

Canon lawyers hear from church prosecutor of sex abuse cases

Thomas Reese | Oct. 25, 2013

The experience of the sexual abuse crisis, hopefully, will "help us become more humble, less arrogant and bossy in our ministry," Bishop Charles Scicluna told members of the Canon Law Society of America on Oct. 16 at their annual meeting in Sacramento, Calif.

He described sexual abuse as "an egregious betrayal of sacred trust" that "has the power to stunt the normal development of people" and "cause depression, post-traumatic disorders, loss of self-esteem and, most tragically, loss of faith." It "is an expression of the anti-Gospel, a betrayal of the message of compassion and love."

Scicluna began working as the first promoter of justice (roughly equivalent to chief prosecutor) at the Congregation for the Doctrine of the Faith in May 2002, when a "tsunami" of abuse cases hit his office. As an official of the doctrinal congregation, Scicluna conducted the investigation of Fr. Marcial Maciel Degollado, the founder of the Legionaries of Christ. Despite opposition from some curial cardinals but with the backing of Cardinal Joseph Ratzinger, Scicluna pursued the investigation until Maciel was suspended from priestly ministry in 2006. Scicluna also reviewed hundreds of case files of priests who eventually were dismissed from ministry for sexual abuse. He left the congregation in 2012 to become an auxiliary bishop in Malta.

The response to the sex abuse crisis

While the bishop defended the "wisdom and courage" of Popes John Paul II and Benedict XVI in dealing with the crisis, he said that in developing Vatican policy and procedures, "the discussions were lengthy and at times chaotic." Even the decision to include sexual abuse of minors as a grave crime "had its friends and its adversaries" in the Vatican, he said.

One of the most important changes the Vatican made was to provide an administrative response to the sex abuse cases. Previously, all cases had to go through a judicial trial, which was cumbersome and slow. He said 60 percent of the cases are now resolved through an administrative process.

"The judicial process is reserved to cases where the case is not clear and you need to give everybody the full guarantees of the law," he said.

Although all sex abuse cases are referred to Rome, few cases are resolved directly by the Congregation for the Doctrine of the Faith.

"The general practice is to allow the local church to exercise its jurisdiction under the supervision of CDF," he said. Even with appeals, in order to avoid a large backlog of cases, the doctrinal congregation prefers to let another local tribunal deal with the case by special mandate of the congregation.

Dismissing priests through an administrative process without a trial was opposed by some canonists as the equivalent of suspending due process and imposing martial law, where the bishop acts as both prosecutor and

judge. Scicluna said the church does not have a separation of powers as in the American criminal justice system.

"In the church, the bishop is the judge, and that is a theological principle," he said.

'Prayer and penance'

In his speech, the bishop noted that canon law specifies three ends for any penal process: reparation of scandal, restitution of justice and the conversion of the accused.

"Whatever we do, we have to ensure these three ends," he said.

He acknowledged that the three goals of the process can sometimes conflict in sentencing.

"A relatively mild sentence may look to the reform of the offending cleric but may, because of its laxity, exacerbate the scandal among the people," he said. "A harsh penalty may satisfy the demands of justice and respond to the outrage among the Christian faithful, but it may throw the offending priest into deep despair."

Even when the priest is dismissed from the clerical state, the church "never throws him away" because that could lead to "further reoffending, further crimes, further harm." The priest "remains a member of the faithful called, as we all are, to conversion and grace."

Scicluna also called on bishops to consult and compare notes on how they deal with priests who are consigned to a life of "prayer and penance."

"I understand the phrase in the sense that the priest has come to acknowledge his sins and his crimes, has accepted to do reparation and has started the long hard pilgrimage of conversion," he said. "A comfortable life on a golf course is definitely not what the words 'prayer and penance' mean."

Scicluna also acknowledged how some decisions have "created a more or less protracted limbo status for accused priests" who are placed on administrative leave for an indefinite period of time while no further action is taken.

"This is an abuse of the system and a denial of the right to due process," he said. It provides closure for neither priests nor victims, he added.

Priests unsuited for ministry

In his address, Scicluna went beyond the issue of sexual abuse and touched on dealing with priests who are simply unsuited for ministry. A bishop should "never knowingly assign a priest to a ministry where he will be of harm to the community," he said.

"There are situations where the priest concerned has not committed any crimes and has not been accused of misconduct but, this notwithstanding, his modus operandi, the way he deals with his parishioners, causes a deep malaise and constant concern as to whether a community of the faithful should be entrusted to him."

Even so, the bishop faces a tough decision in dealing with unassignable priest, he said.

"There is no community to which I would send [an unassignable priest]. He wants to be a pastor, but we don't hate our communities. We love every single community. I don't want to send this guy to any community because there is no community I hate that much. He would be very happy, but I would not be doing my job. ... I would have to give an account to God for my being unfair to the people."

In his speech, he said canons 1740-1741 from the Code of Canon Law allow a bishop to remove such a priest from ministry. For example, "a pattern of boundary violations repeated over a sustained period of time would fit into the criteria indicated by the code" even if he has not committed a crime.

