

From Darkness into Light: Canonical Considerations for Church Leaders on Spiritual Abuse

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1. The addressees

Addressing the issue of spiritual abuse in the Roman Catholic Church requires great sensitivity,¹ because the addressees are very different persons or groups of persons.² First, there are

¹ With the current contribution the author wishes to pay tribute to Archbishop Charles J. Scicluna on the occasion of the 10th anniversary of his ordination to the episcopate. Outstanding is his ministry characterized by perseverance to attend to the rights of victims of abuse to be cared for and listened to, to create an awareness that those in leadership who failed in their response must be held accountable, as well as his capacity to develop canonical provisions that provide justice for all concerned. The victims of “spiritual abuse” will highly benefit from his tireless engagement and achievements. Gratitude is to be expressed as Archbishop Charles J. Scicluna assists the Church to be a place that is safe for all to live in, as well as nourish and develop their relationship with God.

² This study is a translated and slightly reworked version of the article “Die Finsternis aufbrechen: Kirchenrechtliche Überlegungen zum Geistlichen Missbrauch für Kirchliches Leitungspersonal,” *Grauzonen in Kirche und Gesellschaft: Geistiger Missbrauch*, ed. Gerhard Hörting (Wien: LIT-Verlag, 2021), 121-144. This study was written for an address given at the conference “Gefährliche Seelenführer? Geistige und geistlicher Missbrauch” (Dangerous Spiritual Guides? Mental and Spiritual Abuse) and organised by the Commission for “Spiritual Vocations and Ecclesial Ministry” of the German Bishops’ Conference and the Catholic Academy of the Diocese of Dresden – Meißen and held virtually in the Propstei Kirche Trinitatis in Leipzig on 12-13 November 2020. Several lectures of that conference were published simultaneously in a HerderKorrespondenz Special Theme Issue entitled “Gefährliche Seelenführer?”

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those who experienced spiritual abuse and sometimes also sexual abuse in the Church. They, who have had the courage to speak out and who overcame their fears that they would not be heard, deserve respect and esteem. Their voice is crucial, because without it the Church, and not only those who hold leadership and thus responsibility, but also the community as such, would most likely not have faced the topic of spiritual abuse or would not address it to the extent needed. By speaking out, what was hidden in darkness was brought into the light. Hence, the light could begin to unfold its healing effect. The church must realize that without genuinely listening to those affected, it will not be able to journey into the light. It is of crucial relevance to listen personally to the survivors and those affected in order to understand the phenomenon and to be able to react adequately.

Besides those who spoke out, there are also those who do not yet dare to speak or are still thinking about when and with whom they will speak. They follow with great attention the discussions that take place in the media, literature, and at professional conferences. It is to be hoped that, despite all the eagerness to address the issue in public, these persons will be granted time to decide for themselves when and with whom they choose to speak about their experiences. May they be allowed to pursue a pace that is right and good for their own well-being.

The second group of relevant persons carries responsibility for investigating reported abuse in the Church. These persons hold positions of leadership in dioceses, institutes of consecrated life, associations of the faithful and/or movements. Among them will certainly be some who – if they are honest – have to admit that in the area of spiritual and/or sexual abuse they failed in the duties arising from their office or position. They realize that they might have brought guilt upon themselves. These persons wake up, want to face the issue, and help break the silence so that all can journey from darkness into the light. While reading testimonies and studies, and attending conferences, they sense that something must be done so that injustice is prevented, addressed, and clarified. They might feel helpless, but as they overcome their reluctance they are willing and committed to learn and to draw consequences. At the same time, however, they are aware

Geistiger und geistlicher Missbrauch” (Freiburg i.Br.: Herder, 2020). See also the contribution by Gerhard K. Hörting, *Geistlicher Missbrauch als Thema der Kanonistik. Rechtspolitische Schlussfolgerungen im kirchlichen Recht*, 50-53.

that clear and definitive answers and procedures are not yet available. In dialogue with survivors and experts, they want to investigate which changes are necessary. It is to be hoped that these leaders will receive proposals that will encourage them to face and tackle their tasks and responsibilities.

A third group is composed of persons who hold power and responsibility in the Church and ask themselves to which extent they themselves have overstepped boundaries in their own behaviour and used people for their own emotional, spiritual and sexual needs. It is difficult to see or admit this to oneself. Hence, it is necessary to look for ways to get in touch with these persons so as to help them to face reality and name it, as this is a prerequisite for any change. When these persons begin to face the issues, it is to be hoped that they will have the courage – if needed, with the help of others – to critically reflect to which extent their personal actions or those of their community need correction.

2. Reports of abuse reveal a serious disregard for Canon Law

At the beginning of these reflections, I would like to share an experience that greatly influenced the canonical considerations presented in this study. It results from a preliminary canonical penal investigation for allegations of sexual abuse (c. 1717 CIC/1983) which was conducted. A number of these investigations call for reflection on systemic issues, not only with regard to the abuse itself, but also, and above all, with regard to handling the allegations of abuse by Church leaders. Before attending to the case, it needs to be said that, even if sexual abuse does not always presuppose spiritual abuse, the latter might contribute or be ‘conducive’ to sexual abuse. At the same time, however, the reverse conclusion may not be drawn: spiritual abuse does not necessarily lead to sexual abuse.

Spiritual abuse: a contributing factor to sexual abuse in a religious institute

A woman reported her experience of sexual abuse in a religious institute. Although at the time of her abuse the institute had only been canonically established recently, it did already enjoy tremendous respect within ecclesiastical circles. The sister had turned to various instances and persons in the Church to find help, but she was neither listened to nor believed. Another member of the same community had

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also turned to a bishop to ask for help. According to canon law, he had the canonical competence to act, but he told the woman with rather pious words not to complain – yes one could say to ‘shut up’ – mainly because the institute had been extremely successful. Both women were advised to recall the positive witness the community was giving to the world, because of its numerous young members.

