POLISH BISHOPS’ CONFERENCE

Guidelines for the preliminary canonical investigation in the case of accusations against a cleric for the transgression of the Decalogue’s sixth commandment with a minor under age eighteen

The Church, as the community of the faithful, cares for the salvation of every person and the common good of the community in which She carries out her mission. Attentive to Christ, She is sensitive to everything that serves man’s true good and is not indifferent to what threatens him (cf. John Paul II, Encyclical Letter *Redemptor hominis*, no. 13).

Those who serve in the ecclesial communities—especially bishops, presbyters, deacons, and their associates and collaborators—have the task of helping the people they serve to find God in their daily lives. The basic principle of this ministry, following the example of Christ the Lord, is respect for each person’s dignity. This principle calls notably for the recognition and respect of the right of all children and young people, who must be cared for and respected, and allowed to grow up in a safe environment, free from abuse, manipulation, and violence. Every child, received with gratitude by the Church community as a gift from God, is the subject of this inalienable right, which is deeply rooted in Jesus’ teaching. This commits us to provide irreproachable disinterested service for the spiritual, physical, and emotional development of children and adolescents, and excludes that any one of the ministers in the Church violate, in any way, the physical or mental integrity of children and young people. At the same time, it commits to engaging in transparency when it comes to elucidating any suspicions of inappropriate behavior and ensuring that those guilty of violating the rights of children and young people, irrespective of their function or office, will be held liable in accordance with the applicable norms established by the competent ecclesiastical authority and in accordance with the law in force in Poland.

The important tasks intended to assure the common good of the faithful, in particular the protection of children and young people, include an appropriate attitude towards cases of sexual abuse committed by clerics against minors. In the teaching of the Church, in Her pastoral and educational practice as well as in Her disciplinary decisions, the safety of children and young people is Her special concern and an integral part of the common good. The Church wishes to be an example by implementing the best practices both in the protection of children and young people and in response to the harm done by the members of the clergy. The only possible reactions of the Church to the painful phenomenon of sexual abuse of minors are the diligent quest for truth and justice and advancing on their basis. Sexual abuse is perceived by the Church as a serious sin that requires: unambiguous reactions, including those of a disciplinary nature, to persons who have been proven guilty of such acts; healing through works of penance, both by the perpetrator and the entire Church community; reparation of wrongs caused to the victim and to the community; and making sure that similar situations do not occur in the future.

The accusation against clerics for transgressing the sixth commandment with a minor under eighteen years of age may also open a field for abuse, due to the exceptional difficulties of proving guilt and innocence. The context necessary to include in these matters is, moreover, the ease with which the media use such facts, whether proven or not, to undermine the Church’s authority. These circumstances make it necessary for the clerics themselves to be aware of the exceptional character of each of these situations. However, this cannot cause any desire to hide or cover up such facts. This is, indeed, an act prohibited by moral law, which also violates the disciplinary order of the Church and constitutes a crime in Polish law.

The Church’s legislation reserves the settlement of sexual offenses committed by clergy against minors for the Congregation for the Doctrine of the Faith (Motu Proprio “Sacramentorum sanctitatis tutela” of 21 May 2010, Article 6 § 1). Among the most serious crimes of this kind, Church law includes:

1° a crime against the sixth commandment of the Decalogue, committed by a cleric with a minor under age 18 (a person who is permanently incapable of using reason is equated with a minor); 2° a cleric’s acquisition, storage, or dissemination—in any form or by any mean—of pornographic images depicting minors under fourteen years of age in view of sexual satisfaction.

With the stipulation of the norm of the Congregation for the Doctrine of the Faith to repeal the statute of limitations in individual cases, an offense against the sixth commandment committed by a cleric with a minor under 18 years of age expires after twenty years from the date on which the minor reached the age of eighteen.

In addition, can. 1395 of the *Code of Canon Law* also provides criminal sanctions for other acts committed by members of the clergy in the area of sexuality that are not subject to special regulations.

