Quo vadis? Canonical Reflections on the Rights of Alleged Victims in Canonical Procedures

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Abstract

The Working Group "Safeguarding Guidelines and Norms" of the Pontifical Commission for the Protection of Minors convened a seminar on the "Rights of Alleged Victims in Canonical Penal Procedures". The purpose of the seminar was to learn how international treatises understand rights of victims in penal procedures, how these are implemented in different judicial systems around the globe and what the Church can learn from them in light of its current canonical norms for penal procedures. In this study, the author summarises and reflects on the different contributions. In light of the principle *salus animarum suprema lex*, the author calls for *hermeneutics of care* to govern canonical provisions that attend to the rights of victims in canonical procedures.

Keywords: *sexual abuse in the Catholic Church; procedural rights of victims; penal canon law; duty to care, penal procedures*

1. Introduction

In December 2021 the Working Group "Safeguarding Guidelines and Norms" of the Pontifical Commission for the Protection of Minors (PCPM) organised a seminar entitled "Rights of Alleged Victims in Canonical Penal Procedures". The topic had arisen from the 2019 seminar organised by the same working group of the PCPM which was entitled "Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability".[1] During this latter seminar, I reflected on the rights of victims in different canonical penal procedures and made some suggestions

1 English version: Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability, *Periodica* 109 (2020) 401–676. All contributions are translated into English or Italian and these can be accessed at: https://www.iuscangreg.it/seminario-tutela-minori, access 08.08.2022.

as to how this could unfold in the different phases of different procedures.[2] My reflections then and now take into consideration reports that victims shared with me personally as well as findings from reports commissioned by independent institutions or Church authorities. The narratives that were shared reveal that victims not only suffered from sexual abuse as minors by clerics, but that they also incurred new wounds that were inflicted upon them because of the way Church authorities responded to their allegations. They thus experienced what is generally known as "secondary victimisation". Hence, there is a need to evaluate the existing canonical provisions and their implementation in order to avoid such "secondary victimisation".

The purpose of the 2021 seminar of the PCPM was to identify the rights of victims as expressed in different canonical penal procedures and to reflect on them in light of internationally developed standards as well as the way different jurisdictions around the world attend to the role and rights of victims in their respective judicial penal provisions. It is hoped that a dialogue among experts on the topic will assist the Roman Catholic Church in its own reflections on how to best attend to the rights of victims in its own different penal procedures.

This contribution offers a canonical reflection after having listened to the different experts. I really must begin by expressing my gratitude to these outstanding experts for generously sharing their knowledge of the rights of victims in penal matters, be it from the perspective of international treatises and / or the way they unfold in different jurisdictions around the world. I would also like to thank all the people who responded to the presentations and all others who engaged in a true dialogue between these experts and professors of canon law, staff members of different dicasteries of the Roman Curia, as well as a number of diocesan bishops and (former) major superiors of religious institutes who have expertise in this domain. I am grateful for the questions that were raised and the answers we were privileged to hear.

The seminar was opened by a true expert in canonical penal procedures, Prof. Msgr. Gianpaolo Montini, who presented the status quo in canon law. Now that I have heard the presentations of the experts from other

Spanish translation: Myriam Wijlens / Neville Owen (eds), Confidencialidad, transparencia y accountability. La dignidad de las personas en los procesos de denuncia de abuso sexual (PPC-Editorial 2022).

2 Charles J. Scicluna, Rights of Victims in Canonical Penal Processes in Periodica 109 (2020) 493–503.

jurisdictions and in light of my own experience, the question arises: *Quo vadis*? Where can we go from here? In answering that question, I feel it is important to appreciate the fact that the legislation of the Vatican City State since 2019 has updated the institutions of the Holy See in line with international obligations, as the Law CCXCVII states.[3] I offer my reflections in this specific context.

