The Rights of Alleged Victims in Penal Proceedings

Introduction to a Seminar

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> "I am conscious of the effort and work being carried out in various parts of the world to come up with the necessary means to ensure the safety and protection of the integrity of children and of vulnerable adults, as well as implementing zero tolerance and ways of making all those who perpetrate or cover up these crimes accountable. We have delayed in applying these actions and sanctions that are so necessary, yet I am confident that they will help to guarantee a greater culture of care in the present and future".[1]

Serious allegations of sexual abuse of minors by clergy in the Roman Catholic Church have been the cause of deep wounds and tremendous pain inflicted upon the most vulnerable in its own midst. Independent investigations, be they commissioned by either Church or State authorities, reveal that not only the sexual abuse itself, but also the handling of the abuse by those in leadership caused serious harm and call for fundamental reforms as well. Responses and interventions in relation to allegations of abuse should not only prevent a secondary victimisation in the sense that they do not inflict additional pain, open old wounds or create new ones, but they are to be conducive in themselves to the healing of those concerned. Whereas the Church operated for a long time in addressing the abuse cases with a hermeneutics of what might be labelled as "protecting the reputation of the Church", a radical change in mentality towards a hermeneutic of "care" is necessary and it must be characterised by an accompaniment that benefits all, and in particular the victims. A hermeneutics of care is asked for because of the dignity of the persons is involved.

An important part of that healing process concerns the administration of justice. The question arises: how can the judicial system itself contribute to

1 Francis, Letter of His Holiness Pope Francis to the People of God, August 20, 2018, https://www.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco_20180820_lettera-popolo-didio.html, access 10.03.2023.

the healing of those harmed in view of the dignity of the persons and with a hermeneutic of care? This question is not only of relevance for the canonical judicial provisions, but it also concerns judicial systems throughout the world.

Over the past twenty years the Catholic Church has received developments concerning the knowledge and scope of sexual abuse of minors in the area of substantive law. Examples are:

- the widening of the notion of minor from having completed the sixteen years of age to eighteen years and including persons who are considered by law to be equivalent to a minor;
- expanding the content of the delict from sexual abuse of minors to include the production, exhibition, possession or distribution, by whatever means, of child pornography whether real or simulated, as well as the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions;
- changing the perspective of considering the sexual abuse of a minor not just as a violation of an obligation related to celibacy by a cleric, but considering the sexual abuse as a violation of the dignity of the other person, and finally
- amending the time for prescription, which in civil jurisdictions is often referred to as statute of limitations, from expiring not any longer after five years from the day the delict stopped being committed, to twenty years from the time the alleged victim completed its eighteenth year of age and adding the possibility of derogating from prescription altogether in some cases.

The examples show that over the past twenty years there has been an ongoing learning process with regard to the understanding of sexual abuse of minors and its implications leading to relevant changes in the domain of the substantive law. A similar process of learning about sexual abuse cases and the way to respond to them within the canonical penal proceedings commenced much more recently.

1. The Pontifical Commission for the Protection of Minors

Aware of the need to continuously improve its engagement in the area of safeguarding and protecting minors, Pope Francis established the Pontific-

al Commission for the Protection of Minors (PCPM) in the Vatican on March 22, 2014 and commissioned it to propose to him personally the "most opportune initiatives for protecting minors and vulnerable adults".[2] In order to comply with this specific task, the Pope appointed sixteen members to the second commission (2018–2022) originating from all continents and with rather different professional backgrounds and ecclesial vocations (eight of whom are women). This commission decided to establish three working groups. Group one had to attend to "Healing and Care" with a focus on victims / survivors and their families. Group two was commissioned to concentrate on "Formation and Education" especially of those who engage in ministry or hold leadership positions that imply a responsibility for the safety of children and vulnerable persons. Group three, which was composed of a child psychiatrist and four lawyers, one of whom a canon lawyer, focused on "Safeguarding Guidelines and Norms".

Recognising the urgency of attending to canonical penal law matters, the Working Group "Safeguarding Guidelines and Norms" organised in December 2019 on behalf of the PCPM and after consultation with the Dicastery for the Doctrine of the Faith the seminar "Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability".[3] It addressed five major topics: 1) the seal of confession in relation to mandatory reporting of child sexual abuse; 2) the pontifical secret; 3) accountability and transparency in canon law and international law, 4)

2 Francis, Chirograph of His Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors, March 22, 2014, https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html, access 10.03.2023.
For more information about the PCPM: http://www.protectionofminors.va/content/tuteladeiminori/en.html, access 10.03.2023.

