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SEXUAL OFFENCES IN POLAND IN A STATISTICAL PERSPECTIVE – SELECTED ISSUES

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Purpose: to analyse selected statistical data on final convictions for sexual offences in Poland. **Methods:** a statistical method was used to analyse data on the number of final convictions and the types of penalties imposed. **Results:** convictions for sexual offences in Poland represent a small proportion of convictions for all offences in recent years. In 2018, the highest number of convictions among sexual offences concerned the offence of rape (Article 197 of the Polish Penal Code) and sexual acts with a minor under the age of 15 (Article 200 § 1 of the Polish Penal Code – the so-called offence of paedophilia). The indicated sexual offences are in most cases punished with imprisonment, while in 2018 these were mainly imprisonment penalties without conditional suspension of their execution (absolute imprisonment). These penalties in 2018 in most cases did not exceed half of the upper level of the statutory limits of the penalty, and were often adjudicated at the minimum level. **Discussion:** taking into account statistics on convictions for sexual offences, one may come to the conclusion that the threat of such acts is quite low in Poland. However, it should be remembered that sexual crime is stigmatized by a very large so-called ‘dark number’ (committed crimes that are not covered by crime statistics because they are not been disclosed by law enforcement authorities). The majority of convictions concern the most reprehensible sexual offences (rape, paedophilia). It is worth noting that Polish courts are quite lenient towards perpetrators of the indicated crimes.

Key words: sexual offences in Poland; statistics on final convictions.

Introductory remarks. The object of this study is selected statistical data on final convictions for sexual offences in Poland. It is assumed in the Polish penal law literature that sexual offences are prohibited acts under the threat of punishment, which are directly related to the sexual life of a human being and the sphere of sexuality [1, p. 628]. Sexual offences are contained in Chapter XXV of the Polish Penal Code – Offences against sexual freedom and decency [2, 3]. Sexual freedom is the right of an individual to freely dispose of his or her sexual life [4, thesis 1 of the commentary to Article 197 of the PC], while decency in the context of sexual offences is a set of socio-cultural rules governing sexual behaviour in the current society; decency is a general and abstract value, while the offences aimed against it have the nature of the so-called victimless offences

– the object of the attack is not a specific person, but a generally and abstractly understood standard of moral rules [5].

The research purpose is to analyse statistical data and draw conclusions from this data regarding the practice of the application of selected legal provisions on sexual offences. After an initial examination of the published data, detailed analysis has been limited to statistical data on the most frequently committed and most reprehensible sexual offences. This analysis includes data on the number of final convictions in principle from 1999 to 2018. The year 1999 is the first full year of application of the Polish Penal Code of 1997 (instituted on 1 September 1998), while 2018 is the last year for which statistics on final convictions are available. Additionally, the analysis includes data on the type

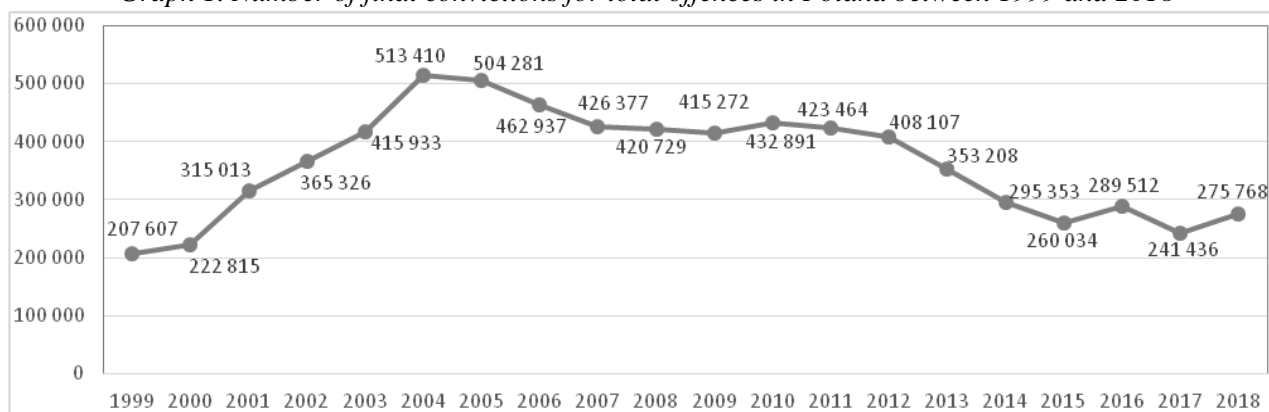
of punishments and the length of imprisonment sentences imposed for selected sexual offences.

The sources of the statistical data include materials prepared by the Polish Ministry of Justice [6]. Data on criminal proceedings initiated by the public prosecutor's office and the Police, as well as data on ascertained crimes, provided by the Police were not used, with one exception (see *Graph 3*), for the analysis, as they refer collectively to individual articles of the PC and not to individual paragraphs in the articles. Additionally, these data points also met exclusion criteria as the method of data collection changed in 2013 and comparison

of this data respectively before and after that date would be difficult.

Research part. Remarks concerning statistical data relating to sexual offences should be preceded by a mention of the state of crime in Poland in general (*Graph 1*). The trend in respect of final convictions for all types of offences was increasing in the years 1999-2004 and the increase was quite high (147% in the indicated six-year period). After 2004, the trend was decreasing; with only a slight increase in 2010, 2016 and 2018 compared to each preceding year (4%, 11%, and 14%, respectively).

