


Standing of Vulnerable Victims in Criminal Proceedings: Polish Regulations Vis-à-Vis EU Law

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Abstract: The aim of this article is to show the impact of the EU Victims' Rights Directive on the Polish regulations. The main focus is placed on the concept of victim, the role of victims in criminal proceedings, and also individual assessment of crime victims' needs. The findings of the analysis indicate that a set of victims' rights adopted within the framework of the EU is largely reflected in Polish regulations, as a result of efforts made by the legislator to implement the EU Directive 29/2012. At the same time, we should remember the objectives of the "EU Strategy on Victims' Rights (2020–2025)" and the proposed amendments to the EU Victims' Rights Directive, which aim to serve a more effective use of their rights in accordance with the Union's standards.

1. Introduction

The interest in victim's rights was especially visible at the end of the 20th century that seems to be linked with introducing a model of restorative justice in criminal procedures. First, this model assumed the possibility of compensation for crime victims. Secondly, it brought about reconciliation between the perpetrator and his victim. Another important aspect is

centralized victims' rights approach, which refers to the support schemes and protective measures, particularly in regard to vulnerable victims.¹

The main horizontal instrument of the European Union for victims' rights is the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter: Victims' Rights Directive or VRD). Actually, it lists a quite comprehensive set of victims' rights, for example the right to understand and to be understood, the right to receive information from the first contact with a competent authority, the right to interpretation and translation, the right to access victim support services, the right to be heard, the right to safeguards in the context of restorative justice services, the right to legal aid, the right to receive a decision on compensation from the offender at the end of criminal proceedings, the right to protection, the right to avoid contact between victim and offender, the right to protection of victims with specific protection needs during criminal proceedings, the right to protection of child victims during criminal proceedings.²

Other relevant EU legal acts include so called Compensation Directive³ and EU rules on European protection orders.⁴ Additionally, at the EU level

¹ Joanna B. Banach-Gutierrez, "Restorative Justice and the Status of Victims in Criminal Proceedings. The Past and Future of Victims' Rights," *International Perspectives in Victimology* 11, no. 1 (2011): 45–60. The victim-centered justice prescribes that victims should be recognized and rely on their rights, see for instance: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Strategy on victims' rights (2020–2025), COM/2020/258 final, p. 4.

² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L315, 14 November 2012). Ewa Bieńkowska and Lidia Mazowiecka, eds., *Normy minimalne w zakresie praw, wsparcia i ochrony ofiar przestępstw, Dyrektywa 2012/29/UE. Komentarz*, 2nd ed. (Warsaw: Wolters Kluwer, 2024). The Directive has been applicable in all EU Member States except Denmark, which is not bound by the Directive, see: Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM (2023) 424, p. 2.

³ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L261, 6 August 2004), 15–8.

⁴ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L338, 21 December 2011), 2–18; Regulation (EU)

some other instruments were adopted so that they respond to the specific needs of victims of particular crimes; these are the Anti-trafficking Directive,⁵ the Directive against sexual abuse and sexual exploitation of children,⁶ and the Counter-terrorism Directive providing for specific rights for victims of terrorism.⁷ Importantly, the EU has also signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).⁸

Furthermore, in June 2020 the European Commission adopted the EU strategy on victims' rights (2020–2025), which highlights that “victims of crime must have access to support and protection at all times.”⁹ This strategy is based on a two-strand approach: (1) empowering victims of crime, and (2) working together for victims' rights. It is directly stressed that

No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L181, 29 June 2013), 4–12.

⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L101, 15 April 2011), 1–11; Anabela Miranda Rodrigues and Maria João Guia, eds., *New Forms of Human Trafficking: Global South Highlights and Local Contexts on Sexual and Labor Exploitation* (Cham: Springer, 2024); Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims PE/14/2024/REV/1 (OJ L, 2024/1712, 24 June 2024), accessed January 10, 2025, <https://eur-lex.europa.eu/eli/dir/2024/1712/oj>.