Listening to the young woman, I sensed that the spiritual context in which the sexual abuse had occurred was itself a contributing factor to the sexual abuse: a closed system in which the members had hardly any contact with relatives or friends, and if they did have contact it was completely regulated by the superiors. Their outgoing and incoming mail was controlled. Instead of the members choosing their own confessor, the leadership of the institute assigned one to them. The confessors were usually priests from the institute itself, who sometimes also held leadership positions within the institute. The young woman reported a violation of the seal of confession, that is knowledge from the *forum internum sacramentale* was used to govern in the *forum externum*. The institute had a spirituality in which the will of God and obedience to superiors became somehow congruent. All were unable to distinguish the two.

Members in this institute had no right to have or even read the institute’s own statutes. There was great confusion about the process of becoming a member of the institute. The woman did not know if she had been fully admitted as a member and thus did not know her own canonical status in the community.

The leadership had been elected for life. There was no chapter. They were thus not accountable to anyone. From the point of view of canon law, it was remarkable that within two years the institute had ‘risen’ from the status of an ‘association of faithful’ of diocesan right to an institute of consecrated life first of diocesan and then of pontifical right. The change from an association to a diocesan right institute of consecrated life had not occurred through the diocese or country where the group had originally been canonically recognised as an association, but through another diocese that was obviously very sympathetic to the community. It turned out that, in the process of approval to be a religious institute of consecrated life of pontifical right, the Congregation for the Institutes of Consecrated Life and Societies of Apostolic Life had not been involved. On the occasion of the recognition as a pontifical right institute, the then Pope had sent

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a special message to the community and a Prefect of an important Congregation of the Roman Curia had celebrated the Eucharist with the institute in gratitude of its papal recognition. Outwardly, therefore, everything appeared to be perfect. However, because of the ‘fast track process,’ the institute had not experienced a maturing process; the status of being a religious institute of diocesan right had not lasted more than two years. Well-known bishops and cardinals were frequent guests. Hence, the institute began to believe and made the world believe that it was exceptional, inspired by the Holy Spirit and that everything was in perfect order. The recognition as an institute of pontifical right, combined with the visits of bishops and cardinals, had in turn given the young woman the impression that there was really no need to question anything, because the Pope himself and a Prefect of a more relevant Congregation of the Roman Curia had been personally involved. As a result, she could no longer rely on her own intuition, but began to believe what she was told, namely that she herself was the problem. The institute did everything to preserve this appearance at all costs. The system was so perfectly organised that it was not only almost impossible for a member to break free from it, but also the young woman’s complaint about her abuse could not really be heard because so many – including bishops and cardinals – allowed themselves to be deceived.³ People within and around this institute were unable or did not want to hear and see.

³ One side deceives and manipulates while the other side is being deceived and manipulated. The Vatican report on USA Cardinal McCarrick, published in 2020, shows the phenomenon in its full force. Cf. www.vatican.va/resources/resources_rapporto-card-mccarrick_20201110_en.pdf (accessed on 21 December 2020). Most remarkable in this report is how bishops and cardinals have allowed themselves to be massively deceived as they either misjudged or ignored numerous indications of wrongdoing. While exercising a preliminary canonical penal investigation I have met a number of bishops who were in some way totally shocked that they personally – in relation to an accused priest – had themselves been deceived by the accused. Often, they had received indications, sometimes even before the ordination, from, as they themselves said, experienced priests, that something was wrong with the candidate in question, but the bishops had not taken the hints seriously and simply put them aside. In some files I could read that when hints had been voiced by women, they were often put aside with the written comment: “The woman is problematic and, yes, she is a single parent” or “She wants to draw attention,” “She just wants to make herself important.” (Similar comments can also be found in the McCarrick report). Therefore, bishops and the other faithful who believe that bishops and/or priests have a special gift to judge the true nature of a person need to learn that their ability is fallible.

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The description shows that in assessing the allegations of sexual abuse and violation of the seal of confession, the context would need to be taken into consideration. Furthermore, most of what constituted this context was and is not only not even permitted by canon law, but indeed it is explicitly forbidden.

A disregard for Canon Law

The terminology of spiritual, clerical and psychological abuse is used repeatedly in the literature, but there is still no definition be it sociologically or legally. And yet, from a canonical perspective, some aspects which may be the cause of severe harm seem to be recurrent.

Forum internum – Sacrament of Reconciliation

Canon law requires a strict separation of acts placed in the *forum internum* and *forum externum*. This principle has led to specific canonical norms: it is strictly forbidden for a confessor to use knowledge obtained from confession (c. 984 §1). A person placed in authority cannot use the knowledge acquired through confession (even before he was in a leadership position) in any way for external governance (c. 984 §2). Precisely because of their office or function, canon law prohibits certain persons to hear the confession of other specific persons: the director of novices and his associate, as well as the rector of a seminary or of other educational institutions, may not hear the confession of the students unless the students freely request it in particular cases only (c. 985). The reasoning behind this norm is that these persons must pronounce in *forum externum* on the future of the person in question. Superiors in religious institutes are also not allowed to hear the confession of subordinates unless the member asks for it on his or her own accord (c. 630 §4). Not only is it unwise to hear confessions in these cases, in a large number of cases, even in cases for which an exception is granted, the persons concerned do not necessarily have a duty to hear the confession themselves, but they may have a legal duty to provide for a suitable confessor (c. 630 §2).

In addition to prohibitions relating to confessors, the law determines that the faithful have the right to freely choose a confessor (c. 991). This freedom is secured by explicitly stating that seminarians – in addition to the confessor appointed for the seminary – may freely choose someone themselves (c. 240 §1). Superiors have the duty to allow members freedom with regard to the sacrament

of penance and spiritual direction (c. 630 §1). In monasteries of nuns in which the nuns live in a cloister which they generally do not leave, in houses of formation and in larger lay communities, there is a duty to provide for confessors without, however, the obligation to approach them (c. 630 §3).

