

Paweł Lewandowski\*

ORCID: <https://orcid.org/0000-0003-4543-4382>

The John Paul II Catholic University of Lublin, Poland

## **The Response of the Catholic Church in the United States to Offences of Sexual Abuse of Minors Committed by Clerics Based on the Example of the Diocese of Fairbanks**

### **Abstract**

Offences of sexual abuse committed by clerics, which are a grave sin, cause physical, mental and spiritual harm to their victims and greatly harm the community of the faithful. In order to prevent such situations from happening anymore, it is necessary to take great responsibility for minors, for people who habitually have an imperfect use of reason and for people to whom the law recognizes equal protection. This concern may be considered an indispensable part of the mission entrusted to the Church, which, as a community of the faithful, strives for the salvation of every human being and for the common good of the community in which it carries out its mission. The answer to how to accomplish this task and how to bring church communities out of the deep crisis caused by sexual abuse of clergy comes from the Catholic Church in the United States, including the Diocese of Fairbanks.

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## Keywords

Sexual abuse, clergy abuse, abuse of minors, sexual misconduct, Diocese of Fairbanks, bankruptcy, Chapter 11.

Where sin increased, grace overflowed all the more

(Rom. 5:20)

Sexual offenses of minors committed by clerics are a grave sin in the eyes of God,<sup>1</sup> they socially and legally require severe and just punishment, have caused great suffering and scandal for many Catholics, and contributed to the distrust of the entire Catholic Church.<sup>2</sup> Particularly high-profile scandals in the matter raised broke out in the United States, Ireland, Belgium, the Netherlands, Germany, Switzerland, Australia and Italy.<sup>3</sup> In relation to the Catholic Church, a number of allegations are constantly raised: harassment of minors by clergy and laity acting on behalf of the Church in local communities, sexual abuse of pupils in educational institutions and aid centres run by the Church, harassment of seminarians, or conducting an inappropriate policy of church

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<sup>1</sup> “Scandal takes on a particular gravity by reason of the authority of those who cause it or the weakness of those who are scandalized. It prompted our Lord to utter this curse: ‘Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened round his neck and to be drowned in the depth of the sea’ (Mt 18:6; Cf. 1 Cor 8:10–13). Scandal is grave when given by those who by nature or office are obliged to teach and educate others. Jesus reproaches the scribes and Pharisees on this account: he likens them to wolves in sheep’s clothing (Cf. Mt 7:15).” *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997, no. 2285. “Connected to incest is any sexual abuse perpetrated by adults on children or adolescents entrusted to their care. The offense is compounded by the scandalous harm done to the physical and moral integrity of the young, who will remain scarred by it all their lives; and the violation of responsibility for their upbringing.” *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997, no. 2389.

<sup>2</sup> Ioannes Paulus PP. II, *Allocutio ad patres cardinales quarundam dioecesium Americae Septemtrionalis ordinaries* (23.04.2002), AAS 94 (2002), pp. 670–672, no. 1.

<sup>3</sup> The Child Rights International Network, *Child Sexual Abuse and the Holy See. The Need for Justice, Accountability and Reform (A Preliminary Report)*, pp. 10–11, [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/VAT/INT\\_CAT\\_CSS\\_VAT\\_17113\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/VAT/INT_CAT_CSS_VAT_17113_E.pdf) (04.02.2022).

institutions towards sexual scandals involving, *inter alia*, by putting pressure on the victims, forcing them to remain silent, interfering with ongoing investigations, refraining from reporting information about crimes to law enforcement agencies, destroying evidence, transferring accused clerics to other parishes, or putting canon law over secular law.

The issue of sexual offences of minors committed by clerics has already attained many serious studies.<sup>4</sup> In individual countries, there were or still operate special commissions of a church or state nature, the purpose of which is an in-depth analysis of this phenomenon and the presentation of a detailed and objective report.<sup>5</sup> Undoubtedly, the problem raised must not be ignored, and its solution and ending can only be brought about by appropriate church and state legislation, honest evaluation of events, repairing the damage caused and the prevention of sexual abuse.

Due to the fact that the Catholic Church in the United States was one of the first to deal with the analysed problem,<sup>6</sup> the solutions implemented in this particular Church constitute good research material allowing for a proper assessment of the applied factual and legal solutions. The purpose of this article is to analyse the reaction of the Catholic Church in the United States to sexual offences of minors committed by clerics based on the example of the Diocese of Fairbanks.

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<sup>4</sup> Just recall here: T.P. Doyle, *Clergy Sexual Abuse. Bibliography of Selected Sources Related to Clergy Sexual Abuse, Ecclesiastical Politics, Theology and Church History* (Revised 29.04.2020), [https://childusa.org/member-docs/Doyle%20Bibliography%2004\\_29\\_2020.pdf](https://childusa.org/member-docs/Doyle%20Bibliography%2004_29_2020.pdf) (04.02.2022); J.S. Evinger, *Annotated Bibliography of Clergy Sexual Abuse and Sexual Boundary Violations in Religious Communities* (Rochester, New York – 37<sup>th</sup> revision: 27.09.2021), <https://www.faithtrustinstitute.org/resources/bibliographies/clergy-sexual-abuse> (04.02.2022); P. Lewandowski, *Financial Support of Accused Clerics of Sexual Abuses of Minors. An Outline*, “Tekna Komisji Prawniczej PAN Oddział w Lublinie” vol. XIV (2021), no. 2, pp. 317–325. <https://doi.org/10.32084/tekapr.2021.14.2-22>.

<sup>5</sup> E.g. *Royal Commission into Institutional Responses to Child Sexual Abuse* (Australia); *Commission to Inquire into Child Abuse* (Ireland); *Commission indépendante sur les abus sexuels dans l'Église* (France); *Państwowa Komisja do spraw wyjaśniania przypadków czynności skierowanych przeciwko wolności seksualnej i obyczajności wobec małoletniego poniżej lat 15* (Poland); *Comissão Independente para o Estudo de Abusos Sexuais contra as Crianças na Igreja Católica Portuguesa* (Portugal); *John Jay College of Criminal Justice* (USA).

