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'VatiLeaks' trial will be landmark event for Vatican tribunal

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Former papal butler Paolo Gabriele will stand trial in this courtroom at the Vatican beginning Saturday. Gabriele will face the charge of aggravated theft for stealing Pope Benedict XVI's private documents. (CNS/L'Osservatore Romano)

VATICAN CITY -- For the Vatican's criminal court, the trial of Paolo Gabriele and Claudio Sciarpelletti for their alleged part in leaking papal correspondence will be unusual and could lead the Vatican to invoke a never-used cooperation agreement with Italy.

Giovanni Giacobbe, promoter of justice in Court of Appeal of Vatican City State, explained to reporters Thursday how the Vatican conducts a criminal trial. But he also admitted that such trials are "extremely" rare, and the only thing remotely similar was a trial for drug possession on Vatican property about 10 years ago.

If Gabriele and Sciarpelletti are found guilty and are sentenced to jail time, they would serve that time in an Italian prison under the terms of a decades-old Italian-Vatican agreement that has never been used, Giacobbe said. Mehmet Ali Agca, the Turkish gunman who tried to kill Pope John Paul II in 1981, was handed over to Italian police and found guilty in an Italian court, not a Vatican court.

Gabriele, who was arrested in May after Vatican police found papal correspondence and other items in his Vatican apartment, faces a charge of aggravated theft, which Giacobbe said carries a possible sentence of up to four years. Sciarpelletti, who had a copy of a document from Gabriele in his desk at the Vatican Secretariat of State, was charged with aiding and abetting Gabriele. He faces up to one year in prison.

Giacobbe said Gabriele's innocence or guilt will have to be determined first because Sciarpelletti cannot be tried for aiding and abetting if the original act is not determined to be a crime.

The judge said there was no way to predict how long the trial would last, though an indication could come from the first session when the prosecution and defense teams make motions, declare whether or not they will contest any of the evidence gathered by Vatican investigators and whether or not they will call more witnesses.

The fact that Gabriele has admitted to investigators that he took the material and shared it with an Italian journalist does not constitute absolute proof, and the judges cannot base their judgment solely on the confession, Giacobbe said.

At one time, he said, "a confession was known as the 'queen of all proofs,' " but most legal experts recognize that confessions can be coerced or that defendants could confess to protect another person.

The responsibility of the judges hearing the trial, Giacobbe said, is to determine whether the evidence supports Gabriele's confession.

He said the confession could "facilitate the trial," making it go more smoothly, and if the accused confesses or expresses repentance and contrition then the judge "will take that into consideration" during sentencing.

Giacobbe said the practice of beginning a trial with a defendant entering a plea of "guilty" or "not guilty" does not exist in Vatican or Italian trials. Also, under Vatican law, a defendant is not asked to take an oath before testifying "like on Perry Mason," he said.

The accused has every right to "say things that are false in order to defend himself" and not incriminate himself, the judge said.

In addition, Giacobbe said, the defendant cannot represent himself. He is asked to choose his own lawyer, and if he hasn't, one is appointed for him by a Vatican judge.

However, the accused has a right not to attend the trial, having a lawyer represent him instead. "He is free" to decide to not show up and face questioning because the trial's aim is to safeguard the rights of the accused, Giacobbe said.

The trial is designed to substantiate, "verify," flesh out or contest information gathered in the preliminary investigation, he said.

Gianluigi Nuzzi, the Italian journalist who published secret papal documents allegedly received from Gabriele, is not subject to a Vatican criminal investigation because that potential crime occurred on Italian territory and therefore, the Vatican has no jurisdiction there, he said.

Gabriele is being accused of theft even though the bulk of sensitive documents he had in his possession were photocopies and not the originals; Giacobbe said making copies of materials accessed illicitly is still a form of stealing.

Vatican trials are usually held on a Saturday because the Vatican judges and prosecutors all work Monday through Friday as Italian lawyers or judges or as professors in Italian universities, Giacobbe said. However, more complex cases will run into the work week, he added.

Vatican judges usually try about 30 cases a year, and the overwhelming majority of them involve "petty crimes" like pickpocketing and usually finish quickly and simply.

The trial of a Vatican employee for possessing 87 grams of cocaine in 2007 was the biggest case they've had in recent memory, he said. There was no trial for the double murder-suicide of a Swiss Guard in 1998 because "the suspect killed himself," and charges were never brought against the woman who attacked the pope during the Christmas liturgy in 2009 because of mental illness.

Giacobbe said the final verdicts in the cases of Gabriele and Sciarpelletti will require a majority vote, not a unanimous decision, among the three judges.

If the three-judge panel finds the defendants not guilty, the Vatican prosecutor can appeal the judgment, just as the defendants can appeal a guilty sentence.

The pope, like many heads of state, has the power to grant clemency at any time to anyone found guilty. While he also has the power to close a case before a trial is scheduled, the pope cannot intervene once a trial starts.

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