⁶ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L335, 17 December 2011), 1–14.

⁷ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L88, 31 March 2017), 6–21.

⁸ The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as “the Istanbul Convention”, “Action against violence against women and domestic violence. Istanbul Convention,” Council of Europe, accessed February 10, 2025, <https://www.coe.int/en/web/istanbul-convention>; Agnė Limantė and Dovilė Pūraitė-Andrikienė, eds., *Legal Protection of Vulnerable Groups in Lithuania, Latvia, Estonia and Poland* (Cham: Springer Nature Switzerland AG, 2022).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Strategy on victims' rights (2020–2025), COM/2020/258 final, p. 2.

It is crucial to empower victims of crime so they can report crime, participate in criminal proceedings, claim compensation and ultimately recover – as much as possible – from the consequences of crime. These ambitious objectives can be achieved only if the Commission and all relevant actors work together. That is why this strategy focuses also on strengthening cooperation and coordination.¹⁰

Accordingly, the strategy presents five key priorities: (1) effective communication with victims and a safe environment for victims to report crime; (2) improving support and protection to the most vulnerable victims; (3) facilitating victims' access to compensation; (4) strengthening cooperation and coordination among all relevant actors; and (5) strengthening the international dimension of victims' rights.¹¹

We should also note that, in order to improve victims' ability to rely on their rights under the VRD, a Proposal for a Directive amending Directive 2012/29/EU has been recently published as a response to identified shortcomings in its practical application.¹²

Despite some positive developments in strengthening victims' rights and victim-centered justice in the EU, the VRD evaluation report adopted by the Commission on June 28, 2022 highlights specific problems that require improvements. Specifically, attention is paid on the issue concerning the practical application of victims' rights and also differences in how Member States have transposed the VRD into national legal orders. The reference is made, for example, to the right to individual assessment of victims' needs, the right to specialized support services, and to the right to receive a decision on compensation from the offender. It is argued that such a policy had a negative impact on exercising the victims' rights, and tackling the arising problems "requires an amendment to the VRD, which can only be achieved at the EU level."¹³

¹⁰ Ibid., 3.

¹¹ Ibid.

¹² Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM (2023) 424 final.

¹³ Ibid., 3.

Five main problems are pointed out, which are as follows:

1. Victims do not always receive information about their rights, or they receive inadequate information that makes it more difficult or impossible for them to exercise those rights.
2. Vulnerable victims (such as children, older people, persons with disabilities, victims of hate crime and victims in detention) do not always benefit from a timely assessment of their needs for protection and are deprived of effective protection measures, such as protection orders.
3. Vulnerable victims often cannot rely on specialist support, such as extended psychological treatment, and child victims often cannot rely on a targeted approach based on multi-agency cooperation.
4. Victims' participation in criminal proceedings is often difficult due to a lack of legal advice and guidance and differences in rules on victims' status in these procedures.
5. Victims' access to compensation in domestic and cross-border cases is difficult due to the lack of state support when enforcing the ordered compensation from the offender, leading to a risk of secondary victimisation.¹⁴

Additionally, it is outlined that both the minimum standards on what constitutes "child-friendly and victim-centered justice have risen in the last 10 years" and therefore the amendments are necessary to adjust them to "recent developments in justice and technologies."¹⁵

In consequence, the revision of the VRD is tending to contribute to a well-functioning area of freedom, security and justice (hereinafter: AFS&J) in which victims' rights could be fully recognized and practically applied. This is a very important aspect in the context of the right to a fair trial which should be referred today not only to procedural safeguards and human treatment of suspects or convicted persons, but also to victims of crime.¹⁶

¹⁴ Ibid., 3–4.

¹⁵ Ibid., 4.