Graph 1. Number of final convictions for total offences in Poland between 1999 and 2018



The percentage of convictions for sexual offences in total penal convictions is negligible (compare *Graph 1* and *Graph 2*). For example, it was 0.7% in 1999 and 2018, and 0.5% in 2004 (a record year for the number of convictions). During the period studied, the number of convictions ranged from 1406 (in 2000) to 2538 (in 2004). However, it must be remembered that sexual crime is stigmatized by a very large so-called 'dark number'. The 'dark number' of crimes can be defined as committed crimes that are not covered by crime statistics because they are not been disclosed by law enforcement authorities. According to J. Warylewski, it is estimated that for sexual offences the 'dark number' is 80-90% [7, p. 418], which means that the probably of only one in ten of these types of offences is disclosed. By comparison, it is estimated that the 'dark number' for all crime categories is around 50% [7, p. 418]. With regard to the trends in final convictions for sexual offences, similarities can be noted to the trends for all offences. The shapes of

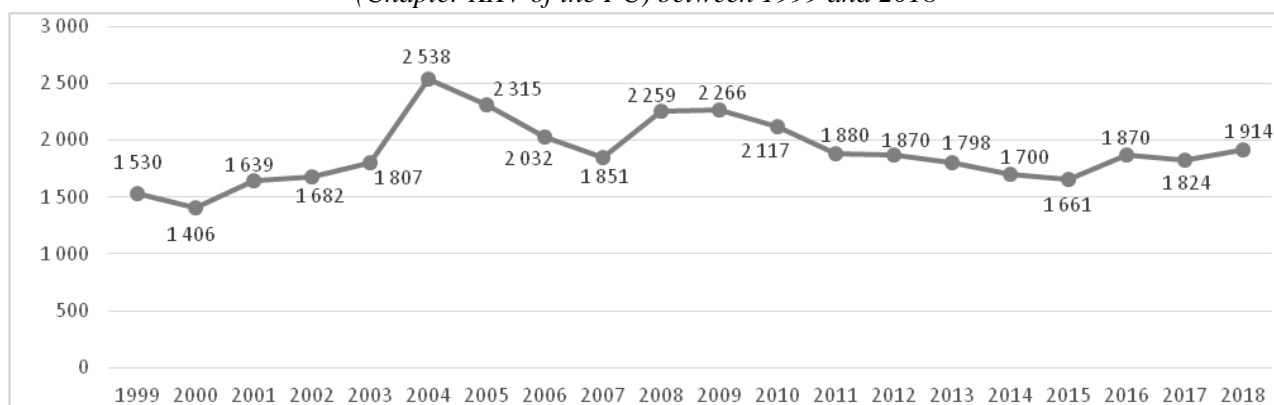
Graph 1 and *Graph 2* are not the same, but these differences can be explained by the relatively small number of convictions for sexual offences, which implies a greater 'sensitivity' of the number of convictions to noticeable year to year changes.

In order to show the statistical picture of sexual crime in Poland in general, it is worth comparing the number of final convictions for offences against sexual freedom and decency with the number of ascertained crimes of this type (ascertained crime is an event, which after the completion of preparatory proceedings was confirmed as a crime). A comparison of *Graph 2* and *Graph 3* shows that during the period under study the number of ascertained crimes was much higher than the number of final convictions. One should not compare individual years, because criminal proceedings sometimes take a long time, so a crime ascertained in a given year is rarely finally tried in the same year. Simplifying the matter, for the purposes of this study, some consecutive years can be compared (an ascer-

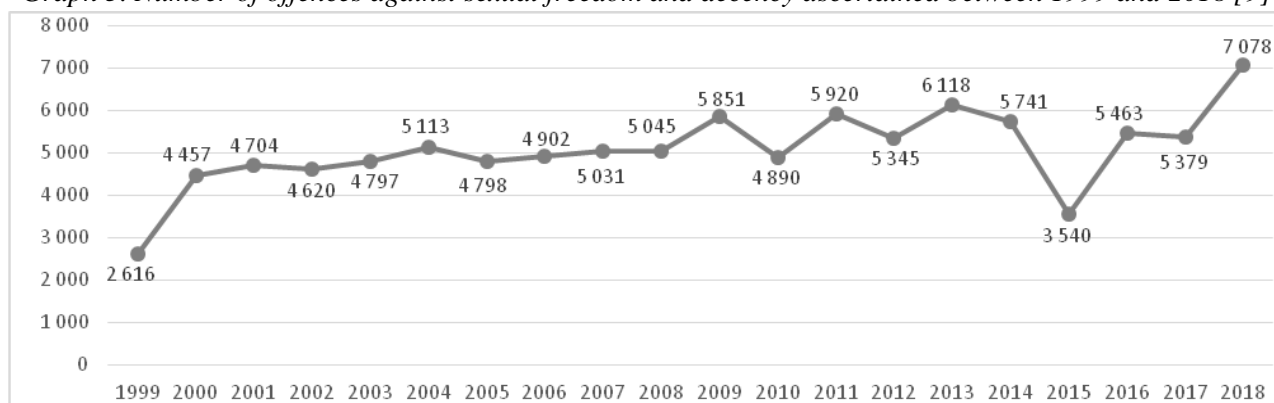
tained crime in one year and a final conviction in the following year). For example, in 2017, there were 181% more ascertained crimes than a final convictions in 2018. Comparing the years 1999-2000, 2004-2005, 2009-2010 and 2014-2015, the number of ascertained crime was higher than the number of convictions by respectively: 86%, 121%, 176% and 246%. It is difficult to explain the disparity. The rate of detectability of delinquents of offences against sexual freedom and decency (the relation of the number of detected crimes [i.e. ascertained crimes in completed preparatory proceedings, in which at least one suspect was found] in a

given year [including those detected after resumption following discontinuance] to the total number of crimes ascertained in a given year, plus the number of crimes ascertained in commenced proceedings and discontinued in previous years due to undetected delinquents) is quite high, reaching approx. 90% in recent years (for example, in 2000 – 89.7%, in 2005 – 89.1%, in 2010 – 89%, in 2015 – 84.9%, and in 2018 – 89.8% [8a, p. 147; 8b, p. 152; 8c, p. 152]). It is, therefore, likely that the evidence gathered in preparatory proceedings is often insufficient to bring an accusation to court, or to convict the perpetrator.