3 The contributions presented during the seminar are published in the language of presentation (English or Italian) in *Periodica* 109 [2020] 401–676. A translation of each contribution in English or Italian can be found on https://www.iuscangreg.it/seminario-tutela-minori, access 10.03.2023. All studies are also published in a Spanish translation: Myriam Wijlens / Neville Owen (eds.), Confidencialidad, Transparencia y Accountabilty: La dignidad de las Personas en los procesos de denuncia de abuso sexual. PPC Editorial 2021, https://cepromelat.com/producto/confidencialidad-transparencia-y-accountability/, access 10.03.2023; as well as in Polish: Myriam Wijlens / Neville Owen (eds.), Nadużycia seksualne w Kościele a tajemnica spowiedzi Wydawnictwo wam 2022, https://wydawnictwowam.pl/sites/default/files/naduzycia_seksualne_st_0.pdf, access 13.03.2023.

accessibility to jurisprudence and 5) the rights of victims in canonical penal procedures.

2. A Seminar on Rights of Alleged Victims

The study presented in the 2019 seminar, which focused on the "Rights of Victims in Canonical Penal Processes"[4] along with the findings from independently conducted investigations, highlighted the crucial need to recognize and address the role of victims in the entire canonical penal judicial system. This system should support victims from accessibility to file a complaint, to receiving care after the court proceedings have been concluded. Based on these findings and after consultation with the Dicastery for the Doctrine of the Faith, the Working Group organized a second seminar entitled "The Rights of Alleged Victims in Penal Procedures".[5] The seminar took place in Rome in December 2021.[6]

The purpose was to provide canon lawyers in leadership positions as well as experts in penal law from different judicial traditions such as the common, civil, and Germanic law with an opportunity to discuss together the role and rights of alleged victims of sexual abuse as minors in their respective judicial systems in light of internationally recognised standards, and to see what reforms in the canonical system might be asked for.

Although due to its scope and nature canon law is not bound by international treaties or conventions, it was felt that an exchange could provide

4 Charles J. Scicluna, The Rights of Victims in Canonical Penal Processes. *Periodica* 109 [2020] 493–503.

5 The term "alleged" victims was chosen to recognize on the one hand that the persons who suffer from sexual abuse as a minor are truly victims, while on the other hand the presumption of innocence of the accused till a verdict has been issued is respected.

6 The Working Group "Safeguarding Guidelines and Norms" existed only during the second mandate of the PCPM (2018–2022). It was composed of Ernesto Caffo (professor of child and adolescent psychiatry, founder and president of *Fondazione S.O.S – Il Telefono Azzurro Onlus*- Italy), Benyam Dawit Mezmur (professor of children's rights law, former chairperson of the UN Committee on the Rights of the Child – Ethiopia / South Africa), Neville Owen – Co-Chair of the Working Group (former senior judge of the Court of Appeal of the Supreme Court of Western Australia, chairperson of the "Truth Justice and Healing Council" created by the Australian Catholic Bishops Conference to respond to the Royal Commission on institutional sexual abuse), Hanna Suchocka (former Prime Minister of Poland, former Ambassador of Poland to the Holy See, professor of constitutional law and human rights – Poland), and Myriam Wijlens – Chair of the Working Group (full professor of Canon Law, preliminary investigator in canonical penal trails – The Netherlands / Germany).

valuable insight, in particular because -as the seminar confirmed- developments in the civil jurisdictions regarding the role and rights of victims are also resulting from an increasing understanding of the medical and psychological impact of the judicial system on victims. An example of this can be found in the studies on secondary victimisation through the application of judicial proceedings. Canon lawyers must also engage with evolving forensic, medical and psychological insights and study how these find an application in civil judicial penal systems in order to discern to which extend consequences must be drawn about a possible necessary adaptation of the canonical penal proceedings. Another reason for taking developments into consideration lies with the fact that in concrete canonical penal cases the outcomes of civil penal procedures are taken into consideration. Hence, the court personnel in canonical cases need to know how to read and evaluate the materials and outcomes of cases adjudicated in the civil penal realm.

3. Participants – Working Method

The seminar was held in in the Congress Centre of Villa Aurelia in Rome from December 12 to 14, 2021. The aim was to facilitate constructive and fruitful exchanges and deliberations between experts working in the area of victims' rights in canon law and judicial systems from different legal traditions in light of internationally recognised standards. Despite the challenges posed by the COVID-19 pandemic, almost all sixty invited participants from around the world were able to attend in person, with only a few participating online. The working languages were English and Italian, and a simultaneous translation was provided.