<sup>6</sup> See T.P. Doyle, S.C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, “Fordham Urban Law Journal” 31 (2004), no. 2, pp. 549–551.

## 1. The establishment and functioning of the Diocese of Fairbanks

In the second half of the 19<sup>th</sup> century, the lands of Alaska belonging to Russia were sold to the United States. The treaty was signed after long negotiations on the night of March 29–30, 1867. The transaction worth 7.2 million dollars was concluded on behalf of Russia by Baron Edward de Stoeckl (Russian: Эдуард Андреевич Стеклъ), and on behalf of the United States by Secretary of State William Seward, who had previously made efforts to purchase these lands. The treaty was ratified on April 9, 1867 by the United States Senate, and the House of Representatives on July 14, 1868, resolved the appropriation of funds.<sup>7</sup>

The first Christian missionaries in Alaska were Orthodox clerics, who were asked by Grigory Ivanovich Shelekhov (Russian: Григорий Ива́нович Шéлихов), one of the organizers of the Russian-American Company, with the permission Catherine the Great. In a special publication dated June 1793, Catherine the Great obliged Metropolitan Gabriel to send to Alaska the best-prepared missionaries, whose group of eight clerics and two lay people finally began evangelization in 1794.<sup>8</sup>

Catholic missionaries arrived in Alaska much later. The first Catholic priest in this area was the Missionary Oblate of Mary Immaculate, Jean Séguin OMI, who spent the winter of 1862–1863 at Fort Yukon.<sup>9</sup> The Society of Jesus made a significant contribution to the development of Catholicism in Alaska. Formal ecclesiastical jurisdiction throughout Alaska first appeared on July 27, 1894, when the Holy See separated Alaska from the dioceses of Vancouver Island and New Westminster and made it the Apostolic Prefecture of Pasquale Tosi SJ as an apostolic prefect.<sup>10</sup> At the same time, Alaska became an independent

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<sup>7</sup> Admittedly, few Americans sympathized with W. Seward's expansionist ambitions, and since Alaska's economic and strategic strengths were not yet recognized at the time, the Secretary of State was accused of doing bad business. His opponents mocked Alaska, calling it "Seward's refrigerator." M.A. Jones, *Historia USA. Narody i cywilizacje*, Wydawnictwo Marabut, Gdańsk 2002, p. 446.

<sup>8</sup> J. Crimont, *Alaska*, in: *The Catholic Encyclopedia. An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, vol. 1, ed. Ch.G. Herbermann, E.A. Pace, C.B. Pallen, T.J. Shahan, J.J. Wynne, The Encyclopedia Press, Inc., New York 1907, p. 249.

<sup>9</sup> See C. Mishler, *Missionaries in Collision: Anglicans and Oblates among the Gwich'in, 1861–65*, "Arctic" 43 (1990), no. 2, pp. 121–126.

<sup>10</sup> See F. Algardi, *Il centenario di un pioniere. P. Pasquale Tosi, esploratore e missionario nell'Alasca*, "Vie d'Italia e del mondo" 3 (1935), pp. 745–769; C. Testore, G. Montali, F. Algardi,

mission entrusted to the Jesuits, with P. Tosi as superior general of the Society of Jesus. On December 22, 1916, Alaska was promoted to the Apostolic Vicariate, first headed by Bishop Joseph R. Crimont SJ.<sup>11</sup>

On June 23, 1951, the Diocese of Juneau was formed from the Apostolic Vicariate of Alaska.<sup>12</sup> On August 8, 1962, the Apostolic Vicariate of Alaska was elevated as the Diocese of Fairbanks.<sup>13</sup> On November 11, 2019, Pope Francis has decided to make the Diocese of Fairbanks, hitherto dependent on the Congregation for the Evangelization of Peoples, subject to common law. Thus, the diocese comes under the Congregation for Bishops.<sup>14</sup> Territorially, Diocese of Fairbanks is the largest diocese in the United States – it covers an area of 1,061,508 km<sup>2</sup>. According to 2018 data, there are 12,300 Catholics in the diocese (7.4% of 165,131 total). The patron saint of the diocese is Saint Thérèse of Lisieux.<sup>15</sup>

## 2. Catholic dioceses in the United States in bankruptcy, in particular the Diocese of Fairbanks

In February 2004, at the special request of the United States Conference of Catholic Bishops (USCCB), the report *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950–2002* was published by the renowned, independent from the Church, John Jay College of Criminal

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*Pasquale Tosi: un romagnolo sanvitese (1835–1898) missionario ed esploratore dalla Montagne Rocciose all'Alaska*, Il Ponte Vecchio, Cesena 2011; M. Tombesi, *Padre Pasquale Tosi 1835–1898. Primo Gesuita romagnolo ad evangelizzare l'Alaska*, Independently Published, 2020.

<sup>11</sup> M. Ewens, *Icy Crossings and Dwellings: John Fox, S.J., and the Sisters of Our Lady of the Snows*, in: *Crossings and Dwellings: Restored Jesuits, Women Religious, American Experience, 1814–2014*, ed. K.B. Roberts, S. Schloesser, Brill, Leiden–Boston 2017, pp. 496–530. [https://doi.org/10.1163/9789004340299\\_014](https://doi.org/10.1163/9789004340299_014)

<sup>12</sup> On January 22, 1966, the Diocese of Juneau lost part of its territory to the newly formed Metropolitan Archdiocese of Anchorage. On May 19, 2020, the two dioceses merged, resulting in the formation of the Metropolitan Archdiocese of Anchorage-Juneau. *Merging of the metropolitan archdiocese of Anchorage with the diocese of Juneau, U.S.A., erection of the new ecclesiastical circumscription of Anchorage-Juneau, U.S.A., and appointment of the first metropolitan archbishop* (19.05.2020), “Bollettino della Sala Stampa della Santa Sede” N. 200519a.

