



# SUMMARY

*of the Second Report of the State Commission for Investigation of Cases against Sexual Liberty and Decency against Minors under the Age of 15 Years*



The State Commission for Investigation of Cases against Sexual Liberty and Decency against  
Minors under the Age of 15 Years



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# 1.

## INTRODUCTION

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The Preamble to the Act on the State Commission emphasises that *none actions against sexual liberty and decency of children can be protected by any secrecy and they cannot be forgotten, irrespective of the time passed*. This phrase outlines a special context of cases related to the investigation of sexual abuse of minors. Hiding information about this type of criminal offence is one of the elements that may lead to perpetuating the suffering of harmed persons. The establishment of the State Commission has become one of the steps aimed at disclosing information that has been hidden so far. This includes both the information hidden by groups, communities or professional circles, and the secrets that persons who experienced sexual violence in their childhood were forced to keep for years.

*The Second Report* of the State Commission presents yet another year of its substantive work. The work included specific activities undertaken to provide individual support to persons harmed by a criminal offence and to develop a permanent systemic change.

The State Commission plays an increasingly important role in the latter area. Its initiatives cover both professional support for harmed persons and the modification of law aimed at reinforcing the right direction of social changes. The State Commission joined the key on-going debate on the way out of the crisis witnessed in child and youth psychiatry. In this regard, the State Commission, as an institution focused on a specific issue, has a unique perspective that allows it to highlight the most important areas in the protection of children's mental health.

Sexual crimes against children spark emotions which usually result in the occurrence of attitudes characterised by the expectation of immediate reactions, decisions, and changes. The State Commission joins judicial system institutions in their

pursuit to investigate a case. As far as a change is concerned, even though expectations are legitimate, it needs to be remembered that such change is happening gradually. Indeed, the change consists in modifying a social attitude based both on knowledge about a paedophilic crime and its assessment, as well as on the capability to respond when such criminal offence is committed. Even now, however, we can see concrete effects of actions taken by the State Commission. The last-year results of the examination of closed criminal cases may serve as an illustration. The findings of analyses referred to in this report have become the subject of interest not only among scientists, but also political commentators. They are also used as material for the purpose of educating, for instance, future psychologists. Significant and permanent changes are witnessed also in the area of legal interventions. A perfect example is the resolution of the Polish Supreme Court of 1 July 2022, in which the Supreme Court shared the opinion of the State Commission in its interpretation of Article 240 of the Criminal Code. This decision brings invaluable social and legal consequences. The Supreme Court fully agreed with the view expressed by the State Commission for more than a year that the notification of a suspected paedophilic crime to a law enforcement authority is mandatory for a person who is in possession of reliable information in this regard. At the same time, it does not matter whether this person became aware of the suspected criminal offence in the period in which notifying law enforcement authorities was only a matter of social responsibility. Reticence in such circumstances may trigger criminal liability. This resolution is of key importance not only for legal debates. It is of paramount importance for victims. The Supreme Court clearly points out that staying silent when a child has been harmed is reprehensible and it violates the rights of a minor.

In order to make systemic changes it is necessary to regularly raise the issue of violence, not least the issue of protecting children against sexual violence. By taking up new initiatives, the State Commission protects the topic of child sexual abuse prevention from social oblivion. This mission is particularly difficult. As mentioned, the topic of sexual crime is often raised, for instance, in many media commentaries. At the same time, this thread tends to disappear surprisingly quickly from the horizon of interest as it provokes concerns, anxiety and fright. The activity of the State Commission, which also regularly cooperates with media outlets, consists in constantly reminding how important it is to care about children both in terms of violence prevention and actual support for harmed persons.

The State Commission is entitled to act in a number of ways. It needs to be remembered that it has been added to the list of institutions to which a case of child sexual abuse crime may be reported. Such information is then forwarded to a public prosecutor's office. Reporting is therefore an action that initiates a procedure in which the State Commission may become an active participant that acts in the interest of a harmed person. The Commission acts *de facto* as a watchdog institution whose role is to analyse cases, assess them, and sound the alarm if irregularities are discovered. Examples provided below show that the monitoring activities carried out by the State Commission in respect of cases forwarded to public prosecutor's offices make persons in charge of investigations and proceedings more careful in such a delicate and often complex area. This is not only a matter of, for example, erroneous decisions issued by persons responsible for investigations that have been identified by the State Commission. Public prosecutor's offices now tend to re-analyse material from closed cases when the State Commission asks for the case file of specific proceedings.

It is worth mentioning that the State Commission is an active participant of court proceedings. It may act as an auxiliary prosecutor in proceedings in the matter of sexual abuse of a child. This allows the State Commission to stay close to harmed persons, which in turn enables it to become aware of the perspective of a person who experienced sexual abuse, which is essential for the examination of the case. Thanks to law makers, such person may take advantage of substantive expertise of an entity specialising in investigating paedophilic crimes. As far as the courtroom is concerned, it cannot be

ignored that it could be the State Commission's activity that ultimately leads to the Polish Supreme Court's decision to grant a cassation. Within the last year, it happened twice that the Polish Supreme Court shared the opinion of the State Commission in criminal proceedings and remitted the cases for reconsideration.

This activity moves us to yet another level of actions taken by the State Commission. These are educational and prevention activities, which in the last year were focused on the significant importance of all initiatives that could bring a systemic change. It is widely recognised that in terms of a discussion about the protection of children against paedophilic crime the Polish society is two decades behind such countries as Germany or Australia, where the shock after revealing information about harm suffered by children led to permanent and effective institutional changes. The establishment of the State Commission in our country is in fact the first step aimed at working on a permanent systemic change. Through its educational and preventive actions, the State Commission is supposed to lead to social changes. Another year of substantive work has shown a series of important aspects in this regard.

The widely understood topic of sexual abuse of children raises both huge interest and huge concerns. When monitoring a public debate on this topic, it may be seen that the debate becomes the most heated when – usually shocking – information about a criminal offence in which a child has been harmed is disclosed. Often, it is a result of significant work done by journalists as through the descriptions of specific cases and stories they inform both the public opinion and competent authorities. In the last year, the State Commission intervened in such cases on several occasions.

In its *Second Report*, the State Commission presents information on work performed within the last year (from July 2021 to July 2022). First and foremost, this includes the presentation of methods applied in order to implement the recommendations from the *First Report* of 2021. Then, activities in the area of individual cases are discussed, as well as concrete effects of initiatives taken by the State Commission in this regard. The sections that follow cover educational and prevention activities. Firstly, initiatives carried out together with other institutions and organisations are presented. Secondly, a social campaign launched by the State Commission is described. Thirdly, assumptions are

outlined for the currently on-going first study in Poland in the area of compensation granted by civil courts to persons who were harmed by sexual abuse in their childhood. Against this background, the report presents also the activities related to attempts to discover the scale of child sexual abuse committed by high-rank persons, in particular those who have contact with children due to their profession. On many occasions, the State Commission encountered difficulties when trying to obtain necessary information and documents from institutions and organisations that possessed them.

One of the key areas of action of the State Commission is to enter child sexual abuse offenders whose cases fell under the statute of limitations to the Register of Sex Offenders. The State Commission pointed out on a number of occasions that it is necessary to change legal regulations in this regard.

In the *Second Report*, there is a separate section focused on time-barred cases. The report also outlines the characteristics of cases reported to the State Commission. The examination of such cases in a manner that guarantees safety to “those persons who as children suffered as a result of acts against sexual liberty and decency, having regard to their pain, sense of loneliness and traumatic experiences, which affect them also in their adult life”, is the ultimate objective of the State Commission. On 22 July 2022, the Chancellery of the President of the Republic of Poland informed the public opinion that an amendment to the Act on the State Commission is to be submitted to the Sejm. It is thanks to the aforementioned that the objective stated above, in particular by means of conducting explanatory enquiries on the cases falling under the statute of limitations, is becoming increasingly reachable.

President of the State Commission

dr hab. Błażej Kmiecik

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# 2.

## EXTENSION OF THE GROUP OF PERSONS RESPONSIBLE FOR FAILURE TO REPORT SEXUAL ABUSE OF CHILDREN (INTERPRETATION OF ARTICLE 240 OF THE CRIMINAL CODE PROVIDED BY THE POLISH SUPREME COURT)

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Article 240 of the Criminal Code is a provision of paramount importance. It refers to a legal obligation to report specific socially harmful criminal offences, such as homicide, unlawful deprivation of liberty, sexual abuse of a child, to law enforcement authorities.

The State Commission does not agree with the interpretation of Article 240 of the Criminal Code, as amended in 2017, adopted by the National Public Prosecutor's Office. This interpretation excludes criminal liability of persons who since 13 July 2017 have been in possession of reliable information about criminal offences against sexual liberty and decency against minors under the age of 15 years, but obtained it prior to this date. Taking into consideration the opinions of experts in criminal law, the State Commission is of the opinion that any person who on 13 July 2017 was in possession of reliable information about preparation of, attempt to commit or commitment of such criminal offences may be deemed liable under criminal law for failing to notify law enforcement authorities from 13 July 2017, irrespective of when they become aware of such information.

In 2021, the State Commission received notifications of suspected criminal offences consisting in failing to notify an authority responsible for criminal prosecution about a case of sexual abuse of a minor under the age of 15 years. Two clergy members were indicated as those who allegedly committed a criminal offence of failing to

notify law enforcement authorities. Having heard the victim in this case, the State Commission filed with the Deputy Public Prosecutor General a notification of a suspected criminal offence committed by four clergy members of the Catholic Church on the grounds of Article 240(1) of the Criminal Code, with the alleged criminal offence consisting in failing to immediately notify law enforcement authorities on 13 July 2017 of reliable information about an offence of sexual nature committed against a minor under the age of 15 years.