Graph 2. Number of final convictions for offences against sexual freedom and decency (Chapter XXV of the PC) between 1999 and 2018



Graph 3. Number of offences against sexual freedom and decency ascertained between 1999 and 2018 [9]



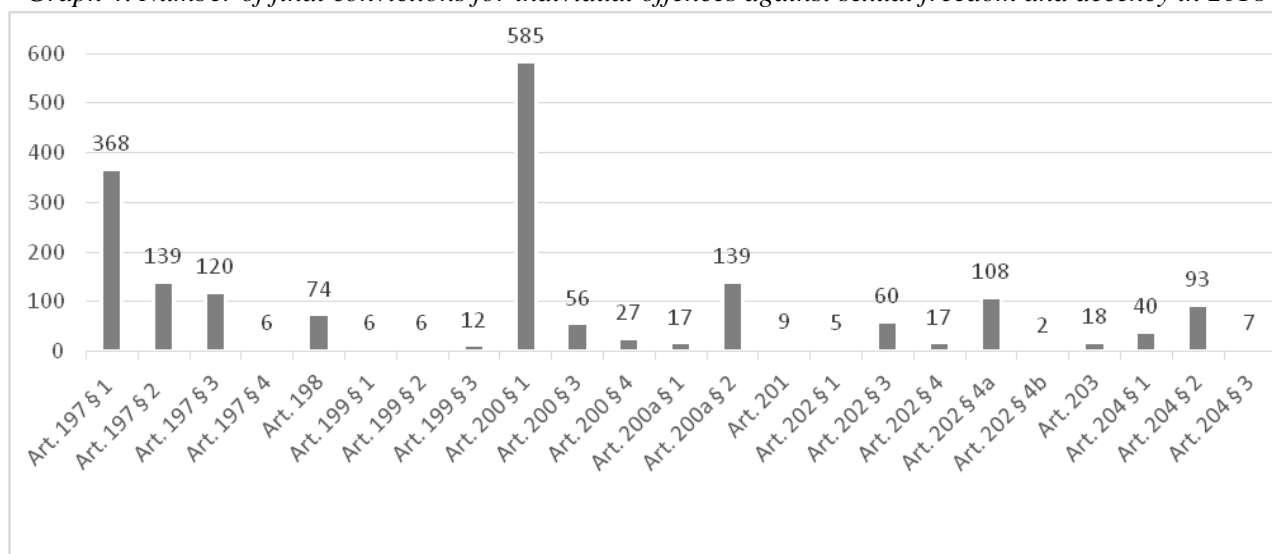
Among all sexual offences, the highest number of convictions is recorded for the offence of rape in its various types (Article 197 of the PC) and for the so-called offence of paedophilia under Article 200 § 1 of the PC (the expression ‘so-called’ has been used, as empirical research shows that a diagnosis

of paedophilia understood medically as a disorder of sexual preferences occurs relatively rarely among perpetrators of offences under Article 200 of the PC [10, p. 67]). In 2018, there were 633 final convictions for the crime of rape, of which the largest number of cases (368) concerned the offence of

rape in its basic type under Article 197 § 1 of the PC (sexual intercourse induced by violence, unlawful threat or deceit) (*Graph 4*). In the same year there were 585 convictions for the offence under Article 200 § 1 of the PC (sexual intercourse with a minor under the age of 15 or committing another sexual act towards such a person or procuring him/her to be subjected to such acts or to perform them). Over 100 convictions were recorded for of-

fences under Article 200a § 2 of the PC (proposing by electronic means to a minor under the age of 15 to engage in sexual intercourse, to submit to or to perform any other sexual act, or to participate in the production or recording of pornographic content) and under Article 202 § 4a of the PC (storing, possessing or accessing pornographic content involving a minor).

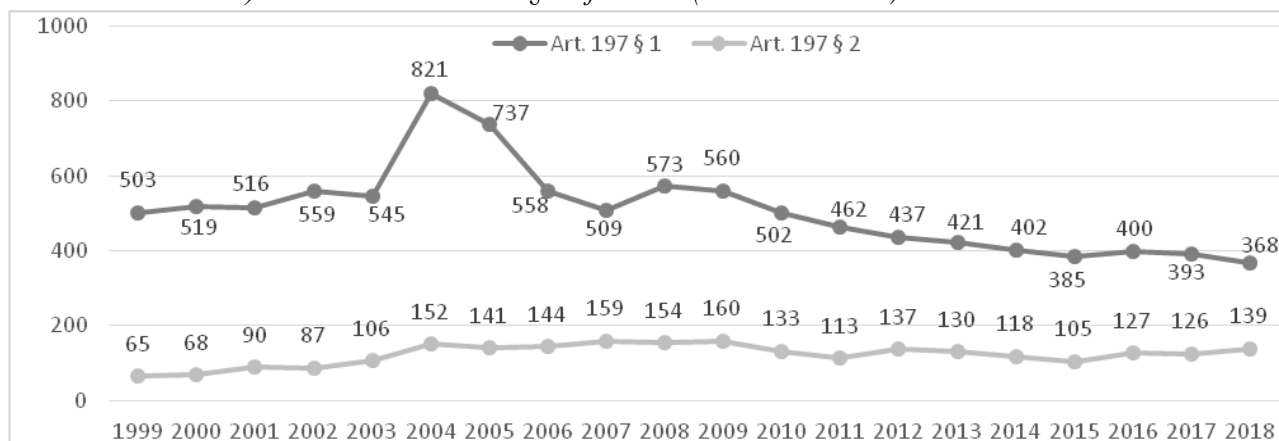
Graph 4. Number of final convictions for individual offences against sexual freedom and decency in 2018



The number of final convictions for the offence of rape in its basic form (Article 197 § 1 and 2 of the PC) does not exceed several hundred cases per year (*Graph 5*). With regard to rape in the form of bringing another person to sexual intercourse (Article 197 § 1 of the PC), the highest number of convictions was recorded in 2004 (821), and the least – in 2018 (368). On the other hand, with regard to rape in the form of bringing another person to submit to a sexual act (other than sexual intercourse) or performing such an act (Article 197 § 2 of the PC), the highest number of convictions was recorded in 2009 (160), while the least – in 1999 (65). The trend with regard to the number of convictions for the offence under Article 197 § 1 of the PC has been downward in recent years, while with regard

to convictions for the offence under Article 197 § 2 of the PC, their number has remained at a similar level over the past several years. However, one should once again recall the very high ‘dark number’ of sexual offences, which in the case of the offence of rape reaches up to 95% [7, p. 418]. It should also be added that from 25 September 2005 to 26 January 2013, Article 205 of the PC was in force, according to which the prosecution of certain sexual offences, including offences specified in Article 197 of the PC, took place, in principle, at the request of the victim. After 26 January 2013, the indicated offences are prosecuted ex officio, so one would expect an increase in the number of convictions for the crime of rape after 2013; however, this did not happen.