2. *The Framework: Accompaniment because of a Duty to Care*

My contribution starts from what needs to govern all further reflections: the response by the Church to allegations of abuse needs to occur within a framework of accompaniment of the victim, because those in leadership especially have a duty to care. This point was made by Professor Jorge Cardona, a professor of Public International Law at the University of Valencia (Spain) and a former member of the Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child by its state parties. Cardona underscores the need to attend in all procedural matters to "the best interests of the child", but adds that this "should not entail a reduction in the rights of the accused [who has a right] to a fair trial […]. Obtaining the truth while respecting the innocence and the rules of a fair trial is not at odds with respect for the best interests of the child".[4] Considering this, Cardona argues in favour of the general accompaniment of victims that is then to unfold in the different legal provisions and in their application. He invites the Church to attend to this because, as he points out, the rationale of canon law is the *salus animarum*, the spiritual well-being of our communities: *salus animarum suprema lex*.[5] Indeed, whatever we try to do to promote and protect the rights of victims and survivors, but also perpetrators, must be read and experienced within this framework; it is the *leitmotiv* of the great duty to care, which is at the basis of the right to be protected. Victims have a right

3 Francis, Law No. CCXCVII 'On the Protection of Minors and Vulnerable Persons' March 26, 2019, available on https://www.vatican.va/resources/resources_protezionem inori-legge297_20190326_en.html, access 06.08.2022.

4 Jorge Cardona, Rights of Alleged Victims in Penal Procedures in Spain, in Charles J. Scicluna / Myriam Wijlens (eds), Rights of Alleged Victims in Penal Proceedings. Provisions in Canon Law and the Criminal Law of Different Legal Systems, Nomos 2023, 160.

5 Cf. can. 1752 of the Code of Canon Law 1983.

to be protected, and the community has a duty to care; this is an expression and unfolding of the *salus animarum.*

International documents, like the EU Directive,[6] hereafter Directive 2012/29/EU, consider the interest of the child to be a paramount principle which is to be the basis for our considerations. Canon law and civil law now converge on defining "minor" in law as a person under 18 years of age.[7] This is an added advantage because now we can start talking on the same level, which is an important development that we should not underestimate. We have the same concept of a minor, which adds value to our reflections.

3. The Scope of the Canonical Penal Procedures

In his remarkable study, Monsignor Montini adopted a very specific perspective on the penal procedures, starting from the moment when the procedure formally starts, up to the definitive sentence. Yet, we must recognise that most of the civil legislation, international conventions, EU directives, laws of Vatican City State, even the Code of Canon Law, hereafter CIC, do consider the preliminary investigation and the right and duty to denounce or disclose as an integral part of the system of penal justice.

In a very eloquent way, Monsignor Montini presented the argument that if you talk about processes, you must go from the *citatio* up to the *sententia definitiva*.[8] However, looking at the comparative legislation as reviewed during the 2021 seminar, one can recognise that the relevant structure of book VII on the Penal Process in the CIC itself starts from the *notitia criminis,* then attends to the preliminary investigation, provides for important norms concerning the deliberation, decision and discretion to choose what

6 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ 2 315/17.

7 Cf. Congregation for the Doctrine of the Faith, A brief introduction to the modifications made in the *Normae de gravioribus delictis*, reserved to the Congregation for the Doctrine of the Faith, n. 14; May 21, 2010, available on https://www.vatican.va/resources/resources_rel-modifiche_en.html, access 02.08.2022; Francis, Rescript of the Holy Father to introduce some amendments to the *Normae de gravioribus delictis,* December 17, 2019, art.1, available on https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217a.html, access 02.08.2022.

8 Gianpaolo Montini, The Rights of Alleged Victims in Canonical Penal Procedures. Current Penal Procedural Canon Law, in Scicluna / Wijlens (n 4) 20.

to do with the information gathered, and finally there is a process, whether administrative or judicial, that leads to a definitive decision.

Hence, any future reflection should not only look at the process as a technical parenthesis but consider it in a wide perspective, because the duty to care cannot be expressed within the parameters of a "process" only in the technical meaning of the term. We must have a system that looks at disclosure, investigation and process as well as aftercare or support.[9]

We cannot simply look at the CIC either. It is necessary to appreciate the fact that with the motu proprio *Vos estis lux mundi*,[10] hereafter VELM, there is a binding universal law. Part one of VELM provides a universal law concerning the protection of minors and vulnerable adults, and it introduces the important legal obligation to offer protection services for victims of crime and the duty to report. Under the heading "care for victims", VELM determines in art. 5 § 1 that victims:

"together with their families, are treated with dignity and respect, and, in particular, are to be:

a) welcomed, listened to and supported, including through provision of specific services;
b) offered spiritual assistance;
c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case".

This is an important development that must be taken into consideration.