However, the Polish law considers offenses, among other things: sexual contact with a minor under fifteen (Art. 200 § 1 of the Polish Penal Code = PPC); making pornographic content available to a minor under fifteen (PCP Art. 200 § 3-5); raping a person under the age of fifteen (PPC Art. 197 § 3 par. 2 of the Polish Penal Code); sexual abuse of a mentally handicapped person (PPC Art. 198); production, dissemination, and possession of pornographic content with a minor under fifteen (PPC Art. 202 § 3-4c); establishing contact with minors under the age of fifteen by means of telecommunication networks for sexual abuse (PPC Art. Art. 200a), as well as an abuse of dependency or trust towards a minor, or in exchange for a promise or property gain for a minor for sexual abuse (PPC Art. 199). Such offenses are prosecuted at the request of the victim or *ex officio* and are subject to a statute of limitations no sooner than after the victim has reached the age of 30.

On the basis of Art. 240 of the Penal Code, anyone with credible information about attempted or committed offenses referred to in PPC Art. 197 § 3 or 4, Art. 198, Art. 200 is required to notify law enforcement authorities. The failure to meet this obligation is punishable by up to three years of imprisonment.

According to Art. 16 of the Motu Proprio “Sacramentorum sanctitatis tutela,” regarding the tasks of the Ordinary (CIC can. 1717) or bishop (CEO can. 1468), a preliminary canonical investigation must be conducted, with the aim of confirming the probability of the crime or the validity of the accusation, and in the case of obtaining such confirmation the documentation must be transmitted to the Holy See.

In order to help the people who are to conduct the preliminary canonical investigation, the Polish Bishops’ Conference issued guidelines on 20 June 2009 that—taking into account the experience of the universal Church in the last few years and especially the Directives of the Prefect of the Congregation for the Doctrine of the Faith, dated 16 May 2011—the present document once again declares binding for the Catholic Church in Poland.

1. The preliminary canonical investigation is intended to study the facts and circumstances and the alleged offender’s transgression of the sixth commandment with minors under the age of eighteen, as well as to acquire and formally describe the truth, to prepare proper documentation while preventing the crime’s possible continuation (if there is any probability) and facilitating the reparation of the harm.

2. It pertains to the competent ecclesiastical superior to receive and to conduct the case. After having personally reviewed the case, he should entrust it to a suitable priest or committee appointed by him. The accuser can report to both the superior of the accused and, for an appropriate right (e.g., distance), to the diocesan bishop of his place of residence. In this situation, the diocesan bishop of the place of residence will enter into permanent cooperation with the superior of the accused, whose competence remains fully valid.

3. The victim of sexual abuse, as well as his/her relatives, should be accorded appropriate pastoral care that provides a sense of security, with readiness to listen to the truth and accept it; and, if necessary, they should be offered the spiritual and psychological help of a specialist, for we are convinced that persons who reveal their suffering also help the Church to heal the violated moral order. The ecclesiastical superior should show willingness to provide spiritual and psychological assistance, as mentioned in Annex No. 1 to this document on assistance to victims.

4. The accuser should be clearly reminded of his/her obligation to report to law enforcement agencies, in accordance with all provisions of Polish law. If the accuser has not already done so, he/she must notify the law enforcement agencies.

5. The first information about the alleged act of a cleric should be carefully verified in secrecy. Letters of this type received, including electronic correspondence and especially information given over the phone, etc., should be the basis for inviting the prosecuting person for a direct conversation, also taking into account whether the case is pending before state authorities. Detailed rules of conducting conversations are included in the Annex no. 2 to this document on the procedure.

6. On the basis of received information that has been verified, the competent superior decides whether to initiate the canonical investigation immediately. If he does decide to initiate a canonical investigation, he entrusts it to the suitable priest or commission (CIC, can. 1717).