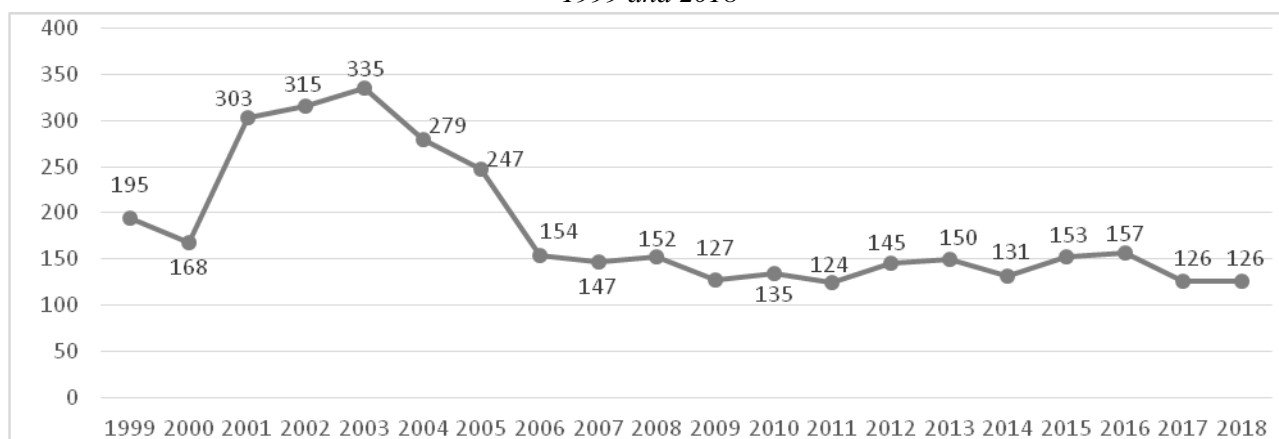
Graph 5. Number of final convictions for the offence of rape under Article 197 § 1 of the PC (sexual intercourse) and under Article 197 § 2 of the PC (other sexual act) between 1999 and 2018



Annual number of final convictions for the crime of aggravated rape, specified in Article 197 § 3 and 4 of the PC (rape with particular cruelty or jointly with another person, and since 8 June 2010 also against a minor under the age of 15 or against an ascendant, descendant, adoptee, adopter, brother or sister) has remained at a similar level since 2006 (Graph 6). The highest number of convictions was

recorded in 2003 (335) and this was 166% higher than the number of convictions in 2017 and 2018. The relatively high proportion of the most serious rape cases in the total number of recorded rape convictions is a cause for worry (compare Graph 5 and Graph 6). In 2018, convictions for the crimes under Article 197 § 3 and 4 of the PC accounted for 20% of all convictions for rape.

Graph 6. Number of final convictions for aggravated rape under Article 197 § 3 and § 4 of the PC between 1999 and 2018



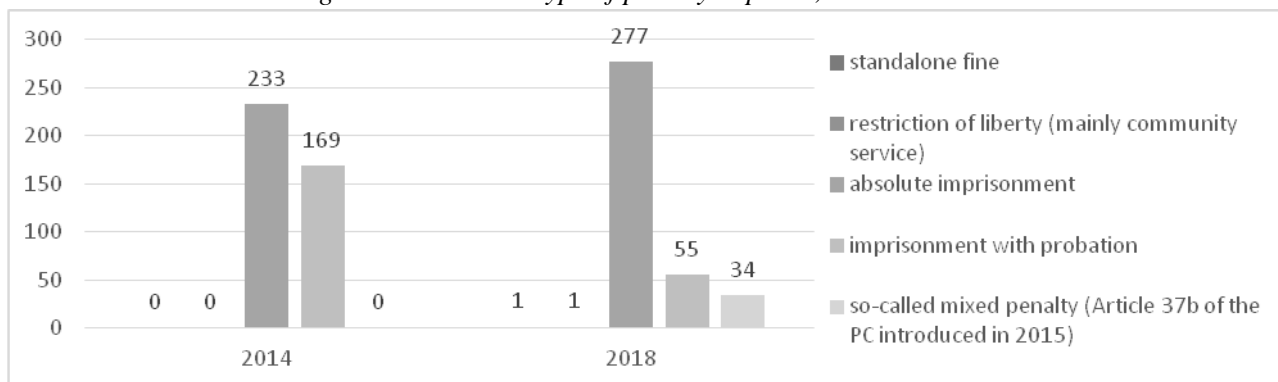
For the offence of rape under Article 197 § 1 of the PC, absolute imprisonment is imposed in most cases (Graph 7). A comparison of the number of final convictions in 2014 and 2018 shows a major change in the punishment policy. In 2014, absolute imprisonment convictions (233 cases), accounted for 58% of all imprisonment convictions (402 cases); whereas in 2018, this ratio was as high as 83% (277 out of 332 cases). This change is due to an

amendment to the PC that came into effect on 1 July 2015; the aim of which was, among other things, to limit the use of conditional suspension of the execution of a imprisonment sentence. In 2018, there were also single cases of sentencing to a standalone fine and restriction of liberty sentence (such a possibility exists with the application of an extraordinary mitigation of penalty; in most cases the sentence of restriction of liberty takes the form of

community service [11]), as well as 34 sentences to the so-called ‘mixed penalty’ referred to in Article 37b of the PC (simultaneous imprisonment and re-

striction of liberty sentence; as a rule, the imprisonment sentence is executed first then).