Scicluna acknowledged that this is a minefield.

"Too stringent a policy will deprive the church of good priests who may still do a good job, given the correct empowerment of the community and the right fraternal support," Scicluna said. "On the other hand, a policy which is too lax (because of lack of ordained ministers or because of a laissez-faire style of leadership) may open the flood gates on serious misconduct, scandalize the community and abort vocations to the priesthood and the religious life in the young generations."

A vision for the future

While much of his address dealt with technical issues of church law, Scicluna also articulated principles for moving forward:

1. A strategy for the protection of children and the prevention of child abuse must enshrine the principle that the well-being of the child should be of paramount concern
2. Recognition of child abuse as a tragic wound to the dignity of the human family
3. In communities where authority is held in high esteem, including communities where sacred power is exercised, empowerment of children and families becomes an essential aspect of prevention of abuse. "The empowerment of the community in this context means the ability to denounce abuse of sacred power for what it is: a betrayal of trust." In this context, Scicluna referred to the powerlessness of the mother of the abused boy in the play and movie "[Doubt](#) [1]."
4. Global institutions, including religious communities, should offer leadership in the formation and screening of pastoral agents.
5. Institutions need to adopt clear codes of conduct that establish clear boundaries in professional relations between pastoral agents and people who approach them in a professional capacity. These codes of conduct need to specify in a clear way the consequences of misconduct.
6. Sexual abuse of minors is not just a canonical crime. It is also a crime prosecuted by civil law. It is important to cooperate with such authority within their responsibilities.
7. Care for the victim is also intrinsically linked to the task of prevention.
8. The welfare of children and of the community must be the paramount criterion in decisions concerning personnel. Perpetrators who are not able to observe set boundaries forfeit their right to roles of stewardship in the community.
9. Institutions, including churches, should show openness to research and development in the field of prevention of child abuse. We all have a great deal to learn from psychology, sociology and the forensic sciences. This does not dispense us from the duty to undertake an honest analysis of what went wrong in tragic cases where stewardship was lacking and the response to child abuse was inadequate because of misplaced concerns for the good name of the institutions we represent.
10. No strategy for the prevention of child abuse will work without commitment and accountability. Quoting Pope Benedict's address to the bishops of Ireland, Scicluna said, "Only decisive action carried out with complete honesty and transparency will restore the respect and good will of the people towards the church."

Bishops' accountability

In an addendum to his address, Scicluna took up the question of the accountability of bishops.

"Bishops are ultimately accountable to God for the stewardship of their diocese," he wrote. "But on earth they are also accountable to their people and to the College of Bishops under Peter."

Canon 1389 §2 states: "A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty." "This law applies also for bishops," Scicluna wrote, but any penal action against a bishop for culpable negligence in the protection of minors is reserved to the pope.

During the question-and-answer period after his talk, Scicluna was asked how to balance the canonical requirements of secrecy with the requirements of transparency under the Dallas Charter.

"The main concern should not be with the pontifical secret but with the common good of the local church," he responded. "We are dealing with the protection of minors. The pontifical secret is not an absolute. ... The protection of minors is more important than the pontifical secret," although he jokingly commented he might be "censured tomorrow for what I am saying."

He said he prefers translating the Latin "secreto" in the canon law as "confidential" rather than "secret."

"There are procedural advantages to confidentiality" in protecting the good name of the accused and protecting the freedom of witnesses, he said. But its purpose is not "to withhold information from the civil authorities or deny the victims the right to seek civil remedy."

He was also asked for suggestions on how to help victims regain their faith. He recounted meeting with victims while he was promoter of justice and as a bishop.

"My experience is that the first thing you need to do for victims is to listen with humility," he said. "So many victims haven't had the opportunity to tell their story in a pastoral context. Telling your story to a court or to a lawyer is one thing. Telling the story to the church is totally different."

"The other thing is the courage to tell victims to move on," he said. "Unfortunately, some victims create a persona out of being victims. And that I find is so sad because if my persona is that 'I am a survivor,' is that the only meaning that I have? Is that my only worth, as being a survivor? We need as a community to help victims to find a bigger, a greater dignity."

He acknowledged that people will not move forward from identifying solely as a survivor if there is not closure "in justice and truth."

Money "may satisfy a person for a while, but it does not give spiritual growth or psychological growth," he said. "We need to help victims to discover that they belong to the church even if they have suffered at the hands of the ministers of the church."

"A tragic consequence of abuse is the loss of faith -- a loss of faith in a God who is compassionate, merciful and loving," Scicluna said. "I have met victims who have renounced the faith as a consequence of what they suffered, and my attitude is silence and prayer."

He told of visiting the Oakland, Calif., Cathedral of Christ the Light, where there is a memorial to victims of sexual abuse with the inscription "never again."

"It is a very important statement, and we have to own it as a church," he said. "The victims evangelize us. And so they are not only at the receiving end of evangelization; they evangelize us because they have an experience which unites them to the cross of Jesus. But my message to the victims is, let us move on as a community. We

have also been wounded by your wounds. Your wounds are our wounds. But we need to move forward together."

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