¹⁶ In the light of international human rights standards, a key question is arising about "fair balance" between the rights granted to suspects or convicted persons and those which should be exercised by victims of crime. See, for example: Krzysztof Orzeszyna, Michał Skwarzyński, and Robert Tabaszewski, *International Human Rights Law* (Warsaw: C.H. Beck, 2023), 45–7;

2. The Concept of Victim in Polish Criminal Law

In the discourse about the concept of victim under Polish criminal law, there could be mentioned three definitions that are varied in their scopes. First of all, the Polish legislator included the definition of a victim in the Code of Criminal Procedure (Polish Code of Criminal Procedure, hereinafter: PCCP).¹⁷ Accordingly, a victim is a natural or legal person whose legal interest has been directly violated or threatened by a crime. It could also be a state or local government institution without legal personality; or another organizational unit for which separate regulations grant a legal capacity (Article 49, paras. 1 and 2 PCCP). Hence, the definition adopted in the Polish Code of Criminal Procedure is much broader than the concept of a victim under the Victims' Rights Directive. Pursuant to the VRD "victim" means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death (Article 2).

In turn, the Act on State compensation for victims of certain intentional offences of 2005 defines the concept of a victim as a natural person who died as result of a prohibited act; or suffered a serious health impairment, bodily dysfunction or health disorder which are lasting longer than 7 days (Article 2(1) of the Act).¹⁸

Another definition of victim is provided in the Polish Charter of Victim's Rights of 1999. In this sense, "the victim" is a natural person whose interest, protected by law, has been directly violated or threatened by the crime, as well as their relatives.¹⁹ Further, the relatives of the victim are the persons listed in the Penal Code (hereinafter: PPC). The definition of a close person is a spouse, an ascendant, descendant, siblings, related

Barbara Gronowska and Piotr Sadowski, *Treatment of Prisoners – International and Polish Perspective* (Toruń: Wydawnictwo Naukowe UMK, 2020).

¹⁷ Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws No. 89, item 555, as amended).

¹⁸ Act on State compensation for victims of certain intentional offences, 7 July 2005 (Journal of Laws 2016, item 325). Compensation means a monetary benefit granted to an entitled person in accordance with the procedure set out in this Act (Article 2(4)).

¹⁹ Polish Charter of Victim's Rights, 1999, accessed January 9, 2025, https://www.advocem.org.pl/wp-content/uploads/2021/12/06_-_polska_karta_praw_ofiary.pdf.

in the same line or degree, a person in an adopted relationship and their spouse, as well as living together (Article 115, para. 11 PPC).²⁰

The EU strategy on victims' rights 2020–2025 in reference to improving support and protection of the most vulnerable victims provides that “all victims of crime are vulnerable, but because of their personal characteristics, the nature of the crime suffered or personal circumstances some victims are even more vulnerable than others.”²¹ They are especially, victims of domestic violence, sexual violence, trafficking in human beings. In this context, it is crucial to mention also child victims, victims of terrorism, victims of hate crime, victims of organized crime, victims of environmental crime.²²

In this study, the protection of victims' rights and exercising their rights in practice will be discussed only in regard to three categories of the most vulnerable victims; these are: child victims, victims of sexual offences and victims of human trafficking.

3. The Role of Victims in Criminal Proceedings and Their Legal Rights

The role of victims in criminal proceedings depends on its stage. Accordingly, with the Code of Criminal Procedure at the stage of the preparatory proceedings, the victim is a party, while in the judicial proceedings the victim may appear as a party, being an auxiliary prosecutor or else private prosecutor. This means that in cases of publicly prosecuted offences, the victim may act as an auxiliary prosecutor in addition to or in place of the public prosecutor. In turn, the victim as a private prosecutor may bring and support charges for privately prosecuted offences.

Nevertheless, the Public Prosecutor is the one who the most often represents the views and concerns of the victim in criminal courts, and the status of the victim is then rather limited to witnesses' rights. Nevertheless, in recent years, the role of the victims in criminal proceedings and their legal rights have been definitively strengthened. In this sense, we may talk about

²⁰ Act of 6 June 1997 – Penal Code (Journal of Laws No. 88, item 553, as amended).

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Strategy on victims' rights (2020–2025), COM/2020/258 final, p. 7.