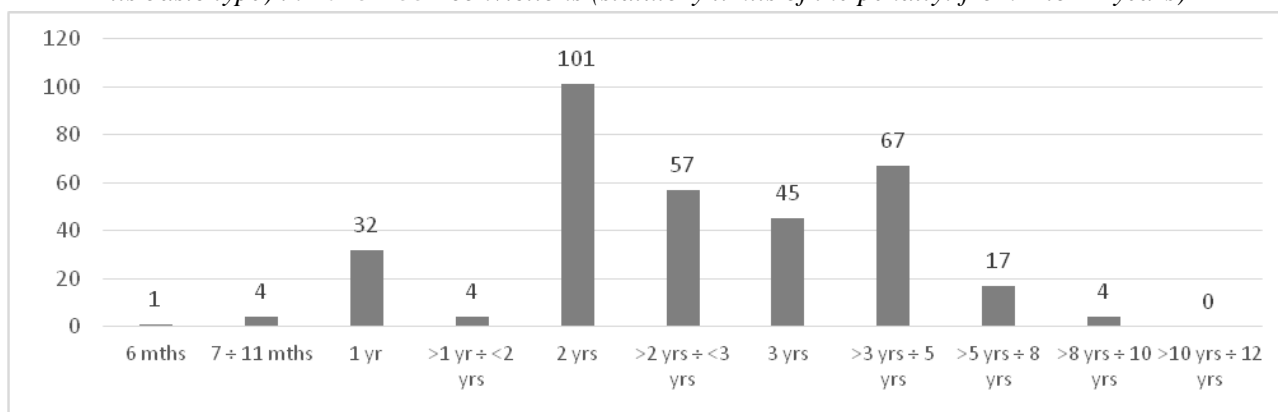
Graph 7. Number of final convictions for the offence under Article 197 § 1 of the PC (rape in its basic type), taking into account the type of penalty imposed, in 2014 and 2018



In 2018, the overwhelming majority of sentences imposed for the offence under Article 197 § 1 of the PC did not exceed 5 years, i.e. 42% of the upper level of the statutory penalty limit (311 out of 332 cases, i.e. 94%) (Graph 8). A penalty equal to or lower than the minimum statutory penalty limit

(with the application of an extraordinary mitigation of penalty) was imposed in 43% of cases. Not once was a maximum penalty imposed. Therefore one can conclude, the courts were very lenient towards perpetrators of the indicated offence.

Graph 8. Length of imprisonment sentences imposed for the offence under Article 197 § 1 of the PC (rape in its basic type) in 2018 – 332 convictions (statutory limits of the penalty: from 2 to 12 years)



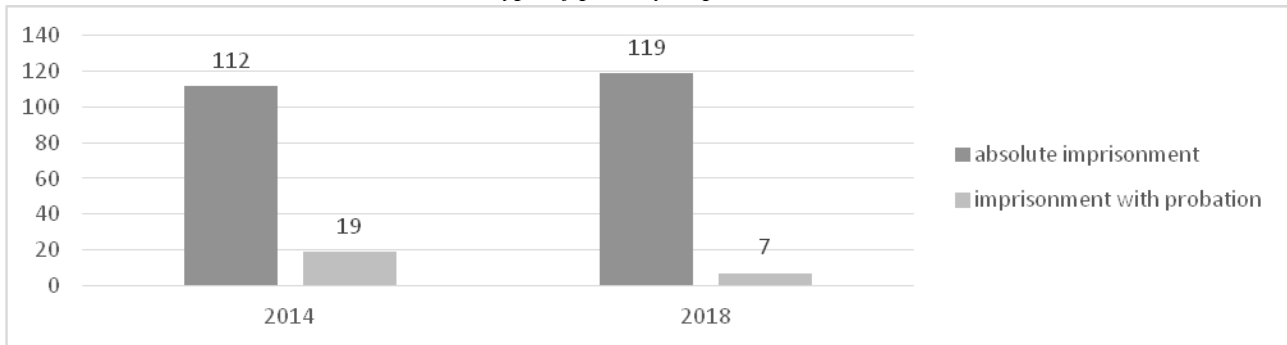
As for the penalties imposed for the crime of aggravated rape (Article 197 § 3 and 4 of the PC), absolute imprisonment predominates (Graph 9). In 2014, this punishment was imposed in 85% of cases, while in 2018 – in 94% of cases. Cases in which imprisonment with probation was imposed were most likely related to the court’s application of an extraordinary mitigation of penalty.

In 2018, in 74% of cases of convictions for the crime under Article 197 § 3 of the PC (rape jointly with another person, against a minor under the age of 15 or against an ascendant, descendant, adoptee, adopter, brother or sister), the length of the imposed imprisonment penalty did not exceed 5 years, i.e. one third of the upper level of the statutory penalty limit (Graph 10). In 41% of cases a penalty equal to or lower than the minimum statutory penalty limit

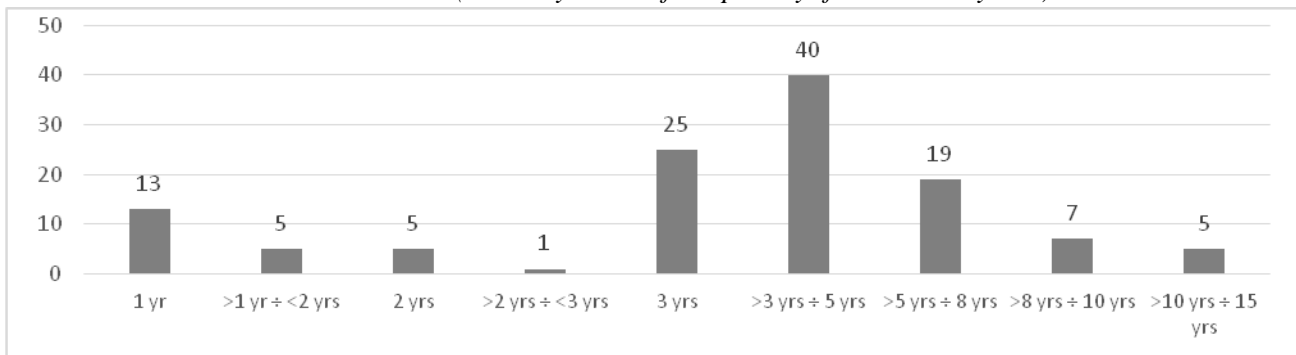
(with the application of an extraordinary mitigation of penalty) was imposed. In relation to perpetrators of the crimes under Article 197 § 4 of the PC (rape with particular cruelty), courts are more severe. A penalty equal to or lower than the minimum statuto-

ry penalty limit (with application of an extraordinary mitigation of penalty) was imposed between 2008 and 2018 in 16% of cases (*Graph 11*).

