

**Sexual Abuse of Children
by Members of the Roman Catholic Church
in the Republic of Austria**

**An NGO Report on How the Holy See's Laws Impact Austria's
Compliance with the Convention on the Rights of the Child**

August 2004

Catholics for a Free Choice and Kinderschutzzentrum Wien

c/o CFFC

1436 U Street, NW, Suite 301

Washington, DC 20009 USA

Tel: 1.202.986.6093

Fax: 1.202.332.7995

www.catholicsforchoice.org

Table of Contents

INTRODUCTION	1
THE ROMAN CATHOLIC CHURCH IN AUSTRIA	2
Religious Instruction in Austria	
CHILD PROTECTION LAWS IN AUSTRIA.....	4
INCIDENTS OF CLERGY SEXUAL ABUSE OF MINORS	6
March 1995: The Case of Cardinal Gröer	
October 2001: Lower Austria	
November 2002: Burgenland	
July 2004: Seminary of St. Pölten	
AREAS OF CONCERN	11
MEASURES TAKEN BY THE CHURCH	12
MEASURES TAKEN BY PUBLIC AUTHORITIES.....	15
RECOMMENDATIONS	16
To the Austrian Government	
To the Committee on the Rights of the Child	
To the Holy See	
To the Roman Catholic Church in Austria	
ANNEX A: The Law of the Holy See	19
ANNEX B: Letter to Diocesan Bishops with Questionnaire	22
ANNEX C: Responses of the Dioceses of Salzburg, Gurk, Graz-Seckau, Innsbruck and Eisenstadt	23
ANNEX D: § 212 StGB	27

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INTRODUCTION

The *Kinderschutzzentrum Wien* (Center for Child Protection of Vienna) was invited by Catholics for a Free Choice (CFFC), an NGO with special consultative status with ECOSOC, to prepare a report on sexual abuse by members and employees of the Roman Catholic church in Austria. The following report will be submitted to the UN Committee for the Rights of the Child in Geneva during their examination of the periodic report of the Republic of Austria. This report will assess how the laws of the Holy See both impact the Roman Catholic church in Austria and compromise the laws of Austria that seek to protect children.

Because the Holy See has laws that contradict the laws of State parties to the Convention, Catholics for a Free Choice, with partners in Canada, Germany and France, submitted NGO reports in 2003 and 2004 to the Committee on the dangers Canada, Germany and France face in complying with the Convention. Similarly, CFFC is submitting this report on how the Holy See's laws contradict Austria's child protection laws, which puts Austria in danger of not fulfilling its obligations to the Convention.

The question raised in this report is whether the Republic of Austria has met its commitments to the implementation of the UN Convention on the Rights of the Child. How did it deal with sexual abuse by members of the Roman Catholic church?¹

¹ For the purpose of this report, members of the church include ordained clergy (priests and religious), religion teachers and, in a larger sense, lay people who work in church organisations.

The Child Protection Center of Vienna is a religiously and politically independent NGO providing crisis intervention, counseling and psychotherapy in cases of violence against children and adolescents. It has existed for thirteen years and responds each year to some 500 cases of violence against children in the federal states of Vienna, Lower Austria and Burgenland. In Austria, the question of sexual abuse by members of the Roman Catholic church has appeared to be particularly complex. Consequently, since 1996, the *Kinderschutzzentrum Wien* has provided services in cases of maltreatment by clergy.

THE ROMAN CATHOLIC CHURCH IN AUSTRIA

The Roman Catholic church has strong traditional roots in Austria. The Counter Reformation in the sixteenth century and close ties between the Habsburg imperial family and Catholicism has resulted in a sustained interrelationship between the Roman Catholic church and the people of Austria. According to the 2001 national census, 79 percent of Austrians are Roman Catholic (4% Protestant and 11% are without any religious affiliation)². In the capital Vienna, every second person is Catholic and 25 percent report no religious affiliation. In the federal states, approximately 85 percent of the population is Catholic.

According to Article 9 of the European Human Rights Convention and the Constitution (BVG BGBl Nr 59 / 1964) in Austria, “everyone has the right to freedom of thought, conscience and religion.” At the same time, however, special relations continue to exist for the Roman Catholic church, including the concordat, which was inherited from the times of the *Ständestaat* (corporative state) and was formalized between Pope Pius XI and the Republic of Austria³ (1934). It was reaffirmed in 1957⁴ and remains valid⁵.

Religious Instruction in Austria

The concordat secures in Article VI the right for the Roman Catholic church to give religious instruction and to execute religious exercises for students in “primary and secondary education institutions.” The state guarantees the binding force of this right. Furthermore, the church is solely entitled to “guide and supervise directly the religious instruction and the religious exercises.” This includes the appointment of religion instructors (Article VI, § 1).

² Source: http://www.statistik.at/gz/vz_religion2.shtml. Accessed August 12, 2004.

³ Source: <http://www.verfassungen.de/at/konkordat33.htm>. Accessed August 12, 2004.

⁴ Source: <http://www.aeiou.at/aeiou.encyclop.k/k629588.htm>. Accessed August 12, 2004.

⁵ Source: <http://www.ris.bka.gv.at/taweb-cgi/taweb?x=d&o=d&v=bnd&d=BND&i=9335&p=1&q=%20%20%20%20%20%20%20%20%20und%20%28konkordat%29>. Accessed August 12, 2004.

All details are provided for in the law on religious instruction (1949, amended in 1957-58) and in an additional treaty between the Holy See and the Republic of Austria (1962, Additional Treaty of 1971). As a result, religious instruction is compulsory for all baptized children (but they may choose to opt out). A cross must be installed in classes where the majority of children are Christian.

The far-reaching autonomy of the Roman Catholic school office has led – as can be demonstrated in various cases (see below) – to substantial problems in the prevention of sexual maltreatment of children.

This special relationship between state and church includes obligations that ensnare all children attending school in Austria; the Roman Catholic church is an influential institution as care provider for children and adolescents in kindergartens, private schools and extracurricular activities.

Day Care Facilities for Children

Day care facilities for children in Austria include nursery schools (institutional care for infants under age three), Kindergarten (institutional day care for children of age 3 – 6) and *Hort* (afternoon care for primary school children of age 6-10). According to 2001-02 statistics in Austria, 40,136 children were registered in Catholic day care facilities for children. The legal caregivers were mainly parishes, religious orders or Caritas.

Out of 267,111 children who were registered in 2001-02 in a day care facility in Austria, 15 percent went to a Catholic service provider. At a regional level, the figures show great imbalances. In Upper Austria, every third child attends a Catholic institution (Caritas being the main care provider). In Carinthia, it is every fourth child. In Vienna, it is 16 percent of all children, and in Styria, 13 percent. In Lower Austria (2.6%), Vorarlberg (3.5%) and Tyrol (6.3%), the Catholic church plays a negligible role as provider of day care facilities for children.