7. If the facts disclosed relate to current events and seem probable, the Ordinary has the right to order what is prescribed in can. 1722 of the *Code of Canon Law*. If, however, the facts disclosed relate to the recent past and seem likely, but there is no immediate danger at present, the superior decides whether to apply preventive measures to the cleric or remove him from working with children and young people until the matter has been clarified. If accusations concern deeds allegedly committed many years ago, this same principle should be applied with proper fairness. In these cases, the superior should encourage the cleric to express prior, explicit, informed and free consent for specialized diagnosis or, if necessary, for therapy. Until the charges are clarified, the cleric cannot be allowed to exercise the ministry nor transferred to work in another diocese.

8. If accusations are brought against a deceased priest, no canonical investigation should be initiated, unless the good of the Church seems to justify an explanation of the matter. The accuser should be notified of these circumstances.

9. The accused cleric enjoys the presumption of innocence until proved guilty. Under no circumstances may he be deprived of the right to defense. He should also be helped to get psychological and legal help. If suspicions have not been confirmed, everything should be done to restore his good name, which was damaged by an unjust accusation.

10. During the initial canonical investigation, it is normal to collect information through interrogations, collecting documents, including medical and psychological opinions, etc., as detailed in Annex no. 2 to this document.

11. After determining the credibility of the accusation, the appropriate superior transfers the case to the Congregation for the Doctrine of the Faith.

12. Each time an Ordinary receives a message of a crime that may at least be probable, he conducts a preliminary investigation and, then, informs the Congregation for the Doctrine of Faith. The Congregation, if it does not consider that there are any special circumstances, instructs the Ordinary to proceed. The competent superior is also obliged to inform the Congregation if the investigation carried out implies that there is no “fumus delicti” in the accusation. If accusations are not confirmed during the preliminary canonical investigation, and this was confirmed by the Congregation, this outcome should be stated in writing and the case closed, while all the files are to be kept in the secret archives of the curia (CIC, can. 1719 CPC).

13. The preliminary canonical investigation is clearly distinguishable from the proceedings conducted under Polish law. If proceedings are conducted by state authorities, the preliminary canonical investigation should be conducted to the extent that it is possible due to legal restrictions resulting from the actions of state authorities.

14. Criminal and civil liability for such offenses shall be borne by the offender as a natural person.

15. The ecclesiastical superior is obliged to familiarize himself with the decisions of State organs and take them into account in his decisions.

16. All documentation of the canonical pre-investigation is, in principle, intended only for the internal use of the Church. The superior should, however, consider whether this documentation constitutes the basis for submitting a separate report to the competent state authorities, in accordance with Polish law, or if the content of the declaration does not indicate that a prohibited act, described in articles other than PPC, Art. 197 § 3 or 4, Art. 198, Art., and Chapter XXV, has been committed.

17. Bearing in mind the provisions of Polish law regarding the submission of a notification of a crime to law enforcement agencies, its contents may in no case be knowledge from the sacramental internal forum (the secret of confession). Similarly, knowledge acquired in spiritual direction should be treated in the same way.

18. Likewise, mutatis mutandis, one should proceed in cases of the transgression of the sixth commandment with a minor below the age of eighteen committed by consecrated persons or lay people working in the structures of the Church.

19. In order to prevent the abuse referred to in this document, it is necessary to ensure the proper formation of priests and candidates for the priesthood, as discussed in more detail in Annex no. 3 to this document on the principles of their formation and prevention.

The text above, adopted on the basis of Resolution No. 13/366/2014 of the Polish Bishops’ Conference of October 8, 2014, was amended by virtue of Resolution No. 5/376/2017 of the Polish Bishops’ Conference on 6 June 2017.

# Annex No. 1: Help for the Victims

Caring for the victims of sexual abuse is a fundamental act of justice on the part of the Church community that suffers pain and shame at the harm done to children and young people.

## Art. 1

While gathering of information about a case of sexual abuse against a minor, the ecclesiastical superior, either a diocesan bishop or a higher religious superior who bears the responsibility, is obliged to:

1) provide spiritual and psychological assistance to the victim of sexual abuse and, if necessary, legal consultations;

2) take steps to prevent the possible continuation of the offense and provide the victim with a sense of security;

3) initiate action aimed at healing trust and restoring the right climate for the continuation of pastoral work in the ecclesial community wounded by the contemptible conduct of a priest.