The development of an institute

Usually, groups are first recognised or established by a diocesan bishop. They are either a ‘private’ or a ‘public’ one and they hold the status ‘diocesan right.’ Subsequently, they develop either across different countries and obtain from the Holy See the status of ‘pontifical right,’ or they develop towards a religious institute and are first established by a diocesan bishop as a religious institute of diocesan right (cf. c. 579). When, subsequently, the religious institute spreads over several countries and over a longer period of time – at least ten years – can demonstrate stability with regard to spirituality, the number of perpetually professed members (at least 100), and finances, the Holy See may, at the request of the institute and after hearing the bishops in whose dioceses the institute operates, establish the institute with the status of ‘pontifical right’ (c. 589).⁴ This description of the process reveals that the development from a private association of diocesan right to a religious institute of pontifical right is to be understood as a maturing process. The process envisaged by the law is the result of centuries of experience. It is foreseen that it takes time to move from one level of recognition to another. If this process is shortened or if otherwise important aspects are left out from consideration, there is a danger that the necessary maturity will not have been reached, which in turn can cause harm to both the members concerned and the Church as such.

It is, therefore, noteworthy that, presumably against the background of certain developments, the law with regard to the recognition of diocesan religious institutes was amended first in 2016 and then again in 2020. On the basis of the 1983 Code of Canon Law, bishops could establish a religious institute of diocesan right, provided they had consulted the Apostolic See (c. 579). This norm was first amended in

⁴ The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life in Rome has, for internal use, a list of criteria to be observed when an institute applies to be established as an institute of pontifical right. The above criteria are set out in this list.

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2016 when the consultation with the Apostolic See became a condition for the valid erection of a diocesan institute. In 2020, Pope Francis decreed that for the validity of the erection of a religious institute the bishop must obtain prior approval of the Apostolic See in writing.⁵

Form and exercise of leadership

Within a religious institute the supreme authority is not the Major Superior with Council, but the general Chapter. Chapters are to be convened regularly. The proper law of an institute, oftentimes referred to as the Constitutions, determines at what interval they are to be convened. Canon law determines that ‘the entire Institute should be represented’ in a Chapter (c. 631 §1). For this reason, the chapter is composed not only of persons who participate *ex officio*, but also and in particular by delegates elected by the (other) members, who have to outnumber the former.⁶ The purpose of a chapter is to ‘protect the patrimony of the institute, promote suitable renewal according to that patrimony, elect the supreme moderator, treat affairs of greater importance, and issue norms which all are bound to obey’ (c. 631). The chapter not only decides on amendments to the Constitutions, which dependent on the status of the institute must be approved by either the diocesan bishop or the Holy See, but also sets out the broad direction of the institute for the years to come. The elected leadership must carry out and implement the decisions of the chapter.

Usually, it is at the beginning of a chapter that the leadership presents a report on the situation of the institute with regard to the development of membership, the provinces and houses, the apostolate

⁵ In May 2016, Pope Francis had already decreed that prior *consultation* with the Apostolic See was required for the *validity* of the erection of new religious institutes by a diocesan bishop (cf. *AAS* 108 [2016] 696). The 2020 amendment goes a step further: “Diocesan bishops may *validly* establish institutes of consecrated life in their territory by formal decree, with the prior *written approval (licentia)* of the Apostolic See” (italics added). *Pope Francis*, Motu Proprio “Authenticum charismatis” amending can. 579 of the *Codex Iuris Canonici*. Cf. www.vatican.va/content/francesco/de/motu_proprio/documents/papa-francesco-motu-proprio-20201101_authenticum-charismatis.html (accessed 5 April 2021).

⁶ This has a profound theological significance: the charism of an institute is not only entrusted to the incumbent leadership but belongs to the institute as such. During a chapter, the institute reflects on its charism while reading the signs of the times and the circumstances in which it lives. All members are therefore invited to engage in this process. Hence, members have a right and a duty to participate in the chapter personally or indirectly through electing delegates.

works, the finances, etc. It gives an account of the way in which it has implemented the decisions of the previous chapter in the light of the charism of the institute and the concrete circumstances experienced. It explains why it has not implemented certain chapter decisions or has done so only partially. The effect of this reporting is that the chapter can deliberate whether a change or correction of its course is necessary and who might be suitable for exercising the leadership of the institute in the years to come.

Canon law determines that for persons in leadership positions in institutes of consecrated life there are terms of office. Usually, those in leadership of a religious institute hold their office of governance only for a certain number of years and indeed, the law stipulates that they should not remain in offices of governance for too long without interruption (c. 624 §1-2).

The proper law of the institute is to regulate the affiliation, rights and duties of the members and the leadership in accordance with canonical norms. Of course, the members have the right to know the statutes and other binding norms of their own institute.

These and other canonical norms result from centuries of experience. Remarkably, in institutes in which spiritual abuse has occurred, it is not uncommon for these and other rules to have been – partially – ignored or disregarded. Such neglect may cause a disregard for the dignity of the people concerned. Instead of one's belonging to the institute being conducive to a stronger relationship with God, it becomes an obstacle. The damage caused can be moral, spiritual, emotional, and/or even financial. It can affect individuals or the community as such. Had the existing norms been respected, abuse might have been prevented. The non-observance or disregard for the law was conducive to and indeed expresses the abuse of power within the institute. Not to respect the law is also an abuse of power. The law, which is often times based on a system of 'checks and balances,' is not only ignored, but often the disrespect for it is even 'spiritualised.'

3. Learning from responding to sexual abuse cases

A closer look at the canonical norms mentioned above, in light of the phenomenon of so-called spiritual abuse, reveals a striking point: many of the norms mentioned could well be classified as preventive measures. They are intended to prevent harm, be it from individuals or from the institution to which they belong. Furthermore, canon

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law already provides for penalties in the case of violations of certain norms, such as the violation of the seal of confession. Nevertheless, it must be stated that, in the realm of canon law, the Church has not yet fully grasped the phenomenon of spiritual abuse with its many facets. Although explicit canonical norms have been lacking hitherto, this does not imply that nothing can be done yet or that there is a need to wait for the ecclesial legislator, be it for the Church universal or for local churches, to issue norms. In searching for ways to respond responsibly, knowledge obtained from dealing with allegations of sexual abuse can provide an orientation, even if not everything can simply be adopted one-to-one. Key words from the field of sexual abuse applicable to spiritual abuse are: systemic aspects, learning process, continuous development, and paradigm shift.

