

REPORT
ON THE IMPLEMENTATION OF
RECOMMENDATIONS
ISSUED BY THE CHILDREN'S RIGHTS COMMITTEE
as at October 2, 2015
CRC/C/POL/CO/3-4

**State Commission for investigation of cases against sexual
liberty and decency against minors under the age of 15 years**

Warsaw, August 2021

Introduction

Child sexual abuse is a category of particularly violent crimes. In many cases, victims of such acts must deal with the consequences of behaviors imposed on them by their attackers throughout adult life. Hence, particular efforts must be made to protect the rights, well-being and interests of children.

Each state should take any and all measures to enhance the protection under criminal law of minor victims of crimes against sexual liberty and decency. Also, steps must be taken to provide the abused children and their loved ones with adequate assistance and support.

The State Commission for investigation of cases against sexual liberty and decency against minors under the age of 15 years State, hereinafter referred to as the “State Commission”, appreciates the amendments that have been made to the Polish legal framework within the last 5 years in order to protect children against sexual abuse, including:

- a) the introduction of a legal obligation to notify law enforcement authorities of a suspected criminal offence, including actions against sexual liberty and decency towards a minor under the age of 15,
- b) the introduction of an obligation for the courts to prohibit convicted offenders against sexual liberty and decency towards a minor from engaging in gainful employment related to the upbringing, education, treatment or care of children,
- c) the establishment of the Register of Sex Offenders,
- d) the introduction of an obligation for employers and other operators engaged in activities related to the upbringing, education, leisure, treatment or care of minors to verify whether an employee is entered to the Register of Sex Offenders prior to concluding an employment agreement with him/her or prior to having him/her perform other activities related to the upbringing, education, leisure, treatment or care of children,
- e) the introduction of a legal regulation for the institution of an attorney ad litem in criminal proceedings,
- f) the establishment of what it referred to as the Police Map of Sexual Predators, and making it public,
- g) the appointment of the State Commission.

At the same time, the State Commission believes further legislative and other measures need to be taken to provide children with an even more comprehensive protection.

The State Commission is a major component of the Polish system for the protection of children's rights. It was established pursuant to the Act of August 30, 2019 on the State Commission for investigation of cases against sexual liberty and decency against minors under the age of 15 years (Journal of Laws [Dz.U.] of 2019, item 1820), hereinafter referred to as the "Act", and started its operations on November 24, 2020.

The State Commission is an independent national authority and forms part of the system for reporting suspected criminal sexual abuse of children. It acts as a quasi-judicial authority in the explanatory enquiry (related to cases where the statute of limitations has expired). To the extent they fall within the area of its activity, the State Commission has the right to access information and documents of other institutions, organizations and entities.

The activity of the State Commission falls within three basic areas:

1. explaining cases of child sexual abuse, including (a) conducting an explanatory enquiry in cases where the statute of limitations has expired; and (b) examining the way the entities respond when it comes to explaining cases of child sexual abuse, including identifying their failure to notify the competent authority of a suspected crime; and (c) identifying practical problems related to prosecuting and punishing sexual abusers,
2. ensuring that national authorities, organizations and entities take prompt steps to fight against child sexual abuse, including by (a) intervening and providing the victims with support in proceedings before national authorities, including participating in criminal proceedings as an auxiliary prosecutor upon consent of the victim or his/her legal guardian; (b) monitoring the actions taken by competent authorities, organizations and entities, based on requests and notices; and (c) requesting the General Prosecutor to lodge an extraordinary complaint against or appeal in cassation from a final judgment closing the case,
3. preventive and educational activities.

Between November 24, 2020 and June 30, 2021, the State Commission conducted 349 cases (reported to it and taken on its own initiative). The State Commission filed 137 reports with the prosecutors' office, including 36 related to a suspected failure to notify the competent authority of a suspected criminal sexual abuse of a child under the age of 15. Also, the State Commission was provided with reports on cases which had previously been investigated by law enforcement authorities and had ended with a refusal to initiate the proceedings or had been withdrawn during the pre-trial stage, as well as on cases for which proceedings were pending before the prosecutors' office or court. Currently, the State Commission monitors 250 such cases.

On July 26, 2021, the State Commission presented its first activity report which included a summary of work, the results of the examination of its own files of judicial proceedings, and recommendations for national authorities, organizations and other entities. The report is available at the State Commission's website: <https://www.gov.pl/web/pkdp/raport-panstwowej-komisji2>.