The expertise present can be grouped into seven domains: 1) victim / survivor of sexual abuse in the Church, 2) professors in judicial penal proceedings from the common, civil, and Germanic legal systems, as well as experts familiar with internationally agreed standards on the rights of victims in different penal proceedings, 3) professors of canon law; 4) staff members from relevant dicasteries of the Roman Curia, 5) diocesan bishops, most of whom are canon lawyers and have experience in conducting penal investigations as well as in governing a diocese. Two of the bishops present are cardinals who are also members of the Council of Cardinals advising Pope Francis; 6) canon lawyers who have a vast experience in conducting canonical penal procedures and who hold leadership positions

in their respective dioceses, and finally 7) members of institutes of consecrated life who due to their leadership position or because of being a canon lawyer have a vast experience in the canonical penal proceedings as it applies to persons in consecrated life.

The organizers of the seminar consciously and deliberately decided that all participants should begin by listening to a victim / survivor who shared the experience of suffering due to canonical penal procedures or their application. All participants were invited to approach the discussion on canonical penal procedures by tuning their ear, heart, and mind to those who have suffered within the Church.

To facilitate an intensive exchange, the speakers were invited to submit their manuscripts before the sessions so that they could be translated and made available to all participants with the request that they read them before the actual session. Additionally, before the seminar began, respondents, mostly consisting of canon lawyers, were selected from among the participants. They were asked to identify the most remarkable and relevant aspects of the experts' presentations on their respective judicial system in view of canonical penal procedural norms.

During the seminar itself, the speakers presented the most important thoughts of their study in only fifteen minutes. The respondents could reply for ten minutes. The floor was then opened to all participants for a thirty-minute active participation in sharing and deepening their knowledge from their own expertise on the subject presented. The seminar closed with a reflection about noteworthy and outstanding aspects learned from the presentations and discussions, paving the way to identifying possible consequences for canonical penal proceedings.

4. The Content of the Seminar

After a word of welcome by the president of the PCPM and Archbishop of Boston, Cardinal Seán O'Malley O.F.M. Cap., the seminar began by listening to the testimony of a victim / survivor from France, who reported about the experience within a canonical penal procedure. In consultation with the victim, the experience was translated in Italian and delivered by a female colleague. The testimony was presented in the first person singular. It revealed several serious obstacles and difficulties the victim / survivor had faced in the different phases of the proceedings. They included finding a canonical advisor, because most of them are clerics and/or not specialized

in penal law; the way the person had been invited for giving testimony; the need to travel to another part of the country for the hearing and the financial and emotional burden this caused the victim; the location and kind of room in which the hearing was conducted; how and what kind of (suggestive) questions had been posed; the accessibility to the psychiatric report written about the victim / survivor to the canonical advisor, but not to the victim / survivor; the kind of information about the procedures that was and was not shared with the victim / survivor; the encounter with priests in the procedures and the experience of being treated in general. The narration caused all present to become aware both of canonical provisions and gaps as well as of shortcomings in the application of existing canonical provisions.

Having listened to the victim, the seminar then continued with a presentation by a professor of canon law concerning the canonical provisions of the rights and possibilities for alleged victims to participate in canonical penal proceedings according to the current canon law. The speaker limited his presentation to canonical penal processes. This was followed by a presentation of an overview of rights of victims of sexual abuse listed in different international treaties, directives, conventions etc. Subsequently, experts from several different jurisdictions presented how in their respective country the rights of victims in penal proceedings unfold. The presentations were grouped by way of legal traditions: from the common law tradition the reports came from Australia, Philippines, India, and the USA. This was followed by presentations from the civil law tradition: Argentina, Spain, France, and Italy, and it concluded with presentations from Germany and Poland. An expert from Nigeria shared his expertise in a response. The seminar concluded with a discussion about the potential implications for canonical penal procedures.

The scholars who generously shared their insights had been chosen for their expertise. A number of them had familiarity with the existing canonical provisions and outlined differences between the current canonical provisions and those of their own jurisdiction. Certainly remarkable is how the internationally recognised standards unfold quite differently in different jurisdictions around the world. Hence, the seminar allowed for a sharing of the different provisions in the different jurisdictions around the world as well. As a result, the canon lawyers did not only learn from the civil lawyers from different jurisdictions; the latter reported that they appreciated learning about provisions in other judicial systems in so many

other countries. It was considered to be a unique opportunity. The interaction thus proved to be extremely rich and insightful.

5. The Outcome

The seminar closed with a reflection by Archbishop Scicluna[7] about the question: *Quo vadis* – where shall we go from here? Having listened to all presentations and discussions he asked: what lessons can be learned and what can be received and implemented in the current canonical provisions? What needs to change?