The State Commission's notification was forwarded to the competent district public prosecutor's office. After initial investigative activities, the public prosecutor refused to initiate an investigation on the failure, existing before the year 2017, to notify authorities responsible for criminal prosecution of reliable information about an offence contrary to Article 200(1) of the Criminal Code that consisted in a sexual intercourse with a minor under the age of 15 years (Article 240(1) of the Criminal Code). The launching of the investigation was refused on the ground that the act in question did not satisfy the prerequisites of an offence. When providing reasons for refusal, the public prosecutor repeated the arguments expressed earlier by the National Public Prosecutor's Office. Having read the two decisions refusing to initiate an investigation, the State Commission filed an appeal against them in their entirety. Interlocutory appeals were lodged with the respective district courts with territorial jurisdiction,

i.e. the district courts in Kalisz and in Żywiec, and to the District Court for Wrocław-Śródmieście. Subsequently, in submissions filed within the interlocutory appeal proceedings, the State Commission requested that a case be forwarded to the Supreme Court together with a request for the resolution of a legal issue that requires the essential interpretation of the Act. Requests of the State Commission regarding the forwarding of the case to the Supreme Court were granted by the District Court for Wrocław-Śródmieście and the District Court in Kalisz. The courts agreed that in the course of examining the interlocutory appeal lodged by the State Commission a legal issue appeared in a submission of the State Commission and it is required to obtain the essential interpretation of the Act.

Having examined the joined cases in proceedings participated by the representatives of the State Commission, the Supreme Court adopted the following resolution on 1 July 2022: *The phrase “in possession of reliable information” used in Article 240(1) of the Criminal Code is to be understood as referring to a state of knowledge of a subject of an offence at the moment it is being committed; the phrase “immediately” does not refer to the time of receiving the information about a criminal offence added to the list of criminal offences in Article 240(1) of the Criminal Code by means of the Act of 23 March 2017 amending the Criminal Code, the Act on Criminal Proceedings in Juvenile Cases, and the Code of Criminal Proceedings (Journal of Laws of 2017, item 773), but to the moment in which the obligation to denounce entered into force, i.e. 13 July 2017; the only causative act of a criminal offence contrary to Article 240(1) of the Polish Criminal Code is expressed by the verbal phrase “fails to notify”.*

Therefore, the Supreme Court agreed with the opinion of the State Commission expressed in interlocutory appeal proceedings before district courts. The resolution of the Supreme Court determines that a person who had been in possession of reliable information about a criminal offence before the entry into force of the act amending Article 240(1) of the Criminal Code had an obligation to notify law enforcement authorities immediately after 13 July 2017. In the statement of reasons to the resolution provided orally, the Supreme Court also emphasised that even though prior to 13 July 2017 refraining from notifying authorities of an offence against sexual liberty of a child was not punishable, it was undoubtedly reprehensible. The interpretation under which the obligation to notify authorities of an offence contrary to Article 240(1) of the Criminal Code does not apply to persons who had become aware of it prior to 13 July 2017 would amount to tolerance to hiding paedophilic crimes and could give offenders the sense of impunity. The position of the Supreme Court on the interpretation of Article 240(1) of the Criminal Code means that the protection of children guaranteed in the Constitution of the Republic of Poland is made real.



# 3.

## LEGAL AID FOR HARMED PERSONS

### The rights of the State Commission in criminal proceedings

According to the provisions of the Act, within proceedings conducted by a public prosecutor’s office or courts in the matter of sexual criminal offences, the State Commission is entitled to:

- a. monitor criminal proceedings at the stage of pre-trial and trial,
- b. examine the case file of closed criminal proceedings,
- c. take part in criminal proceedings at the stage of trial as an auxiliary prosecutor,
- d. request that the Public Prosecutor General lodge extraordinary measures of appeal (cassation, extraordinary complaint).

From 25 July 2021 to 24 July 2022, the State Commission processed the total of 513 cases, including 318 new ones, i.e. reported and taken at its own initiative.

The cases processed by the State Commission concerned:

- a. reports that triggered a pre-trial stage of criminal proceedings after being forwarded by the State Commission to a public prosecutor,
- b. monitoring of criminal proceedings at the pre-trial and trial stages,

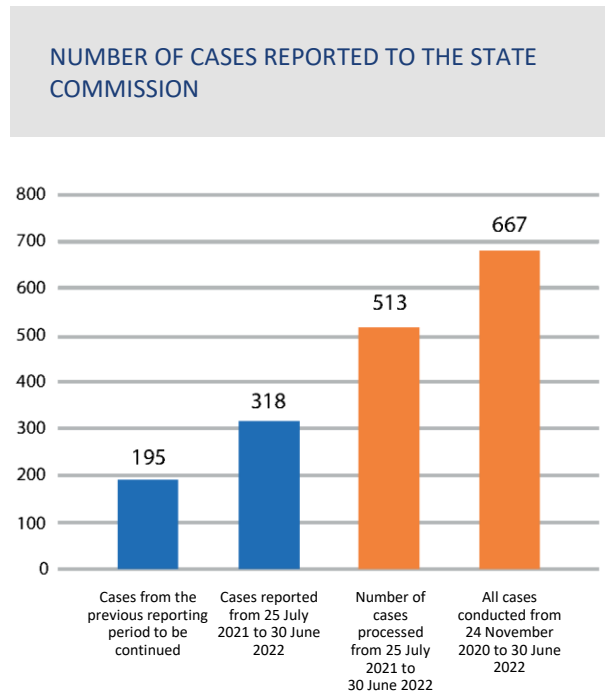


Figure 1. Number of cases reported to the State Commission

- c. examination of closed cases,
- d. reports of sexual abuse criminal offences against minors under the age of 15 years time-barred under the statute of limitations,
- e. reports in so-called various cases.

## Reports that triggered a pre-trial stage of criminal proceedings after being forwarded by the State Commission to a public prosecutor

30% of all the cases reported to the State Commission in the reporting period were reports made under Article 22(1) of the Act. Pursuant to the Article, the State Commission is required to forward each report of a criminal offence to the competent public prosecutor's office with a territorial jurisdiction. After forwarding the case, the State Commission monitors the pre-trial stage of proceedings. It needs to be emphasised that a report filed via the State Commission is equivalent to notifying an authority responsible for criminal prosecution.

In the analysed reporting period, the State Commission forwarded 96 reports to the public prosecutor, and the number of reports forwarded since the beginning of its activity reached 233 when it comes to the reports of potential sexual criminal offences against minors. 2 out of 96 reports forwarded to the public prosecutor's office concerned the suspicion of failing to report sexual

criminal offences against children to authorities responsible for criminal prosecution.

### NOTIFICATIONS OF SUSPECTED CRIMINAL OFFENCES FORWARDED TO THE PUBLIC PROSECUTOR'S OFFICES

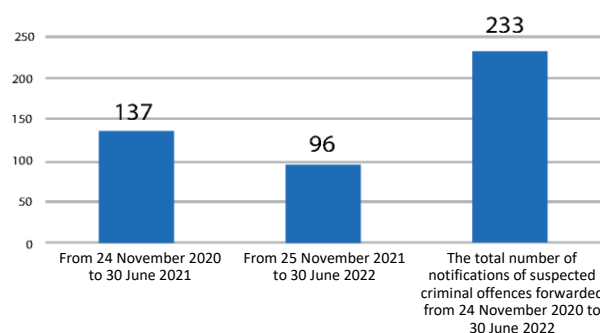


Figure 2. Notifications of suspected criminal offences forwarded to the public prosecutor's office by the State Commission

## Monitoring of criminal proceedings at the pre-trial and trial stages

The State Commission received requests for monitoring criminal proceedings both at the pre-trial and trial stage. The State Commission carried out monitoring activities also in cases in which the pre-trial stage was initiated by its forwarding the notification of a suspected criminal offence, and it took up such activities at its own initiative

as well (based on reports of irregularities disclosed by media outlets). In total, the State Commission monitored criminal proceedings in approx. 58%<sup>1</sup> of the total number of cases processed.

## Examination of closed cases

The State Commission is also entitled to examine the correctness of actions taken and assessments made by a public prosecutor at the pre-trial stage in cases ended with a decision on the merits: a decision refusing to initiate proceedings or a decision to discontinue proceedings. The State Commission took such steps both in response to requests received and at its own initiative (based on reports of irregularities disclosed by media outlets). Requests for the examination of closed

cases included requests for the verification of decisions that ended the proceedings and for the examination of procedural correctness. In the reporting period in question, cases belonging to this category accounted for approx. 29% of all cases reported and processed *ex officio* by the State Commission.

## Reports on so-called various cases

In the reporting period in question, the State Commission received submissions which were not

reports within the meaning of Article 22(1) of the Act. In such cases, whistle-blowers raised the topic of sexual

<sup>1</sup> This figure includes forwarded cases (30%).

abuse of children in general, asked questions about tasks and competences of the State Commission, requested information about how a criminal event should be reported to the State Commission and what actions can be taken by the State Commission in response thereto. This group also covers correspondence that included opinions of its authors, including opinions on sexual abuse of children. Some topics raised remained outside the statutory competences of the State Commission.

The examples are as follows:

- a. widely understood family matters, including cases related to care and educational circumstances of

a minor and – in a large majority – parents’ disputes over custody and contact,

- b. cases concerning suspicion of other criminal offences than those against sexual liberty and decency against a minor under the age of 15 years,
- c. sexual violence against minors who were at least 15 at the moment when the offence was committed.

This type of correspondence accounted for approx. 13% of the total number of cases received by the State Commission.