²² Ibid., 7–12.

evident reflection of victimological perspectives. Such an approach is rather clearly seen through introducing of the latest legal provisions into the Polish legal order. Here, we should mention that in the years 2021–2024 the Polish legislator, taking seriously the importance of the Victims' Rights Directive, introduced into the Code of Criminal Procedure some new amendments, and respectively new ordinances of the Ministry of Justice were published. In this regard, the arising questions are what does it essentially mean in the legal practice for crime victims, particularly to the most vulnerable ones like minors (child victims), victims of sexual violence or human trafficking. Also, what kind of problems have been occurring as so far in reference to crime victims' rights protection, and whether the legal rights granted to them might be fully exercised under the existing norms.

First of all, we may say that a positive aspect there is, for example, introducing the principle of presumption of age of the victim. It means that, in the event that any doubts as to the age of the victim cannot be removed, and there is a reasonable assumption that he or she is a minor, the provisions of the Code of Criminal Procedure relating to minors shall be applied (Article 49b PCCP). This serves to clarify the applicable provisions concerning the procedural guarantees to which victims are entitled. They are reflected, among others, in the provisions of the Code of Criminal Procedure regarding the victim's right to information on his rights, information on the proceedings, the right to translation (including the right to submit a notification of a crime in the language of the victim), to be heard, to legal aid, to reimbursement of expenses, to compensation or protection measures.

While special guarantees in the course of criminal proceedings for children as crime victims cover especially the recording of their interrogations by means of video and sound recording devices (Article 147 paras. 1 and 2a PCCP), there will be an appointment of a representative for the child (Article 51 para. 2 PCCP), and participation of a psychologist. The provisions protecting the most vulnerable victims, including children also provide for their interrogation following specific standards and in the rooms specially prepared for this purpose, so called "Friendly interrogation room" (Articles 185a–185c, 185e–185f).²³ Actually, the place of their interrogation

²³ Rozporządzenie Ministra Sprawiedliwości z dnia 13 stycznia 2025 r. w sprawie określenia wzorów informacji o przebiegu, sposobie i warunkach przesłuchania dla osób

and the recording should meet the standards set out in the Ordinance of the Minister of Justice²⁴ and the Guidelines of the Nobody's Children Foundation (currently: "Let's Give Children Strength Foundation"). The mission of the foundation is *inter alia* to undertake actions aimed at child-friendly justice. For this reason, the foundation engages in legislative activities aimed at the proper representation of the child in proceedings and the realization of the child's right to speak out in court on their cases. The foundation has been widely providing training to judges, prosecutors and psychologists. Fundacja Dajmy Dzieciom Siłę (Empowering Children Foundation) runs Child Advocacy Centres and provides a "Child-Friendly Interview Room. The application for such a room is available on the foundation's home page.²⁵

Generally, we may say that in specified cases the interrogations should be conducted in such a way that allows the victim to avoid eye contact with the perpetrator, in the absence of the perpetrator in the courtroom. Also, during the interrogation in the course of the criminal proceedings one should avoid unnecessary questions, and the court can decide that the hearing should take place without the participation of the audience. In accordance with the Code of Criminal Procedure a person indicated by a victim may be present during the activities with his or her participation in the preparatory stage of the criminal proceedings, if this does not make it impossible to carry out the activities or make it significantly more difficult (Article 299a PCCP). The Code of Criminal Procedure also provides that in certain circumstances a court may exclude the public from the hearing in

przesłuchiwanym w trybie określonym w art. 185a–185c k.p.k. oraz art. 185e k.p.k. (Journal of Laws 2025, item 59).

²⁴ Rozporządzenie Ministra Sprawiedliwości z dnia 22 września 2024 r. w sprawie sposobu przygotowania i przeprowadzenia przesłuchań w trybie określonym w art. 185a–185c oraz art. 185e Kodeksu postępowania karnego oraz warunków, jakim powinny odpowiadać pomieszczenia przeznaczone do przeprowadzania takich przesłuchań (Journal of Laws 2024, item 1477). "Friendly interrogation room" is a room specially designated for the purpose of conducting hearings pursuant to Article 185a to 185c and Article 185e of the Code of Criminal Procedure, meeting the conditions set out in this Ordinance, located at the seat of the court or outside its seat, in particular at the seat of the public prosecutor's office, the Police, a state or local government institution or an entity whose tasks include providing assistance to minors or the victims of rape.