Private Schools

Dioceses and convents were the main school providers during the academic year of 2002-03. Of 6,357 schools in Austria, 282 (4.4%) were Roman Catholic providers. Of 1,234,861 Austrian students, 68,619 (5.6%) received their education from Roman Catholic schools.

While 10 percent of all students in Vienna are educated in Roman Catholic schools, the other eight federal states provide between 3.1 and 5.3 percent of students with a Roman Catholic education. This is significant insofar as Vienna has by far the smallest Catholic population of the country (55%).

Extracurricular and Vacation Time Care Facilities

Popular organisations like the Catholic Youth Group offer extracurricular activities or care for children with working parents during school vacations (“youth camps”).

The Catholic Youth Group is Austria’s largest youth organization. It provides services to approximately 130,000 children between the ages of 8 and 14. It includes youth groups in parishes and organisations for altar children, and it provides preparation for first communion. Out of 339,902 children under age 14 in Austria, 10 percent were integrated and active in the Catholic Youth Group in 2002.

CHILD PROTECTION LAWS IN AUSTRIA

Thanks to the reforms of the penal code in 1998, 2001 and 2002, sexual contact between adults (persons over age 18) and minors under age 14 is considered “sexual abuse of minors” (§ 207 StGB) and punishable. Vaginal, oral and anal penetrations and the attempt to petition for “sexual intercourse-like acts” with a third person are listed under the title “Severe Sexual Abuse of Minors” (§ 206 StGB) and are subject to more severe punishment.

Furthermore, § 207b StGB protects adolescents up to the age of 16, who “for certain reasons are not mature enough” to “understand the significance of the act or to act according to this insight.” It is subject to the “superiority due to the age” of the perpetrator.

§ 212 StGB protects both older adolescents between 16 and 18 years of age and adults from sexual abuse by persons holding authority. In the May 2004 draft of the Austrian penal code, the following relationships of authority are newly codified (Please see Annex D for original wording.):

- Parents and equivalent relationships, e.g. stepchildren, wards (*for minors only*);
- Teachers, educators, professional trainers and supervisors when it is an abuse of position (*for minors only*);

- Physicians, clinical psychologists, health psychologists, psychotherapists or any other member of a health care or medical profession with a person in his or her professional care;
- Employees in educational institutions, e.g. homes;
- Physicians in medical institutions, e.g. clinics, hospitals; and
- Civil servants in relationship to persons entrusted to his or her official supervision.

In cases where an adult would have “directly” offered or paid compensation to initiate sexual interaction – and only then – adolescents are protected until age of majority (18 years).

According to the current law, sexual abuse by members of the Catholic church is only a punishable offense if:

- The victim is a minor (under age 14),
- The victim is psychologically “immature” and younger than 16,
- The minor (under age 18) directly receives or is offered financial compensation or gifts from the perpetrator,
- The abuse takes place in a educational institution, or
- The perpetrator is a teacher or professional trainer of the victim.

Other than § 207 StGB and § 212 StGB, there is no protection against molestation for individuals in the following categories:

- Altar children,
- Adolescents and young adults who go to confession with a priest,
- Adolescents and young adults who receive pastoral care from a priest, and
- Adults in professional training, e.g. seminarians.

While even adult clients of psychotherapists and physicians are protected in principle by penal code against sexual molestation, under Austrian law, pastoral care or confession services with a priest do not offer the same protections.

In its September 14, 2003, report on this project of law, the *Kinderschutzzentrum Wien* recommended that priests be explicitly threatened with punishment for initiating sexual abuse under the benefit of their status. The government rejected this proposal.

Consequently, the Austrian government does not protect adolescents between age 14 and 18 from sexual abuse by priests. It does not take into account that priests – similar to other professionals in the care sector – hold a position of considerable authority in the eyes of persons who are subject to them; including when they are outside of their liturgical activities (e.g. personal contact with altar children, persons who go to confession, adults in a professional training relationship with them in a seminary). It even contradicts the assertion of the Vatican Congregation for the Clergy, which underscores that the priest holds this authority also beyond the direct “exercise of his profession”: “The priest, therefore, must always know what he has to do, precisely as a priest. As St. John Bosco says, “The priest is a priest at the altar; he is a priest in the confessional; he is a priest in the school; he is priest on the street; indeed, he is a priest everywhere.”⁶

These ideas are not mere abstract meditations but have a practical relevance that becomes evident in the current public debate on the events in the training of priests (see below).

INCIDENTS OF CLERGY SEXUAL ABUSE OF MINORS

March 1995: The Case of Cardinal Gröer

In March 1995, a significant crisis broke out in the Roman Catholic church in Austria when the cardinal and archbishop of Vienna, Hans Hermann Gröer, was charged with sexual abuse. A former student of the Hollabrunn seminary accused the cardinal of having had a sexual relationship with him when the student was 14 years old. According to the former student, Gröer had caressed him, massaged his genitals, and had harassed him into giving him “French kisses.” He had to lay with the cardinal in Gröer’s bed and suffer being washed by Gröer in his shower.

Gröer, a close friend of Pope John Paul II, had been in semi-retirement at the time in a prominent post at a Marian shrine. According to the National Catholic Reporter, “John Paul remarked at the time that Christ also had faced ‘unjust accusations’ and allowed him to become prior of an Austrian monastery.”⁷

The public release of these accusations in the news magazine *Profil* resulted in a reaction of solidarity of numerous Catholics with their spiritual leader. The accused himself remained

⁶“The Priest, Pastor and Leader of the Parish Community.” Instruction to the Congregation for the Clergy. August 4, 2002.

⁷ Fox, T., “The unsettling story of the Austrian church,” *National Catholic Reporter*, August 13, 2004.

silent, and he even drew a parallel to Jesus' behavior in front of the Sanhedrin.⁸ Other members of the clergy rejected the accusations as "sexual fantasies" and affirmed Gröer's innocence.

Only after 13 young men lodged additional charges against Gröer and a closed door debate took place at the Bishops' Conference in February 1998, a few bishops issued a declaration stating that, "they had attained the moral certainty that the accusations against Gröer were founded in their essential aspects." The cardinal himself never responded to this issue, and it was only under the pressure of the Vatican (the Holy See) that he eventually retired on April 14, 1998 – three years after the beginning of the affair – to a women's convent. On April 16, the retired archbishop apologized, although it was never clear what he apologized for and what kind of "guilt" he assumed.

The Gröer crisis led a number of people to leave the church, and it had an impact on a "*Kirchenvolksbegehren*" (petition of the people of the church) in June 1995, when 507,425 Austrian Catholics called for democratization of the church.