Another point that one needs to make is that whenever references are made to the exercise of discretion by the authority in canon law, such decisions have consequences for the community, for the victims, their families, and for the perpetrators. An example of the exercise of this discretion concerns the moment when the Ordinary has to decide whether it is expedient to have a penal process, or once a penal process has been decided on, to choose what kind of process is best: administrative or judicial. This discretion must be exercised *ex iusta causa*; it cannot be taken lightly, but

9 See in this regard also the contribution by Mark Bartchak, The Position of Alleged Victims in the Canonical Penal Process, in Scicluna / Wijlens (n 4) 287-308, who as a judge in canonical penal processes and a diocesan bishop underscores the need to attend to victims in a much wider sense than the mere process itself.

10 Francis, Apostolic Letter in the form of Motu Proprio *Vos estis lux mundi,* May 10, 2019, available on https://www.vatican.va/content/francesco/es/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html, access 06.08.2022.

it must instead be a reasonable decision. It would seem justified for all concerned that the decision should entail a consultation with experts. As I have mentioned on another occasion: "Expert advice brings light and comfort and helps us bishops arrive at decisions that are based on scientific and professional competence. Tackling cases as they arise in a synodal or collegial setting will give the necessary energy to bishops to reach out in a pastoral way to the victims, the accused priests, the community of the faithful and indeed to society at large".[11]

So far the canonical system does not have a process or remedy for victims, or even the perpetrator, to challenge a decision taken at the preliminary stage, whereas we saw during the seminar, how many jurisdictions, and even the Directive 2012/29/EU itself, offer these remedies for preliminary decisions. This is something that should be considered. Does one have a remedy if the bishop decides not to conduct a penal process in a particular case? Considering that bishops and major superiors can themselves be called to account for the decisions they take in these matters,[12] the provision is of relevance not only for victims, but for those who exercise leadership as well.

The CIC talks about the aggrieved party before the formal beginning of the process in canon 1718. When there is the opportunity for reconciliation and with the consent of the parties, the person investigating can facilitate this and can also award *ex bono et aequo* damages. Hence, the CIC recognizes that the parties are already protagonists or players before the beginning of the penal process. We need to take cognisance of this.

We owe victims everything that we can do to facilitate the search for truth because this will be the basis for healing. I think that whatever help and role we can give victims of abuse in the canonical penal proceedings is important, because this is part of our mission: our mission is a mission to heal.

11 Charles J. Scicluna, Taking Responsibility for processing Cases of Sexual Abuse and for Prevention of Abuse, Lecture given at the Meeting 'Protection of Minors in the Church' of the Holy Father with the Presidents of Episcopal Conferences, Rome February 22, 2019, available on https://www.vatican.va/resources/resources_mons-scicluna-protezioneminori_20190221_en.html, access 24.12.22.

12 Francis, Apostolic Letter issued Motu Proprio *As a loving Mother*, 4 June 2016, available on https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20160604_come-una-madre-amorevole.html, access 24.12.22.

There has been a very important emphasis on the "public" nature of penal procedures. This is an action promoted by the authorities in the name of the public good. However, during this 2021 seminar we have learned of civil law systems that have also brought in the parties as "co-actors" in the penal procedures. The provisions in Germany[13] and Poland,[14] which will be expanded upon in further detail below, are very interesting, and we should reflect on them and try to understand them on a deeper level.

It is worth considering that even in the context of the public nature of penal processes – and they are public because they promote the common good of the Church – the common good of the Church includes the good of the victims and the accused. I recall a comment that in certain communities in Africa the individual is put on a secondary level and there is a more pronounced emphasis on the community and the role of the community. These emphases are not incompatible, because the common good includes the good of the individuals who are wounded. Pope Francis has been quite vocal in giving the magisterium a grounding and the theology of the care of the victim. I am referring to his 2018 "Letter to the People of God",[15] which deals with the theology of our responses to abuse, seeing it in light of the Gospel"s teaching that when one member suffers, we all suffer. The wound inflicted on one of us is a wound inflicted on the body of the Church.

Furthermore, I would also include the good of the accused, because we tend to concentrate on the victim, but the good of the accused, what we define as the *emendatio rei,* the conversion of the accused, is part of the common good. It is a blessing to the Church if a person who is guilty of an egregious crime returns to the fold. That would be an extraordinary response to the danger of recidivism and an extraordinary way to prevent further crime.