## Cases taken by the State Commission at its own initiative (*ex officio*)

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Apart from cases reported, the State Commission also takes up cases described by media outlets. In such circumstances, the sources of information include information websites, press articles, film materials or web portals. In the reporting period in question, the State Commission processed at its own initiative 48 cases concerning sexual activities against minors

under the age of 15 years. In total, since the State Commission started receiving reports, i.e. 24 November 2020, it has been conducting 81 cases at its own initiative.

## Who reports cases to the State Commission most often

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As far as the person reporting a criminal offence consisting in sexual abuse of a child is concerned, the cases reported to the State Commission in the reporting period included:

- a. 54 cases initiated as a result of reports made by victims themselves,
- b. 78 cases initiated by the parents of minor victims,
- c. 14 cases reported by persons who were relatives by blood or affinity to victims,
- d. 2 cases initiated by clergy members,
- e. 5 cases reported by NGOs,
- f. 49 cases reported by non-relatives,

- g. 5 cases reported by NGOs,

- h. 49 cases reported by non-relatives.

In the remaining 48 cases, the State Commission took steps *ex officio*, which means that there was not any person filing a report.

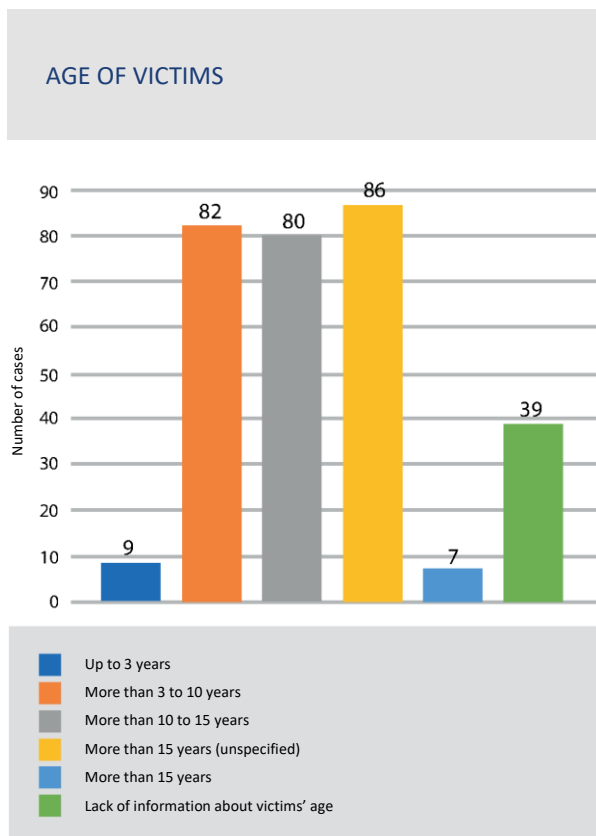
As for the gender of victims, 161 of victims were girls and 114 were boys. In other cases, it was impossible to determine the victim’s gender based on the data provided. This happened predominantly in cases related to cybercrime.

## Subjective criterion

As far as the age of victims is concerned, the following groups may be distinguished in the reported cases:

- a. 257 cases (97%) in which victims were under the age of 15 years at the moment when a criminal offence was committed,
- b. 7 cases (3%), in which the age of minor victims at the moment when a criminal offence was committed was determined to be above 15.

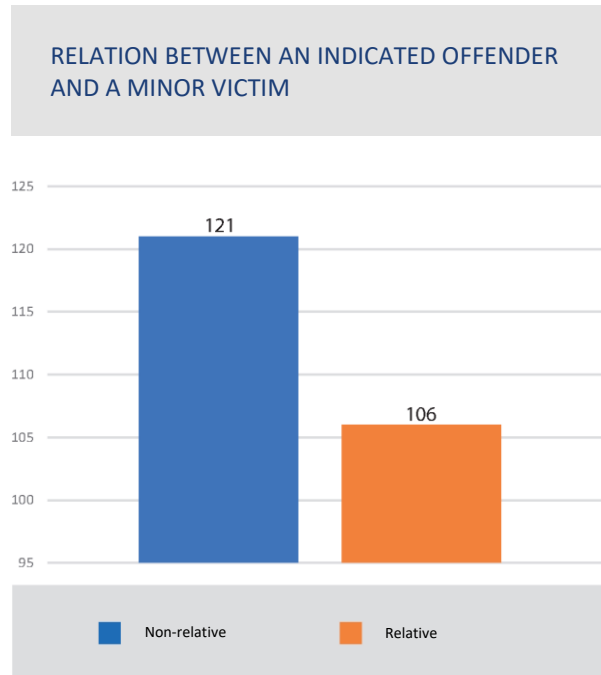
In the remaining 54 cases, the age of victims was not known at the stage of filing a report with the State Commission.



**Figure 3.** Age of victims

As for the analysing the gender of offenders, it needs to be emphasised that in a vast majority of cases (approx. 96% of reported cases) persons indicated as perpetrators of criminal offences against sexual liberty and decency against minors under the age of 15 years were men (265 persons). 10 women were indicated as

potential offenders, i.e. they accounted for approx. 4% of reported cases.



**Figure 4.** Relation between an indicated offender and a minor victim

An important criterion to be taken into account when describing cases reported to the State Commission as part of individual proceedings is a criterion of relation between a child and a perpetrator of sexual abuse.

As for the relation between a victim and an indicated offender, with the criterion of kinship taken into account, approx. 38% of cases pertained to the offences committed in a family or home environment.

In 70 reported cases, a parent was indicated as an offender, in 36 cases it was another person related or affiliated to the victim, including a sibling (4 cases), grandparents (16 cases), more distant family members (16 cases).

In 21 cases, indicated offenders were persons who were not related to the child and whom the child had not known before. In 13 cases, an offender was not indicated at the stage of filing a report to the State Commission.

<sup>2</sup> In the event of issuing a non-appealable decision refusing to initiate proceedings or discontinuing proceedings due to the statute of limitations applicable to criminal liability for paedophilic crime, a public prosecutor or the competent court forwards the case together with the case file to the State Commission.

It transpires from the analysis of cases received by the State Commission in the reporting period in question that offenders who are not relatives, but have a sort of relation with the minor victim include among others: teachers/caretakers (9 cases), sport coaches (6 cases), doctors (2 cases), clergy members (57 cases), representatives of other religious organisations

(5 cases), parent’s partners (17 cases), friends of the family (6 cases), neighbours (19 cases).

In 31 cases, an offender was indicated, but at the stage of reporting no data were submitted on the relation between a victim and an indicated offender.

## Subject matter criterion

An important criterion according to which cases received by the State Commission in the reporting period may be classified is the modus operandi of an indicated offender (including the place in which the offence happened).

In a majority of cases, accounting for approx. 91% reported cases, offenders acted in an offline environment. Approximately 9% of reported cases covered criminal conduct in cyberspace.

## Legal qualification of criminal offences adopted by authorities conducting criminal proceedings

Cases taken up and processed by the State Commission may also be classified according to the criterion of legal qualification adopted by authorities conducting proceedings at specific stages. The section below presents figures illustrating the legal qualification of criminal offences adopted in criminal proceedings in which the State Commission remained interested.

In the reporting period in question, the State Commission monitored a total of 303 pending criminal proceedings, including 66 at the pre-trial stage (when reading the data presented it needs to be taken into account that one case may cover more than one criminal offence, which is why the number of legal qualifications exceeds the number of cases).

In 46 cases (pending or closed), the State Commission notified supervisory public prosecutors of irregularities it identified.

### LEGAL QUALIFICATION OF CRIMINAL OFFENCES

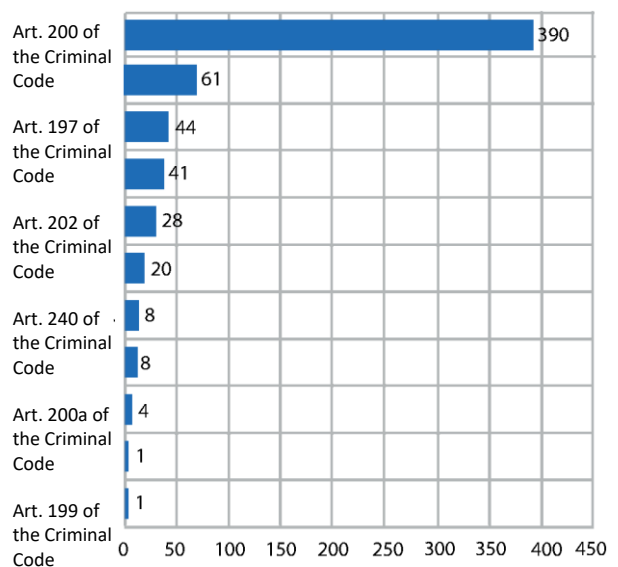


Figure 5. Legal qualification of criminal offences

In 6 cases, a request was made to make the proceedings subject to line supervision, in 20 cases the State Commission filed a request for the reopening of closed proceedings ended with a non-appealable decision or ruling. In 20 other cases, it specified irregularities without any additional requests.

As yet, according to the replies sent to the State Commission, the requests of the State Commission were granted in 20 cases (in 13 cases a public prosecutor issued a decision to reopen proceedings, and in 3 cases the proceedings were made subject to line supervision, in 1 case a public prosecutor decided to reopen proceedings and made them subject to line supervision, while in 3 cases a higher-level prosecutor issued guidelines addressed to subordinate prosecutors to eliminate irregularities in future proceedings).

In the reporting period, the State Commission carried out monitoring activities in respect of court proceedings in 66 cases.

As far as the cases ended with a non-appealable decision or ruling are concerned, the State Commission examines both the stage of pre-trial and trial. In 46 cases, having received a request for case files from the State Commission, public prosecutors decided to supplement previously closed proceedings.