Systemic aspects

Ever since about the mid-1980s, when the Church was confronted with sexual abuse of minors, it slowly began to understand the need to address the issue as a systemic challenge. Initially, the focus was on *intervention*: What should the person in leadership do when there are indications of sexual abuse? Later, the issue of *prevention* arose: How can abuse be prevented from occurring (repeatedly)? Steps towards primary, secondary, and tertiary prevention were developed and initiated. Only recently has the topic of ‘coming to terms with the past’ become the focus of attention: What actually happened and how did the leadership, which held responsibility, react and act at the time? Did they fail in their response and to what extent is this failure culpable? Who must be held accountable and who has the authority and power to call those who failed to accountability?

It is not difficult to see that this whole range of questions also arises in the area of spiritual abuse. Hence, it is possible to learn from the insights and experiences gained from the sexual abuse crises. For example, a very first step could consist in setting up a system that receives and handles complaints about spiritual abuse. Furthermore, in the context of prevention, more diligence could be exercised in the process of granting a canonical status to ecclesial movements, associations, and religious institutes, etc. Also, where these already exist, guidelines could be developed for the way ordinary canonical visitations are carried out which would allow for intervention and correction when and where necessary. These aspects will be discussed in more detail below.

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Learning process

Whereas the process of the Church's response to allegations of abuse and the subsequent action taken is almost identical all over the world, there is yet a great disparity in terms of when the process begins. Even the pace of the different steps taken within the process do not really differ much from one local church or province of religious institute to another, but the moment the process commences differs greatly. For example, while in the 1980s and 1990s the issue of sexual abuse in the Church was already making waves in Ireland, the USA and Australia, Germany began the process only in 2010. Remarkably, in all these countries it was not the Church itself that responded 'freely' to the allegations, but the reaction only came after pressure from society, above all through the media. While the issue has now also been on the agenda in Poland since around 2019, the accusations in various other Southern and Eastern European countries are to a large extent still being ignored or trivialised by those in the Church who hold leadership positions. Regularly the latter qualify the reports by the media as a form of 'persecution of the Church.'

Just as Church leaders and believers are struggling to recognise sexual abuse as a systemic problem, it is likely that this will also be the case for spiritual abuse. The situation for the latter is aggravated by the fact that spiritual abuse constitutes no specific offence be it in canon or state law. Nevertheless, it is to be hoped that because of the problems of sexual abuse, the recognition of the phenomenon of spiritual abuse will not have to take as long. It is to be expected, however, that – as with sexual abuse – the process of facing up to the problem will commence at different times around the world. Nevertheless, this cannot and should not be an excuse for Church leaders to remain inactive, in particular because the responsibility to care for the welfare of all people entrusted to his care arises from the office of a diocesan bishop.

Continuous developments

Over the course of the past 35 years the canonical response to sexual abuse has demanded continuous adaptation and change. New insights have led to improvements and changes in laws and guidelines. For example, over the years the relevant delicts have been specified, the notion of 'minor' was raised from having completed 16 years of age to the 18th year, the notion of 'vulnerable adult' was included, the statute of limitations was raised, and competencies and responsibilities for

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investigating allegations and deciding on further action were further clarified. The changes made so far reveal that the Church not only finds itself in a continuous learning process, but that it is also aware that this is an ongoing process.⁷ And yet, the Church must admit that it has not been proactive in this learning process. The changes are responses to events the Church saw itself confronted with. An important lesson the Church is learning from the sex abuse crises is the realisation that laws and regulations, once adopted, do not necessarily apply ‘forever,’ but that they are part of a process of development.

The legal handling of spiritual abuse will definitely be characterised as a learning process as well. Laws cannot be developed without deep knowledge of the phenomenon of spiritual abuse. Hence, the Church will have to listen to those affected by spiritual abuse in order to learn and analyse what exactly spiritual abuse entails, what factors cause or contribute to it, what actions and which persons (with authority) are involved in it, which factors favour spiritual abuse or could have a preventive effect, etc. The legislator will need input from experts from other disciplines. The expertise might show to which extent the culture in which one lives has an influence on the perception of what is perceived as spiritual abuse. Providing for proper and adequate canonical provisions will require clarification as to what is meant by spiritual abuse and which factors favour or positively prevent such abuse. At the same time, the already existing norms for reporting sexual abuse and for determining who is canonically responsible to respond to the allegations can provide guidance in developing adequate norms in the area of spiritual abuse.

⁷ In the summer of 2020 this became particularly apparent when the Prefect of the Congregation for the Doctrine of the Faith, Cardinal Luis Ladaria, pointed out that the “Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics” which had just been published by his Congregation, had deliberately been given the number 1.0 because future updates were to be expected: “Being a “manual,” it will need to follow the eventual developments of the normative canons, and will need to be adapted. It will also need to respond to new challenges that experience will offer to the juridical treatment of the cases in question. Lastly, it will need to treasure the considerations that arrive from the various ecclesiastical realities: dioceses, institutes, ecclesiastical faculties, and counselling centres set up at diocesan and inter-diocesan levels. Their qualified contribution will help to correct, integrate, specify and clarify those points that, as is only natural, require deeper reflection.” www.vatican.va/roman_curia/congregations/cfaith/ladaria-ferrer/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso-ladaria_en.html (accessed on 5 April 2021).

Paradigm shift

Laws alone cannot change the way abuse is dealt with. What is needed is a paradigm shift from focusing on the protection of the reputation of the Church, to placing respect for the dignity of the human person and his or her relationship with God at the centre of considerations. It must become clear to everyone that whoever wants to protect the Church or its institutions can only do so by protecting the 'least of those' themselves.

4. Developing a checklist

Although no explicit canonical norms are in place with regard to handling spiritual abuse, a few steps can be taken nonetheless.