13 Frauke Rostalski, The Rights of (Minor) Victims of Sexual Violence in German Criminal Procedure, in Scicluna / Wijlens (n 4) 243-260.

14 Malgorzata Skórzewska-Amberg, Polish Criminal Procedure in Respect of Sexual Offences Against Minors, in Scicluna / Wijlens (n 4) 261-285.

15 Francis, Letter of His Holiness Pope Francis to the People of God, August 20, 2018, available on https://www.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco_20180820_lettera-popolo-didio.html, access 06.08.2022.

4. Rights of Victims – a procurator partis laesae

In the 2019 seminar organised by the PCPM,[16] while speaking about the rights of victims, I suggested the introduction of a *procurator partis laesae* as a representative of the victim. Now having listened to many interesting experiences from different jurisdictions in the current seminar, I feel that such a proposal does not come from Mars, because civil jurisdictions have adopted a similar model. While it is necessary to respect the specific nature of the canonical system, it is equally true that the canonical system has always been open to development. The impact of canon law is universal and could be a beneficial influence in so many cultures.

Frauke Rostalski, Professor of Criminal Law, Criminal Proceedings, Legal Philosophy and Legal Comparison at the University of Cologne, made a noteworthy contribution from the perspective of the German system. She remarks that since "[a] criminal offense is an individual's violation of a legal prohibition or obligation", the legal system might see the offence as a mere violation of the law, but "[a]bove all, it is a violation of a victim's legal position". She explains that through criminal law, the conflict is taken out of the private realm into the public sphere, which, however, could:

"lead us to losing sight of the individual victim that suffered at the hands of the defendant. The criminal offence is an attack on the rights of the society to which the victim belongs: the criminal offence is grounded in the specific violation of the victim's legally protected right, which in turn gives rise to the reaction of the state in the shape of punishment. Thus, the victim should be accorded an appropriate role in the criminal process – as a person who has a special interest in the resolution of the conflict".[17]

Rostalski explains that German criminal law offers decisive instruments to help the victims pursue their legitimate interests: the "private accessory prosecution" and the "assertion of rights in adhesion proceedings". These measures might risk further emotional damage for the victim, but, writes Rostalski, such tension is to be considered in the creation of victim rights. The victim should have an opportunity to participate in the trial, while their psychological constitution is also to be considered. In contrast, the adhesion proceedings, as explained by Rostalski, do not give the victim an active role in the trial; instead, the injured party is "able to claim damages

16 See Fn. 1 above.
17 Rostalski (n 13) 244.

in civil law in the context of a criminal trial".[18] This provision is in place so as to avoid conflicting decisions in criminal and civil law.

Through a private accessory prosecutor, victims have their own procedural standing and become independent participants in the proceedings: "The injured party is given the opportunity to present his/her specific situation and emphasise the suffering he/she endured, to strengthen his/her claim for redress".[19] Through this instrument the victim also has the right to defend themselves against a termination decision by the prosecutor. The prosecutor might do so, but "if the injured party put forward the request for criminal prosecution and it is later terminated, he/she must be informed about the decision of the prosecution [...] and he/she may appeal this decision".[20] Rostalski explains that during the criminal proceedings the private accessory prosecutor has the right to demand and receive information as well as view relevant records, be informed about the trial and the termination of the proceedings, where and when the main proceedings are held, as well as what charges are brought against the defendant. "However, he/she does not have the right to receive a copy of the decisions".[21] Hence, the injured party would only obtain the result of the proceedings in a comprehensive manner. Furthermore, they have a right to receive information that concerns their own safety in relation to the defendant. This would include, for example, instructions not to get in touch with the victim. Through the private accessory prosecutor, the injured party has the right to review records. Other rights are, for example, the right to be present at the main proceedings, reject judges and experts, and question the defendant, witnesses and experts themselves. There are a number of other relevant rights, for which I refer to Rostalski's article.