<sup>13</sup> Sacrum Consistorium, *Provisio Ecclesiarum*, AAS 54 (1962), p. 832.

<sup>14</sup> *Church Provision* (11.11.2019), “Bollettino della Sala Stampa della Santa Sede” N. 191111d.

<sup>15</sup> <http://www.gcatholic.org/dioceses/diocese/fair0.htm> (05.02.2022).

Justice.<sup>16</sup> The report lists 4,392 clerics with allegations of abuse, whose victims were 10,667 minors (under the age of 18). This is 4.3% of clerics active at that time.<sup>17</sup> The vast majority of clerics with allegations of abuse (68%) were ordained between 1950 and 1979. Clerics ordained prior to 1950 accounted for 21.3% of the allegations, and clerics ordained after 1979 accounted for 10.7% of allegations.<sup>18</sup> The largest group of alleged victims (50.9%) was between the ages of 11 and 14, 27.3% were 15–17, 16% were 8–10 and nearly 6% were under age 7. The alleged crimes of the clergy were classified into more than twenty categories. The most frequent allegedly committed acts were: touching over the victim's clothes (52.6%), touching under the victim's clothes (44.9%), oral sex (26%), undressing the victim (25.7%) and penile penetration or attempted penile penetration (22.4%).<sup>19</sup> Until the date of publication of the report, the amount of money already paid by the Catholic Church in the United States, as a result of allegations, to victims, exceeds \$ 500,000,000.<sup>20</sup>

As of November 2021, twenty-eight Catholic dioceses in the United States have sought bankruptcy protection in Chapter 11 of the Bankruptcy Code: Archdiocese of Portland (2004), Diocese of Tucson (2004), Diocese of Spokane (2004), Diocese of Davenport (2006), Diocese of San Diego (2007), Diocese of Wilmington (2009), Archdiocese of Milwaukee (2011), Diocese of Gallup (2013), Diocese of Stockton (2014), Diocese of Helena (2014), Archdiocese of St. Paul and Minneapolis (2015), Diocese of Duluth (2015), Diocese of New Ulm (2017), Diocese of Great Falls–Billings (2017), Archdiocese of San Juan (2018), Diocese of Winona–Rochester (2018), Archdiocese of Santa Fe (2018), Archdiocese of Agana (2019), Diocese of Rochester (2019), Diocese of St. Cloud (2019),

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<sup>16</sup> *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950–2002. A Research Study Conducted by the John Jay College of Criminal Justice for the United States Conference of Catholic Bishops*, The City University of New York, February 2004, Washington, D.C., <https://www.usccb.org/sites/default/files/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf> (05.02.2022).

<sup>17</sup> *The Nature and Scope of Sexual Abuse of Minors*, p. 4.

<sup>18</sup> *The Nature and Scope of Sexual Abuse of Minors*, p. 5.

<sup>19</sup> *The Nature and Scope of Sexual Abuse of Minors*, p. 6.

<sup>20</sup> *The Nature and Scope of Sexual Abuse of Minors*, p. 5. For obvious reasons, this amount is much higher today, and the analysed report is not the only one. See Pennsylvania. Court of Common Pleas (Allegheny County), Pennsylvania. Statewide Investigating Grand Jury, *40th Statewide Investigating Grand Jury. Report 1. Interim-Redacted*, Pennsylvania 2018, <https://www.courthousenews.com/wp-content/uploads/2018/08/pa-abuse-report.pdf> (05.02.2022).

Diocese of Buffalo (2020), Diocese of Harrisburg (2020), Archdiocese of New Orleans (2020), Diocese of Syracuse (2020), Diocese of Rockville Centre (2020), Diocese of Camden (2020), Diocese of Norwich (2021) and Diocese of Fairbanks.<sup>21</sup>

The Diocese of Fairbanks has sought bankruptcy protection in Chapter 11 of the Bankruptcy Code on March 1, 2008.<sup>22</sup> Beginning in approximately the fall of 2002, claims alleging sex abuse at the hands of priests and other workers in the Church started being asserted against the Catholic Bishop of Northern Alaska.<sup>23</sup> By the Petition Date, one hundred forty lawsuits with one hundred fifty plaintiffs had been filed against the CBNA. That number did not include claims that had not resulted in lawsuits either because there was a settlement or the person simply did not pursue a claim.<sup>24</sup> The entire procedure under Chapter 11 was lengthy and demanding. A significant part of the documentation has been published: *Objection and Response to Motion for Official Committee of Unsecured Creditors for Authority to Commence, Prosecute and Settle Litigation on Behalf of Bankruptcy Estate Against the Holy See and Diocese-Related Entities* on March 2, 2009,<sup>25</sup> *Motion for Official Committee of Unsecured Creditors for Authority to Commence, Prosecute and Settle Litigation on Behalf of Bankruptcy Estate Against the Holy See and Diocese-Related Entities* on May 11, 2009,<sup>26</sup> *Objection of Official Committee of Unsecured Creditors to "Motion for Order Under 11 U.S.C. § 1121(d) Extending Exclusive Period While Debtor Solicits Acceptance of its Plan of Reorganization"* on June 12, 2009,<sup>27</sup> *Transcript of Hearing on UCC's*

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<sup>21</sup> In addition: Society of Jesus (Oregon Province), Christian Brothers of Ireland, Crosier Fathers and Brothers. M.T. Reilly, *Catholic Dioceses in Bankruptcy*, 49 Seton Hall L. Rev. 871 (2019), pp. 871–924, <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1104&context=bankruptcy> (05.02.2022). Detailed lists and documentation of the analysed matter, see <https://elibrary.law.psu.edu/bankruptcy/index.html> (05.02.2022).