The manner in which the church dealt with accusations against the Austrian Roman Catholic church's highest church official is emblematic of how the church generally responds to these matters: while the impression was given that the case was under discussion within the church, all information released to the outside could be characterized as cryptic or poetic in nature. It was never revealed whether and which accusations were true and about what a "moral certainty" had been attained. The combination of silence and a "clarification," which was never made transparent for the public opinion and thus cannot be understood, enhanced the impression that the Roman Catholic church is itself not able or not willing to comprehensively explain what transpires in such significant cases. Additionally, it took three years for the consequences to follow. Until that day, the cardinal could continue executing Episcopal duties, for example, administering the sacrament of confirmation to adolescents and children.

In addition to this highly publicized case, other cases that have permeated the public's awareness of these issues illustrate problems that have their roots in Austrian law. The following information is taken from media reports from litigation in court.

⁸ Mat 26, 62 ss.

October 2001: Lower Austria

A 28-year-old leader of altar children sexually exploited 20 children over age 7 between 1986 and 1996 in Lower Austria. In his defense, the perpetrator declared that he himself had been sexually abused by a 46-year-old vicar. According to the accused, the vicar had also sexually abused 6 or 7 adolescents.

The vicar in question, a member of a religious order, sexually abused altar boys between 1989 and 1992. He was then transferred to a neighboring locality in Lower Austria, where he allegedly recidivated in 1997, showing pornographic videos during religious instruction. The Archdiocese of Vienna removed him from pastoral care for children and transferred him to a convent of Augustinian monks in Upper Austria. However, in 1998, the Diocese of Linz immediately appointed him to a primary school to assume the same tasks: religious instruction of 7-year-old children.

The corresponding state office for education declared it had “no possibility to decline an instructor for religious education as solely the diocese was entitled to decide who would be appointed instructor for religious education”⁹.

The school office of the Diocese of Linz has underscored that they had no knowledge about the vicar’s precedents of abuse, and it has charged the religious order with the responsibility: “The order should not have presented him. I do not see any carelessness from the church school office”¹⁰.

November 2002: Burgenland

A parish priest of a Burgenland community was punished with 18 months of conditional reclusion for attempted sexual abuse and contravention against the law on drugs. The priest had sexually harassed altar boys and other adolescents and masturbated with them. The conviction was only possible because the priest offered money to one of the victims for sexual services (§ 207b StGB Abs 3). Under Austrian law, none of the other abuses was punishable.

⁹ *Salzburger Nachrichten*, October 16, 2001.

¹⁰ *Ibid.*

July 2004: Seminary of St. Pölten

The issue of clergy sexual abuse became a critical issue once again in the summer 2004, when charges of misconduct in the St. Pölten seminary were exposed to the public. It must be noted, however, that the reports in the media confused extremely divergent issues. On one hand, some seminarians were accused of homosexual activity; on the other, there were allegations that concern crimes (delicts), which are unambiguously punished by Austrian law. In December 2003 and in June 2004, computers of the seminary were confiscated. On one computer belonging to a seminarian, “a great number of pornographic pictures” were found.¹¹ According to the *New York Times*, the authorities discovered as many as 40,000 photographs and computer videos featuring, among other things, child pornography.

While legal proceedings against eight other students were “discontinued for lack of proof of a penally relevant behavior,” at the time of this report, investigations are currently being pursued based on two anonymous charges against persons at the seminary who are involved in the sexual abuse of minors.

Initial media coverage and church response to the crisis overwhelmingly focused on homosexuality and obscured the charges of abuse. Photos were published that show adult members of the seminary kissing each other or touching each other in the pelvic area, without assessing whether these were **consensual contacts among seminarians** or if this were **an exploitation of the power gradient** between different members of the seminary. For Austrian penal law, the latter case is immaterial given the gaps in Austrian penal law (see *Child Protection Laws in Austria*).

Given the tangential fixation of the coverage of the scandal, a general outrage about homosexual orientation and practices in priestly milieus and a debate on celibacy in the clergy exploded in the public arena. The Roman Catholic church took the opportunity to restate and defend its moral teaching on homosexuality and to challenge the idea of ordination of homosexuals to priests. It also sought to “investigate” the events “independently from any relevance for penal law..... on the basis of the moral teaching of the church and canon law.”¹² For example, it called for excluding homosexual priests from all pastoral work with adolescents and children.¹³

¹¹ Wording of the St. Pölten public prosecutor’s office

¹² The auxiliary bishop of Salzburg, Bp Laun, demanded so in the daily “Die Tagespost” No. 408, July 20, 2004

¹³ Homepage of the bishop: <http://www.stjosef.at/bischof.k.krenn/>. Accessed August 12, 2004.

At the time of this report, a sound investigation of charges of homosexuality and the necessary debate about the protection of minors within the church is resulting in an assertion of a restrictive sexual ethos used to discriminate against homosexuals. The church and the government are simultaneously conflating homosexuality with pedosexuality, and they are continuing to ignore the fact that girls and women are victims of molestation by priests to a similar degree.

Bishop Kurt Krenn of St. Pölten was already facing scandal when the seminary became the focus of international attention. He had ordained a deacon who had been rejected by the Archdiocese of Munich-Freising for allegations of pedophilic tendencies. Krenn ordered the diocese to release an “official clarification,”¹⁴ in which the candidate was cleared of any wrongdoing. Only the direct intervention of the Vatican prevented the ordination and promotion of a suspected abuser to *protégé* of the bishop. These events, followed by the recently revealed controversy, resulted in the following claims against Krenn:

- The bishop had contributed to covering up the events at the seminary by verbally minimizing the charges (he spoke of “stupid boys’ pranks”).
- The diocese admitted persons to be trained to become priests that had been rejected by other dioceses for lack of maturity. In particular, the usual probatory year had been eliminated.
- The seminary had tolerated and covered up anti-Semitic expressions.¹⁵

On July 20, 2004, the Vatican appointed Bishop Klaus Küng of Feldkirch as apostolic visitor to St. Pölten to investigate the allegations. On August 11, 2004, amid calls for the resignation of Krenn, the Vatican shut down the seminary. “A fresh start is needed,” said Küng. He also took the opportunity to voice his “consternation that homosexual relations had formed” at the seminary, he declared that the selection criteria for young men entering the seminary had been lax, and he asserted that a new screening process for both new and existing students would be implemented.¹⁶ At the writing of this report, it is unclear if Krenn will step down.

¹⁴ Interview of the bishop in NEWS, July 20, 2002, and declaration of Mgr. Hörmer, June 26, 2002, p. 35

¹⁵ Profil, Nr. 30, July 19, 2004, p. 22

¹⁶ “Seminary Closed Amidst Pornography Scandal,” *Deutsche Welle*, August 13, 2004.