## Art. 2

Priests should be ready to engage in conversations and hold meetings with the faithful, especially during the initial period after the revelation of sexual abuse that has occurred in their communities. Especially, children and young people should be surrounded by pastoral care.

## Art. 3

1. The ecclesiastical superior fulfills the obligation of providing spiritual and psychological assistance as well as legal consultations for the victim of sexual abuse, acting through the person or the commission referred to in Art. 5 para. 1 of Annex no. 2 on the procedure.

2. The victim must be informed that of his/her basic right is to submit a report to the law enforcement authorities, as detailed in Art. 5 para. 2 of Annex no. 2 on the procedure.

3. In their behavior towards the victim of sexual abuse, persons acting on behalf of the ecclesiastical superior should always be inspired by a sense of justice and concern for the welfare of the victim and for the church community.

## Art. 4

1. Assistance to the victim of sexual abuse and his/her relatives begins with the acceptance of the declaration concerning the cleric’s transgression of the sixth commandment of the Decalogue with a minor under the age of eighteen.

2. The person or the commission referred to in Art. 5 para. 1 of Annex no. 2 on the procedure, charged with conducting a conversation or interviews with a person or with the people who report sexual abuse, is to ensure the maximum sense of security, to manifest willingness to listen and accept the truth, and to convince people that by revealing their suffering they help the Church to restore the moral order which has been violated.

## Art. 5

1. Spiritual and psychological assistance should be provided to the victim of sexual abuse, who is a minor below the age of eighteen, in close cooperation with the parents (legal guardians), and in the case of victims under 15, with their explicit consent.

2. Victims of abuse, both minors and adults, have the right to be accompanied, during explanatory and procedural activities, by a trusted person of their choice.

3. They also have the right to know what preventive measures have been taken in reference to the person accused of abuse.

## Art. 6

Spiritual and psychological help should also be offered to people in the immediate environment of the victim of sexual abuse, especially family members. They should also be informed of how they can benefit from spiritual and psychological help.

**Art. 7**

When proposing psychological help, the ecclesiastical superior can also call upon specialists from outside the structures associated with the Catholic Church.

The text above was adopted during the 366th Plenary Assembly of the Polish Bishops’ Conference, held in Warsaw from 7 to 8 October 2014.

# Annex no. 2: The Procedure

All activities undertaken by the ecclesiastical superior, in connection with obtaining information on cases of sexual abuse against a minor under the age of 18 and intended both to secure the common good of the faithful and learn the truth, should reflect the code’s principle: *salus animarum suprema lex*.

Victims of sexual abuse should be cared for in accordance with the provisions of Annex no. 1 on Help for the Victims.

The cleric accused of committing an act that transgressed the sixth commandment of the Decalogue with a minor under eighteen years of age is entitled to the basic legal right of defense and of the presumption of innocence until proven guilty.

## Art. 1

If an ecclesiastical superior, either a diocesan bishop or a higher religious superior who bears the responsibility, receives a report, which is at least probable, of a priest committing a deed with a minor under 18 that transgresses the sixth commandment of the Decalogue, is obliged to initiate a preliminary canonical inquiry;

## Art. 1 a

1. If the report indicates the possibility that a prohibited act, described in PPC Art. 197 § 3 or 4; Art. 198; or Art. 200, and the report can be considered reliable, the ecclesiastical superior informs, through the appointed representative, the competent authority appointed to prosecute these crimes. The ecclesiastical superior is not obliged to do this if he knows that law enforcement authorities have already been notified of the prohibited act.

2. The attorney shall immediately notify the law enforcement authorities in writing and give:

1) the address of the alleged offender;

2) a general description of the prohibited act;

3) the name and surname of the alleged victim;

4) the address of the person from whom the information was obtained.