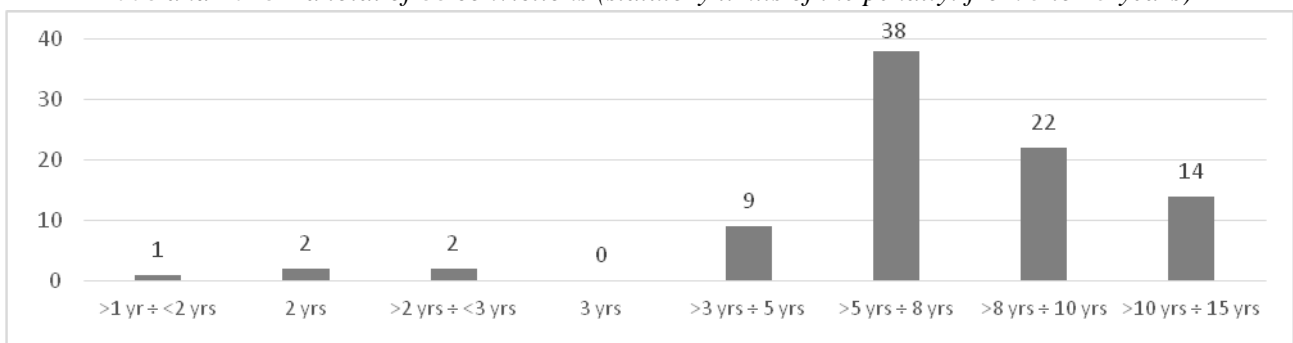
Graph 9. Number of final convictions for aggravated rape under Article 197 § 3 and § 4 of the PC, taking into account the type of penalty imposed, in 2014 and 2018



Graph 10. Length of imprisonment sentences imposed for the crime under Article 197 § 3 of the PC in 2018 – 120 convictions (statutory limits of the penalty: from 3 to 15 years)



Graph 11. Length of imprisonment sentences imposed for the crime under Article 197 § 4 of the PC between 2008 and 2018 – a total of 88 convictions (statutory limits of the penalty: from 5 to 15 years)



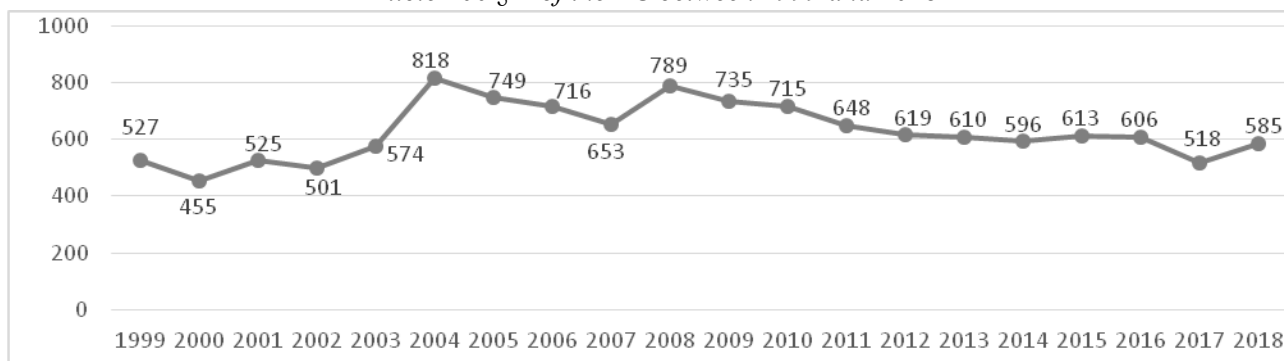
As regards an annual number of final convictions for an offence under Article 200 § 1 of the PC (sexual intercourse with a minor under the age of 15 or committing another sexual act towards such a

person or procuring him/her to be subjected to such acts or to perform them), a downward trend can be observed after 2008, with slight differences in the number of convictions in individual years

(Graph 12). In the years 2000-2004, on the other hand, the trend in this respect was upward. The highest percentage increase in the number of convictions with year to year variation took place in 2004 (increase by 42.5% in comparison with 2003).

However, it is also important to note that about a large number of these crimes which are not disclosed by law enforcement authorities and may fall into the ‘dark numbers’ category discussed previously.

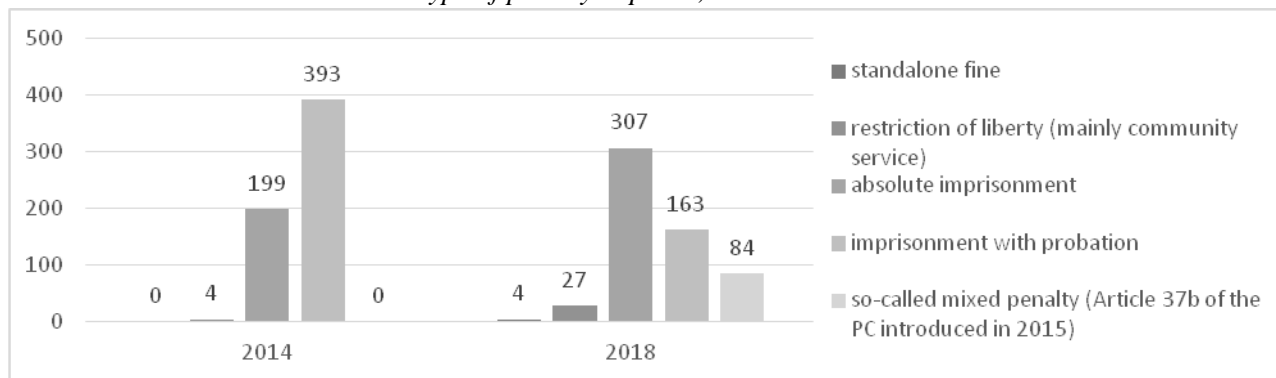
Graph 12. Number of final convictions for the offence under Article 200 § 1 of the PC between 1999 and 2018