The State Commission is among the national authorities in charge of protecting children against sexual violence. The analysis of cases reported to the State Commission suggests that Poland still fails to sufficiently respect the rights of minor victims of sexual abuse. It is necessary to introduce additional mechanisms that protect children against such acts, including by adopting a consistent, coherent and more stringent approach vis-à-vis the perpetrators.

The State Commission prepared draft amendments to the provisions of the Criminal Code and draft amendments to the Act, and delivered them to the President of the Republic of Poland, asking him to take a legislative initiative. Designed to supplement the applicable regulations with matters regarding adequate actions to be taken by the State Commission, the proposed amendments will provide greater empowerment to child victims and better safeguard them against crimes. Work on both drafts has reached the final stage at the Chancellery of the President of the Republic of Poland.

The summary of the proposed amendments was discussed in the *Summary of the First Report of the State Commission for explaining cases of actions against sexual liberty and decency towards a minor under the age of 15*, as enclosed to this Report.

After the first year of its activity, the State Commission draws attention to the need to introduce subsequent changes that guarantee a more comprehensive protection of children against sexual violence. Based on the hearing of victims, the reports, the results of own studies and the analysis

of standards defined in the Convention on the Rights of the Child, the State Commission set out a target for the relevant changes. These actions were reflected in the Recommendations presented below.

The activity of the State Commission is part of implementing the Committee's recommendations regarding:

- a. continuing the actions taken to guarantee that all cases of child sexual abuse will be investigated and prosecuted;
- b. organizing a children-friendly system which enables such cases to be reported by children and other persons;
- c. setting up a policy and taking action needed to prevent new cases of child sexual abuse.

Child sexual abuse

A. The right to protection against violence, cruelty, exploitation, demoralization, negligent treatment and other maltreatment

States Parties shall take all appropriate (...) measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (...).

(Article 19 of the Convention on the Rights of the Child)

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes (...), they shall in particular take all appropriate (...) measures to prevent:

- 1. the inducement or coercion of a child to engage in any unlawful sexual activity;*
- 2. the exploitative use of children in prostitution or other unlawful sexual practices;*
- 3. the exploitative use of children in pornographic performances and materials.*

(Article 34 of the Convention on the Rights of the Child)

Recommendation 1

A systemic improvement in the protection of rights of child victims of sexual violence

Justification: The State Commission believes that the existing legal regulations for child protection against sexual abuse need to be supplemented and improved. In the Polish criminal law, coercing a person into prostitution is not identified as a separate crime if the victim is a child. Also, alternative non-custodial sanctions (fine, restricted freedom) can be imposed in the following cases: inducing a minor to engage in sexual activity through electronic means; promoting pedophilia; public presentation of pornographic content.

The State Commission believes that courts should no longer have the ability to impose non-custodial sanctions as they are inadequate to criminal sexual abuse of children. Also, coercing a person into prostitution should be qualified as a crime (punishable by at least three years of imprisonment) if the victim is a minor.

The propositions presented by the State Commission in their draft, include:

- removing the statute of limitations for sexual crimes against children, and preventing all kinds of convictions for sexual acts against children (including suspended prison sentences) from being spent;
- introducing new types of crimes, i.e. making it a criminal offence to publish a naked child picture without using violence, punishable threats, contrivance or another form of coercion in order to sexually satisfy oneself or another person; and criminalizing contacts with a minor on the Internet or in a telecommunications network where the purpose of such contacts is to sexually abuse a minor solely in the cyberspace (without real-world contact);
- imposing criminal liability on criminal sexual abuse of a child committed abroad, whether or not it is punishable in the country where committed;
- making the following offences be deemed aggravated and subject to a greater penalty: sexual abuse of insanity, vulnerability, a relationship of dependency or a critical situation; coercion into prostitution; infringement of sexual privacy - if the victim is under the age of 15;

- prohibiting the conditional withdrawal of proceedings regarding sexual crimes against children;
- restricting the ability to conditionally suspend the imprisonment of a perpetrator of a crime against sexual liberty and decency where the victim is a child;
- making it compulsory to place every perpetrator of a sexual crime against children under supervision (irrespective of whether or not he/she was diagnosed with sexual preference disorder), if sentenced to suspended imprisonment;
- withdrawal of penalties alternative to imprisonment (fine, restricted freedom) in the case of offences such as: promoting pedophilia (Article 200b of the Criminal Code); public display of content (Article 202, Section 1 of the Criminal Code); making sexual propositions to a minor on the Internet or in a telecommunications network (Article 200a, Section 2 of the Criminal Code).