Similarly, the victim has the chance to take an active role during the trial in Polish criminal procedure. Professor Malgorzata Skórzewska-Amberg, Chair of Theory, Philosophy and History of Law at the School of Law at the Kozminski University in Warsaw, explains that even if the parties in the proceedings are the prosecutor and the defendant, the victim may appear as a party as an "auxiliary prosecutor". Professor Skórzewska-Amberg describes this instrument as "an institution of the Polish criminal procedure which has been introduced in order to enable the aggrieved party to

18 Ibid. 247.
19 Ibid. 246.
20 Ibid. 249.
21 Ibid.

actively participate in the trial and exercise the victim's rights as a party – alongside or instead of the public prosecutor".[22] She explains that through an auxiliary prosecutor the victim is entitled to submit evidentiary motions and pose questions to those interrogated, attend the main hearing and attend the court sittings prior to the main hearing, in respect of conditional discharge or dismissal on the grounds of the defendant's incapacity, along with the application of protective measures or conviction and sentencing without a main hearing.[23]

Professor Mary Graw Leary, a former federal prosecutor and professor of law from the Catholic University of America in Washington DC with expertise in the intersection between criminal law, criminal procedure, technology and contemporary victimisation, presented a comprehensive examination of ten minimum rights that the federal statutes of the USA recognise for victims of sexual abuse. These rights, which can serve as orientation in our study, include the right to:

- be reasonably protected from the accused;
- obtain a reasonable, accurate and timely notice of any public court proceeding or any parole proceeding involving the crime or of any release of or escape by the accused;
- not be excluded from any public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
- be reasonably heard at any public proceeding in the district court involving release, plea, sentencing or any parole proceeding;
- confer with the attorney for the government in the case;
- full and timely restitution as provided in law;
- proceedings free from unreasonable delay;
- be treated with fairness and with respect for the victim's dignity and privacy.[24]

22 Skórzewska-Amberg (n. 14) 272.
23 Ibid. 274.
24 Mary Graw Leary, A Crime Victim Rights Framework in the USA, in Scicluna / Wijlens (n 4) 130-145.

The canon lawyers with experience in conducting penal procedures Bishop Marc Bartchak[25] and Aidan McGrath OFM[26] have already offered some useful insights on how these rights are already foreseen in canonical norms or can be unfolded within them. Their thoughts should be taken into consideration by a possible task force, as I will suggest below. Furthermore, it is important to remember that the first *Vademecum* issued by the Congregation for the Doctrine of the Faith already determines: "In cases where it proves necessary to hear minors or persons equivalent to them, the civil norms of the country should be followed, as well as methods suited to their age or condition, permitting, for example, that the minor be accompanied by a trusted adult and avoiding any direct contact with the person accused".[27]

The reflections make one realise that information and dialogue with those concerned is essential and can be an important aspect in the healing process. If this is not done properly, that process is impeded. As VELM says, we have a duty to care, to support, to accompany. Pope Francis keeps telling us that the style of the gospel is *tenerezza, compassione, vicinanza*. We should be able to apply these notions and translate them into action and thus show compassion, tenderness and closeness to the victims.

In this regard, another point mentioned in the study presented by Professor Rostalski about the German provisions is of relevance. She refers to the possibility of professional psychosocial procedural accompaniment, *psychosoziale Prozessbegleitung*. She states that this is an additional means of support for victims of sexual violence, including minors, during the criminal proceedings: "the person providing this assistance should be allowed to be present with the injured person during his/her examination and the main hearing".[28]

25 Bartchak, (n. 9).

26 Aidan McGrath, With Dignity and Respect: How Victims May Participate in Canonical Proceedings – Reflections on a Conference by a Practicing Canon Lawyer in Penal Matters, in Charles Scicluna / Myriam Wijlens (n 4) 312.

27 Congregation for the Doctrine of the Faith, Congregation for the Doctrine of the Faith, *Vademecum* on certain points of procedure in treating cases of sexual abuse of minors committed by clerics, Version 1.0, 16 July 2020 n. 51, available on https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html, access 15.08.2022. Indeed, after the seminar, version 2.0 was published on 5 June 2022, available on https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html, access 15.08.2022.

28 Rostalski (n 13), 253.

This is an interesting provision for accompanying a victim throughout the process. Regretfully, those who work in the Dicastery for the Doctrine of the Faith have heard reports of cases in which people had been left in the dark as to what the outcome was of the case in which they were a victim. I remember a person who wrote letters to the Holy See complaining that nothing happened after he had reported a case of abuse. Hence, we checked and discovered that the accused priest had been dismissed from the clerical state. The Church had complied with its duty, but no one had informed the person most affected, namely the victim. The obligation to contribute to healing, to express care had not been fulfilled.