<sup>22</sup> M.T. Reilly, *Catholic Dioceses in Bankruptcy*, p. 923.

<sup>23</sup> The corporate name of the Diocese of Fairbanks is the Catholic Bishop of Northern Alaska (CBNA).

<sup>24</sup> *Declaration of Bishop Donald J. Kettler in Support of Chapter 11 Petition and First Day Motions* (02.03.2008), *Catholic Dioceses in Bankruptcy*, 14, p. 9, <https://elibrary.law.psu.edu/bankruptcy/14> (05.02.2022).

<sup>25</sup> *Catholic Dioceses in Bankruptcy*, 13, <https://elibrary.law.psu.edu/bankruptcy/13> (05.02.2022).

<sup>26</sup> *Catholic Dioceses in Bankruptcy*, 20, <https://elibrary.law.psu.edu/bankruptcy/20> (05.02.2022).

<sup>27</sup> *Catholic Dioceses in Bankruptcy*, 21, <https://elibrary.law.psu.edu/bankruptcy/21> (05.02.2022).

*Motion for Authority to Commence, Prosecute, and Settle Litigation on Behalf of Bankruptcy Estate Against the Holy See and Diocese-Related Entities* on August 31, 2009,<sup>28</sup> *Order and Memorandum of the Court Regarding Committee's Motion to Pursue Litigation and Debtor's Motion to Strike* on September, 11, 2009,<sup>29</sup> *Order and Memorandum of the Court on Motion to Extend Exclusivity Period* on September, 11, 2009,<sup>30</sup> *Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska (as confirmed)* on December 17, 2009,<sup>31</sup> *Third Amended and Restated Disclosure Statement in Support of Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization* on December 17, 2009.<sup>32</sup> The procedure has been completed in accordance with *Order Approving Third Amended and Restated Disclosure Statement and Confirming Third Amended and Restated Joint Plan of Reorganization* on February 17, 2010.<sup>33</sup>

The *Third Amended and Restated Joint Plan of Reorganization* pursuant to the provisions of Chapter 11 of the Bankruptcy Code included a number of activities: 1) funding the fund; 2) asset sale to the endowment; 3) pilgrim springs auction; 4) Harding Lake sale; 5) assignment of certain claims to settlement trustee; 6) formation of settlement trust and litigation trust; 7) special arbitrator and settlement trustee assume responsibility; 8) funding on the effective date; 9) assignment of claims against great divide candidate insurers; 10) funding after the effective date; 11) payments to the fund the effective date; 12) non-monetary commitment to healing and reconciliation; 13) procedure for determination of claims other than tort claims or future tort claims; 14) payments effective upon tender; 15) preservation of debtor's claims, demands, and causes of action; 16) special

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<sup>28</sup> *Catholic Dioceses in Bankruptcy*, 15, [https://elibrary.law.psu.edu/bankruptcy/15\(05.02.2022\)](https://elibrary.law.psu.edu/bankruptcy/15(05.02.2022)).

<sup>29</sup> *Catholic Dioceses in Bankruptcy*, 16, [https://elibrary.law.psu.edu/bankruptcy/16\(05.02.2022\)](https://elibrary.law.psu.edu/bankruptcy/16(05.02.2022)).

<sup>30</sup> *Catholic Dioceses in Bankruptcy*, 17, [https://elibrary.law.psu.edu/bankruptcy/17\(05.02.2022\)](https://elibrary.law.psu.edu/bankruptcy/17(05.02.2022)).

<sup>31</sup> *Catholic Dioceses in Bankruptcy*, 19, [https://elibrary.law.psu.edu/bankruptcy/19\(05.02.2022\)](https://elibrary.law.psu.edu/bankruptcy/19(05.02.2022)).

<sup>32</sup> *Catholic Dioceses in Bankruptcy*, 18, [https://elibrary.law.psu.edu/bankruptcy/18\(05.02.2022\)](https://elibrary.law.psu.edu/bankruptcy/18(05.02.2022)).

<sup>33</sup> *Catholic Dioceses in Bankruptcy*, 12, [https://elibrary.law.psu.edu/bankruptcy/12\(06.02.2022\)](https://elibrary.law.psu.edu/bankruptcy/12(06.02.2022)).

provisions governing unimpaired claims; 17) operative documents; 18) return of deposits; 19) administrative claims bar date; 20) delivery of distributions.<sup>34</sup>

### 3. Universal legislation

A responsible and far-sighted response of the Church to the sexual offences of minors committed by clerics must be primarily of a legal nature. Fair universal legislation is a necessary tool to honestly and consistently explain all past crimes and painful omissions, to provide the necessary support to all who report injustice to the Church today, and to do everything possible to prevent similar events from happening in the future. The fair application of the law becomes an indispensable help for the victim, as it is an essential step to restore a sense of justice. The penal law in the Catholic Church should be interpreted as serving love to one's neighbor. Moreover, it obliges to show other forms of support of the victim, i.e. psychological help, legal consultation or spiritual accompaniment. In addition, when accused of the most serious offense or gross negligence related thereto, the use of legal procedures gives an opportunity for the cleric to present arguments in his defence. At the time of proving guilt, just administration of punishment is also an act of love for a cleric who has committed an offence, because it becomes a tool for him to take responsibility for his actions, which is a necessary condition in the process of conversion and reconciliation with the Church community and rehabilitation.<sup>35</sup>

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<sup>34</sup> *Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska* (17.12.2009), *Catholic Dioceses in Bankruptcy*, 12, pp. 53–65, Article 17, <https://elibrary.law.psu.edu/bankruptcy/12> (06.02.2022).