²⁵ "Jak pomagamy? – czyli działania pomocowe Fundacji," Fundacja Dajemy Dzieciom Siłę, accessed February 22, 2025, <https://fdds.pl/jak-pomagamy.html#przesluchania-sadowe>.

whole or in part (Article 360 paras. 1(1)(d) and 3 PCCP). In addition, when there is a concern that the presence of the accused could have an embarrassing effect on the testimony of the witness, the chairman may order that the accused leave the courtroom during the interview. The chairman may also conduct the interview with the use of some technical devices enabling the conduct of this activity at a distance with the simultaneous direct transmission of image and sound (Article 390 paras. 2 and 3 PCCP).

It follows from the above that some of the indicated provisions apply directly to child victims, and others to victims regardless of their age. Exercising such legal rights are becoming of significant importance, for victims of sexual violence or human trafficking.

What is important, due to the obligation for introducing the provisions of the Victims' Rights Directive into the Polish legal order, there have been introduced new rules regarding the collection of information (individual assessment) about the victim and the hearing of him or her (Article 52a PCCP). The indicated provision is of a guarantee nature for the victim. Namely, it imposes on the authority which is conducting the criminal proceedings an obligation to determine the circumstances of the case regarding the characteristics and personal conditions of the victim, as well as the type and extent of the negative consequences of the committed crime. Also, there is the obligation imposed on the competent authority which is conducting the criminal proceedings to collect from the victim a statement whether he or she wants to apply specially the protective measures or psychological assistance as specified in the provision.

Therefore, the hearing of the victim and witnesses may take place remotely with the use of technical devices recording video and sound, as well as a confidentiality of the circumstances being kept which would allow for disclosure of the witness' identity. Moreover, where there are crimes committed with the use of any violence or unlawful threats or crimes against freedom, crimes against sexual freedom and decency, crimes against the family and care of a victim who at the time of questioning is under 15 years of age, he or she should be questioned as a witness only then, when his testimony may be of significant importance for judging the case, and only once, unless important circumstances come to light, the clarification of which requires another questioning, or the accused, who did not have a defense attorney at the time of the first questioning of the victim, requests for this.

The hearing is conducted by the court at a session with the participation of psychologist, immediately, not later than within 14 days from the date of the request. The prosecutor, defense counsel and the victim's representative have the right to participate in the interview. At the main hearing, the recorded image and sound of the hearing is reproduced and the protocol of the hearing is read. Further, in cases regarding the above-mentioned crimes, a minor victim who at the time of the interview was 15 years old, is also interviewed remotely, when there is a justified fear that the interview in other conditions could have a negative impact on his mental state.

In addition to the provisions included in the Code of Criminal Procedure, there are also specific laws, namely the Act on victim and witness protection of and support, 2014²⁶, as well as the Act on state compensation for victims of certain intentional offences, 2005.²⁷ Accordingly to the provisions of the Act on victim and witness protection of and support, in the event of a threat to the mental health of the victim, a witness or their relatives, the authority conducting operational and investigative activities, or a vetting or preparatory proceedings, or the court informs the victim or witness about the possibility of obtaining any psychological assistance provided by entities that have received a subsidy for this purpose from the Victim Assistance Fund, and Post-penitentiary Assistance (commonly called "A Justice Fund," Article 43 Executive Penal Code)²⁸ or other entities providing psychological assistance, along with an indication of the list of these entities and the method of contact (Article 10(1) of the Act).²⁹

Legal regulations on the protection of the victims' interests against the effects of crime also contain a fairly extensive catalogue of compensatory measures. These funds are located among others in the area of substantive criminal law (Article 46 PPC). However, if it proves impossible to obtain compensation from the offender through an individual redress procedure, solutions have been developed to obtain compensation from

²⁶ Act on victim and witness protection of and support, 2014 (Journal of Laws 2015, item 21).