For the area of *prevention* as well as *intervention*, a checklist could be developed to provide guidance to those in leadership positions in dioceses as well as in religious institutes of consecrated life and associations for the moment when a group requests a canonical status. The checklist could also be used when a bishop considers granting permission to an association of the Christian faithful or a religious institute that has already been granted the status of 'diocesan right association' or 'diocesan right religious institute' by another bishop of another diocese to settle in his own diocese. It might also be used if, for example, a bishop carries out an ordinary visitation or orders an extraordinary one after receiving indications of spiritual abuse.⁸ The proposed checklist is a first attempt and does not claim to be comprehensive. Such a checklist does not imply that when the items are discussed, it automatically follows that spiritual abuse has or has not occurred. An immediate challenge will be the fact that the term 'spiritual abuse' is not defined canonically. Nevertheless, using the checklist will allow one to discover to which extent a group has a spirituality and way of life that is conducive to the faith and wellbeing of its members, or whether there are serious problems or grievances in some relevant areas.

⁸ On the subject of visitation, see also Dominicus M. Meier, *Die bischöfliche Visitation als "cura animarum,"* in *Deus Caritas Jakob Mayr: Festgabe 25 Jahre Weihbischof von Salzburg*, ed. Hans Paarhammer (Salzburg: Dr.- & Verlag-Haus Thaur, 1996), 339-358 and Sharon L. Holland, "Visitation in Religious Institutes: A Service of Communion," in *Proceedings of the Canon Law Society of America* (Washington DC: CLSA, 1999), 161-178.

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The checklist needs to attend to several major areas: spirituality and the way it is lived out, membership, governance structure, leaders and leadership culture, and finances.⁹ The following are individual items for a possible checklist.

Spirituality

What is the biography of the founder¹⁰ of this group? If the person belonged to or was incardinated in a previous group, a movement, association, religious institute or diocese and left, what exactly were the motives? What was the leadership's attitude to his or her leaving or transferring? How did those exercising governance at the time react to his or her ideas and views?

What is the spirituality of the founder of the group or the group itself? Did the founder of the group have an allegedly extraordinary spiritual experience or receive a 'divine' input that led him or her to radically change their life? How did his or her superiors see this?

Is there a personality cult, in particular with regard to the founder? How does this cult manifest itself?

What image of God does the founder of the group convey? What role do sin, guilt, failure, God's punishment, humility, self-mortification, confession, penance, submission, and obedience play in this spirituality? How balanced and 'healthy' is this spirituality? How exclusive or how exalted is it in the perception of itself and of others?

Which devotional practices are preferred? How free are the members to participate in them or not?

Where and with whom do the members make their retreats? Who decides this?

Which literature/movies etc. are particularly recommended or not allowed to be read or used and what is the justification for this? Which media may (not) be used? How is (social) media accessible to the members? Who decides on this?

⁹ In the diocese of Osnabrück (Germany), a checklist for orientation in cases of spiritual abuse was developed, which is primarily intended for individuals to determine for themselves whether they have experienced spiritual abuse. Cf. <https://bistum-osnabrueck.de/wp-content/uploads/2017/01/Grundsatzpapier-geistlicher-Missbrauch-102020.pdf> (accessed on 5 April 2021). Many aspects mentioned there are also expressed in the thought put forward here, even if the latter is written primarily with a view to the responsibility of those in leadership.

¹⁰ Of course, the founders can also be women: the problems are similar to those faced by men.

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Canon law allows for freely choosing one's confessor. How is this right implemented? Are different confessors made available and are members allowed to choose him themselves? What is the profile of the spiritual directors and spiritual advisers? Who 'approves' them? Do the members have the possibility to go on their own to the confessor or spiritual adviser or do they have to be driven and/or accompanied while travelling there?

Where is confession being heard? In a church or, for example, in a room of a monastery or rectory? If this occurs in a room which is also used as a bedroom, why is this room used?

How are *forum internum* and *externum* in practice separated? If those in governance hear confessions or offer spiritual counselling, how is it ensured that the two fora remain separate? Is the separation also perceived as such by the penitents? Does the community call in exorcists? Who are these persons?

How is the right to privacy practised, for example, with regard to mail, access to telephone, internet etc.?

Members, adherents, and affiliates

What is the profile of the people who feel attracted to this community? Did they complete their education and are they pursuing regular professions? If not, how is their education guaranteed? Are the interested persons particularly vulnerable and actually need specific care and attention? A vulnerability might arise, for example, because they have psychological problems, have just experienced a death or divorce — be it as a partner or be it as a child — or originate from a family affected by e.g. sickness, addictions, poverty. Are those who are interested for one reason or another intensively searching for their identity?

How do families participate in this community? Can their children freely decide not to join their parents or even leave the group? Are the children facing punishment when they consider leaving the group? For example, do parents withdraw their love from them or refuse to speak with them? Do the parents themselves decide how to raise their children or are they in a sense controlled by the leadership or their spiritual advisors? When the children leave the community, do they still have a 'home' to return to or do they face 'closed doors'? Are marriages arranged or preferred to occur from within the movement? Are there repercussions if one marries outside the group?

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How are people, who have fallen ill, treated by the community? Are these mainly mental or physical illnesses? How are they cared for medically? Is illness seen as a punishment from God? Are certain healing and fasting methods urged? How are medicines (psychotropic drugs) used? Are – specialised – medical doctors consulted? Are they from within or outside the group? To which extent is exorcism applied to handle medical problems? Is there proper medical insurance for the member in the country of residence?

How are people who have left the community described within the group? Are they labelled with the other members, for example, as ‘mentally too unstable to belong to us?’

Governance, leaders and structures

Does the group have approved canonical statutes? Who drafted them and who in the group approved them? Which ecclesiastical authority approved them? Was the ecclesiastical approval of the group/statutes refused by any other ecclesiastical authority, e.g., by another diocesan bishop? Why? Has the group been denied permission to work in another diocese or was it asked to leave another diocese? If so, why? Prior to allowing the community to settle in one’s own diocese, were enquiries made about it by the ecclesiastical authority responsible for them? Why not?

Who are the persons currently serving in the leadership of the entity? How are they appointed and how long is their term of office? Is the term of office limited and how often can someone be re-elected/appointed? Was postulation invoked?