<sup>35</sup> Cf. W. Polak, *Wprowadzenie*, in: *Odpowiedź Kościoła na dramat wykorzystywania seksualnego małoletnich. Aspekt prawny*, ed. P. Studnicki, M. Dalgiewicz, Wydawnictwo Księży Pallotyńów Apostolicum, Żąbki 2020, pp. 9–10. "In the past, great damage was done by a failure to appreciate the close relationship existing in the Church between the exercise of charity and recourse – where circumstances and justice so require – to disciplinary sanctions. This manner of thinking – as we have learned from experience – risks leading to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies. This situation often brings with it the danger that over time such conduct may become entrenched, making correction more difficult and in many cases creating scandal and confusion among the faithful." Franciscus PP., *Constitutio apostolica Pascite gregem Dei qua Liber VI Codicis Iuris Canonici reformatur* (23.05.2021), "Communicationes" 53 (2021), pp. 9–12.

The legislator renewed the provisions in the analysed scope of violation of the sixth commandment of the Decalogue in Can. 1395 § 2,<sup>36</sup> and after the amendment of Book VI of the 1983 Code of Canon Law<sup>37</sup> (entering into force beginning on December 8, 2021) in Can. 1398 § 1.<sup>38</sup> The offense applies to all acts of a sexual nature committed by a cleric with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection. The existence of an offence is not affected by the fact whether the victim voluntarily and spontaneously agreed to a given sexual act, whether he provoked it himself, or whether everything took place against his will. Also, the sex of the victim does not change the fact that it is an offence. Moreover, it did not necessarily have to be physical contact, it was enough for the cleric to take action to use the victim for sexual arousal or gratification. Criminal acts express the intention of the perpetrator: to be used for sexual stimulation or gratification. Abuse can take many forms: touch, kiss, exposure of the genitals or sexual intercourse. There is also indirect abuse: provocative conversation; acquisition, retention, exhibition or distributing of pornographic material; or photographing or filming for pornographic purposes. The cleric often appears in the pastoral relationship with the victim. Criminal acts described in Can. 1398 § 1 are punishable even when committed once. Sexual abuse of victims violates their human dignity and personal freedom.<sup>39</sup> It should

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<sup>36</sup> Can. 1395 § 2: “A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.”

<sup>37</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1–317.

<sup>38</sup> Can. 1398 § 1: “A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he: 1° commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection; 2° grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated; 3° immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.”

<sup>39</sup> H. Stawniak, G. Jarząbek-Bielecka, A. Bielecka-Gąszcz, *Przemoc seksualna wobec małoletnich i ich ochrona prawno-etyczna i kanoniczna*, “Prawo Kanoniczne” 60 (2017), no. 2, pp. 153–155. <https://doi.org/10.21697/pk.2017.60.2.07>.

also be remembered that, according to Can. 1398 § 2, “A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys a dignity or performs an office or function in the Church, who commits an offence mentioned in § 1 or in can. 1395 § 3 is to be punished according to the provision of can. 1336 §§ 2–4, with the addition of other penalties according to the gravity of the offence.”

Such cases are reserved for judgment by the Congregation for the Doctrine of the Faith, as indicated by the norms *de gravioribus delictis* promulgated by John Paul II,<sup>40</sup> and modified by Benedict XVI,<sup>41</sup> and Francis.<sup>42</sup> In order to adequately protect minors from sexual misconduct, the legislator has clarified the procedure to be followed in these cases: Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics,<sup>43</sup> Apostolic Letter Issued Motu Proprio by the Supreme Pontiff Francis *As a Loving Mother*<sup>44</sup> and Apostolic Letter Issued Motu Proprio by the Supreme Pontiff Francis *Vos estis lux mundi*.<sup>45</sup> Moreover, the Congregation for the Doctrine of the Faith has issued a *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, the purpose of which is to provide “instructions” to the correct handling of cases involving accused clerics of child abuse.<sup>46</sup>

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<sup>40</sup> Ioannes Paulus PP. II, Litterae apostolicae motu proprio datae *Sacramentorum sanctitatis tutela* quibus normae de gravioribus delictis congregationi pro doctrina fidei reservatis promulgantur (30.04.2001), AAS 93 (2001), pp. 737–739.

<sup>41</sup> Congregatio pro Doctrina Fidei, *Rescriptum ex Audientia: Normae de gravioribus delictis* (21.05.2010), AAS 102 (2010), pp. 419–434.

<sup>42</sup> Francis, *Rescriptum ex audientia SS.MI: Rescript of the Holy Father Francis to introduce some amendments to the “Normae de gravioribus delictis”* (03.12.2019), “Bollettino della Sala Stampa della Santa Sede” N. 191217a; Francis, *Rescriptum ex audientia SS.MI: Rescriptum of the Holy Father Francis to promulgate the Instruction on the confidentiality of legal proceedings* (06.12.2019), “Bollettino della Sala Stampa della Santa Sede” N. 191217b.

<sup>43</sup> Congregazione per la Dottrina della Fede, Lettera circolare per aiutare le Conferenze Episcopali nel preparare *Linee guida* per il trattamento dei casi di abuso sessuale nei confronti di minori da parte di chierici (03.05.2011), AAS 103 (2011), pp. 406–412.

<sup>44</sup> Francesco, Lettera apostolica in forma di “motu proprio” del sommo pontefice Francesco *Come una madre amorevole* (04.06.2016), AAS 108 (2016), pp. 715–717.

<sup>45</sup> Francesco, Lettera apostolica in forma di “motu proprio” del sommo pontefice Francesco *Vos estis lux mundi* (07.05.2019), “Communicationes” 51 (2019), pp. 23–33.

<sup>46</sup> Congregazione per la Dottrina della Fede, *Vademecum su alcuni punti di procedura nel trattamento dei casi di abuso sessuale di minori commessi da chierici* (16.07.2020), “Bollettino della Sala Stampa della Santa Sede” N. 0386.