3. The plenipotentiary must obtain official confirmation of the notification.

4. If the content or nature of the declaration clearly shows that it is unreliable, the law enforcement authorities should be notified immediately after the possible initial canonical investigation has confirmed the probability that a prohibited act, referred to in PPC Art. 197 § 3 or 4; Art. 198; or Art. 200, has been committed.

## Art. 2

The operations and actions taken by the ecclesiastical superior with regard to a suspected cleric may include:

1) withdrawal from duties entailed by entrusted offices, services, or tasks, in order to prevent a possible continuation of a crime;

2) providing adequate psychological and therapeutic care;

3) assignment to residence and providing the necessary material living means.

## Art. 3

The purpose of the preliminary canonical investigation is to: 1) examine facts and circumstances; 2) preparation of documentation.

## Art. 4

The preliminary canonical investigation includes:

1) reception of the declaration;

2) the procedure related to the examination of facts and circumstances as well as the collection of evidence;

3) the procedure related to gathering documentation.

## Art. 5

1. The ecclesiastical superior indicates the suitable person or committee authorized to receive the declaration.

2. Having received the declaration, after kindly hearing the plaintiff, following the provisions of Annex no. 1 of Help for the Victims:

1) the plaintiff will be asked if he/she has notified the law enforcement authorities of a prohibited act referred to in PPC Art. 197 § 3 and 4; Art. 198; and Art. 200. The response should be given in writing and bear the plaintiff’s signature. If he/she refuses to sign, a memo should be redacted;

2) the plaintiff shall be informed that, if no such notification has been made, he/she has the obligation to submit a notification to the law enforcement authorities; the plaintiff should also be informed that the ecclesiastical authority will make the notification unless the law enforcement authorities have knowledge of a prohibited act;

3) it will be explained that the canonical procedure has validity within the Church.

3. The person submitting the declaration, after receiving the information referred to in para. 2, should formulate the declaration in writing. If he/she does not do this, the report from the conversation held, signed if possible by all its participants, becomes the basis for taking further steps.

4. If the declaration concerns a person under 15 years of age, the victim may be interviewed only with the consent of the parents and in the presence of a psychologist. If, however, the declaration concerns a person between 15 and 18 years of age, the victim should be interviewed in the presence of a psychologist.

5. After the conversation, referred to in paragraph 4, the opinion of an expert psychologist is needed for further action.

6. Deleted

## Art. 6

In order to obtain the necessary information about the alleged crime, the ecclesiastical superior, acting through a person or committee referred to in Art. 5 para. 1, should take the necessary steps to investigate the circumstances and gather evidence. This may include:

1) convoking the cleric and hearing him at the seat of the Curia;

2) hearing persons who have knowledge of the alleged crime;

3) visiting the site.

## Art. 7

1. In order to carry out the canonical procedure, it is necessary to collect and draw up the following documents:

1) the written declaration or protocol referred to in Art. 5 para. 3;

2) the protocol of the conversation held, referred to in Art. 5 para. 4;

3) the protocol of a conversation with the cleric;

4) the protocol of the visit conducted at the site;

5) the protocols of conversations with people having knowledge on this subject;

6) opinions of experts;

7) any other documents, both public and private, that seem useful for the consideration of the case.

2. Documents prepared for the canonical procedure must be kept in the secret archives of the episcopal curia.

## Art. 8

1. After the completion of a preliminary canonical investigation showing the credibility of the declaration referred to in Article 5 para. 3, the ecclesiastical superior transfers the matter to the Congregation for the Doctrine of Faith.

2. After the completion of a preliminary canonical investigation that does not corroborate the declaration referred to in Art. 5 para. 3, the ecclesiastical superior is obliged to reassign an unjustly suspected cleric to the duties and activities from which he was suspended and to do everything possible to restore his good name which has been damaged.

## Art. 9

In the event of detention or if the court decides to put the cleric into detention or to apply other preventive measures, in connection with the charge of committing the act described in Chapter XXV of the Criminal Code, the ecclesiastical superior should notify the Secretary General of the Polish Bishops’ Conference.