Implementation: Adoption of the draft, as developed by the State Commission and submitted to the President of the Republic of Poland, by the Polish Parliament.

Recommendation 2

Introducing the institution of child's attorney for minor victims

Justification: In a situation where no attorney ad litem was appointed for the child, it should be compulsory to adopt a decision appointing a child's attorney for him/her. The purpose of introducing the institution of child's attorney to the criminal procedure is to better protect the well-being, rights and dignity of the child victim and to ensure he/she is represented appropriately.

Implementation: Supplementing the *Criminal Procedure Code* with a provision addressing the institution of child's attorney. Establishing the lists of attorneys and legal counsels, at the level of District Bar Councils and District Chambers of Legal Counsels, to be specialized in protecting children's rights (the lists can be consistent with, or the same as, those of attorneys and legal counsels appointed to act as an attorney ad litem).

Recommendation 3

A prompt request by the prosecutor to appoint an attorney ad litem for a minor victim

Justification: In every criminal investigation where one of the parents is suspected (accused) of an offence against his/her child, the guardianship court shall promptly appoint an attorney to represent the minor (attorney ad litem). In some cases, the prosecutor fails to comply with the obligation to request the appointment of an attorney ad litem or fails to do so promptly. As a consequence, the minor is not represented and his/her procedural rights are infringed (e.g. as he/she is unable to challenge the decision ending the procedure).

Implementation: Appropriate amendments to the *Criminal Procedure Code* requiring the prosecutor to request the guardianship court to appoint an attorney ad litem for the minor victim promptly upon being notified of an offence committed against the child by one of his/her parents.

Recommendation 4

The prosecutor's request to appoint an attorney ad litem for the minor victim shall be examined by the guardianship court within three days.

Justification: Until the guardianship court appoints an attorney ad litem, the minor victim is totally unable to exercise his/her procedural rights. The prompt examination of the request is of key importance because of the duration of the investigation procedure (30 days).

Implementation: Appropriate amendments to the *Criminal Procedure Code* imposing an obligation on the guardianship court to examine the prosecutor's request to appoint an attorney ad litem for the minor victim within 3 days; this should be similar to the procedures for appointing a public defender for detainees, as currently in force.

Recommendation 5

Every district court shall have an up-to-date list of attorneys and legal counsels selected based on adequate psychological and social skills who demonstrate extraordinary knowledge of cases involving children.

Justification: The provisions on the attorney ad litem are insufficiently implemented in practice. One of the reasons for the above is that guardianship courts do not have the lists of attorneys and legal counsels. In addition to meeting the requirements laid down in the *Family and Guardianship Code*, persons entered to that list should demonstrate adequate psychological and social skills. This is important because the contact established between the attorney ad litem and the child must provide the latter with the utmost sense of security and will help protect the minor against secondary trauma resulting from his/her participation in the court procedures.

Implementation: The Supreme Bar Council and the State Chamber of Legal Counsels shall prepare the lists of attorneys and legal counsels who may be appointed as an attorney ad litem pursuant to Article 99¹ of the *Family and Guardianship Code*, and shall deliver them to competent district courts.

Recommendation 6

Giving priority to criminal cases involving sexual violence against children

Justification: Criminal procedures regarding sexual violence against children should be given priority both at the pre-trial stage and during the trial (similarly to cases where provisional detention is pronounced). The principle of priority in setting the dates for the hearings would be crucial for the courts, so that the aforesaid investigations may be conducted and finalized in a swift manner without undue delay.

Implementation: Adequate internal regulations giving priority to criminal cases involving sexual violence against children at the level of appropriate court rules and prosecutors' office rules.

Recommendation 7

Measures need to be taken to truly enforce the ban on children's access to pornographic content in ICT networks.

Justification: A ban exists that makes it a crime to distribute pornographic content in a way that makes it accessible to minors under the age of 15. However, that provision is often infringed by the perpetrators if pornographic content is distributed in ICT networks. There is a dearth of actions and measures that would truly protect children against accessing such content.

Implementation: Legal and technological solutions which are in place in other countries need to be implemented to prevent children from freely accessing pornographic content.