## The State Commission's participation in criminal court proceedings as an auxiliary prosecutor

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In the reporting period in question, the State Commission declared its will to join the proceedings as an auxiliary prosecutor in 12 proceedings pending before the court. In total, from 24 November 2020 to 30 June 2022, the State Commission took part in proceedings in this capacity in 15 cases. It should be emphasised that the State Commission acted exclusively upon the consent of a victim or their representative.

Case status: in one case the proceedings were ended with a non-appealable judgment, in 3 cases a judgment could still be appealed. In four cases, proceedings are pending before a second instance court. In two of them the State Commission lodged an appeal against a ruling delivered by the first-instance court, while in the other two it joined the case as an auxiliary prosecutor at the stage of appeal.

In each case where an offender was convicted for a crime against sexual liberty against a minor under the age of 15 years, the State Commission acting as an auxiliary prosecutor filed a request for an obligation to redress the damage or compensate for harm suffered by the victim. In all proceedings that ended with judgements of conviction the court granted the requests of the State Commission in this regard.

The State Commission took part in civil proceedings as a trusted person.

The State Commission cannot declare its will to participate in civil proceedings with rights equal to those of a party as such a solution is not provided for by the provisions of the Act or the civil law procedure.

However, in the reporting period in question, the State Commission took part in civil proceedings acting as a trusted person following a request of an aggrieved party.

Requests to the Public Prosecutor General to lodge an extraordinary complaint or cassation against non-appealable judgments that ended proceedings in the matter of sexual criminal offences against minors under the age of 15 years.

Since 24 November 2020, when reports started being received, the State Commission lodged the total of 7 requests to the Minister of Justice and the Public Prosecutor General, including 5 in the current reporting period (3 requests for cassation and 2 requests for extraordinary complaint).

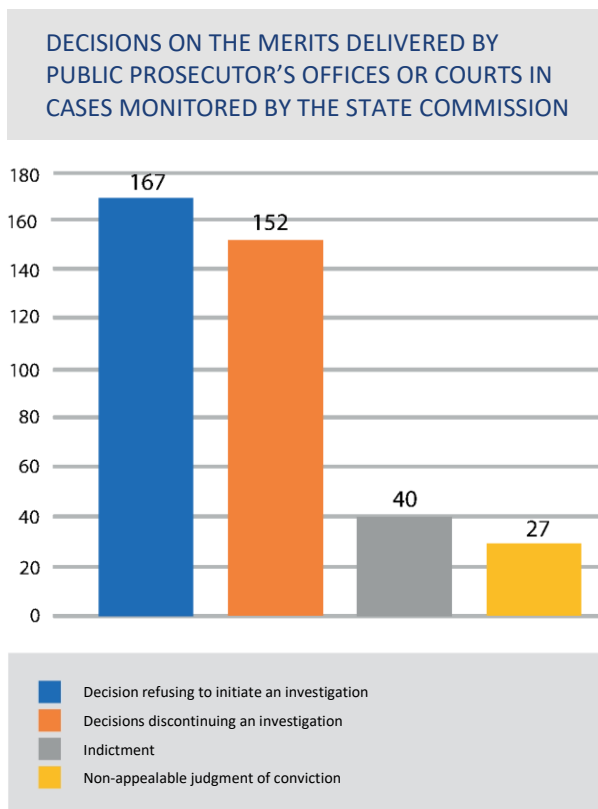
Two requests for cassation concerned judgments of conviction, while one request concerned a decision of a district court on the interlocutory appeal against a decision issued by a public prosecutor to discontinue an investigation.

Until now, two requests for cassation lodged by the Public Prosecutor General in response to the initiatives of the State Commission were examined by the Supreme Court. In both cases, the Supreme Court shared the opinion presented in the State Commission's requests for cassation and it reversed the contested judgments, and remitted the cases to district courts for reconsideration.

## Decisions on the merits delivered by a public prosecutor or the court in cases monitored by the State Commission

In all cases reported or taken up by the State Commission at its own initiative, a public prosecutor or the court issued the following decisions on the merits:

- a. decisions refusing to initiate an investigation – in 167 cases, including due to the statute of limitations – in 95 cases,
- b. decisions discontinuing an investigation – in 152 cases, including due to the statute of limitations – in 61 cases,
- c. indictment – in 40 cases,
- d. non-appealable judgment of conviction – in 27 cases.



**Figure 6.** Decisions on the merits delivered by public prosecutor's offices or courts in cases monitored by the State Commission

The most popular legal basis provided by public prosecutors for refusing to initiate an investigation was the statute of limitations. Determinations that an act fails to satisfy the elements of a criminal offence or that, according to the statutory act, the offender does not

commit a criminal offence ranked the second. The next in the ranking was the determination that the offence in question was not committed or that there is no data to sufficiently prove that it was committed.

The most popular legal basis for discontinuing an investigation was a finding that the offence was not committed or that there is no data to sufficiently prove that it was committed, and the determination that it falls under the statute of limitations. The next reason for discontinuance was lack of elements of a criminal offence or an assumption that the offender does not commit a criminal offence.

Irregularities identified by the State Commission during the pre-trial stage.

The following shortcomings should be mentioned as the most important or the most repetitive:

- a. related to legal representation of a minor victim,
- b. related to the non-exhaustion of evidence initiative,
- c. related to taking procedural steps in a dilatory manner,
- d. related to the legal qualification of a criminal offence committed by a person indicated as the offender,
- e. related to reasons for discontinuance or selection of the legal basis for discontinuance,
- f. related to the serving of a procedural decision.

# 4.

## EXPLORATION OF A POSSIBILITY TO STUDY THE TOPIC OF CHILD SEXUAL ABUSE

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The exploration of further contexts of child sexual abuse is a long-term process, which requires the specification of areas that spark a special interest among researchers. It is necessary to provide an initial assessment of facts and formal aspects, in particular with respect to activities taken by entities and organisations who have contact with minors for professional reasons. In the last reporting period, i.e. between 1 July 2021 and July 2022, the State Commission on many occasions addressed institutions and organisations whose employees, representatives or persons otherwise linked may have contact with minors under the age of 15 years. The queries may be divided into two main groups.

These were addressed to:

- institutions and organisations whose representatives/employees have professional contact with children on a daily basis. Written

questions were sent to: teachers, sport persons, scouts, doctors, nurses, monastic delegates responsible for the protection of children and the youth, artists and Christian denominations. Questions concerned registered cases of child sexual abuse, implemented procedures, response procedures taken in this regard and prevention measures.

- Experts working with persons who experienced sexual abuse in their childhood or with the perpetrators of paedophilic crimes. Written questions were sent to: mental health facilities – hospitals, health centres, patients’ ombudsmen of psychiatric hospitals, sex therapists. The questions concerned the most important issues they encountered in their practice.

### Initial conclusions based on responses received

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The initial assessment of the situation that may be based on the actions taken and responses received makes it possible to draw the following conclusions:

- Organisations and institutions respond to the questions of the State Commission with a diversified intensity. On the one hand, we have boards of education or nurses’ chambers which responded to the questions asked in

majority. On the other hand, few sport associations, scout organizations, monastic delegates or artists’ unions provided answers to the State Commission.

- The issue of child sexual abuse was not in the area of interest of some professional disciplinary bodies, e.g. it transpires from all responses provided by doctors that since 2017



medical courts have not examined any violation of ethics by doctors on the suspicion of sexual abuse of a minor under the age of 15 years. Such cases, however, have been reported by media outlets. The State Commission is also processing cases that concern the representatives of this professional group.

- It is necessary to apply another research methodology in respect of some institutions and organisations. Another form of analytical activity will apply, for example, to analysing the case files of disciplinary proceedings of teachers, and different steps need to be taken given, for instance, the fact that the majority of scout associations did not respond to questions asked by the State Commission.

- A question needs to be asked about effective research tools in the case of institutions which refuse to provide documents for analytical purposes. For instance, the Holy See expects international legal measures to be taken in each case which is a subject matter of interest to a judicial body. This position actually hampers the collection of research material. Currently, it seems essential to create in Poland an independent, intra-Church forum which, equipped with adequate legal powers (and supported, for instance, by external experts) will analyse how respective Church institutions and their representatives responded in the past to cases related to child sexual abuse.
- It should be noted in the context of religious organisations that it is necessary to continue an in-depth analysis of cases of child sexual abuse committed by representatives of religious/Christian communities other than the Catholic one. So far this matter has not been duly researched.

# 5.

## EDUCATIONAL AND PREVENTION ACTIVITIES

In the second year of its existence the State Commission took extensive actions in the area of education on sexual abuse and prevention of sexual crime against child and the youth. Some activities have been targeted at local communities, some have been targeted at specific social groups, while others were designed for the society as a whole and included international cooperation. This

wide scope of activities is the result of, in particular, research work performed at the early stage of the State Commission's existence and it is a response to issues identified at that time and issues disclosed later.

### First social campaign *#RozmawiajReaguj (#TalkReact)*



Building upon the results of a survey presented in the *First Report* of 2021, the State Commission launched a social campaign to make adults who have contact with children aware that a child who has been sexually abused is never guilty of what happened, and the entire responsibility always lies with an offender. The campaign based on the *#TalkReact* slogan was addressed to all adults who have contact with children, in particular to adults from towns with up to 50 thousand inhabitants and villages. The main message was that the proper reaction of adults after a case of sexual abuse is discovered is essential to decrease the trauma for a child.

The campaign was carried out online in December 2021 and May 2022. In total, it lasted 7 days in 2021 and 21 days in May 2022. Campaign banners were displayed in this period more than 23 million times. With the level of 63.4%, the visibility of the campaign in December 2021 was higher than the market average. The main target of the campaign run from 9 to 29 May was 7 million views. After 21 days, the level of 9,374,284 views was achieved.