#### 4. Particular legislation of the United States Conference of Catholic Bishops

In his speech to the cardinals of the United States assembled in the Holy See for an extraordinary meeting devoted to a series of sexual scandals in the Catholic Church in the United States on April 23, 2002, Pope John Paul II emphatically said: “It must be absolutely clear to the Catholic faithful, and to the wider community, that Bishops and superiors are concerned, above all else, with the spiritual good of souls. People need to know that there is no place in the priesthood and religious life for those who would harm the young. They must know that Bishops and priests are totally committed to the fullness of Catholic truth on matters of sexual morality, a truth as essential to the renewal of the priesthood and the episcopate as it is to the renewal of marriage and family life. We must be confident that this time of trial will bring a purification of the entire Catholic community, a purification that is urgently needed if the Church is to preach more effectively the Gospel of Jesus Christ in all its liberating force. Now you must ensure that where sin increased, grace will all the more abound (cf. Rom 5:20). So much pain, so much sorrow must lead to a holier priesthood, a holier episcopate, and a holier Church.”<sup>47</sup> The Pope also noted that God alone is the source of holiness and that it is to Him that we should first of all turn to for forgiveness, healing and the grace of uncompromising courage to fight for the holiness of the Catholic Church.<sup>48</sup>

After a series of working meetings of the American bishops with Pope John Paul II, on June 14, 2002, the United States Conference of Catholic Bishops approved a *Charter for the Protection of Children and Young People*, more commonly known as the *Dallas Charter*, for addressing allegations of sexual abuse of minors by Catholic priests, deacons, and other church personnel (i.e., employees and volunteers). The revised *Charter for the Protection of Children and Young People* was developed by the Ad Hoc Committee for Sexual Abuse of the United States Conference of Catholic Bishops. It was approved by the full body of the USCCB at its the June 2005 Plenary Assembly, and at its the June

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<sup>47</sup> Ioannes Paulus PP. II, *Allocutio ad patres cardinales quarundam dioecesium Americae Septemtrionalis ordinaries*, nos. 3–4.

<sup>48</sup> Ioannes Paulus PP. II, *Allocutio ad patres cardinales quarundam dioecesium Americae Septemtrionalis ordinaries*, no. 4.

2018 Plenary Assembly.<sup>49</sup> The *Charter for the Protection of Children and Young People* is preceded by a preamble describing the experience of the Catholic Church in the United States after 2002 with the drama of sexual abuse of minors by deacons, priests and bishops. The *Charter* contains seventeen articles grouped into four parts: a) *To Promote Healing and Reconciliation with Victim/Survivors of Sexual Abuse of Minors* (Article 1–3); b) *To Guarantee an Effective Response to Allegations of Sexual Abuse of Minors* (Article 4–7); c) *To Ensure the Accountability of Our Procedures* (Article 8–11); d) *To Protect the Faithful in the Future* (Article 12–17). In total, the following guiding ideas of the analysed document and related obligations can be indicated: zero tolerance, victim outreach, required reporting to public authorities, lay review boards, victim assistance coordinators, safe environment training, backgrounds check, no confidentiality agreements unless requested by survivor, ongoing formation for clergy. The document is crowned with a solemn promise to *prevention, protection* and *accountability* in creating a safe environment for all (Conclusion).<sup>50</sup> The *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*<sup>51</sup> are connected with the *Charter for the Protection of Children and Young People*.

In June 2019, the United States Conference of Catholic Bishops promulgated *Directives for the Implementation of the Provisions of Vos estis lux mundi Concerning Bishops and their Equivalents*,<sup>52</sup> in which it regulated five issues: outlines use of lay experts to investigate and publicize allegations; national 3<sup>rd</sup>

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<sup>49</sup> United States Conference of Catholic Bishops, *Charter for the Protection of Children and Young People*, pp. 3–18, <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf> (09.02.2022).

<sup>50</sup> It should be mentioned that the document was also published in Spanish: Conferencia de los Obispos Católicos de los Estados Unidos, *Estatuto para la protección de niños y jóvenes*, pp. 3–16, [https://www.usccb.org/images/Estatuto-para-la-proteccion%CC%81n-de-nin%CC%83os-y-jo%CC%81venes-2018-final\\_0.pdf](https://www.usccb.org/images/Estatuto-para-la-proteccion%CC%81n-de-nin%CC%83os-y-jo%CC%81venes-2018-final_0.pdf) (09.02.2022).

<sup>51</sup> United States Conference of Catholic Bishops, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, pp. 19–28, [https://www.usccb.org/test/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final\(1\).pdf](https://www.usccb.org/test/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final(1).pdf) (09.02.2022). The *Essential Norms* were promulgated on December 12, 2002. The member of the United States Conference of Catholic Bishops approved a revised text on June 17, 2005. The *Essential Norms* have been in force since May 15, 2006.