## Art. 10

In all cases, information for the media is provided only by a spokesperson or by someone else appointed by the ecclesiastical superior.

The text above, adopted on the basis of Resolution No. 13/366/2014 of the Polish Bishops’ Conference dated 8 October 2014, was amended by virtue of Resolution No. 5/376/2017 of the Polish Bishops’ Conference dated 6 June 2017.

# Annex no. 3: Principles of Formation and Prevention

The foundation of formation for the priesthood or religious life is to build a personal relationship with God. The formation must not lack proper treatment and life in the sphere of sexuality and competent preparation for living in chastity and celibacy. The candidate’s cooperation with the spiritual director, the confessor, and the superiors is necessary. The formators have the special task of showing, with the help of different forms and means, the positive dimension of the sexual sphere, which is necessary for building mature interpersonal relations. The development of the personal sexual identity should be accomplished through the conscious acceptance of this sphere and its orientation towards a deeper integration with the emotional and spiritual spheres. In their teaching, the formators should stress the values ​​of living in chastity and celibacy as a joyful gift of self to God and to people.

## I. The rules of formation

### Art. 1

Before admitting a candidate for ordination or religious profession, superiors are required to examine the candidate’s suitability, always respecting the person’s privacy.

### Art. 2

1. The path of the discernment of possible difficulties in the sexual sphere should begin when the candidate is accepted for the seminary or by the Order.

2. The postulant for a seminary or an Order should undergo a proper psychological examination and an in-depth interview, which will allow formators to recognize the level of sexual maturity and the existence of possible disorders. This should be done by a psychologist who respects Christian anthropology.

3. In order to properly assess the candidate’s personality, the expert should conduct the examination both in the form of an interview and through a test, always with the prior, explicit, conscious and voluntary consent of the candidate.

4. The subject of sexual maturity of a candidate for the priesthood or religious life should find its place in conversations conducted by the formators, especially priests who participate in the process of accepting candidates for a seminary or an Order. Spiritual fathers and confessors cannot express their opinion about the candidate on the external forum.

5. In the case of a pronounced lack of sexual maturity in the candidate for the priesthood or religious life, the task of the superiors is to recognize and assess the existing difficulties.

6. A person with a sexual dysfunction, including a deeply rooted homosexual orientation, should not be admitted to the seminary or a religious institute.

### Art. 3

1. Lectures and conferences for those preparing for the priesthood or religious life should include topics related to developing a mature sexuality. This should also be taken into account in spiritual direction and in other activities for the development of spiritual life.

2. Candidates for the priesthood or religious life should receive the necessary knowledge in the field of the amenability, in the Church and the state forum, for crimes against the sixth commandment of the Decalogue, in particular those committed with minors, as well as about the scope of applicable procedures provided for in common and local law regarding contact with victims of sexual abuse committed by clergy.

### Art. 4

1. Effective prevention in the field of sexual offenses committed by religious persons should include a group of formators.

2. If any abuse, even the smallest, in the sexual sphere is committed by formators in seminaries or religious institutes, their superiors should promptly intervene and, when necessary, remove them from office.

### Art. 5

1. Pastors working with children and young people should be trained in order to have professional contact with these groups.

2. Within conferences and meetings for priests and religious persons, they should be sensitized to every kind of sexual abuse that may be committed against minors.

## II. Principles of Prevention

### Art. 6

1. Prevention of sexual abuse against minors is an integral part of the Church’s commitment to working with children and young people.

2. Prevention is aimed at eliminating the risk of sexual abuse in the strict sense; it is intended to help to avoid psychological and physical transgression of the limits of intimacy and to contribute to promoting the protection of children and young people against various forms of violence and abuse, also outside the ecclesiastical environment.

The text above was adopted during the 366th Plenary Assembly of the Polish Bishops’ Conference, which was held in Warsaw from 7 to 8 October 2014.