## Wide-ranging prevention training

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The State Commission decided to provide training in the area of sexual abuse prevention to rural communes, urban communes and mixed (rural and urban) communes. Local leaders will be invited, i.e. representatives of local governments and NGOs, women from country housewives' club, men from volunteer fire fighting brigades and others. The selection of participants is a consequence of a belief that such persons, due to their position and social trust, may become effective in actions for protecting children taken by small communities.

During the planned training, participants will have learnt the basic topics in the area of child sexual abuse. The aim of the training is to make adults from small towns and villages more sensitive to harm suffered by children and more responsible for their fate. It is in these environments in which, according to the First Report of the State Commission, sexual abuse against minors occurs the most often.

As part of educational work, brochures are prepared to reach out with information, educational and prevention content to a very large number of recipients. The brochures will be distributed in education facilities, healthcare facilities, social welfare facilities and police stations in rural areas and in towns inhabited by less than 50 thousand people. A psychological education brochure will be addressed mainly to parents, guardians and staff. It will describe the types of sexual crime against children, symptoms of sexual abuse and forms of support that needs to be provided to a child if a crime against the child is suspected. Another brochure is being developed with the intention to present, in a simple graphic form, information about the competences of the State Commission, the scope of its activities and support it provides.

## Cooperation with the Ministry of Justice

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The State Commission took part in a meeting that inaugurated the work of the Group for Combating Crime against Sexual Liberty and Decency at the Ministry of Justice in November 2021. Since then the State Commission has taken part in all meetings of this group and has been involved in its work.

At the meetings of the group, the State Commission repeatedly tabled projects related to: the necessity to extend the protection of minors against new types of crimes, such as the making of a naked image of a child public to sexually satisfy oneself or a third party and contacting a minor via a telecommunication network or the Internet to sexually abuse him or her solely in cyberspace. The State Commission raised also such issues as: giving priority to criminal cases related to child sexual abuse, mandatory assignment of an attorney to a victim, fast-track examination of procedural requests, including a request for the appointment of a court-

appointed guardian for a minor victim, mandatory sex therapist's opinion concerning a perpetrator of sexual criminal offences committed against a child and referrals for addiction therapy applicable to the perpetrators of sexual criminal offences committed under the influence of alcohol, organising training and opening specialised courses to expert witnesses providing opinions in criminal cases, increasing the competences of lawyers in the domain of this issue and the effects of child sexual abuse.

As yet, three meetings have been held by the group. Several documents were drafted to sum up its work and outline a plan for the future. The representatives of the State Commission take active part in the work of the group and strive for taking into account a number of postulated changes and recommendations published in the *First Report* of the State Commission.

## Cooperation with the Ministry of Sport and Tourism

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Cooperation with organisations supervised by the Ministry of Sport and Tourism was established on 7 September 2021, when the State Commission addressed 68 Polish sport associations and asked them about procedures in place to prevent sexual violence against children and the number of identified cases of sexual abuse offences against minors under the age of 15 years. 24 Polish sport associations replied to the query of the State Commission as at 10 May 2022. After an initial analysis of the material received, the State Commission decided that it was necessary to cooperate with the Ministry of Sport and Tourism. Members of the State Commission had two meetings with representatives of the Ministry and an interinstitutional working group was established.

The cooperation with the Ministry of Sport and Tourism covers strategic action areas and the possibilities of strengthening a child protection system in sports through legislative solutions, as well as changes in good practices adopted by Polish sport associations. The State Commission presented its proposed changes to the *Code of Good Governance in Polish Sport Associations*. It was also invited to table amendments for the purpose of the planned amendment of the Act on Sport. Further cooperation of the State Commission and the Institute of Sport covers joint research on the scale of child sexual abuse in the area of sport in Poland.

## International contacts in the area of prevention targeted at potential offenders

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When analysing foreign strategies of combating child sexual abuse, the State Commission found one of German projects particularly interesting, which is why it contacted the representative of the Charité Medical University in Berlin, an institution managing the self-help platform called Troubled Desire (reine Selbsthilfe-Plattform). The platform is an auto-diagnosis tool for people who identify in themselves and feel sexual interest in children and the youth, and its ultimate objective is to minimise the risk of sexual criminal offence being committed against children and to help people sexually attracted to children so that their drive is not acted on by means of distorted sexual behaviour.

The State Commission asked the Charité team questions about the financing of psychological support and eligibility for such support, details of support procedures and methods used, as well as the potential effects of using the platform. The answer provided by

a representative of the Charité indicates that the platform is not financed from health insurance, which is why interested persons should contact a therapist (on their own). According to the information received via e-mail from Charité on 2 March 2022, it is probable that the Polish version of the website will be available by the end of this year. Having analysed the material provided by the representative of the Charité and the content of the platform itself, the State Commission is considering whether it is possible to create similar support tools aimed at potential sexual violence offenders to provide them access to specialised support and help them refrain from acting on their drive. Currently, consultations are carried out in Poland with specialists in these areas to explore possible forms of adapting this idea to Polish contexts.

## Participation in the 47<sup>th</sup> Congress of Polish Psychiatrists: “When science meets practice”

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The State Commission took an active part in the 47<sup>th</sup> Congress of Polish Psychiatrists which took place at the Medical University of Łódź on 8–11 June 2022 under the

patronage of the Polish Psychiatric Association. The presentation of the State Commission was focused on the support options that it can provide both to patients

traumatised by sexual abuse experienced in childhood and to specialists who work with such patients.

Relevant in the field, the results of the State Commission's study on the profile of offenders convicted for child sexual abuse, selected court proceedings and recommendations based on the results

were also presented. Data come from the study on sexual crime against children under the age of 15 years in Poland conducted by the State Commission on the basis of case files of closed criminal proceedings from 2017–2020.

## Compensation measures

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A public opinion survey commissioned in Poland by the State Commission focused on sexual abuse (FC-BOS 2021) shows that 90% of respondents believe that based on a judgment of conviction concerning child sexual abuse a victim should get compensation for non-pecuniary and pecuniary damage from the offender. In response to social needs voiced in such a manner, and primarily in view of the best interest of victims, in 2021 the State Commission started another stage of research on compensatory measures conducted on the basis of case files from district and regional courts (civil divisions). It is another phase of this study as in the first year of its existence the State Commission analysed the scale of compensations for non-pecuniary damage, compensations for pecuniary damage, and exemplary damages in criminal proceedings. The main sources of data for research are as follows: the analysis of the case files of civil law proceedings, as well as data from the ministerial Justice Fund and centres financed through the Fund that provide support to people harmed by criminal offences. The objective of research is to check, among others, what amounts are received by people who experienced sexual abuse in their childhood.

As part of the research, the State Commission sent questions to the Justice Fund and to the centres financed through the Fund that provide support to victims, it examined solutions applied in other countries and it sent questions to all civil divisions of district and regional courts in Poland, requesting information about the number of cases for compensation measures on the ground of child sexual abuse in which compensation measures were granted during the last five years. It also requested that the case files of such cases be sent to it. Case files are analysed with the use of a mixed method, and the study results will be published in coming months in a substantive report.

# 6.

## CASES REFERRED FOR EXPLANATORY ENQUIRIES

### 1. Selected characteristics of explanatory enquiries

a. The only condition that needs to be satisfied for an explanatory enquiry to be launched is to have criminal proceedings ended with a non-appealable decision due to the statute of limitations and to have the case file presented to the State Commission.

b. The Act does not provide for any limitations as for the period in which criminal offences could have been committed or the statute of limitations, which means that explanatory enquiries may be conducted with respect to all offences, no matter when committed and irrespective of whether they are no longer punishable given the statute of limitations.

One of the cases reported to the State Commission concerned an offence committed in 1961. The case was notified in 2020, i.e. 49 years after it fell under the statute of limitations. According to the State Commission's knowledge, this case is the oldest criminal offence and the earlier offence to be time-barred under the statute of limitations.

c. Explanatory enquiries are initiated and conducted *ex officio*. The public prosecutor or the competent court are required to submit a non-appealable decision refusing to initiate an investigation or discontinuing the proceedings due to the statute of limitations together with the case file.

It is essential that law enforcement authorities or the State Commission are notified of a criminal offence in the first place. As a rule, this is the only step that needs to be taken by an aggrieved party or another person who possess knowledge about the criminal offence to ensure that an explanatory enquiry may be conducted in the future.

Other steps are taken by the public prosecutor's office or the competent court and if proceedings are ended with a non-appealable decision due to the statute of limitations, it is the State Commission that takes steps.

Thanks to this solution the burden of proving that a person indicated as an offender committed a criminal offence of sexual abuse does not rest with an aggrieved party, which could have been extremely tedious for many reasons, in particular in the context of reliving traumatic events from the past. The State Commission is entitled to significantly supplement evidence material included in the case file provided by the public prosecutor or the competent court, which is often limited, in particular when a decision refusing to initiate an investigation had been issued.

The body of evidence collected by a public prosecutor or the competent court may also be assessed differently by the State Commission as part of an explanatory enquiry, in particular if it carries out additional activities and supplements the evidence material.

d. If a person indicated as the offender refuses to take part in procedures taken as part of an explanatory enquiry, this does not prevent the State Commission from issuing a decision to make an entry in the Register of Sex Offenders if other evidence provides grounds for such an entry to be made. There is no risk, then, that a person indicated as the offender, through their actions or omissions, could intentionally prolong the explanatory enquiry.

- e. Neither the age of an aggrieved party, nor their death rules out the possibility of an enquiry being initiated by the State Commission. In other words, the death of an aggrieved party does not render an explanatory enquiry impossible.

The analysis of cases received by the State Commission shows that aggrieved parties are of various age, from 28 to 73 years old. The largest group of aggrieved parties are people between 30 and 39 years. The oldest aggrieved party is 73 and this person reported a criminal offence at the age of 71, i.e. 59 years after it was committed. The analysis of case files also shows that the shortest period of time between the aggrieved party's coming of age to the notification of a criminal offence is more than 6 years, while the longest period is 53 years.