5. Specified Training for Professionals in Canonical Penal Procedures

I noticed that so many of the civil jurisdictions that have been reviewed insist on the training of personnel to be able to address the special status of a minor or of a person abused as a minor.

Professor Salvioli from Argentina, the former President of the UN Human Rights Committee (2015–2016) and UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, explains in his insightful contribution that one of the recommendations for good practice to effectively ensure the rights of victims of abuse is to "train investigators, prosecutors and judges to carry out their functions according to human rights standards, eliminating the prejudices and stereotypes that place the responsibility for the abuse on the behaviour of the victims".[29] Professor Cardona explains that Spanish law also requires that all those involved in the different proceedings related to violence against children and adolescents must have specialised, initial and continuous training. He refers to General Comment No. 13 of the Committee on the Rights of the Child, which recommends:

> [T]hat investigations [have] to be carried out "by qualified professionals who have received role-specific and comprehensive training [for this purpose], and must require a child rights-based and child-sensitive approach", taking "extreme care […] to avoid subjecting the child to further

29 Fabián Salvioli, The Rights of the Victims: International Standards and the Need of a Holistic Approach, in Scicluna / Wijlens (n 4) 48.

> harm through the process of the investigation".[30] This specialization is reiterated when it calls for "juvenile or family specialized courts […] for child victims of violence", or "the establishment of specialized units within the police, the judiciary and the prosecutor's office".[31]

Cardona explains that the training does not only apply to police, but also to attorneys, lawyers defending child victims, and those working in the judicial and prosecution domain. The training relates to material and procedural aspects. Spanish law foresees that professionals specialised in the different areas of action, including forensic sciences and legal medicine, work together, thus reinforcing the multidisciplinary nature of assistance provided to victims. In canon law, besides having to have at least a licentiate in canon law, additional specialised training for those working in the area of penal law could be envisioned. Such training could include learning methods of interrogating, evaluating proof and forensic reports, understanding trauma caused by sexual abuse and its impact on giving testimony, etc.

During our dialogues, we have indeed seen that even if an adult is talking about their experience, at that moment it is the child talking through that adult. Those involved in these cases need to be aware of this and the challenges that arise from it. Victims are often still living in their trauma because they are almost frozen in that traumatic experience. Their language is almost fixed in that time and space. Therefore, the people who encounter victims need training to be able to be empathic and caring in the job of supporting victims. It is also of relevance that those who are procurators, auditors, advocates, promotors of justice or judges in canonical procedures understand the proof presented.

Through his personal experience as a judge in canonical procedures, Bishop Mark Bartchak has already shared some very helpful reflections on how to conduct a canonical investigation, how to interact with and interrogate victims as well as how to judge their testimony.[32] It would be good to develop this area more deeply and also see, for example, how faculties of canon law can offer specialised courses possibly in cooperation

30 UN Committee on the Rights of the Child (CRC), 'General comment No. 13 (2011): The right of the child to freedom from all forms of violence', 18 April 2011, CRC/C/GC/13, available on https://www.refworld.org/docid/4e6da4922.html, access 15.08.2022.

31 Cardona (n 4) 164.

32 Bartchak (n 9) 298.

with forensic institutions. Training should be multidisciplinary: canonical, psychological and spiritual.

6. A Dialogue between the Different Judicial Systems

One of the things that came to the fore in the 2021 PCPM seminar is that there are different families of law and that within the same family of law such as common law, civil law and Germanic law, the legal provisions in different places are at different points of the graph. Canon law on the other hand has the benefit – because it is truly catholic, truly universal – of being able to influence culture around the world.

The dialogue between canon law and civil law in this area has been beneficial, as can be seen with regard to the development of the motu proprio *Sacramentorum sanctiatis tutela* after its initial publication in 2001; recently, the third version was issued.[33] In 2010 canonical legislation introduced the question of sexual exploitation through images, formerly called pornography. This was the result of a developing phenomenon that had to be recognised and addressed. The recent 2021 revision of the motu proprio included further developments that not only accept what VELM had already determined concerning sexual abuse of minors, but also states which delicts are the preserve of the Dicastery for the Doctrine of the Faith and which ones are not.