How are decisions made? Who is involved? Who has access to what kind of information? How transparent are the decision-making procedures? To whom is the leadership accountable? Is there a canonical chapter and if not, why not? Is the chapter moderated by an external person or exclusively by its own members?

How are power, authority, and obedience dealt with and how are they justified theologically? How is ‘divine providence’ referred to in decisions? When reflecting theologically on power, authority, and leadership, it may be useful to explore how the theological concepts of ‘consecration’ and ‘acting as Christ’s representative’ — *in persona Christi capitis* — are understood by all concerned and how this plays out concretely in the interaction of the different persons.

What is the communication culture in the group, that is, who is informed by whom in what way about what, or who decides this?

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To whom can a member complain or present concerns? How are conflicts and complaints dealt with?

Law, economics, and finances

How is the group organised under state law? Is there a legal entity to act in civil law? Are there statutes of the legal entity in civil law? How is the governance of the civil entity regulated? Who has what powers to act on behalf of the legal entity in civil law? How are these persons appointed to those positions?

In whose name are the bank accounts and who owns the properties? Who is authorised to sign?

How are the finances of the group regulated? How is the group financed? Where does the income come from? How is health insurance for members regulated? How is a pension scheme planned? Are there sufficient savings, also for the ageing members? Are contributions made to the pension scheme, and if not, is this legal? Is there a financial provision for pensions in case the member leaves the institute? Is this area spiritualised according to the motto: God will take care of us?

Is there pressure from the institution on the members to transfer private assets/inheritances to the community? Is this also spiritualised, e.g., by saying that it is divine providence that the parents have now passed away because the community needs the assets right now? What financial contributions are expected from the members? And again: How transparent is the financial management?

How is poverty lived? Does the concept of poverty apply equally to all or only to the members but not to the leadership? What financial resources are available to individual members for clothes, books, personal needs, further studies? Are they allowed to dispose of certain sums themselves? How and to whom do they have to account for their finances?

What employment contracts exist with the dioceses for priests and their housekeepers or other persons who work for the diocese or in the parish?

What possibilities do members have to contact the outside world? Can they talk freely on the phone or do others always listen in? Do they have their own email account? Is postal secrecy respected?

Outlook

The topics listed can only indicate to which extent a group is stable and healthy, and thus whether it really has a future or warrants an action by the ecclesial authority responsible.

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In addressing the questions above, it is important that the authorities do not only listen to the leaders of an entity, because these might consciously or unconsciously present the facts differently from what they are in reality. Moreover, out of fear for repercussions, members might not always feel free to speak freely.

5. The responsibility of the diocesan Bishop

In the area of spiritual abuse, the responsibility to prevent abuse and to respond to indications of abuse lie first with the leadership of the institutions themselves, whether they are purely juridic persons (cf. c. 114-115), associations of the faithful (c. 312) or religious institutes. Superiors and persons in the government of the legal entity must ensure, firstly, that spiritual, sexual, financial, and emotional abuse cannot and do not occur, secondly, that indications of abuse in this area are investigated and, thirdly, that if irregularities are detected, adequate action is taken.

However, the question also arises as to what responsibility the diocesan bishop has in this particular domain. There are four different areas: 1) Recognising or establishing juridic persons, associations, and religious institutes by granting them the status of being of diocesan right. 2) Granting permission to a mere juridic person, institute, or association, which has already been approved in another diocese or even by the Holy See, to 'settle' or be active in one's own diocese. 3) Regularly conducting pastoral visitations in accordance with the law, and 4) Responding to indications that spiritual, sexual, financial or emotional abuse or irregularities may have occurred, for which purpose a visitation might have to be ordered.

The following sections attend to this in more detail with regard to associations of the faithful as well as religious institutes.

Associations of the Christian faithful

Diocesan bishops have the power and the right to establish juridic persons be they aggregates of persons and/or of things (cf. c. 114-115 in conjunction with c. 312). They also have the power to commend, recommend or recognise associations. If they do so, the associations have the status of private associations (c. 299 §2). If, on the other hand, associations are established by the competent authority, they have the status of a public association (c. 301 §3). No association may call itself 'Catholic' without the consent of the competent ecclesiastical

authority, which is for the diocesan level the diocesan bishop (c. 300 and c. 312). It is noteworthy that the law provides that this power is reserved to the diocesan bishop only. Hence, a local ordinary, that is, a vicar general or episcopal vicar, is not authorised to do so *ex officio*. Even a diocesan administrator does not have this authority (c. 312 §1). Of course, the diocesan bishop could delegate this power to the other local ordinaries, but it is often argued that this competence lies only with the diocesan bishop himself, because recognition or establishment of these juridic entities has long term consequences for all concerned. Establishing juridic persons or associations of the faithful should be considered in relation to the purpose for which they exist and in light of the objective capacity to fulfil the objective for an indefinite time. In order to recognize or establish an association, the competent authority must approve or review the statutes (cf. c. 117 and c. 299 §3).

The ecclesiastical recognition of a private juridic person or the erection of a public one or an association of the faithful marks the life of a group in a special way. It should be carried out with the utmost care and requires a thorough check at this stage. It will be insufficient for the competent ecclesiastical authority, be it the diocesan bishop or Holy See, to be informed only by the leadership of the entity that seeks approval and merely check the proposed statutes. It is also important to ascertain how the provisions of the statutes are lived out in the life of the community. It might be advisable to recognise the group first as a juridic person and later as an association and from there move forwards. Indeed, the process of recognition can be gradual, so that the group can mature and its stability can be established over a number of years. At the same time, the ecclesiastical authority must be aware that once a group has been recognised formally, even if it is only the 'lowest' level of recognition, groups themselves might well leave the outside world in the dark as to their exact canonical status. On websites and in the social media they might simply write that they are recognised by the Church. This is correct, but if their website and printed materials contain photos with the pope, with bishops, cardinals or other important Church officials, the reader who is not familiar with canon law may get the impression that the group has a higher status than it actually does. Hence, the speed of the ecclesiastical authority to grant canonical status to groups might be served when it is characterised by the saying '*festina lente*?' (make haste slowly). The above-mentioned checklist could provide guidance in the recognition process.