Recommendation 8

The obligation to have an expert assess whether the minor can participate in a rehearing

Justification: The law provides for two exceptions from the principle of a single hearing of a minor (serious circumstances which require a rehearing in order to be explained; or a request from the defendant who did not have an attorney during the first hearing of the victim). If either of them occurs, the prerequisite is to examine the circumstances related to the condition of the victim, and – whatever the case may be – seek expert opinion on whether he/she may participate in a rehearing. This will allow for providing him/her with complete protection and security.

Implementation: Appropriate amendments to the *Criminal Procedure Code* which make sure that the rehearing referred to in Article 185a, Section 1 cannot take place if the health status or the mental or physical condition of the minor victim below the age of 15 does not so permit.

Recommendation 9

Investigations related to sexual violence against children shall only be conducted by adequately trained judges

Justification: It is necessary that judges who conduct a hearing as provided for in Article 185 a) to c) of the *Criminal Procedure Code* be adequately trained on the basics of how to communicate with a child. Because of the extremely delicate nature of proceedings with the participation of children, criminal court judges must demonstrate adequate knowledge and skills.

The results of own studies carried out by the State Commission suggest that in Poland, crimes involving sexual violence against children carry convictions with imprisonment sentences which often are conditionally suspended. The decision-making practice shows that the courts make rare use of probation and criminal measures such as: expulsion from the dwelling shared with the victim; prohibition on approaching the victim; and compulsory participation in corrective and

educational programs. These would promote a permanent reorientation of the perpetrators' attitudes while ensuring security to minor victims.

Implementation: The Ministry of Justice and the State School of Judiciary and Public Prosecution shall supplement the educational program for judges, at both the preliminary education stage and lifelong learning stage.

Recommendation 10

Indicating the gender of the judge who conducts the hearing of a minor victim as provided for in Article 185a of the Criminal Procedure Code (it should be other than the perpetrator's gender).

Justification: Currently, none of the provisions of the *Criminal Code* does indicate the need to avoid gender concordance between the judge and the perpetrator. If the judge and the perpetrator are of the same gender, the scope and reliability of information obtained from the child can be limited. Also, this can have an adverse effect on the child's mental condition.

Implementation: Appropriate amendments to the *Criminal Procedure Code* which require that the hearing of a minor victim be conducted by a judge of another gender than the perpetrator.

Recommendation 11

Indicating the gender of the expert psychologist who participates in the hearing of a minor victim as provided for in Article 185a of the Criminal Procedure Code (it should be the same as the victim's gender)

Justification: The requirement that the expert psychologist who participates in the hearing of the victim be of the same gender is only applicable to crimes under Articles 197 to 199 of the Criminal Code, whereas it should also cover crimes under Article 200 of the Criminal Code.

Reinforcing the child's sense of security is crucial for obtaining complete and reliable information which affects the fairness of the proceedings.

Implementation: Making appropriate amendments to the *Criminal Procedure Code* which require that the expert psychologist who participates to the hearing of a minor victim as provided for in Article 185a of the *Criminal Procedure Code* in criminal proceedings under Article 200 of the Criminal Code be of the same gender as the minor victim.

Recommendation 12

Introducing information targeted at minor victims and minor witnesses to prepare them for participating in court proceedings (based on existing materials developed by NGOs).

Justification: Information targeted at minor victims and minor witnesses should be understandable to them, i.e. be prepared so that a child understands their content and form. This will help the child to be heard understand the principles of the hearing, including the right to refuse to testify, the obligation to tell the truth and the need for recording the proceedings on data media. Also, this will reduce the child's fear and anxiety.

Implementation: The Minister of Justice shall supplement the ordinance on how to prepare a hearing conducted as provided for in Articles 185a to 185c of the *Criminal Procedure Code*. Efforts must be made to align the language and form with the child's age (good practices developed by NGOs should be used for that purpose). This information should be mailed together with the summons to appear in court.

Recommendation 13

Extending the instructions for the victim with a provision that upon his/her prior written consent, he/she may be represented in the criminal proceedings by the State Commission as an auxiliary prosecutor.

Justification: The victim has the right to additional support based on procedural activities of the State Commission, and should be notified thereof.

Implementation: The Minister of Justice shall supplement the sample instructions (as specified in the ordinance) for the victim with information that he/she can reach out to the State Commission.

B. The right to protection against violence, cruelty, exploitation, demoralization, negligence and other maltreatment, and the right to healthcare.

(...) Such protective measures should (...) include effective procedures for the establishment of social programs to provide necessary support for the child (...) as well as for other forms of prevention (...).