In 2018, the most frequently imposed penalty for the offence under Article 200 § 1 of the PC was absolute imprisonment (52.5% of all convictions) (Graph 13). Imprisonment with probation was imposed in 28% of convictions. Additionally, in 14% of convictions, the so-called ‘mixed penalty’ was imposed. There was also a small number of convictions for a standalone fine and restriction of liberty.

In 2014, the situation was markedly different. Convictions with imprisonment with probation accounted for 66% of all convictions. This should be linked to the aforementioned 2015 amendment to the PC. In 2018, the structure of penalties imposed was adequate to the reprehensibility of the offence in question.

Graph 13. Number of final convictions for the offence under Article 200 § 1 of the PC, taking into account the type of penalty imposed, in 2014 and 2018



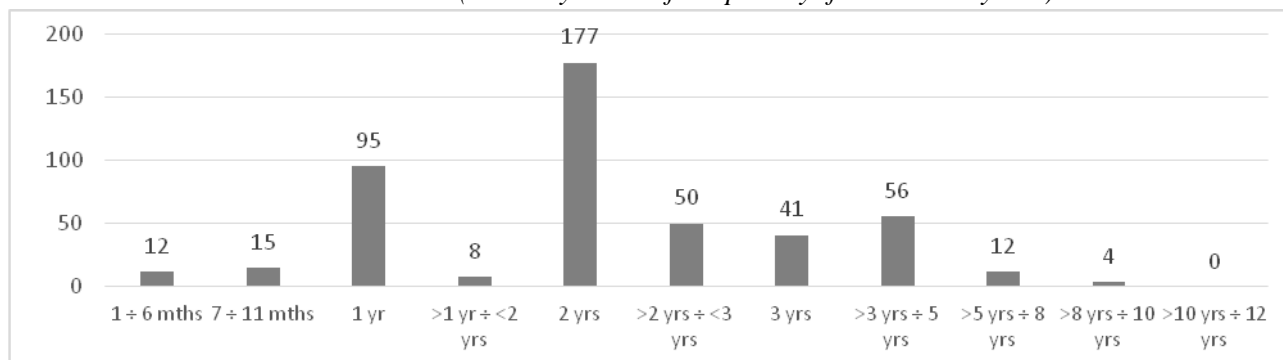
Imprisonment sentences imposed for the offence under Article 200 § 1 of the PC in 2018 in 65% of cases did not exceed the minimum level of the statutory penalty limit, and in 28% of cases their dimension was lower than this minimum level (with the application of an extraordinary mitigation of penalty) (Graph 14). In the overwhelming majority

of cases (97%), imprisonment did not exceed 5 years, i.e. 42% of the upper level of the statutory penalty limit. Therefore, it appears as if the courts are more lenient towards perpetrators of the crime under Article 200 § 1 of the PC than towards perpetrators of the crime of rape. It should be noted, however, that Article 200 § 1 of the PC concerns

such sexual contact with a minor under the age of 15 which does not constitute rape as defined in Article 197 of the PC, and therefore, this lenient ap-

proach should not be treated as unequivocally negative.

Graph 14. Length of imprisonment sentences imposed for the offence under Article 200 § 1 of the PC in 2018 – 470 convictions (statutory limits of the penalty: from 2 to 12 years)

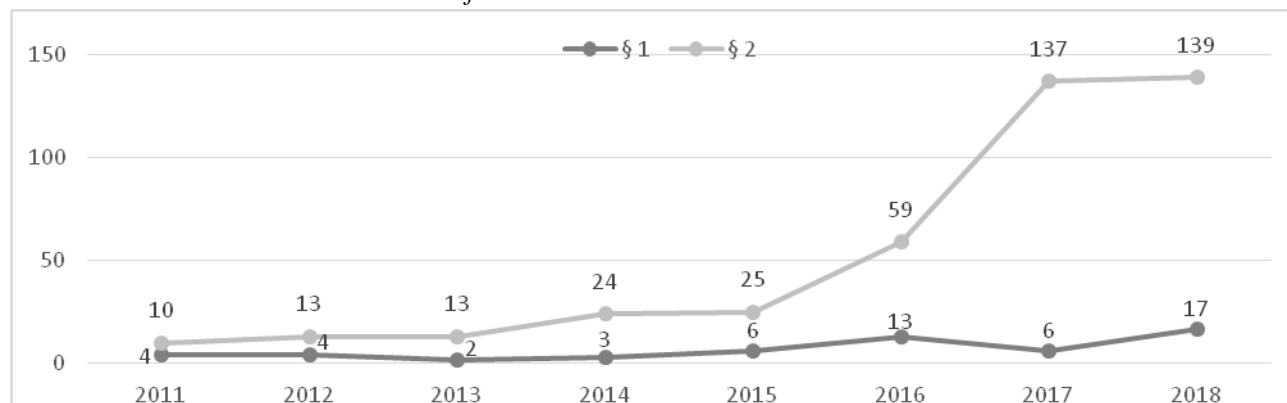


Finally, it is necessary to briefly refer to the statistics concerning offences that are not as reprehensible as the offences of rape and so-called paedophilia described above, however their share among the offences against sexual freedom and decency is noticeable. A relatively new type of a prohibited act in the Polish law is the so-called crime of grooming, as defined in Article 200a of the PC (pursuant to § 1, a penalty shall be imposed on anyone who, for the purpose of committing the offence specified in Article 197 § 3 item 2 or Article 200, as well as for the purpose of producing or recording pornographic content, through an IT system or a telecommunication network, establishes contact with a minor below the age of 15 with the intent to meet him by means of deception, exploitation of an error or incapacity to grasp the situation or by unlawful threat; pursuant to § 2, a penalty shall be imposed on anyone who through an IT system or a telecommunication network, proposes to a minor below the age of 15 sexual intercourse, submission to or performance of another sexual act or participation in the production or recording of pornographic con-