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Once an association exists, it is subject to supervision (*vigilantia*) by the competent ecclesiastical authority, ‘which is to take care that the integrity of faith and morals is preserved in them and is to watch so that abuse does not creep into ecclesiastical discipline. This authority therefore has the duty and right to inspect them according to the norm of law and the statutes. These associations are also subject to the governance of this same authority according to the precepts of the canons which follow’ (c. 305 §1). The next paragraph states, ‘Associations of any kind are subject to the vigilance of the Holy See; diocesan associations and other associations to the extent that they work in the diocese are subject to the vigilance of the local ordinary’ (c. 305 §2). The norms, therefore, state that local ordinaries do indeed have a duty of vigilance and thus also have the authority to fulfil this duty. This applies not only to associations which they themselves have commended, recommended, recognised, or established and which, therefore, have their seat in their diocese, but it also applies to associations recognised or established by another ecclesiastical authority and which are active in their own diocese.

Local ordinaries, who include besides the diocesan bishop also the vicar general and episcopal vicars, cannot and may not evade this duty. They can fulfil it by carrying out a regular visitation, as in the case of parishes. In case there are indications of irregularities they can order an extraordinary visitation. For this purpose, it is probably advisable not to carry out such a visitation oneself, but to commission persons or – even better – a team that has the necessary competencies in the area in which irregularities are suspected. Experience has shown, however, that irregularities are often not only present in one area, but that, for instance, financial and/or spiritual problems can go hand in hand with governance problems. The advantage of appointing a team for the extraordinary visitation is that four eyes see more than two and the danger of manipulation during the visitation, which is often part of the problem especially in institutes in which spiritual abuse is present, is reduced.

Institutes of consecrated life

It would seem that there is no empirical data available indicating whether diocesan bishops proceed too quickly in recognising associations. Yet, it would seem that the Holy See did have indications that this might have occurred when it came to establishing diocesan

right institutes of consecrated life, because in 2016 and 2020 the law was changed. The law provides that diocesan bishops, but not local ordinaries, are empowered to establish institutes of consecrated life, often called religious institutes. The 1983 Code determined that the diocesan bishop should consult with the Apostolic See before doing so. In 2016, it was decreed that this consultation was necessary for the validity of the establishment. Apparently, however, this measure did not have the desired outcome, because at the end of 2020 another change in the law was made: for the valid erection, consultation with the Apostolic See is no longer sufficient; from then onwards the valid erection of an institute of consecrated life of diocesan right requires the previous consent by the Holy See in writing.¹¹

It might be opportune for the legislator to consider a similar limitation in the discretionary power of the bishop with regard to erecting associations of the faithful. Yet, a centralisation of authority is also not desired, as the Holy See might have difficulty knowing the specific cultural and social context in which and for which the association is erected. One model could be that a diocesan bishop may only do so after a favourable vote or a ‘nihil obstat,’ for example from the episcopal conference or from the other bishops in the ecclesiastical province.¹²

Institutes, whether pontifical or diocesan, may erect houses in other dioceses according to their own law, provided the diocesan bishop of the place where the house is to be located has given prior consent (c. 609 §1). Here too the bishop carries a responsibility, because ‘the erection of houses takes place with consideration for their advantage

¹¹João Braz Card. de Aviz, Rescritto del Santo Padre Francesco circa le associazioni pubbliche di fedeli in itinere, 15.06.2022: <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2022/06/15/0462/00950.html> (accessed on 12 August 2022). Cf. *Pope Francis*, Motu Proprio “Authenticum charismatis” (par. 5 supra). The change in this document is justified by a reference to the 1996 post-synodal Apostolic Exhortation *Vita consecrata*: the vitality of new Institutes and Societies “must be judged by the authority of the Church, which has the responsibility of examining them in order to discern the authenticity of the purpose for their foundation and to prevent the proliferation of institutions similar to one another, with the consequent risk of a harmful fragmentation into excessively small groups” (par. 12).

¹²The proposal to involve the conference of bishops or the bishops of the ecclesiastical province finds its origin in similar canonical provisions: a diocesan bishop can delegate laypersons to assist at weddings after a favourable vote of the episcopal conference (c. 1112) or a bishop can appoint laypersons as judges after the conference has given the permission to do so (c. 1425 §4).

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to the Church and the institute and with suitable safeguards for those things which are required to carry out properly the religious life of the members according to the proper purposes and spirit of the institute.’ (c. 610 §1). The law explicitly expresses how cautious a bishop has to be in giving his consent for erecting a house in his diocese: ‘No house is to be erected unless it can be judged prudently that the needs of the members will be provided for suitably’ (c. 610 §2). There is no reason to believe that the ‘needs’ of the members refers only to the financial aspects of life. Furthermore, an additional aspect comes in: by giving consent to establish a canonical house, the bishop also consents that the institute may exercise its apostolate in his diocese. However, if a house wishes to exercise apostolic works which are different from those for which it was established, the consent of the diocesan bishop is again required (c. 612).

With the erection of an institute of diocesan right comes the right and duty of the diocesan bishop to perform a canonical visitation of the institute within the boundaries of his diocese as such at least once every five years (c. 396 §1 and c. 397 §1). The same goes for the diocesan bishop who has approved the erection of a canonical house of an institute of diocesan right whose principal seat is in another diocese: he too has a right to a visitation of the house in question as well as of the associated apostolate works in his diocese at least every five years. This right, however, implies also a duty which, if not (properly) fulfilled, could be qualified as an act of negligence. Restrictions apply as far as members of religious institutes of pontifical right and their houses in his diocese are concerned (c. 397 §2).¹³ If the bishop is alerted to abuses, he can and must admonish the religious superior. Even if not provided for by law, the bishop should, in my opinion, after an unsuccessful warning, report the problem to the supreme moderator of the institute as well as to the diocesan bishop of the principal seat of the institute. Nevertheless, it should be noted that if his warning to the religious superior remains in vain, the diocesan bishop can (*potest*) deal with this on his own authority (c. 683 §2).