²⁷ Act on state compensation for victims of certain intentional offences, 2005 (Journal of Laws 2016, item 325).

²⁸ Act of 6 June 1997 – Executive Penal Code (Journal of Laws No. 90, item 557, as amended); Ewa Bieńkowska, "Fundusz pomocy pokrzywdzonym oraz pomocy penitencjarnej po najnowszych zmianach," *Zeszyty Prawnicze* 16, no. 3 (2016): 5–22.

²⁹ Act on victim and witness protection of and support, 2014 (Journal of Laws 2015, item 21).

the state, i.e. obtaining funds from a public fund created to meet the needs of victims. State compensation is clearly of a subsidiary nature and, it is intended to minimize the consequences suffered by the victim of crime. Pursuant to the Act on state compensation for victims of certain intentional offences, such a compensation may be awarded in the amount covering lost earnings or other means of livelihood, costs related to treatment and rehabilitation, and funeral expenses. The state compensation may not exceed 25,000 zlotys, or 60,000 zlotys if the victim suffered death.³⁰

It is worth noting that the Act on state compensation is facing criticism because of many outstanding reasons. Specially, Fundacja Pomocy Ofiarom Przestępstw (the Victims of Crime Assistance Foundation) draws attention to the issue of incorrect practice of granting compensation benefits to crime victims. The current state compensation system is considered to be ineffective and in need of some modifications. First of all, the provisions in their current form are not used adequately and what is worse may lead to secondary victimization of the crime victims. One of the main reasons is the lack of appropriate and understandable information for victims. Moreover, there is a lack of commitment to the application of this institution of law enforcement and justice authorities, which in fact should well understand, apply and inform about it. This is indicated that in the years 2005–2021 the institution of compensation was almost not used. What is more, on average, 140,000 zlotys was paid per year, although it was expected that it would be 70 million zlotys. It is argued that the procedure for examining applications is based on much formalized proceedings in civil court. This procedure also includes the participation of a prosecutor, whose role additionally complicates the proceedings for granting state compensation. In the years 2005–2021, the civil court granted only 38 compensations on average per year.³¹

³⁰ Act on state compensation for victims of certain intentional offences, 2005 (Journal of Laws 2016, item 325).

³¹ "Kompensata państwowa," January 31, 2023, Fundacja Pomocy Ofiarom Przestępstw, accessed February 22, 2025, <https://fpop.org.pl/kompensata-panstwowa/>; Lidia Mazowiecka, *Państwowa kompensata dla ofiar przestępstw* (Warsaw: Wolters Kluwer Polska, 2012); Stanisław Łagodziński, "Praktyka przyznawania świadczeń na podstawie ustawy z 7.07.2005 r. o państwowej kompensacie przysługującej ofiarom niektórych przestępstw," *Prawo w działaniu. Sprawy karne*, no. 9 (2011): 119–41, accessed February 22, 2025, <https://iws.gov.pl/wp-content/uploads/2018/09/dr-Stanisław-Łagodziński-Praktyka-przyznawania-swiadczeń>

In the years 2018–2020, the necessary funds for treatment and rehabilitation were allocated as compensation only in 34, 29 and 21 cases, respectively. In the first half of the year 2021, there were 15 compensations. In the years 2018 and 2019, there were 111 applications submitted (34 granted) and 117 (29 granted), respectively. In 2020, there were 55 such cases and 21 of them were awarded compensation, while in the first half of 2021 – there were 31 applications submitted, and only 15 of them were granted.³²

In view of the above, the Victims of Crime Assistance Foundation has presented a draft act on state compensation for victims of intentional criminal acts committed with the use of violence. The compensation provided for in the draft Act of January 27, 2025 on state compensation for victims of intentional criminal acts committed with the use of violence assumes the possibility of an efficient and dignified return to normality for victims of this type of crime. Also, a significant change in the Act is the inclusion of children as beneficiaries.³³

In reference to protective measures that might be used in the interests of vulnerable victims, we should highlight provisions of the Polish Penal Code. They cover some measures that are intended to affect the immediate safety of the victim and the victim's closest relatives, including a prohibition on contacting or approaching the victim, and an order to leave the premises occupied jointly with the victim.