<sup>52</sup> United States Conference of Catholic Bishops, *Directives for the Implementation of the Provisions of Vos estis lux mundi Concerning Bishops and their Equivalents*, <https://www.usccb.org/sites/default/files/about/leadership/usccb-general-assembly/2019-june-meeting/upload/usccb-modified-amended-directives-2019-06.pdf> (09.02.2022).

party reporting; strengthens conflict of interest ban; pastoral care for those harmed; affirms duties of metropolitan. Taking into account the provision of Article 2 § 1 of the VELM, the obligation is required that each province should, in a widely available manner (in printed form, online, and *via* other media), inform about how to receive notifications with regard to delicts against the sixth commandment of the Decalogue and conduct carried out by the subjects referred to in Article 6 of the VELM, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to Article 1a of the VELM. In addition, each metropolitan, in consultation with the suffragan bishops, should appoint on a stable basis, even by means of an ecclesiastical office (see Article 2 § 1 of the VELM), a qualified lay person to receive reports of conduct about bishops referred to in Article 1 of the VELM.<sup>53</sup>

Also in June 2019 the United States Conference of Catholic Bishops promulgated the *Protocol Regarding Available Non-Penal Restrictions on Bishops*,<sup>54</sup> which contains two guidance: on bishops who were removed or who resigned for reasons related to sexual abuse or abuse of power and on participation of such bishops removed or resigned in the USCCB meetings. The indicated forms of proceedings are to be implemented by the diocesan bishop who is the successor of the bishop emeritus, by the diocesan bishop in whose jurisdiction the bishop emeritus resides or in which he seeks to minister, or by the episcopal conference, within the existing limits of their authority, and in light of any measures already imposed by the Apostolic See.<sup>55</sup>

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<sup>53</sup> The responsibilities of the appointed lay person are the following: engaging and interacting with the third-party entity arranged for nationally by the USCCB to receive reports; receiving reports on behalf of the metropolitan either through the third-party entity or those made directly to the metropolitan; informing the public about how to report cases involving bishops; advising the metropolitan on whether a report is manifestly unfounded pursuant to Article 10 § 1 of the VELM, and on his compliance with applicable civil laws requiring reports to civil authorities in accord with Article 19 of the VELM; gathering any needed additional information from the one making the report in the event there is a need for clarification about details that are time, place, and person specific. United States Conference of Catholic Bishops, *Directives for the Implementation of the Provisions of Vos estis lux mundi Concerning Bishops and their Equivalents*, no. 1.

<sup>54</sup> United States Conference of Catholic Bishops, *Protocol Regarding Available Non-Penal Restrictions on Bishops*, <https://www.rcan.org/sites/default/files/files/USCCB%20Protocol.pdf> (09.02.2022).

<sup>55</sup> United States Conference of Catholic Bishops, *Protocol Regarding Available Non-Penal Restrictions on Bishops*, no. 2.

During the Plenary Assembly of the United States Conference of Catholic Bishops in June 2019, the document *Affirming Our Episcopal Commitments* was adopted,<sup>56</sup> which is a renewal of commitments to the ruthless struggle of American bishops against the offences of sexual abuse.

## 5. Safe Environment in the Diocese of Fairbanks

After the application of the Code of Bankruptcy on March 1, 2008 and the implementation of the *Third Amended and Restated Joint Plan of Reorganization*, the Diocese of Fairbanks took a number of monetary and non-monetary undertakings. Leaving aside the financial matters that must be triggered in Point 2 of this article,<sup>57</sup> the non-financial actions turned out to be important. In order to further promote healing and reconciliation, and in order to continue efforts to prevent sexual abuse from occurring in the diocese in the future, the Catholic Bishop of Northern Alaska has committed to publishing the names of all known individuals, including clerics, religious, lay employees and volunteers, against whom a complaint of sexual abuse has been filed by one or more individuals – those listed include admitted, proven, or credibly accused, including deceased perpetrators of sexual abuse. The above-mentioned publication was an annex to the *Third Amended and Restated Joint Plan of Reorganization*<sup>58</sup> and was to be posted on the website of the Diocese of Fairbanks for ten years (starting on March 19, 2010). On November 16, 2020, in the interest of transparency, the Catholic Bishop of Northern Alaska made the decision to retain this information on this website. Moreover, for the reason that the list on the website included only names of individuals accused in lawsuits or proofs of claim at the time of the bankruptcy, the CBNA decided to conduct

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<sup>56</sup> United States Conference of Catholic Bishops, *Affirming Our Episcopal Commitments*, <https://www.usccb.org/sites/default/files/about/leadership/usccb-general-assembly/2019-june-meeting/upload/usccb-affirming-our-episcopal-commitments-2019-06.pdf> (09.02.2022).

<sup>57</sup> *Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska*, Article 17.

<sup>58</sup> *Individuals against whom a claim of abuse has been field*, in: *Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska*, Exhibit "2". Contains the names of 26 priests (162 claims of abuse in total), 2 deacons (2 claims of abuse in total), 3 brothers (7 claims of abuse in total), 7 sisters (13 claims of abuse in total) and 6 lay persons (142 claims of abuse in total).

an independent review of diocesan files,<sup>59</sup> which made it possible to update the list of admitted, proven or credibly accused perpetrators of sexual abuse.<sup>60</sup>

Within eighteen months, the Catholic Bishop of Northern Alaska personally went to each parish in which any individuals were abused. The CBNA was reading a statement of apology from the pulpit and encouraged parishioners to support victims. He further called for reporting abuse to law enforcement, the diocesan victim's assistance coordinator, health care professionals and/or any survivor group or organization that the person wishing to make a report of abuse determines is appropriate to receive the report of abuse.<sup>61</sup>

The Catholic Bishop of Northern Alaska was obliged to prepare a special letter of apology, which was to be published on the website of the Diocese of Fairbanks for a period of ten years, in parish bulletins once a month for a period of three months, and on KNOM radio at least once a month for a period of three months.<sup>62</sup> In this letter, the CBNA provided survivors of clergy sexual abuse: "Let me take this opportunity to put to rest some concerns you may have. You bear absolutely no responsibility for the harm you have suffered. Further, let me assure you any sacraments you received from clergy perpetrators are valid and by reporting them you have helped correct a terrible wrong."<sup>63</sup> The CBNA also addressed individual letters to all victims and their immediate families.<sup>64</sup>

In addition, the Catholic Bishop of Northern Alaska has been obliged to respect the following legal acts: the *Charter for the Protection of Children and*

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<sup>59</sup> This work was done by Dr. Kathleen McChesney from Kinsale Management Consulting.