7. Quo vadis? A "task force" and an Instruction

Quo vadis – where do we go from here? I suggest that this is not the moment to decide anything; above all, there is no mandate to do so. However, I would suggest that, under the auspices of the PCPM, "a task force" would

33 John Paul II, Apostolic Letter in the form of Motu Proprio '*Sacramentorum Sanctitatis Tutela*', AAS 93 [2001], available on https://www.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html, access 09.08.2022; Benedict XVI, *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis* AAS 102 [2010], available on https://www.vatican.va/resources/resources_norme_en.html, access 09.08.2022; Francis, Norms on delicts reserved to the Congregation for the Doctrine of the Faith, L'Osservatore Romano 161 [2021], available on https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_norme-delittiriservati-cfaith_en.html, access 09.08.2022.

take care of the elements I have suggested. Of course, different Roman dicasteries need to be involved because of their specialised knowledge and wisdom, be it in the case at hand or also in drafting legal documents.

First, we need time and energy to digest the extraordinary amount of input and information we have had the privilege to receive through the papers, the dialogues and the responses of those who participated in the seminar. There is a world of information that needs to be digested. A task force would discuss the elements of convergence and differentiation, and it would be integrated by people familiar with the limits and the values of the canon law system.

One of the limits that we usually ignore is the fact that canon law is a system based on the voluntary submission of the individual member of the people of God, whereas a state jurisdiction has the power of physical coercion and obliges because of citizenship or residence. Canon law is based on the obsequious notion of faith. As the apostolic constitution *Pascite gregem Dei*,[34] by which Pope Francis promulgated the new norms contained in Book VI of the CIC, says the submission to canonical penal law is an expression of an act of faith, but it is also a disciplinary and voluntary submission. There are people who have walked away from the Church to avoid or evade the consequences of penal processes. Another limitation concerns the technical possibilities that the Church has: it simply cannot order the accused to make available devices such as computers and phones on which relevant proof might be found, nor does it have the technical possibility to conduct such an investigation. Hence, cooperation with civil authorities in these areas is necessary.

Following the discussion on the elements of convergence and differentiation, the task force would be able to extrapolate a set of principles for policy. We have been blessed with so much information about principles of best practices in international treatises, on the United Nations level and regional conventions like the Directive 2012/29/EU. There are principles that converge; they usually concern the right to information, the right to participation and the right to support and award damages. This task force would also be able to propose ways and means by which the Church can promote the empowerment of victims in the process of the search for truth.

34 Francis, Apostolic Constitution *Pascite gregem Dei* on the Reform of Book VI of the Code of Canon Law, available on https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601b.html, access 26.08.2022.

This obviously leads to two important aspects which are not technically procedural, but which are present in so many jurisdictions: information and training. Most of the documents shared in the current seminar concentrate on information, such as the right of the victims to be informed about their rights, about the process, and about its development or progress. There is also a need to attend to the (ongoing) training of those persons who engage as players and stakeholders in a canonical process, as mentioned above.

The task force could look into the possibility of issuing an instruction. I am thinking of an instruction, because unlike a revision of the whole procedural law in book VII of the Code of Canon Law, which might well take a long time, an instruction could answer to the needs much more quickly, and considering the principle *Lex semper reformanda est,* subsequent changes that might be needed due to new insights could be more easily accounted for. Furthermore, an instruction or guidelines would have the advantage of going beyond attending to procedures in the strict sense. After all, the care for the victim starts, as mentioned above, before the formal beginning of a process and goes beyond it. The Code of Canon Law in its procedural law could not cover the care of victims like VELM does in part I. An instruction would be able to have this holistic approach. It is necessary to give the care of victims the right context, which is wider than what happens from the formal beginning of a canonical process to the very end, because the care of victims is broader.

The idea of an instruction, however, brings me to one of the things that I learned from the extraordinary input by Monsignor Montini: we need more information about the status of canon law. Most canon lawyers who participated in the seminar would agree that we all learned something because the sources that Monsignor Montini mentioned are not available to us mortals. We cannot go on with a system where specialised information is not shared institutionally. I was intrigued by some things he mentioned, especially about the rights of the *pars laesa* within the process. In his study, he quotes a law that was in force between 1950 and 1991;[35] it is not in force

35 Pius XII, Apostolic Letter in the form of Motu Proprio *Sollicitudinem Nostram. De iudiciis pro Ecclesia orientali,* available on https://www.vatican.va/content/pius-xii/la/motu_proprio/documents/hf_p-xii_motu-proprio_19500106_sollicitudinem-nostram.html, access 28.08.2022; Gianpaolo Montini, The Rights of Alleged Victims in Canonical Penal Procedures. Current Penal Procedural Law, in Scicluna / Wijlens (n 4) 27 FN 17/18.

anymore. But how are we going to apply a law that is not in force anymore and nobody knows about?