AREAS OF CONCERN

Through analysis of the reported cases, information provided by responding dioceses to a questionnaire circulated by the *Kinderschutzzentrum Wien* (see Annexes B and C), and conversations that we had with staff from the Catholic Youth Group, the following areas of concern could be identified:

a) Altar Children

Altar children are in the care of the priest and the sacristan. According to the education officer of the Austrian Catholic Youth Group, this is the place where the greatest amount of sexual abuse occurs: “This is our problem child.” Indeed, the publicly reported cases took place with great incidence among altar children and in the context of liturgy. The Austrian government does not protect these minors when they are between 14 and 18 years old because it does not consider the relationship between a priest and altar children as a “relationship of authority.”

b) Religious Instruction

Sexual abuse by a teacher is punishable according to § 212 StGB, but the autonomy of church school offices concerning the appointment and dismissal of religion teachers evidently leads to the fact that maltreating teachers or priests who give religious instruction will continue to be employed as teachers, despite the discovery of pedophilic tendencies. This is largely abetted by the deficient communication between church school offices, state offices and dioceses.

The Austrian state acts in this matter carelessly, at best. It surrenders this field to Roman Catholic self-administration without examining the teachers who will serve; and it obliges baptized children, through mandatory school attendance, to be exposed to these individuals. In this sense, the state delivers children over age 6 to authority holding persons that are only partly subject to its control.

c) Lay Persons as Perpetrators

Sexual abuse by lay persons – for example, non-clerical volunteers at church excursions or for the preparation for first communion – is difficult to deal with because the church has no permanent disciplinary options and because contraventions have no penal relevance. It is necessary to make a thorough selection of the lay collaborators.

Ultimately it cannot be excluded – as the bishop of Eisenstadt writes – that “a (new) abuse also might take place outside the field of activity of the church.”

d) Professional Training for Candidates to Priesthood

The diffuse debate on the alleged events in the seminary in St. Pölten includes the theoretical question if adult persons who are being trained to become priests should be protected from sexual approaches from their trainers. Generally speaking, sexual contacts between, for instance, an employer and an employee or a higher education teacher and a student are considered private matters as long as no coercion is involved. Sexual contacts between clients and psychologists, psychotherapists and physicians, however, are subject to penal law. An analysis of the kind of relationship that exists between a trainee and the trainer is necessary, in particular concerning the power differential that could be perceived to make it impossible for the trainee to freely decide upon his or her sexual autonomy.

A central question is if current candidates to the Catholic priesthood have sufficient maturity for the exercise of their responsible profession.

MEASURES TAKEN BY THE CHURCH

Under the pressure of the cases publicized in the media, the dioceses of Eisenstadt, Gurk-Klagenfurt, Innsbruck and Linz established a special committee or counseling service, and the dioceses of Feldkirch, Graz-Seckau and Vienna installed an ombudsperson. In the Diocese of St. Pölten and in the Archdiocese of Salzburg, no committee includes members who do not belong to the church; the vicar general is the person in charge of clarifying any allegation.

In November 2003, the *Kinderschutzzentrum* addressed a letter to all Austrian diocesan bishops with a questionnaire (see Annex B). Out of the nine dioceses that received a questionnaire, only the Bishop of Eisenstadt and the Vicar General of the Archdiocese of Salzburg responded immediately. The responses of Innsbruck, Graz-Seckau and Gurk arrived in February 2004, and Graz-Seckau and Gurk’s responses reflected the exact same wording in parts. As of August 2004, the dioceses of St. Pölten, Feldkirch and Linz and the Archdiocese of Vienna have not responded to the questionnaire. The table in Annex C presents the responses of the dioceses.

In sum, most cases of sexual abuse and exploitation of minors reported to dioceses are committed by priests. There were 36 total allegations against priests, two against religion teachers and six against lay staff. Because this does not include the data from Vienna, Linz, Feldkirch and St. Pölten, a comprehensive interpretation is not possible.

When priests are accused of molestation, commissions composed by church staff (often the vicar general; in Vienna, a special ombudsman) and either permanent or specifically appointed independent experts in the case of Salzburg investigate the case. These experts are generally psychologists, psychotherapists and/or lawyers. It is not clear what the criteria for investigation are. There seems to be no clearly established model.

During the time of investigation, the accused priest – at least in the dioceses that responded to our questionnaire – are temporarily dismissed from their duties. This decision is generally made by the responsible diocesan bishop without waiting for a directive from the Holy See. The reason invoked is that in the interest of protecting potential victims, it is not possible to wait for the conclusion of the Vatican’s canonical procedure and its judgment. All dioceses responded that they follow the April 30, 2001, instructions from the Congregation for the Doctrine of Faith, according to the *motu proprio* of the pope (see Annex A: Law of the Holy See). However, **this law prohibits bishops or other church authorities from taking any action beyond a preliminary investigation of the allegation without further direction from the Holy See’s delegate.**

The collaboration with secular authorities is less clear. The most concrete responses reveal that in the cases that deal with secular or lay examples of abuse, informing the school office or the state was not necessary because they had been informed by other means (or should have been informed). Only Salzburg stated that it would inform secular authorities as a matter of principle. Innsbruck contacted the *Kinderschutzzentrum*, which is an NGO. Gurk follows the wishes of the victims or their parents. Other dioceses speak of the specificity of each case. The dioceses were asked what internal church measures against persons accused of abuse are taken to protect potential victims. The general response given by the respondents suggests that they take all the necessary steps to prevent recidivism, to the degree that is possible.

According to Eisenstadt, “Until the moment of clarification no new task will be entrusted to the alleged perpetrator. In the case that Rome decides that a priest may remain in office, he

will only be entrusted with tasks that do not include the danger that he could recidivate.” Gurk and Graz-Seckau both wrote that they would take several measures, including:

- Reappointing priests who cannot be charged or cleared of the accusation to tasks in other environments;
- Informing various persons, who would monitor and accompany the accused priest; and
- Advising the accused that “it is in his own interest to clarify unambiguously any allegations against him and to avoid anything that could in whatever form further allegations if justified or not justified.”

Psychotherapeutic care for victims to treat their trauma is offered in all dioceses, and Graz also offers free legal support. Innsbruck underlines that the perpetrator will have to pay all financial compensations. Perpetrators will possibly receive psychotherapy, and according to the Bishop of Eisenstadt, if they are reduced to the lay status, they will receive help to begin “a new life.”

The five dioceses that have responded to our questions react in a sensitive manner to the issue of sexual abuse and seek assistance from professionals who are external to the church. The degree and method of cooperation with state is unclear, and each diocese deals with it in a different way. In many cases, the interests and wishes of persons who have made the allegations are taken into account. There is no mandatory procedure, such as immediately referring to secular officials when there is an allegation of sexual abuse. It appears that allegations are first investigated within the church, and the secular authorities are brought in only when allegations seem to be based on credible evidence. It remains completely unclear what the criteria are to determine the “credibility” of a case or an element. No formal procedure seems to exist.