<sup>60</sup> Catholic Bishop of Northern Alaska, *Bishop's Letter* (16.11.2020), [https://dioceseoffairbanks.org/joomla/images/2020\\_press\\_release/Bishops\\_letter\\_16\\_Nov\\_2020.pdf](https://dioceseoffairbanks.org/joomla/images/2020_press_release/Bishops_letter_16_Nov_2020.pdf) (09.02.2022). List of perpetrators, see [https://dioceseoffairbanks.org/joomla/index.php?option=com\\_content&view=article&id=109&Itemid=375](https://dioceseoffairbanks.org/joomla/index.php?option=com_content&view=article&id=109&Itemid=375) (09.02.2022). Contains the names of 28 priests (171 claims of abuse in total), 2 deacons (2 claims of abuse in total), 3 brothers (8 claims of abuse in total), 7 sisters (13 claims of abuse in total) and 6 lay persons (143 claims of abuse in total).

<sup>61</sup> *Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska*, Article 17.12c.

<sup>62</sup> Catholic Bishop of Northern Alaska, *Letter of Apology from Bankruptcy* (17.03.2010), [https://dioceseoffairbanks.org/joomla/images/safe\\_environment/Letter\\_of\\_Apology.pdf](https://dioceseoffairbanks.org/joomla/images/safe_environment/Letter_of_Apology.pdf) (09.02.2022).

<sup>63</sup> Catholic Bishop of Northern Alaska, *Letter of Apology from Bankruptcy* (17.03.2010), [https://dioceseoffairbanks.org/joomla/images/safe\\_environment/Letter\\_of\\_Apology.pdf](https://dioceseoffairbanks.org/joomla/images/safe_environment/Letter_of_Apology.pdf) (09.02.2022).

<sup>64</sup> *Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska*, Article 17.12f.

*Young People* initially adopted by the United States Conference of Catholic Bishops in 2002,<sup>65</sup> the *Diocese of Fairbanks' Faithful Healing, Preventing and Responding to Ministry-Related Child Sexual Abuse Policy* adopted on August 1, 2003,<sup>66</sup> the *Diocese of Fairbanks' Policy on Abuse of Vulnerable Adults* adopted November 16, 2005.<sup>67</sup>

## 6. Conclusion

In a special letter to the People of God, Pope Francis emphasized: “It is essential that we, as a Church, be able to acknowledge and condemn, with sorrow and shame, the atrocities perpetrated by consecrated persons, clerics, and all those entrusted with the mission of watching over and caring for those most vulnerable. Let us beg forgiveness for our own sins and the sins of others. An awareness of sin helps us to acknowledge the errors, the crimes and the wounds caused in the past and allows us, in the present, to be more open and committed along a journey of renewed conversion.”<sup>68</sup>

Today, painful events related to sexual offences of minors committed by clerics cannot be erased from the pages of the history of the Church, but this experience can and should be worked on towards honest and transparent activity of church communities in the analysed area. An example of the possible implementation of such plans is the Catholic Church in the United States, in particular the Diocese of Fairbanks, which has taken responsibility for

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<sup>65</sup> Revised 2005, 2011, 2018.

<sup>66</sup> Today is in effect: *Policies for Activities with Children & Youth Diocese of Fairbanks* (Revised 2015), [https://dioceseoffairbanks.org/joomla/images/policy/YM\\_policy\\_rev\\_2015.pdf](https://dioceseoffairbanks.org/joomla/images/policy/YM_policy_rev_2015.pdf) (09.02.2022); *Supplemental Policy Statement, Criminal Background Checks for All Employees of the Diocese of Fairbanks and for Volunteers Who Work With Children* (Revised 2022), [https://dioceseoffairbanks.org/joomla/images/policy/Abuse\\_Policy\\_2022\\_revised.pdf](https://dioceseoffairbanks.org/joomla/images/policy/Abuse_Policy_2022_revised.pdf) (09.02.2022); *Code of Professional Conduct for Clergy, Religious, Lay Employees and Volunteers* (Revised 2022), [https://dioceseoffairbanks.org/joomla/images/policy/Code\\_of\\_Conduct\\_revised\\_2022.pdf](https://dioceseoffairbanks.org/joomla/images/policy/Code_of_Conduct_revised_2022.pdf) (09.02.2022).

<sup>67</sup> The document was replaced by: *Abuse Policy* (Revised April 2020), [https://dioceseoffairbanks.org/joomla/images/policy/2021-Abuse\\_Policy\\_2020\\_revised.pdf](https://dioceseoffairbanks.org/joomla/images/policy/2021-Abuse_Policy_2020_revised.pdf) (09.02.2022). Today is in effect: *Supplemental Policy Statement, Criminal Background Checks for All Employees of the Diocese of Fairbanks and for Volunteers Who Work With Children*.

<sup>68</sup> Francis, *Letter of His Holiness Pope Francis to the People of God* (20.08.2018), “Bollettino della Sala Stampa della Santa Sede” N. 0578.

creating a safe environment. Rigorous legislation, both universal and particular, is intended to be applied in all parishes, communities and works of the Church, both by clergy, consecrated persons and lay people who undertake any service among children and young people, as well as among disabled and vulnerable people. The Catholic Church should create an appropriate environment for the integral development of every human being, regardless of his age or intellectual capacity.

Caring for minors must always be associated with care for their integral and full development, spiritual, mental and physical well-being. The inherent and inalienable dignity of man, revealed in God's law and guarded by canon and secular law, should constitute the source and guarantee of the safety of every person entrusted with the pastoral service. Particular care is due to the defenceless, minors and the sick, who, in the spirit of the Gospel, should be cared for and protected against all evil. The harm done to people, especially the most vulnerable ones, is not only the wounds inflicted as a result of criminal acts, but also the lack of proper reaction of the caregivers to information about them, as well as failure to take due care to prevent them.

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