There should be a system that allows us to be informed, even about the jurisprudence of the tribunals of the Holy See,[36] especially the Apostolic Signatura, where I worked for seven years as a substitute promotor of justice. Hardly anybody knows about the work of the Signatura, because the Signatura itself has always refused to publish its jurisprudence except for some rare things and in very rare instances. This means that experts like Monsignor Montini need to help this task force to glean these principles.

We also need proposals from a task force which give extra impetus to the system because the Church would benefit from instruction. Monsignor Montini mentioned the experience with the instruction *Dignitas connubii,* which concerns the procedure in marriage nullity cases.[37] I was secretary on the team that worked on it from 1996 to 2000. It was an extraordinary experience, and I remember that most of it was based on the instruction *Provida Mater,*[38] which was issued in 1936, an instruction that went into great detail. It was useful even after the promulgation of the 1983 CIC. If you have a great law, like the motu proprio *Sollecitudinem nostram* promulgated for the Eastern Churches in 1950,[39] which is not *ius vigens* now, it can help with the development of a new instruction.

However, since we are talking about delicts that are the preserve of the Dicastery for the Doctrine of the Faith, I would suggest that its own input is essential. The *Vademecum,*[40] published by this Dicastery, offers extraordinary, albeit not perfect, input. It could also be a basis for further progress, because the Dicastery for the Doctrine of the Faith did a good service of including many aspects of its jurisprudence, especially on the formal

36 The call for the publication of jurisprudence was already mentioned in a number of studies presented in the 2019 seminar organised by the PCPM (see n 1 above). See e.g., John Beal, Accountability and Transparency According to Canon and International Law: A human Rights Perspective, in Periodica 109 (2020) 505–526; and Neville J. Owen, The Ideal of Accessible Justice: In praise of Jurisprudence, in Periodica 109 (2020) 633–658; as well as Neville J. Owen / Myriam Wijlens, Outlook after the Seminar, in Periodica 109 (2020) 659–666.

37 Montini (n 35) 37.

38 S. Congregation de Disciplina Sacramentorum, Instructio *Provida Mater Ecclesia*, AAS 28 (1936) 313–372; English translation in T. Lincoln Bouscaren (ed), The Canon Law Digest, vol. 2, Milwaukee, Bruce, 1943, 473–530.

39 Pius XII (n 35) 5–120.

40 Congregation for the Doctrine of the Faith, *Vademecum* (n 27).

procedural level, but it did not envisage the question of awarding damages. However, it is something that could be remedied in an instruction.

It is important that we realise that our system is a special system; it needs to bear witness to the wisdom behind the minimum standards on the rights, support and protection of victims of crimes that are now a threshold and a standard in the international community. We need to be wise in accepting the fact that the Roman Catholic Church, which used to be an authority and interpreter of *ius gentium* during the first and second millenniums, now needs to understand that in the third millennium it has to continue this dialogue with the international community, and that its own system needs to be up to scratch and be an example of best practices of a faith community that has the important role of care, because after all the *salus animarum* doesn't expect anything else from us.

This is my take: a task force and an instruction. Therefore, I would like to conclude my reflections by saying that they are open-ended; this is the beginning of a process. It is an extraordinary beginning, because it is in dialogue with the world and we need to be challenged by the international community and local jurisdictions, because we need to be of service to our communities, and we owe it to people in our flock who are wounded and crying out for healing and justice.

Biography

Archbishop Charles J. Scicluna has been the Archbishop of Malta since 2015. He holds doctorates in Civil and in Canon Law. After serving as Deputy Promotor of Justice at the Apostolic Signatura (1995–2002), he was appointed in 2002 as promotor of justice at the Congregation for the Doctrine of the Faith with special responsibility for the *delicta graviora*, in particular the abuse of minors. In 2015 Pope Francis appointed him president of the College for Recourses in Cases of Reserved Delicts at the same Dicastery.

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