If an aggrieved party dies, even before a report is filed, this does not prevent conducting an explanatory enquiry or issuing a decision to make an entry in the Register of Sex Offenders. The analysis of case files carried out by the State Commission indicates that in two cases the aggrieved parties no longer live. In one case, the aggrieved party died before a decision refusing to initiate an investigation was issued and law enforcement authorities were notified 10 years after the person's death. In the second case, the aggrieved party died a few months after law enforcement authorities were notified of a criminal offence, but before proceedings were ended with a non-appealable decision. The case was referred to the State Commission more than 2 years after the aggrieved party's death.

- f. Information received during hearings are secrets protected under law and hearings are carried out exclusively in chambers, without any third parties. No information about activities with the persons invited to hearings and no personal data of such persons are published or disclosed to third parties. If an entry is made in the Register, the data of an aggrieved party are not included in the entry. A decision to make an entry is forwarded to the Information Office of the National Criminal Register only after the anonymization of the aggrieved party's data.

Corporate investigations, including disciplinary proceedings, do not affect explanatory enquiries conducted by the State Commission. An explanatory enquiry is initiated irrespective of whether such corporate or disciplinary proceedings have been conducted.

- g. The State Commission is not bound to any extent by the determinations made by disciplinary bodies. Disciplinary proceedings or determinations made within them do not prevent explanatory enquiries. Enquiries before the State Commission may be conducted irrespective of disciplinary proceedings and are not affected by the stages of disciplinary proceedings or determinations made within such proceedings.

The analysis of cases received by the State Commission shows that 53 out of 122 cases concerned church proceedings and in 2 cases other disciplinary proceedings were pending.

## 2. Explanatory enquiries on the limitation of claims for redress

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- a. Claims concerning the redress of damage caused by a criminal offence are subject to limitation. Given the limitation, a person entitled to make claims is required to act with due diligence and take actions in their own interest to avoid their claim being barred, in particular in the context of respecting the time-limit applicable to an action for payment.
- b. Claims on the grounds of damage to persons are barred under the statute of limitations after three years of the date on which the aggrieved party

became aware of the damage and of the person required to redress it.

- c. If damage consisting in depression disorders or disorders of sexual life that feature the elements of health disorder becomes apparent after 20 years of the day of a criminal offence, the aggrieved party will be entitled to seek for redress.
- d. The position of a person harmed by a criminal offence who would like to seek redress after a long period of time after the criminal offence is also

- improved by an option to determine civil liability of the defendant for the future (under Article 189 of the Code of Civil Proceedings).
- e. If an aggrieved party brings an action for payment after the time-limit under the statute of limitations, the court may consider dismissal of the case due to the limitation of the claim sought only in response to a defence of the respondent as long as it is filed on time.
- f. The ending of an explanatory enquiry by the State Commission and a non-appealable entry to the Register of Sex Offenders confirms the existence of a criminal offence against sexual liberty against a minor and circumstances in which it was committed.
- g. If evidence taken in an explanatory enquiry is used in a civil action for payment, it will help the aggrieved party to prove the indicated offender’s prerequisites of liability.
- h. It is particularly important in proceedings conducted a long time after a criminal offence, typical of damage that arises from harm caused by a criminal offence experienced in childhood (when a body conducting proceedings discontinues criminal proceedings or refuses to initiate proceedings on the ground of the statute of limitations).

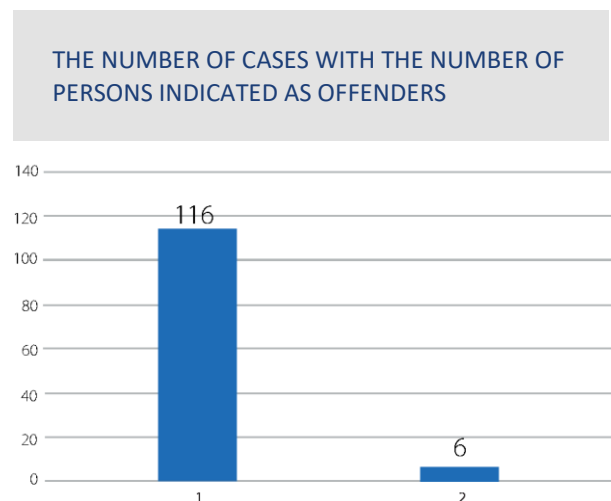
- i. Indicating in an explanatory enquiry that the aggrieved party has been harmed by a crime against sexual liberty allows the civil court to assume that the damage raised by the claimant results from the criminal offence.
- j. There is an interdependency between an explanatory enquiry carried out by the State Commission and the course and objectives of civil proceedings. Both in an explanatory enquiry and in civil proceedings for payment, it is examined whether a criminal offence against sexual liberty against a minor was committed and the offender is determined.
- k. The State Commission is entitled to carry out evidence procedure at its own initiative to a much larger extent than the court in civil proceedings. It may also use tools available to law enforcement authorities, which are not available in civil proceedings. A non-appealable decision to make an entry in the Register of Sex Offenders that ends the enquiry confirms that a criminal offence occurred and indicates the offender.
- l. For this reason, taking part in an explanatory enquiry may make it easier for the aggrieved party to obtain from the offender means necessary to redress the damage caused by the criminal offence.

### 3. The description of cases referred for explanatory enquiries

The description below is based on 122 cases received by the State Commission. Some cases covered more than one offence and for this reason the number of offences does not correspond to the number of cases.

#### 3.1. Persons indicated as offenders and persons indicated as victims

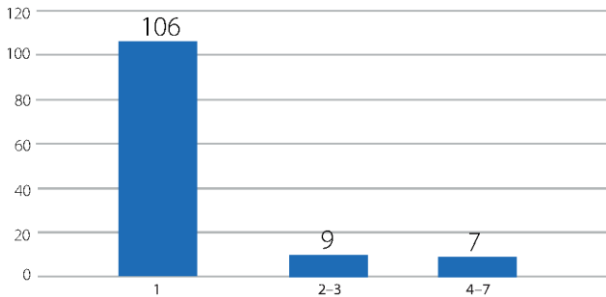
Explanatory enquiries usually concern one minor victim, however, there are also cases with multiple victims.



**Figure 7.** The number of cases with the number of persons indicated as offenders



THE NUMBER OF CASES WITH THE NUMBER OF PERSONS INDICATED AS VICTIMS

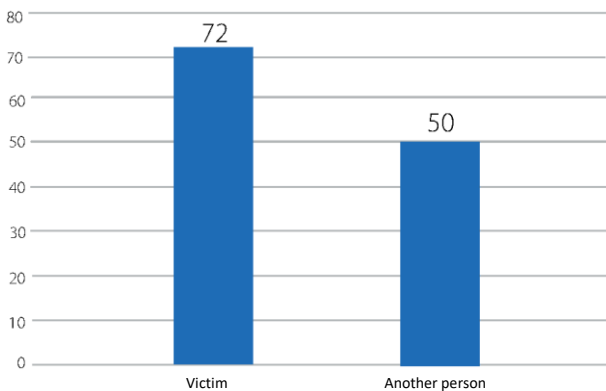


**Figure 8.** The number of cases with the number of persons indicated as victims

**3.2. Notifying entities and the notified entity**

Among 122 cases received by the State Commission, it was relatively the most often victims themselves that notified it of an offence. Other notifying parties included persons related to the victim, but also institutions and clergy members.

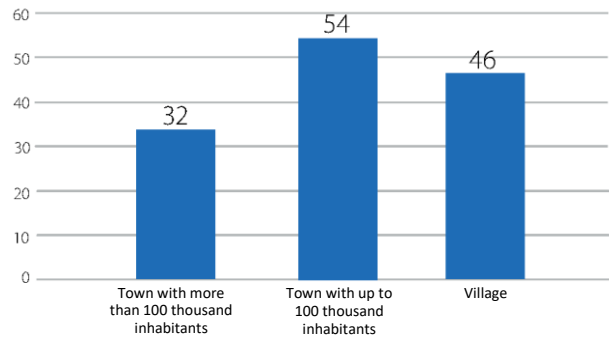
THE NUMBER OF CASES WITH THE PARTY NOTIFYING OF A CRIMINAL OFFENCE



**Figure 9.** The number of cases with the party notifying of a criminal offence

**3.3. Place where the offence was committed**

PLACE WHERE THE OFFENCE WAS COMMITTED WITH THE NUMBER OF INHABITANTS



**Figure 10.** Place where the offence was committed with the number of inhabitants

In the group of 122 cases received by the State Commission, the places indicated relatively the most often were rural areas and towns with up to 100 thousand inhabitants.

**3.4. Legal qualification of offences**

In cases committed in the past received by the State Commission that fell under the statute of limitations (122 in total), the offences examined in criminal proceedings were qualified relatively the most often under Article 200(1) of the Criminal Code or Article 176 of the Criminal Code of 1969 (the previous Criminal Code). The "Others" group includes offences qualified under Article 198 of the Criminal Code, Article 203 of Regulation of the President of the Republic of Poland of 11 July 1932, Criminal Code, Article 169 of the previous Criminal Code and Article 170 of the previous Criminal Code. In some cases, one offence was classified under at least two provisions of the Criminal Code., e.g. Article 199(2) and Article 200(1) of the Criminal Code.