Austria does not have a unified federal procedure in cases of allegation of sexual abuse, as has been the case in the German Federal Republic since the Fall plenary session of the bishops’ 2002 conference in Fulda.

In November 2003, Cardinal Christoph Schönborn, Archbishop of Vienna (his diocese did not respond to the questionnaire), read an extensive declaration which announced prevention measures against sexual abuse by members of the church. This included:

- Special care to determine the trustworthiness of paid staff and voluntary collaborators regarding their relationships with children and adolescents, and the vulnerable in particular;
- Special attention in professional training to questions of personal and sexual development and maturity of future collaborators; and
- Enhanced service of continuous counseling and assistance in personal crisis situations and in problems that could arise with entrusted persons or with persons who entrust themselves to them.

Explicit directives were also announced concerning the appropriate behavior for church staff towards entrusted persons and persons who entrust themselves.

While the presented points appear well-crafted and display competence, it remains to be seen if action will follow words, particularly as far as a transparent and comprehensible way of dealing with allegations of sexual abuse is concerned.

At this time, the Diocese of Linz is developing a concept on how to operate for the benefit of the victims. Four Styria suggestions to prevent sexual abuse in the church have been presented by Prof. Anton Kolb.¹⁷

MEASURES TAKEN BY PUBLIC AUTHORITIES

As encouraging as the various dioceses development towards greater transparency and more inclusion of extra-ecclesial expertise in ombudsman services and counseling teams might be, the tenacious silence of the ÖVP-FPÖ (Austrian People's Party-Freedom Party of Austria) government on the issue is incomprehensible.

Not only does the government fail to protect its citizens against abuses by Roman Catholic priests who –particularly in Austria – hold enormous authority, but it also ignores even explicit amendments in current legislative reforms that would protect minors aged 14 to 18 against abuse by persons holding religious authority. This contravenes the commitments of both the Austrian government and the Holy See to the United Nations, according to which children – in the sense of the UN charter “minors” – are to be protected against sexual abuse.

¹⁷ http://www.theol.gfunigraz.ac.at/pgil/texte_kolb/missbrauch_kirche.htm

RECOMMENDATIONS

In conclusion, one needs to determine how far the Austrian state is able to guarantee that children and adolescents, who do not only voluntarily visit the church but are under the care of church staff through state entanglements, can be protected against sexual abuse and other forms of psychological and physical violence. We are in a situation where, compared to other persons who hold authority (psychotherapists, clinical psychologists, physicians and officials), clerical child molesters and abusers are more protected than the concerned children themselves.

To the Austrian Government

- When reporting to the Committee, Austria should include information about the scope of clergy sexual abuse in Austria and what measures the Austrian government has taken to protect children from future clergy sexual abuse and exploitation.
- Austrian authorities should carry out an analysis of the Holy See's laws and the laws of Austria and determine areas where the Austrian Catholic church may not be in compliance with Austria's child protection laws.
- The Austrian government should protect minors aged 14-18 and adults in situations of dependence (liturgical services, confession, training for candidates to priesthood) against abuse through an amendment of § 212 StGB.
- The Austrian legislature should embark on extensive restructuring of the law on religious instruction – in particular concerning the competences to appoint religious instructors, the examination of their pedagogic capacities, disciplinary measures by state instances of education and clear communication between the church school office and the state school office.
- A unified procedure to deal with suspicion and clarification of sexual abuse allegations should be developed.
- Specialized committees or counseling services, which also include experts external to the church in all dioceses, should be installed.

To the UN Committee on the Rights of the Child

- When Austria reports to the Committee, the Committee should inquire about instances of clergy sexual abuse in Austria and ask that the Austrian government explain how Austrian law holds Austrian Catholic church officials and other religious leaders

accountable in cases of clergy sexual abuse and the exploitation of minors. The Austrian government should be asked what measures it has taken to investigate the magnitude of such cases and to prevent them from happening in the future.

- The Committee should urge the Austrian government to seek ways to hold the Austrian Catholic church and the Holy See accountable to its laws, especially those that seek to protect children from abuse.

To the Holy See

- The Holy See, a State party to the Convention on the Rights of the Child, is delinquent in its obligations, as it has not yet submitted its 1997 and 2002 reports to the Committee. It should do so immediately, and include a full report on child abuse by clergy and members of religious orders, with a concrete plan for ensuring that future abuse does not occur. It should also submit a report to the Austrian government including full disclosure about cases of abuse in Austria and measures the Holy See is taking to prevent future abuses.
- In addition, the Holy See should reveal to other States' parties what measures it has taken to eliminate the sexual abuse of children and adolescents by Catholic clergy and members of religious orders in those countries and what measures it proposes to take to secure justice for the abused.
- The Holy See should commit to cooperating with local civil authorities by providing evidence and assisting with the prosecution of Catholic church officials involved in the abuse of children and adolescents.
- The Holy See must commit to rescinding its requirements of secrecy in these cases, and it should comply with its own law in creating accessible opportunities for children and adolescents, or their representatives, to vindicate and defend their rights, and must guarantee procedural integrity in internal judicial and non-judicial processes.
- The Holy See must also prohibit those clerics who have abused children from affiliation with activities and organizations which would allow them access to children, including, but not limited to: parishes, schools, day care facilities, leisure groups and activities (such as Catholic Youth Groups or those affiliated with World Youth Day), hospitals, mentoring groups, missionary activities to children and youth, seminaries and convents.

- To assist in fulfilling these ends, the Holy See should create and maintain a publicly accessible database of proven child-abusing clergy and members of religious orders so that these people cannot merely relocate to avoid the consequences of their crimes.

To the Roman Catholic Church in Austria

- The Catholic Church in Austria should cooperate with government officials to ensure that in handling cases of clergy sexual abuse, the Austrian Catholic church complies with the national laws of Austria.
- The Austrian Catholic church should work in conjunction with the Austrian government to ensure both Austria's and the Holy See's compliance with the Convention on the Rights of the Child.
- A record should be published of all cases of sexual abuse—respecting the privacy of victims and offenders—that includes criminal cases and those reported to the Holy See.

ANNEX A

Law of the Holy See

As Austria and the Committee members analyse Austria's child protection laws, it is important that they consider also the laws of the Holy See in order to ensure that those laws do not prevent Austria from being in compliance with the Convention. Furthermore, knowledge and understanding of the Holy See's laws will assist Austria in holding the Austrian Catholic church accountable to its own laws.

