

Judge says abuse lawsuit against Vatican can go ahead

WASHINGTON. (CNS) – A federal judge in Louisville, Ky., has denied a Vatican request to dismiss a sex abuse lawsuit seeking damages from the Holy See.

U.S. District Judge John G. Heyburn II ruled Jan. 11 that U.S. bishops and priests are employees of the Vatican within the terms of the Federal Sovereign Immunity Act.

The act generally exempts other sovereign states from the jurisdiction of U.S. courts, but it allows U.S. courts to adjudicate lawsuits seeking monetary damages from a foreign country for personal injury caused in the United States by an employee of that country “while acting within the scope of his office or employment.”

The lawsuit, brought by Louisville attorney William McMurry on behalf of three clients who claim they were abused by priests when they were minors, is believed to be the first clergy sexual abuse suit that names the Holy See as the sole defendant.

Mr. McMurry described Judge Heyburn’s decision as “historic.”

However, The Courier-Journal, Louisville daily newspaper, quoted attorney Jeffrey S. Lena of Berkeley, Calif., counsel for the Vatican, saying that calling U.S. bishops and priests Vatican employees is a “fairly weak linchpin” for the case.

“The Holy See is just not responsible for this, and that’s the bottom line,” he said.

The Vatican’s spokesman, Jesuit Father Federico Lombardi, said Jan. 12 that he had no comment on the ruling.

Mr. Lena said the Vatican did not present evidence before the ruling, which was a procedural ruling on a preliminary challenge in which the judge must treat the facts alleged in the complaint as if they were true.

The case is the second in which a federal judge has denied a motion to remove the Vatican as a defendant.

Last June a federal judge in Portland, Ore., ruled against a Vatican motion to be dismissed as a defendant in a case in which a religious order priest was accused of child molestation in Portland when he was assigned there after previously admitting he had abused minors in Ireland and in Chicago. The Vatican has appealed that ruling.

In a number of other sex abuse cases around the country in recent years the Holy See has succeeded in getting itself dismissed as a co-defendant.

In the Louisville case, Judge Heyburn barred some of the bases for claims against the Vatican but accepted the grounds of “negligent failure to report (abuse), negligent failure to warn, breach of fiduciary duty – insofar as that breach involved failure to report and failure to warn – outrage and emotional distress, violations of the customary law of human rights, and claims under the doctrine of respondeat superior.”

“Respondeat superior” is the legal doctrine under which an employer may be responsible for actions of an employee acting within the scope of his or her office or employment.

Judge Heyburn said a priest engaged in sexual abuse is not acting within the scope of his employment, but noted that the plaintiffs claim their superiors failed to address such misconduct properly and covered it up. “If, as plaintiffs allege, these bishops, archbishops and other clergy followed a written or unwritten policy established by the Holy See, they certainly acted within the scope of their office or employment,” he said.

Judge Heyburn acknowledged that whether the Holy See qualifies as an employer of U.S. clergy for the purposes of the case had not yet been fully tested.

“The court is open to reconsidering its decision that the United States-based bishops, archbishops and other clergy of the Roman Catholic Church are employees of the Holy See for purposes of FSIA (the Foreign Sovereign Immunity Act) if further contrary evidence emerges during the litigation,” he wrote.