LEGAL QUALIFICATION OF OFFENCES

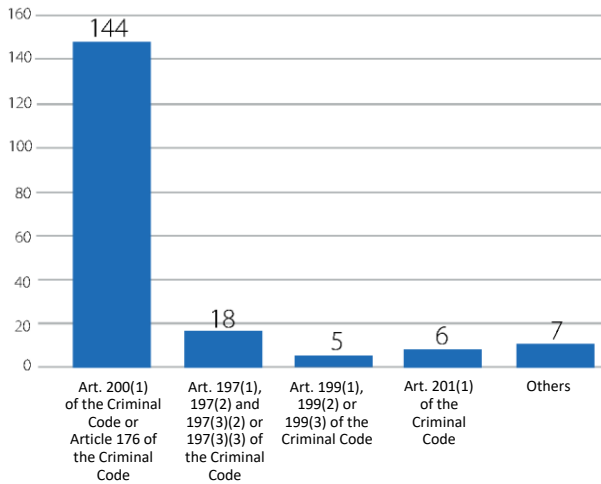


Figure 11. Legal qualification of offences

3.5. Time when the offence was committed and time when the offence was notified

In 122 cases reported to the State Commission, it was relatively most often the case that the offence was committed in the period in which the Criminal Code of 1969 applied. In 5 cases, the offence was committed when the Criminal Code of 1932 applied.

TIME BETWEEN THE OFFENCE AND THE NOTIFICATION

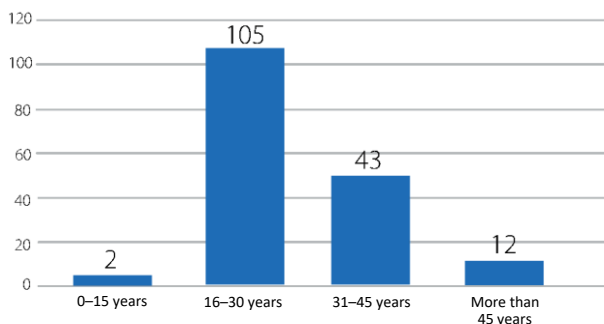


Figure 12. Time between the offence and the notification

In a vast majority of cases under scrutiny, more than 15 years have passed between the offence and the notification of law enforcement authorities or the State Commission. The earliest of notifications was received more than 12 years after the offence was committed, while the latest after almost 59 years.

3.6. Repetitive nature of offences

NATURE OF OFFENCES IN TERMS OF THEIR REPETITIVENESS

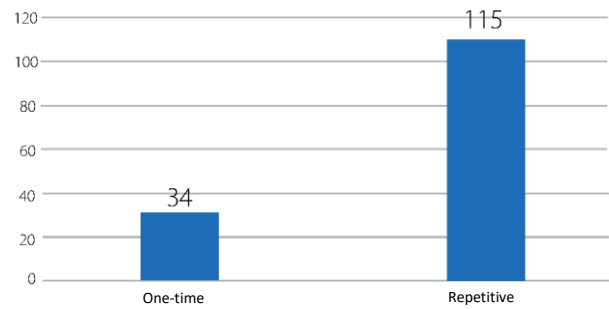


Figure 13. Nature of offences in terms of their repetitiveness

In 122 cases analysed by the State Commission, the relative majority of acts were repetitive in their nature, i.e. they happened at different points in time.

3.7. Statute of limitations

In the group of 122 cases, the shortest period between criminal liability being time-barred under the statute of limitations and the notification of a criminal offence was 12 days and the longest was almost 49 years. In one case, criminal liability became time-barred during criminal proceedings.

TIME BETWEEN CRIMINAL LIABILITY BEING TIME-BARRED AND THE NOTIFICATION OF A CRIMINAL OFFENCE

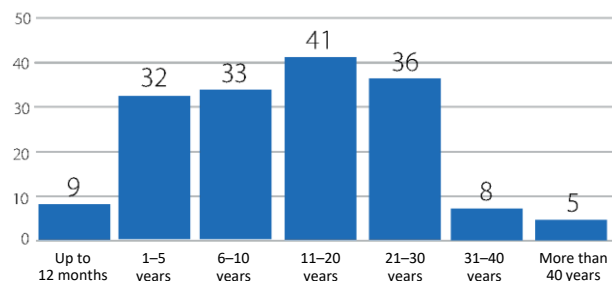
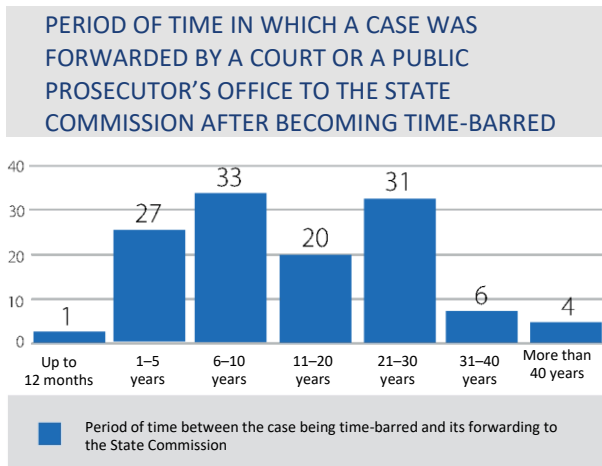


Figure 14. Time between criminal liability being time-barred and the notification of a criminal offence

Courts and public prosecutor's offices are required to forward cases that fell under the statute of limitations since the entry into force of the Act (September 2019), however, the actual possibility of forwarding such cases was introduced in November 2020. Since then, only one

case has been forwarded to the State Commission in a period shorter than a year after the case became time-barred under the statute of limitations. The longest period between the time limit under the statute of limitations and the notification of a case to the State Commission was 49 years.

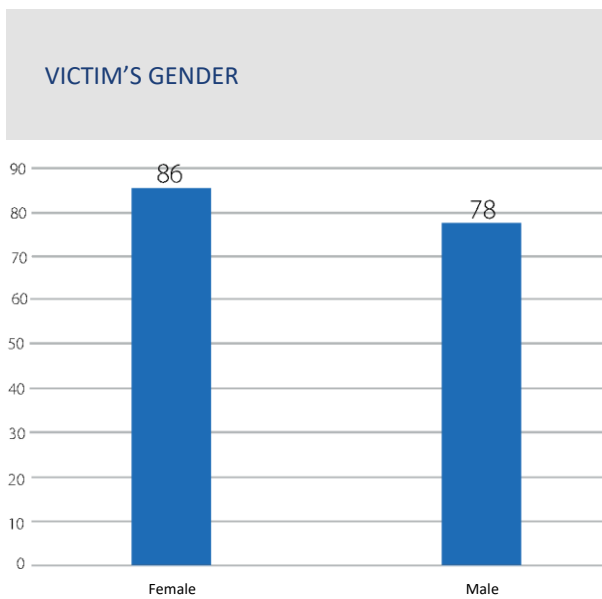


**Figure 15.** Period of time between the case being time-barred and its forwarding to the State Commission

### 3.8. Characteristics of victims

#### 3.8.1. Gender

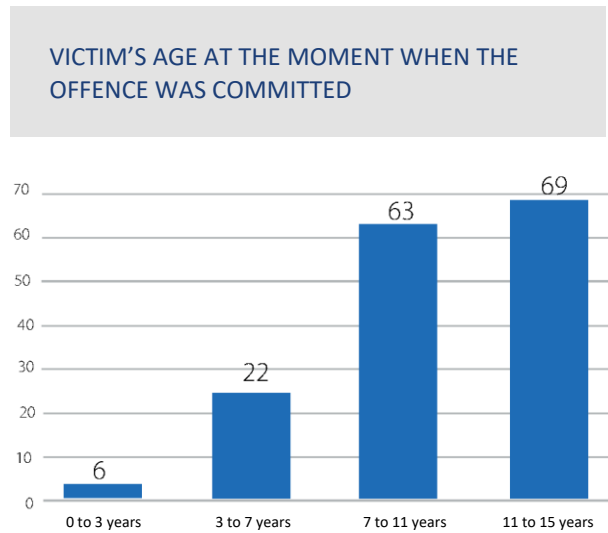
In 122 cases received by the State Commission, victims were both female and male, however, the relative majority of cases concerned women.



**Figure 16.** Victim's gender

#### 3.8.2. Victim's age at the moment when the offence was committed

The figure shows the age of victims in cases where the offender committed criminal acts throughout a longer period of time. In four cases, specific information on the age of victims were missing.



**Figure 17.** Victim's age at the moment when the offence was committed

#### 3.8.3. Victim's current age

The youngest victims are 28, while the oldest victim is 73 years old. Two victims no longer live, while in other cases it was impossible to establish the current age of the victim.

#### 3.8.4. The period of time between the victim's coming of age and the notification of the offence

In the majority of cases described, it was established that the period of time between the victim's coming of age and the notification of the offence was between 10 to 20 years. In 18 cases, it was impossible to determine with certainty when a victim came of age and, consequently, to determine such a period of time.

### 3.9. Characteristics of persons indicated as offenders

#### 3.9.1. Gender

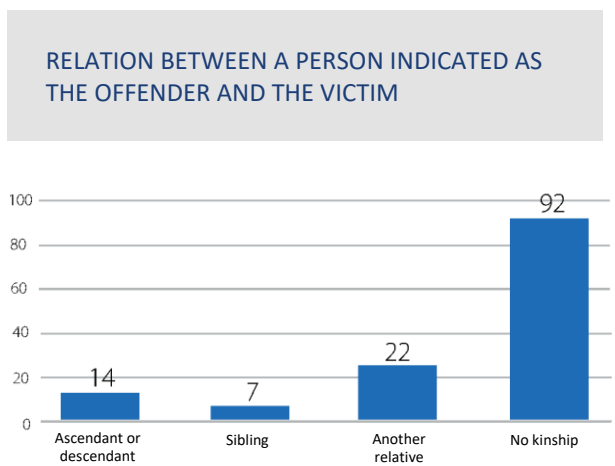
Nearly all offenders were men. Only two women were indicated as offenders. In two cases it was impossible to establish the offender's gender as data in this regard were missing.