In his presentation Scicluna emphasizes that whatever is being undertaken must be done in a framework of accompaniment of the victim, because of a duty to care. He underscores that this framework finds its rationale in the purpose of canon law: *salus animarum suprema lex*. This principle governs the rights of victims to be protected from harm and the community's duty to care. He explains that the canonical provisions may not be limited to penal processes in the strict sense of the word, that is, from their formal opening to the definitive sentence. Rather, he argues, the duty to care requires attending to disclosure, investigation, process, and aftercare or support. He also addresses possible remedies for victims and accused to challenge decisions made about the conclusion of the preliminary case – e.g., if no penal process will follow, or what kind of process will be used, administrative or judicial.

Scicluna reflects as well on the relevance of the public nature of penal procedures to contribute to the public good. He calls for a more in-depth study of provisions that some countries such as those in Germany and Poland make, leading him to repeat the proposal he already made in 2019: the possibility to introduce a *procurator partis laesae* as a representative of the victim in the penal procedure. Furthermore, he lists a number of rights that the presentation of the legal provisions in the USA provided and suggest that they can be possible points of orientation for further steps. Another aspect that he considers worthy of reflection concerns the possibility to provide for a professional psychosocial procedural accompaniment of victims in some judicial systems.

7 Archbishop Charles J. Scicluna, former promotor of justice of the Vatican's Dicastery for the Doctrine of the Faith (2002–2012) and current president of the College for Recourses in Cases of Reserved Delicts at the same Dicastery (since 2015).

In light of the presentations, Scicluna draws attention to the expressed need for specified training for all professionals in penal matters as stipulated in some conventions and national judicial provisions. The training relates to material and procedural aspects and includes forensic sciences and legal medicine. Besides training in canon law in general, such a specialized training could be envisioned for those involved in canonical penal matters.

In reflecting on where to go from here – *Quo vadis* – Scicluna proposes that a Task Force be established. The Task Force should study the rich contributions presented and the intense conversations held during the seminar, with the aim of identifying areas of convergence and differentiation. It can then determine which elements can be integrated into canonical provisions. The Task Force could distil a set of principles for policy that empower victims throughout the process.

Finally, Scicluna proposes to investigate the possibility of issuing an instruction similar to the instruction *Dignitas connubii* for conducting marriage nullity cases issued in 2005. It could be completed within a relative short timeframe and could be easily adapted as new insights arise.

6. The Current Publication

The current book publishes almost all studies presented during the seminar. Two canon lawyers, Bishop Mark Bartchak (USA) and Aidan McGrath O.F.M. (Ireland), participated in the seminar by reacting to one assigned paper to them. For the publication of this book, both generously offered to revise their initial reflections by including observations in light of all the studies and discussions of the seminar. Their contribution is of specific value because their reflection is based on their extensive personal experience in conducting and / or participating in canonical penal cases. Hence the book contains besides ten studies originating from experts on international standards for victims in penal proceedings and on legal provisions for victims in penal proceedings in different judicial systems, four studies with canonical reflections: one outlining the status quo of the current legislation and three offering reflections about possible and necessary aspects to be taking into consideration for reforms of penal canonical provisions in the near future.

7. Gratitude

Gratitude is expressed first and foremost to the victim, who by narrating painful experiences incurred during the canonical proceedings made all participants aware of the need to be attentive listeners and to adopt a disposition of accompanying and caring when reflecting upon the existing canonical norms.

Immense thanks is extended to the experts who generously presented high quality studies and who engaged in deep conversations with all participants.

The respondents and participants are commended for their active engagement with the speakers and each other. Their questions and remarks assisted the experts in refining their studies for publication. The contribution and engagement of all give expression to caring for victims when administrating justice.

Thanks is also given to the members of the Working Group "Safeguarding Guidelines and Norms", who tirelessly engaged in the two seminars that the Working Group organized.

Finally, gratitude is articulated to Yeshica Marianne Umaña Calderón, JCL who assisted in the preparations and organisation of the seminar in Rome, and who took minutes of all interventions so that the authors could consider the comments for preparing their manuscripts for publication. Her contribution was invaluable for the success of this project.

Biography

Prof. Dr. Myriam Wijlens was born in The Netherlands. She is an ordinary professor of canon law at the Catholic Theological Faculty of the University of Erfurt (Germany). Mandated by Church authorities she conducted numerous canonical penal preliminary investigations. Pope Francis appointed her as a member to the Pontifical Commission for the Protection of Minors (2018–2022) in which she served as moderator of the Working Group "Safeguarding Guidelines and Norms". On behalf of the Dicastery for Christian Unity she serves on the Faith and Order Commission of the World Council of Churches and on ARCIC. Pope Francis appointed her 2021 as Consultor to the Synod, where she serves on the Coordinating Commission for the Synod on Synodality.