Importantly in 2020, the Regulation of the Minister of Justice concerning the model of the instruction on the rights and obligations of the victim in criminal proceedings entered into force, which covers the updated

-na-podstawie-ustawy-z-7.07.2005-r.-o-panstwowej-kompensacie-przyslugujacej-ofiarom-niektorych-przestepstw-119.pdf.

³² Statistical data provided by L. Mazowiecka (Patrycja Rojek-Socha, "Kompensata dla pokrzywdzonych przestępstwem nie działa," February 16, 2022, Prawo.pl, accessed November 15, 2024, <https://www.prawo.pl/prawnicy-sady/kompensata-dla-pokrzywdzonych-przestepstwem-ms-rozwaza-zmiany,513489.html>).

³³ "Kompensata państwowa," accessed February 22, 2025, <https://fpop.org.pl/kompensata-panstwowa/>; Rojek-Socha, "Kompensata dla pokrzywdzonych przestępstwem," accessed February 22, 2025, <https://www.prawo.pl/prawnicy-sady/procedura-przyznania-kompensat-pokrzywdzonym-do-zmiany-jest-projekt,531625.html>; "Projekt ustawy o państwowej kompensacie dla ofiar umyślnych czynów zabronionych popełnionych z użyciem przemocy," February 20, 2025, Fundacja Pomocy Ofiarom Przestępstw, accessed February 22, 2025, <https://fpop.org.pl/projekt-ustawy-o-panstwowej-kompensacie-dla-ofiar-umyslonych-czynow-zabronionych-popolnionych-z-uzyciem-przemocy/>.

“Letter of victim’s rights”. This Regulation implements the provisions of both the Victims’ Rights Directive and Directive 2011/99/EU on the European protection order.³⁴ Namely, the competent authority is obliged to provide the victim with information on his or her rights and obligations, and have the signed copy included in the files of the conducted criminal proceedings. There is also information that if the instruction provided seems unclear or incomplete to the victim, he or she may request additional specific information from the investigator about his or her rights and obligations.³⁵

Besides all the provisions briefly illustrated so far, it should be mentioned that already in 1999, a document called the “Polish Charter of Victim’s Rights” was adopted. This Charter forms a set of crime victims’ rights, based on the available international and European legal instruments of that time. The Polish Charter of Victim’s Rights has been prepared commonly by the Ministry of Justice, in cooperation with governmental and non-governmental institutions and organizations in order to provide the necessary assistance to crime victims. In a word, this document is reflecting the obligations adopted by Poland.³⁶

4. Individual Assessment of Crime Victims’ Needs

Although the Polish Charter of Victim’s Rights for years has been functioning as a “soft law,” being a certain kind of guidelines for investigative and judicial authorities, its role in strengthening the crime victims’ rights should be much appreciated. It is obvious that this particular document played a key role on the path for the crime victims to be seen, and also treated in a special manner. However, in time Poland was obligated to undertake some further steps in a legal form so as to adjust Polish legal order to the requirements

³⁴ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L338, 21 December 2011), 2–18.

³⁵ Ordinance of the Minister of Justice concerning the model of the instruction on the rights and obligations of the victim in criminal proceedings of 14 September 2020 (Journal of Laws, item 1619).