**3.9.2. Age at the moment when the offence was committed, incl. if an offender was of age**

The large majority of those indicated as perpetrators of child abuse of a minor under the age of 15 years were of age. In about a dozen of cases it was impossible to state whether such persons were of age or not as birth date information was missing.

**3.9.3. Relation between a person indicated as the offender and the victim (in an explanatory enquiry)**

In a vast majority of cases, persons indicated as offenders were not relatives. The remaining group included siblings, ascendants or descendants, or other relatives (such as a step-father, uncle, cousin, etc.). In about a dozen of cases, data necessary to establish the degree of kinship were missing.



**Figure 18.** Relation between a person indicated as the offender and the victim



## ACTING ON THE RECOMMENDATIONS OF THE STATE COMMISSION

The part below presents the steps taken by the State Commission to implement the State Commission's recommendations included in the *First Report* of July

2021. Selected recommendations from four areas in which changes are necessary are discussed.

### 1. Recommendations for the quality of specialized care

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

The time when a child discloses a fact of sexual abuse is of particular sensitivity. Lack of adequate support in this period may result in secondary harm, as well as difficult and irreversible changes in a child's psyche, and it may increase a risk that information disclosed earlier would be withdrawn even though they are true. This fosters the avoidance of criminal liability by offenders.

##### 1.2.1. Actions taken by the State Commission to implement the recommendation

##### 1.2.1.1. Intervention on the outflow of child psychiatry specialists from public health services

The State Commission sent questions to the Ministry of Health on its planned activities to improve the system of healthcare provided to sexual abuse victims. The letter was sent in response to the information that doctors and therapists from the Child and Youth Psychiatry Clinic at the Institute of Psychiatry and Neurology in Warsaw decided to hand in their resignations. The letter contained a question of whether it was possible to establish a rapid intervention path for children in cases of suspected sexual abuse. In response to the question

asked by the State Commission, the Ministry of Health informed about the ongoing reform of psychiatric and psychotherapeutic system for children and the youth, which should improve the situation in this domain according to the Ministry.

##### 1.2.1.2. Intervention on reduced rates for psychological support

The State Commission is of the opinion that adequate support may be provided only through proper organisational arrangements and adequate financing of specialists. One of activities taken by the State Commission to improve the accessibility of specialists was to launch a series of meetings with expert groups in order to develop the best methods/models to ensure adequate therapeutic support for children harmed by sexual abuse.

The State Commission consistently analyses the accessibility of all forms of help provided to harmed persons. It also strongly opposes a practice of underpricing healthcare services provided by psychiatrists and psychologists. In view of the issues described above, the State Commission pointed out that it was necessary to develop a common ground and it invited representatives of the mental health specialists community to have a dialogue.

### **1.3. Strengthening the core curriculum of the Ministry of Education and Science by adding content related to the prevention of sexual abuse**

It is necessary to ensure that children and the youth have access to reliable and age-appropriate materials on protection against violence and sexual abuse, both offline and online. Minors should be aware of threats, they should know how to identify them, how to avoid them and how to act in the event of a materialised threat.

#### **1.3.1. Actions taken by the State Commission to implement the recommendation**

##### **1.3.1.1. Supplementation of the core curriculum**

According to the State Commission, a good step towards the protection of minors is to include elements of sexual abuse prevention in the core curriculum.

##### **1.3.1.2. Cooperation with the Ministry of Education and Science as part of a working group**

Meetings of a working group composed of representatives of the Ministry of Education and Science and the State Commission are currently held on a regular basis. An educational and prevention programme should be based on the developmental needs of students, with protective factors and risk factors being taken into account.

##### **1.3.1.3. Work on the preparation of actions aimed at staff meetings and parents' boards at educational facilities**

As part of this cooperation, a series of working meetings were held with representatives of the Ministry (Department for Inclusive Education and Upbringing) and the unit supervised by this office, i.e. Centre for the Development of Education. The cooperation is now focused on preparing and implementing cascade training sessions for visiting inspectors, boards of education and staff of continuous professional development centres for teachers. One of its outcomes is also the Safe Holidays campaign aimed at systematic and regular education in the area of such risks which tend to intensify in the period of holidays.

##### **1.3.1.4. Education of students who will work with children in the future**

The State Commission, acting in the best interest of children and taking into account the necessity to pay attention to the problem of child sexual abuse, offered cooperation, among others, to the Polish Accreditation Committee. The first stage of joint actions will include the mainstreaming of the topic of sexuality, sexual violence against minors and the prevention of sexual abuse in higher education curricula.

##### **1.3.1.5. "Education for All" Project**

The State Commission analysed the project of the Ministry of Education and Science titled "Education for All – Legislative and Organisational Framework for High Quality Inclusive Education for All Learners" and provided its comments. The State Commission appreciated the attempts to strengthen the system of support for children through child and family centres; it also voiced its concerns about the potential extension of the period of waiting by children and families who experienced sexual abuse for services and indispensable support.

## 2. Recommendations for preventive measures

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### 2.2. Including the potential perpetrators of sexual criminal offences in the target category for preventive measures

It transpires from the analysis of case files that a significant majority of offenders breached social norms in the past. This may point to the probability of abnormal personality development, which is a risk factor for committing sexual criminal offences in the future. One of the important objectives of sexual abuse prevention is to take steps to prevent potential offenders from harming children.

#### 2.2.1. Actions taken by the State Commission to implement the recommendation

The State Commission started cooperation with Youth Educational Centres (MOW) and Youth Sociotherapy Centres (MOS). As part of this cooperation, the State Commission took part in the 12<sup>th</sup> Assembly of Educational Centres' Management Staff. Participants were acquainted with the research work of the State Commission and its rights. During the Assembly, the staff managing the centres provided information on their work with young people who experienced sexual abuse. Among children in care there are both victims

and offenders, as well as those who are in need of special measures as they experienced the two roles, being both offenders and victims. Participants of the debate pointed out to the State Commission representatives how important it is to have access to training opportunities in the area of prevention and interventions in the context of risks or actual occurrence of sexual abuse. The issue of very limited access to specialised support needed by the youth staying in rehabilitation facilities was also raised.

An important step in extending knowledge about the scale of sexual violence among the children in care of Youth Educational Centres (MOW) was a survey prepared by the State Commission which focused on difficulties in working with children in care and methods of response and which was provided to the heads of such facilities. Questions asked in the survey concerned also the methods of preventing sexual abuse, programmes of work and their perceived effectiveness; it was also possible to present recommendations of best practices based on the practices applied in specific facilities.

## 3. Recommendations on how to deal with the perpetrators

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### 3.1. Introducing post-penitentiary therapeutic measures for prisoners previously sentenced for criminal offences against sexual liberty and decency against a minor under the age of 15 years

The current post-penitentiary support addressed to persons who are released from penitentiary institutions and psychiatry wards with diagnosed psychosexual development disorders or sexual preference disorders is not sufficient. Systematic rehabilitation and therapeutic support may result in a decreased risk of recidivism.

#### 3.1.1. Actions taken by the State Commission to implement the recommendation

The State Commission takes actions aimed at creating real possibilities for persons targeted by the recommendation to take advantage of post-penitentiary

support offered by community psychiatry centres. Currently, there are no such facilities (with a few exceptions). There is no comprehensive proposal of preventive actions targeted at this group. In pursuit of a change in this regard, the State Commission established a close cooperation with psychologists and psychotherapists, psychiatrists and sex therapists. The topic of the need to develop some forms of community support in forensic psychiatry was raised also at the meetings with national consultants in the field of psychiatry, child and youth psychiatry, sex therapy, as well as at the meetings with professional associations and professional self-governments representing such groups of specialists. The issue was also mentioned in the context of two interventions of the State Commission in response to a situation in the National Centre for the Prevention of Dissociative Behaviour in Gostynin.

## 4. Recommendations for procedural changes

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### 4.1. Giving priority to criminal proceedings related to child sexual abuse

Criminal proceedings concerning sexual violence against children should be prioritised both at the pre-trial and trial stage (as it happens in the event of pre-trial detention).

#### 4.1.1. Actions taken by the State Commission to implement the recommendation

To implement the recommendation, the State Commission formed a request to the Minister of Justice and the Public Prosecutor General to change internal legal regulations on the functioning of public prosecutor's office and common courts. The State Commission also pointed out that it was necessary to provide extra protection to children harmed by sexual abuse, also in the area of the right of privacy, protection against social stigmatisation and its further negative consequences. Additionally, the State Commission recommended the appointment of (coordinating) prosecutors at the level of regional public prosecutor's offices to supervise proceedings in such cases.

In response to this letter, the Ministry of Justice informed in two responses that the matters raised by the State Commission are of interest to the Ministry. A proposal to appoint prosecutors to act as coordinators was also approved.



# 8.

## SUMMARY

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In the *Second Report*, covering another year of work, the State Commission has described actions taken and their effects. Activities related to individual proceedings conducted by public prosecutor's offices or courts were noted. In this regard it is essential that the State Commission not only monitors this type of cases, but that this activity brings concrete results. Other domains of activities presented include: research, educational and preventive activity aimed at developing permanent positive social changes in the protection of children's rights against sexual violence.

In its future research work, the State Commission intends to analyse the issues witnessed that raise its concerns. In its daily activities, the State Commission will continue to support harmed persons whose cases are pending before public prosecutors or common courts. Moreover, the State Commission intends to continue to inform the public opinion regularly about: recommendations implemented, its actions and initiatives aimed at implementing permanent changes whose aim will be to protect minors more effectively. Dissemination of knowledge and making the society more sensitive to harm suffered by children is the key element of fighting against sexual crimes.



**THE STATE COMMISSION**  
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Minors under the Age of 15 Years

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