(Article 19 of the Convention on the Rights of the Child)

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (...), and shall strive to ensure that no child is deprived of his or her right of access to such health care services. (...)

(Article 24 of the Convention on the Rights of the Child)

Recommendation 14

Combating sexual abuse of children in higher-risk places

Justification: It is important to adequately control the places where potential victims and potential perpetrators contact each other. This means public space, e.g. swimming pools, malls, playgrounds, facilities run by church institutions, hotels and other leisure facilities. This could be a way to avoid many cases of child sexual abuse.

Implementation: Increasing the number of safe places by employing measures such as: surveillance cameras, patrolling by competent services, making the responsible staff sensitive to worrying behaviors of an adult towards a child, and implementing response procedures to deal with such situations. Also, competent institutions and entities should adopt good practices based on existing patterns.

Recommendation 15

Making rural areas and small towns covered by measures taken to increase social awareness of child sexual abuse.

Justification: According to studies by the State Commission, child sexual abuse is significantly more frequent in small towns (with a population below 50,000) and rural areas. Hence, this is where a particular need exists to disseminate knowledge of the issue of child sexual abuse and to make people ready and able to respond to suspected cases of child abuse.

Implementation: Enablement of competent local government units and all other institutions and entities in charge of children's rights protection through:

- information and educational campaigns;
- reinforcing the network of guidance centers (e.g. increasing the number of preventive, educational and therapeutic consultancy sessions);

- disseminating information among children and parents on where to look for help when something worrying happens (helplines, chat, assistance applications, addresses of institutions and facilities);
- making members of interdisciplinary teams and employees of schools (psychologists, counselors and educators), of psychological and pedagogical counseling centers, of social welfare centers, of healthcare centers (pediatricians, general practitioners, dentists, nurses) and of local NGOs who know the children's and parents' needs contribute to information, psychological and educational measures.

Recommendation 16

Establishing and financing a rapid intervention path which ensures priority in accessing psychological care is given to children suspected of being sexual abuse victims.

Justification: The moment when a child discloses the fact of being sexually abused is an extremely vulnerable period. The lack of adequate support at that time can have the following consequences: secondary trauma; severe, irreversible damage to the child's brain; and a greater risk of withdrawing previously disclosed information despite it being true. This makes it more likely for the perpetrators to avoid criminal liability.

Implementation: Allocating additional funds to employ more adequately trained psychologists (including in psychological and pedagogical counseling centers and mental care centers) and adopting an organizational model for these institutions to make sure a child can be admitted on an emergency basis within seven days of being reported. Additional funds shall also be allocated to the rapid intervention path by the National Health Fund. Where needed, it should be possible to reimburse the costs of psychological assistance delivered to the child at a private center.

C. The right to education

Article 28

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (...)

4. make educational and vocational information and guidance available and accessible to all children; (...)

(Article 28 of the Convention on the Rights of the Child)

Recommendation 17

Supplementing the core curriculum of the Ministry of Education and Science with matters related to preventing sexual abuse

Justification: The security of children and youth is a particular part of social and child education measures. Major directions of preventive strategies focused on potential victims include educational programs for preventing sexual abuse. Children and youth need to be provided with access to reliable, age-appropriate materials on how to protect themselves against sexual violence and abuse in both the real and virtual worlds. They should know how to discover and avoid threats, and what to do when faced with an existing threat.

Implementation: Extending the core curriculum of the Ministry of Education and Science with matters related to preventing sexual abuse (including materials dedicated to children with specific educational and development needs). Programs make use of materials previously developed by competent NGOs should strengthen the children's personal security and make them able to: recognize and avoid risky situations; present physical and verbal resistance to the potential perpetrator; find and inform adults of the developments.

Summary:

The outcomes of the first year of operation of the State Commission suggest it plays a major role in protecting children's rights in Poland. The establishment of a new institution specialized in providing assistance to child victims and persons who experienced sexual violence as children is crucial in building a system to effectively support the victims. The State Commission will continue to carry out the activities entrusted to it under the Act. Additionally, legal provisions will be analyzed to enhance legal protection for the youngest, to provide greater effectiveness in explaining cases related to child sexual abuse, and make the Polish criminal law more consistent with the provisions of the Convention on the Rights of the Child. The State Commission will initiate and promote preventive and educational measures to improve the security of the youngest in both the real and virtual worlds.