The *Code of Canon Law* (the "code") provides the legal underpinning not only for the fundamental legislation of the Vatican City State,¹⁸ but also spells out the constitutive and disciplinary scheme of the Roman Catholic church and is applicable to all members throughout the world. In this law, and by its own declaration, the Holy See governs the Catholic church.¹⁹ Canon law has several sections that illustrate recognition of some rights of the child and repugnance for sexual abuse of children by clergy and religious.

First, the code, like the Convention, recognizes legal majority of individuals at age eighteen.²⁰ The code provides that before the age of majority the child's exercise of his or her rights is subject to the authority of the child's parents or guardians.²¹ As stated above, and as recognized in the law, there are some instances where the rights of the child must take precedence over the parents' authority; abuse is one of these instances where the child's rights cannot be compromised.²²

The code makes several assertions of basic rights that are applicable to the protection and defense of children. A few examples of these rights demonstrate that all subjects have the right under the law to express their needs to their local authorities, the bishops.²³ Canon 212§2 would be applicable to those victims and their families who have approached their bishops informing them of abuse and asking that action be taken when priests have abused children. The rights to privacy and to maintain one's good reputation are also enumerated.²⁴ This canon (c. 218) should prevent the church's lawyers from making accusations against child victims of sexual abuse and their parents, blaming them for culpability in the crime as some have recently done.²⁵ The code also states clearly that Christians have the right to defend their rights (these and others) in a competent church forum, in accord with the law.²⁶

The code also defines the relationships between people in terms of their hierarchical relationship within the church structure. The pope holds supreme, full, immediate and universal power in the Catholic church.²⁷ The code describes the pope as having power over the "universal" or worldwide church, but also a "primacy of power" in a form of concurrent jurisdiction with bishops in all dioceses and other groupings of churches.²⁸ He alone approves changes to the law in the codes, laws for the universal church, and is the bishops' immediate superior.

¹⁸ *La Nuova Legge Fondamentale Dello Stato Della Città Del Vaticano*, effective February 22, 2000. Can be found on the World Wide Web at <www.vatican.va>.

¹⁹ See note 4 above; and *Codex Iuris Canonici* (Code of Canon Law), canon 331.

²⁰ *Codex Iuris Canonici*, canon 97§1. In canon law, majority is reached on the day after one's eighteenth birthday.

²¹ *Ibid.*, canon 98§2.

²² Declaration and Reservations of the Holy See, 1990, Reservation b.

²³ *Codex Iuris Canonici*, canon 212§2.

²⁴ *Codex Iuris Canonici*, canon 218.

²⁵ See Michael Powell and Lois Romano, "Roman Catholic Church Shifts Legal Strategy," *Washington Post*, May 13, 2002; and Walter V. Robinson, "An Alleged Victim is Called Negligent," *Boston Globe*, April 29, 2002.

²⁶ *Codex Iuris Canonici*, canon 221§1. This forum is separate from those provided by civil society. The canon refers to an independent ecclesiastical court or alternate venue for redress of rights.

²⁷ *Ibid.*, canon 331.

²⁸ *Ibid.*, canon 333§1.

The diocesan bishops oversee the conduct and life of the priests subject to them, even, in some cases, legislating when appropriate.²⁹ These men are obliged to promote the observance of laws and to act in executive and judicial roles in accordance with the law.³⁰ Worthy of special mention for the cases in question in this report, the code makes explicit provision for the competence of diocesan bishops to issue norms and pass judgment on matters relating to priests' obligations to their vows of celibacy and sexual continence.³¹ At the diocesan level, there is no effectual separation of powers; the bishop is the executive, legislator, and judge for all matters in his diocese. In most cases, responsibility for handling cases of clerical sexual abuse of children lies first with the diocesan bishop, and ultimately with the Holy See.³²

The Holy See's legal code continues, in its section on criminal law, stating explicitly that clergy sexual activity with minors is a serious offense, to be dealt with in a serious manner, even including dismissal from the clerical state—considered the most severe penalty for a priest.³³ The code then provides a detailed judicial process to investigate, confirm or repudiate claims, and punish criminal acts.³⁴ This process includes several mechanisms for protecting the rights of the accused cleric as well as the accusing party, and provisions for due process before the law. The law guarantees the victims of the abuse the opportunity to participate in a judicial proceeding and to request and be awarded reparations. It even prescribes a penalty for negligence, which could be asserted in these cases when a superior has failed to investigate or punish instances of actionable offenses brought to his attention.³⁵ In addition to these codified provisions, the legal system of the Holy See allows a superior to petition directly to the Holy See in egregious cases, enabling a punishment to be inflicted swiftly, and without due process.

There are special laws for Catholics who are members of institutes of consecrated life, both secular and religious. We know many of these institutes as “religious orders” such as the Dominicans, the Franciscans, and the Jesuits, or the Christian Brothers, or religious institutes of women. For these people, the code determines that certain offenses call for mandatory dismissal from the institute. Included in these offenses are homicide, kidnapping, and sexual activity that involves force or threats or takes place in public or with a minor.³⁶ In addition to the code, these organizations also have constitutions and rules of conduct specific to each. The superiors within these institutes are responsible for seeing that the law is followed by the members of the institutes. All these laws addressing clergy sexual abuse of a minor, and the local authorities charged with implementing them, are now directly subordinate to one office of the Holy See.

New Law Requires Secrecy and Centralized Review

In 2001, the Holy See issued a document entitled *Sacramentorum sanctitatis tutela*,³⁷ instituting a little publicized but important change in the law. In this document, which supersedes the law in the codes, the Holy See directs all the bishops of the world to inform one of its offices, the Congregation for the Doctrine of the Faith, if they receive an allegation of child sexual abuse by a cleric. This same law prohibits the bishops or other church authorities from taking any action beyond a preliminary investigation of the allegation without further direction from the Holy See's delegate.³⁸

²⁹ Ibid., canons 381–402, especially 381, 384 and 391.

³⁰ Ibid., canons 391 and 392.

³¹ Ibid., canon 277, especially §3.

³² For priests in religious institutes and societies of apostolic life, the superior of the institute or society often has primary responsibility, although there is sometimes overlap with the diocesan bishop's competence.

³³ Codex Iuris Canonici, canon 1395§2.

³⁴ Ibid., canons 1717–1752.

³⁵ Ibid., canon 1389§2; Thomas J. Green in *New Commentary on the Code of Canon Law*, eds. John P. Beal et. al., (New York: Paulist Press, 2000), 1593–1594; “Vatican official says bishops usually not liable for abuse by priests,” Catholic News Service, May 16, 2002.

³⁶ *Codex Iuris Canonici*, canon 695. Note that the code provides that for the category of sexual offenses, the hierarchical superior need not dismiss the offender if the superior judges that justice can be restored and scandal repaired in another manner. The laws of the code and of each institute provide procedures for these cases. Laws of each are approved by the diocesan bishop and/or the Holy See.