¹³ For all institutes, c. 683 §1 applies: “At the time of pastoral visitation and also in the case of necessity, the diocesan bishop, either personally or through another, can visit churches and oratories which the Christian faithful habitually attend, schools, and other works of religion or charity, whether spiritual or temporal, entrusted to religious, but not schools which are open exclusively to the institute’s own students.”

Negligence by religious superiors and diocesan Bishops

The tasks mentioned so far, which result from the responsibility of both the religious superior and the diocesan bishop, have recently not only been underscored, but also intensified by Pope Francis. The norms he promulgated result most likely from the increased awareness that those who have a corresponding responsibility have too often failed to live up to it. In June 2016, Pope Francis decreed disciplinary consequences through the *motu proprio* entitled *Come una madre amorevole* (*Like a loving mother*):¹⁴ diocesan bishops, eparchs and those responsible for a particular Church must be vigilant in protecting the most vulnerable of those entrusted to their care. The document recalls that canon law already has a provision for removing ministers from their ecclesiastical office ‘for grave reasons.’ By way of clarification, it is then explicitly pointed out that this also applies to diocesan bishops and eparchs as well as to those who are equivalent to them by law (cf. c. 193 §1 CIC; c. 975 §1 CCEO). This provision applies when the bishop ‘as through negligence committed or through omission facilitated acts that have caused grave harm to others, either to physical persons or to the community as a whole. The harm may be physical, moral, spiritual or through the use of patrimony’ (cf. Art. 1 §1). With regard to the application of these norms, it is further determined that in the case of sexual abuse of minors and vulnerable adults, ‘it is enough that the lack of diligence be grave’ (Art. 1 §3). The document finally determines that ‘the Major Superiors of Religious Institutes and Societies of Apostolic Life of Pontifical Right are equivalent to diocesan Bishops and Eparchs’ (cf. Art. 1 §4).

6. Outlook: first measures

The current study reveals that, above all, the diocesan bishop as well as the other local ordinaries hold a great responsibility. In order for them to fulfil this responsibility, the law has endowed their office with the necessary authority and power. Indeed, possessing power is as such not bad in itself, for it is granted to fulfil the responsibility that arises from a particular office. It is crucial, however, that the exercise of power is performed with transparency, in accordance with the law, and that the manner in which it is exercised is accounted for.

¹⁴ Cf. https://w2.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_lettera-ap_20160604_come-una-madre-amorevole.html (accessed on 5 April 2021).

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The aim of this paper was to take a first look at the canonical possibilities for responsible action in the area of spiritual abuse. A next step could be to attend to specific themes more closely. Among those topics one could include the subject of the celebration of the sacrament of reconciliation, the seal of confession, and issues related to confidentiality. Topics to be addressed would be, for example, the education and training of confessors and spiritual directors, their competence to conduct conversations and listen to people, as well as to know when people's psychological problems exceed their competence. For example, the widespread practice of granting for life a faculty to hear confessions shortly after ordination might well have to be re-examined. Would it make sense to grant this authority for a certain period of time, of course with the possibility of renewing or extending it, but perhaps linking it to necessary further training? Consideration should be given to how a certain 'quality' could be ensured in terms of hearing confessions and spiritual accompaniment. The importance and practical separation of *forum internum* and *forum externum* should also be attended to.¹⁵

Another area in need of further study concerns the topic of obedience, because both clerics (c. 273) and religious (c. 601) promise

¹⁵ The Pontifical Commission for the Protection of Minors organised a seminar in Rome in 2019 entitled "Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability." Among other issues, confession, the seal of confession and improved transparency in the procedure were the subject of the conference, while at the same time confidentiality, which is not to be equated with secrecy, is to be guaranteed above all for the persons concerned. The seminar revealed, among other things, that training and further education of confessors is necessary and that knowledge of the *forum internum* and *externum* and their application must be deepened. For more information about the seminar, see Myriam Wijlens, Neville Owen, "Introduction to Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability. A Seminar organised by the Pontifical Commission for the Protection of Minors," *Periodica* 109 (2020) 403-415; in Italian: "Introduzione a Promozione e Protezione della dignità delle persone nelle accuse di abuso di minori e adulti vulnerabili: Bilanciare riservatezza, trasparenza e *accountability*. Seminario Organizzato dalla Pontificia Commissione per la tutela dei minori," *Periodica* 109 (2020): 417-429. For the results of the seminar, see Myriam Wijlens, Neville Owen, "Outlook after the PCPM Seminar: Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability," *Periodica* 109 (2020): 661-668; In Italian: "Seminario della Pontificia Commissione per la tutela dei minori: Prospettive," *Periodica* 109 (2020): 669-674. The presentations given during the seminar are published in English and Italian in *Periodica* 109 (2020): 400-674 and are available on the website of www.iuscangreg.it/seminario-tutela-minori.

obedience. The question arises as to what this obedience entails and how this vow is to be understood in connection with superiors as ‘those who stand in the place of God’ (*vices Dei gerentes* c. 601). Related to this topic are the topics of responsibility, care and power and how those in leadership positions unfold them in a healthy way.¹⁶ In line with this, the question may be raised as to what extent supervision could be beneficial for those in a leadership position.

Another major challenge consists in providing for a canonical description of the term ‘spiritual abuse.’ It would seem to be necessary to approach the question from the perspective of human dignity.

At the end of this study it is possible to conclude that although the current canonical norms do not address spiritual abuse explicitly, nevertheless, persons holding leadership positions can already, with the help of existing canonical provisions, embark on shedding the darkness and moving into the light. However, for such a journey to bear fruit it will be indispensable to be in dialogue with those affected by the abuse as well as experts in the relevant areas. The point of reference in that journey cannot any longer be the preservation of the reputation of the Church, but rather should be the promotion and protection of the dignity of the human person.

¹⁶ On the subject of obedience, see Bruno Primetshofer, *Ordensrecht* (Freiburg i.Br.: Rombach, 42003), 39-43.