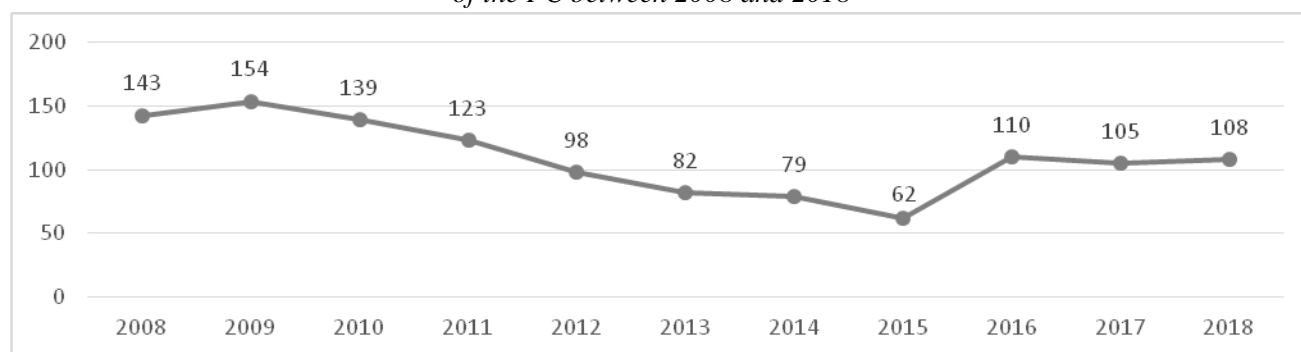
tent, and undertakes to carry it out). Currently convictions for the offence under Article 200a § 1 of the PC are small, but it should be noted that the number of convictions for the offence under Article 200a § 2 of the PC has increased quite considerably in the last few years (*Graph 15*). This increase may be a result of intensified awareness in society and in law enforcement authorities regarding behaviours specified in the above mentioned legal provision.

Regarding the offence under Article 202 § 4a of the PC (storing, possessing or accessing pornographic content involving a minor; from 26 September 2005 to 25 May 2014 – importing, storing or possessing pornographic content involving of a minor under the age of 15), there were between several dozen (the least in 2015 – 62 convictions), and less than two hundred (the most in 2009 – 154 convictions) final convictions per year in the analysed period (*Graph 16*). This shows that the threat of using so-called child pornography in Poland is rather low.

Graph 15. Number of final convictions for the so-called offence of grooming under Article 200a of the PC between 2011 and 2018



Graph 16. Number of final convictions for the offence under Article 202 § 4a of the PC between 2008 and 2018



Conclusions. In summary, analysis of the data indicates that convictions for sexual offences in Poland represents a small proportion of convictions for all offences in recent years. The percentage of convictions for sexual offences to total convictions for offences is around 1%. However, it should be noted that sexual crime is stigmatized by a very large ‘dark number’ unreported events, which is much higher for sexual crime when compared other types of crime. In 2018, the highest number of convictions among sexual offences involved the offence of rape and sexual acts with a minor under the age of 15. The indicated sexual offences were in most cases punished with imprisonment, while in 2018 these were mainly punished with absolute imprisonment. These penalties in 2018 in most cases did not exceed half of the upper level of the statutory limits of the penalty, and were often adjudicated at the minimum level.

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Пьотр Понятовський

СЕСУАЛЬНІ ЗЛОЧИНИ У ПОЛЬЩІ У СТАТИСТИЧНІЙ ПЕРСПЕКТИВІ – ОКРЕМІ ПИТАННЯ

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Мета: проаналізувані окремі статистичні дані щодо вироків, що вступили у законну силу за статеві злочини за законодавством Польщі. **Методи:** за допомогою статистичного методу були проаналізовані дані про кількість винесених обвинувальних вироків та видів призначених покарань. **Результати:** обвинувальні вироків за статеві злочини у Польщі становлять невелику частку обвинувальних вироків за всі злочини за останні роки. У 2018 році найбільша кількість обвинувальних вироків серед злочинів на сексуальному ґрунті стосувалася зґвалтування (стаття 197 Кримінального кодексу Польщі) та сексуальних дій з неповнолітніми віком до 15 років (стаття 200 § 1 Кримінального кодексу Польщі – так званим злочином педофілії). Зазначені злочини на сексуальному ґрунті здебільшого караються позбавленням волі, тоді як до 2018 р. за них переважно призначалося покарання у виді позбавлення волі без умовного відстрочення їхнього виконання (абсолютне позбавлення волі). Ці покарання у 2018 році здебільшого не перевищували половини верхньої межі встановленого законом строку позбавлення волі, а найчастіше призначалися на мінімальному рівні. **Обговорення:** беручи до уваги статистику судимостей за статеві злочини, можна дійти висновку, що загроза подібних дій у Польщі є досить низькою. Проте слід пам'ятати, що злочини на сексуальному ґрунті стигматизовані дуже великим ступенем латентності (вчинені злочини, які не потрапляють до статистики злочинів, оскільки не розкриваються правоохоронними органами). Більшість обвинувальних вироків стосується статевих злочинів (зґвалтування, педофілія), які найбільше засуджуються як суспільством, так і законом. На жаль, варто зазначити, що польські суди досить поблажливо ставляться до осіб, які вчинили ці злочини.

Ключові слова: сексуальні злочини; статистика остаточних вироків; зґвалтування; педофілія; обвинувальний вирок; позбавлення волі.

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