³⁷ John Paul II, Apostolic Letter *motu proprio*, *Sacramentorum sanctitatis tutela*, April 30, 2001, sent by letter of the Congregation for the Doctrine of the Faith to all Catholic bishops in the world on May 18, 2001 (*Epistula ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes de <<delictis gravioribus>> eidem Congregationi pro Doctrina Fidei << reservatis>>*), *Acta Apostolicae Sedis* 93 (2001) 737–739 and 785–788 respectively. See <http://www.vatican.va/roman_curia/congregations/cfaith/doc_dis_index.htm>.

³⁸ The Congregation for the Doctrine of the Faith (commonly abbreviated CDF), founded in 1542 by Pope Paul III,

According to the new law, this office of the Holy See may, at its discretion, conduct an inquiry itself, or transmit norms to the local ecclesiastical authority explaining how to proceed. These cases, the law states, are “subject to the pontifical secret.” This is the Holy See’s highest level of confidentiality—just short of the absolute secrecy required by sacramental confession—and provides that the Holy See reserves the right to punish any party who reveals information about clerical sexual abuse of children. Furthermore, the document mandates that no one but a priest may be involved in the proceedings concerning clergy sexual abuse of minors.³⁹ These provisions raise questions about the integrity of the internal processes as well as questions of how this law might conflict with laws of the geographically defined jurisdictions in which the subjects of the Holy See find themselves.

The new legal requirements make clear two facts: (1) the Holy See has overtly claimed responsibility for managing these cases, and (2) the Holy See does not intend to comply fully with the Convention on the Rights of the Child. The latter is shown by the Holy See’s desire to skirt the reporting requirements of Article 44 through its own secrecy requirements and to frustrate legitimate efforts of other States party, like Austria, to the Convention by advocating circumvention of their laws in favour of the Holy See’s new secret procedures.

Overall, the Holy See’s law does provide redress and some protection for children in cases of sexual abuse and also provides for punishment of clergy and religious who sexually abuse children. The existence of law, however, is of little use if the law is not enforced. The canon laws which touch on this issue are many and have been consistently ignored, inadequately applied, or wrongly applied in favor of the church authorities and its institutional image.

is one of the departments of the Vatican that assists the pope in governing the Catholic church. It was originally called the Sacred Congregation of the Universal Inquisition, as its duty was to defend the church from heresy. It is the oldest of the Curia’s nine congregations. The congregation, says the “Activity of the Holy See,” in conformity with its *raison d’être*, promotes in a collegial fashion encounters and initiatives to “spread sound doctrine and defend those points of Christian tradition which seem in danger because of new and unacceptable doctrines.” See the Vatican website <<http://www.vatican.va>>.

³⁹ See note 41 above.

ANNEX B

Letter to the Diocesan Bishops with Questionnaire

Bishop Dr. Kurt Krenn
Domplatz 1
3100 St. Pölten

Vienna 12-11-2003

Dear Bishop Dr. Krenn,

The *Kinderschutzzentrum* Vienna has been asked by the US-based NGO Catholics for a Free Choice to write a report on sexual abuse by church staff.

This information will be included in a report that will be submitted to the Committee on the Rights of the Child in Geneva. It is an annotation to the official government report on their implementation of the Convention on the Rights of the Child in Austria.

In this context we are writing you to obtain new data and so that we can provide an open and objective perspective of the situation in Austria.

As Cardinal Archbishop Dr. Schönborn's declared in his statement of November 7, 2003, on sexual abuse in the church, that all faithful in the archdiocese of Vienna should collaborate to uncover and prevent further abuse, we write you as the person responsible for the dioceses of St. Pölten and ask you to please provide us with the following information:

- 1) Does the diocese have a special contact office for sexual abuse cases? If yes, when was it established?
- 2) How many allegations of sexual abuse have been dealt with since?
- 3) In how many cases were priests accused?
- 4) In how many cases were religion teachers accused?
- 5) In how many cases was lay staff accused?
- 6) Under what conditions were allegations against members of the Roman Catholic Church referred to secular authorities (executive, offices of youth welfare)?
- 7) Do you have formal criteria to investigate allegations and determine the credibility of an allegation?
- 8) What church internal measures are taken to protect future potential victims?
- 9) Are priests temporarily suspended from their functions when charged with abuse and for the time of clarification of the charges?
- 10) Do you inform the CDF in the case of a suspicion of abuse?
- 11) Do you wait in such cases for directives from the Holy See or do you act on your own responsibility?
- 12) Do you offer care for the healing of trauma for child and adolescent victims?
- 13) If a perpetrator is judged by a secular court, how do you deal with him after he has completed his punishment?
- 14) How do you deal with allegations that cannot be dismissed unambiguously?

We urge you to help us, through your responses, to draw a comprehensive and transparent picture of the Austrian situation. We will follow up by phone in the coming days.

Thank you very much in advance for your help.

Sincerely yours,
Univ. Lekt. Mag. Holger Eich
Director of the Kinderschutzzentrum Vienna

ANNEX C

Table: Responses of the Dioceses of Gurk, Graz-Seckau, Innsbruck, Salzburg and Eisenstadt

	GURK	GRAZ-SECKAU	INNSBRUCK	SALZBURG	EISENSTADT
Specialized Counseling Centers	Since 1995	Since 1996	Since 2000: Diocesan contact office	Vicar General serves as contact person Depending on case, will consult experts	Since 1995: The Committee for Special Cases, including legal experts, a physician/ psychotherapist, an academic and two priests
Charges Against Members of Clergy	7 charges	5 charges v. parish priests 1 charge v. woman religious	19 charges v. secular priests and priests belonging to religious orders	2 charges	1 charge
Charges Against Religion Teachers	0 charges	1 charge	1 charge	0 charges	0 charges
Charges Against Lay Persons	2 charges	2 charges	2 charges	0 charges	0 charges
Report to Secular Authorities	No report to secular authorities without authorization of parents of victim or victim	No report to secular authorities needed in the cases to date	Diocese contacts the Center for Child Protection, Innsbruck	In principle, the diocese contacts secular authorities	Diocese involves the Committee of Special Cases to determine if the charges are serious If the charges are deemed credible, diocese involves state authorities and dismisses the alleged perpetrator from responsibilities
Criteria of Evaluation	Evaluation by Vicar General with Prof. Dr. Menschik-Bendele, Chair for Clinical Psychology, Psychotherapy and Psychoanalysis at the University of Klagenfurt	Practically no binding criteria. Counseling meetings with Vicar General and an experienced psychotherapist of the Center for Child Protection, Innsbruck. According to diocese, "Absolute security cannot always be guaranteed."	No binding criteria According to the diocese, "Almost all accusations have proved to be valid"	According to the diocese, "A thorough investigation is conducted to find out the truth"	Involvement of the Committee for Special Cases to investigate the seriousness of the accusations

	GURK	GRAZ-SECKAU	INNSBRUCK	SALZBURG	EISENSTADT
Measures to Protect Further Potential Victims	In general: Provisional dismissal of alleged perpetrator from activities and transfer to other field of activities that excludes contact with potential victims	Contingent on the type of charges: Provisional dismissal of alleged perpetrator from activities and transfer to other field of activities that excludes as much as possible any contact with potential victims	Psychotherapeutic treatment for the alleged perpetrator After conclusion of the treatment, possible assignment to pastoral field that does not include contact with children and adolescents Under some circumstances, suspension from priesthood	According to the diocese, "In each case the aim is to prevent further cases of abuse"	Until clarification: No entrustment of alleged perpetrator with any new tasks According to the diocese, "If a priest remains in office on a directive from Rome, he will be only entrusted with tasks that exclude the danger of recidivating"
Temporary Suspension in Case of Suspicion	Priests: Provisional dismissal from pastoral activities until the facts are determined	Priests: Provisional dismissal from pastoral activities until the facts are determined	Suspension contingent upon each situation	Yes	Yes
Reporting to the Congregation for the Doctrine and Faith	Yes According to the directives of the <i>Motu Proprio</i> of April 30, 2001	Yes According to the directives of the <i>Motu Proprio</i> of April 30, 2001	Yes According to regulations of the Congregation	Yes	In specific case of abuse: Report issued to Congregation, response already received
Acting on Own Responsibility Without Directives from the Holy See	According to the diocese, "Of course, as [waiting for an] answer from Rome and the elaboration of a decision by a tribunal according to canonical rules will take a longer period of time"	According to the diocese, "Given that a response from Rome and the elaboration of a canonical decision by a tribunal takes some time, the diocese will apply measures in own responsibility"	Yes	Yes	According to the diocese, "Yes, absolutely. Because even the conditional condemnation of a member of the clergy, and in particular of a priest in such cases, must be seen in a special light"

	GURK	GRAZ-SECKAU	INNSBRUCK	SALZBURG	EISENSTADT
Measures to Protect Further Potential Victims	In general: Provisional dismissal of alleged perpetrator from activities and transfer to other field of activities that excludes contact with potential victims	Contingent on the type of charges: Provisional dismissal of alleged perpetrator from activities and transfer to other field of activities that excludes as much as possible any contact with potential victims	Psychotherapeutic treatment for the alleged perpetrator After conclusion of the treatment, possible assignment to pastoral field that does not include contact with children and adolescents Under some circumstances, suspension from priesthood	According to the diocese, "In each case the aim is to prevent further cases of abuse"	Until clarification: No entrustment of alleged perpetrator with any new tasks According to the diocese, "If a priest remains in office on a directive from Rome, he will be only entrusted with tasks that exclude the danger of recidivating"
Temporary Suspension in Case of Suspicion	Priests: Provisional dismissal from pastoral activities until the facts are determined	Priests: Provisional dismissal from pastoral activities until the facts are determined	Suspension contingent upon each situation	Yes	Yes
Reporting to the Congregation for the Doctrine and Faith	Yes According to the directives of the <i>Motu Proprio</i> of April 30, 2001	Yes According to the directives of the <i>Motu Proprio</i> of April 30, 2001	Yes According to regulations of the Congregation	Yes	In specific case of abuse: Report issued to Congregation, response already received
Acting on Own Responsibility Without Directives from the Holy See	According to the diocese, "Of course, as [waiting for an] answer from Rome and the elaboration of a decision by a tribunal according to canonical rules will take a longer period of time"	According to the diocese, "Given that a response from Rome and the elaboration of a canonical decision by a tribunal takes some time, the diocese will apply measures in own responsibility"	Yes	Yes	According to the diocese, "Yes, absolutely. Because even the conditional condemnation of a member of the clergy, and in particular of a priest in such cases, must be seen in a special light"

	GURK	GRAZ-SECKAU	INNSBRUCK	SALZBURG	EISENSTADT
Management of Accused Persons in the Case of Doubt	<p>Contingent upon the type and gravity of the transgression</p> <p>Measures include: --appointment to activities in a different environment, --informing several persons who will monitor the alleged perpetrator</p> <p>According to the diocese, "The concerned person will need to get a clear awareness that it is in his own interest that charges are unambiguously clarified and he needs to avoid anything that might in any form lead to justified or unjustified allegations"</p>	<p>Contingent upon the type and gravity of the transgression</p> <p>Measures include: --appointment to activities in a different environment, --informing several persons who will monitor the alleged perpetrator</p> <p>According to the diocese, "The concerned person will need to get a clear awareness that it is in his own interest that charges are unambiguously clarified and he needs to avoid anything that might in any form lead to justified or unjustified allegations"</p>	<p>The church will take internal steps to provide rehabilitative therapy to alleged perpetrators regardless of whether the case has penal proscriptions or it is a situation where no penal consequence will follow</p>	<p>According to the diocese, "Did not happen so far"</p>	<p><i>No response</i></p>

ANNEX D

§ 212 StGB

(1) Wer

1. mit einer mit ihm in absteigender Linie verwandten minderjährigen Person, seinem minderjährigen Wahlkind, Stiefkind oder Mündel oder
 2. mit einer minderjährigen Person, die seiner Erziehung, Ausbildung oder Aufsicht untersteht, unter Ausnützung seiner Stellung gegenüber dieser Person
- eine geschlechtliche Handlung vornimmt oder von einer solchen Person an sich vornehmen lässt oder, um sich oder einen Dritten geschlechtlich zu erregen oder zu befriedigen, dazu verleitet, eine geschlechtliche Handlung an sich selbst vorzunehmen, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.

(2) Ebenso ist zu bestrafen, wer

1. als Arzt, klinischer Psychologe, Gesundheitspsychologe oder Psychotherapeut oder sonst als Angehöriger eines Gesundheits- oder Krankenpflegeberufes mit einer berufsmäßig betreuten Person,
 2. als Angestellter einer Erziehungsanstalt oder sonst als in einer Erziehungsanstalt Beschäftigter mit einer in der Anstalt betreuten Person oder
 3. als Beamter mit einer Person, die seiner amtlichen Obhut anvertraut ist,
- unter Ausnützung seiner Stellung dieser Person gegenüber eine geschlechtliche Handlung vornimmt oder von einer solchen Person an sich vornehmen lässt oder, um sich oder einen Dritten geschlechtlich zu erregen oder zu befriedigen, dazu verleitet, eine geschlechtliche Handlung an sich selbst vorzunehmen

Quelle: Strafrechtsänderungsgesetz 2004; BGBl. I Nr. 15/2004