³⁶ Joanna B. Banach-Gutierrez, “Crime Victims’ Rights in the European Area of Justice and Polish Legislation,” in *Nowa Kodyfikacja Prawa Karnego*, vol. 52, ed. Tomasz Kalisz (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2019), 28; Maria Wysocka and Dariusz Baj, “Polska Karta Praw Ofiar w systemie polskiego prawa,” *Kwartalnik Policyjny* 54, no. 3 (2020): 8–16.

of the European Union law, including implementation of Article 22 of “the Victims’ Rights Directive.”³⁷

Consequently, the Polish legislator has implemented into the national legal order most of the provisions indicated in the Victims’ Rights Directive.³⁸ Here, an important element in the implementation of Article 22 of ‘the Victims’ Rights Directive and Article 19(3) of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography³⁹ is providing for the article 52a of the Code of Criminal Procedure. The introduction of Article 52a of the Code of Criminal Procedure is at the same time the implementation of one of the fundamental principles of Polish criminal procedure, referring to legally protected interests of the victim (Article 2 §1(3)).⁴⁰

The content of Article 52a of this Code in question directly addresses the importance of individual assessment in determining the specific protection needs of victims. The general presumption is that every victim of crime should be subject to such an assessment, with vulnerable victims during criminal proceedings being particularly vulnerable to secondary victimization, intimidation and retaliation by the offender. The determination of such risks is only possible on the basis of an individual assessment of a specific victim. To facilitate this, a questionnaire for the assessment of special protection needs has been introduced for the authorities conducting criminal proceedings (Police and Public Prosecutor’s Office).⁴¹

³⁷ Bieńkowska and Mazowiecka, *Normy minimalne*.

³⁸ Ewa Bieńkowska, *Wiktymologia* (Warsaw: Wolters Kluwer, 2018).

³⁹ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L13, 20 January 2004), 44–8.

⁴⁰ Paweł Falenta, “Nowy art. 52a k.p.k. jako realizacja praw pokrzywdzonego,” *Prokuratura i Prawo*, no. 6 (2021): 5–7. Pursuant to Article 2 §1(3) the provisions of this Code are intended to structure criminal proceedings in such a way that the legally protected interests of the victim are taken into account while also respecting their dignity. Article 52a in the wording of the Act of 13 January 2023, which entered into force on 15 February 2024 (Journal of Laws 2023, item 1860).

⁴¹ Michał Lewoc, Departament Współpracy Międzynarodowej i Praw Człowieka, Ministerstwo Sprawiedliwości, *Komentarz do kwestionariusza indywidualnej oceny szczególnych potrzeb osoby pokrzywdzonej w zakresie ochrony* (Warsaw 2015).

Amended Article 52a of the Code of Criminal Procedure strengthens the procedural guarantees for the victim and witness using an individual assessment questionnaire, obliging in this way the competent authorities to assess the actual situation. The purpose of the legal regulation contained in Article 52a of the Code of Criminal Procedure is to collect data and information necessary to implement appropriate support mechanisms. However, this provision introduces an optional assessment of the victim's situation by the procedural authority, generally carried out after obtaining his or her consent. Therefore, there may be a risk of taking actions that are inappropriate to a given situation.⁴²

In the reported cases of sexual offenses (rape, use of helplessness or handicap, abuse of dependence), the notification of the crime, if submitted by the victim, should be limited to indicating the most important facts and evidence. In the event of cases, related to such offences, the victim, who at the time of questioning has reached the age of 15, is questioned as a witness only if his or her testimony may be of a significant importance for judging the case, and only once, unless the important circumstances come to light, the clarification of which requires some questioning again. Also, at the request of the victim, it should be ensured that the expert psychologist participating in the interview is of the same sex as the victim, unless it will result in any obstructions of the conducting proceedings. Since sexual offences violate a person's privacy and dignity, and become a cause of secondary victimization, such a special mode of questioning victims of sexual offences introduced into the Polish Code of Criminal Procedure should be evaluated positively.⁴³

As for rape crimes, according to the Attorney General's guidelines, prosecutors handling such cases should keep in mind the welfare of the victim, who should be treated with due respect, culture, professionalism and dignity, preventing the phenomenon of secondary victimization. They should also ensure that the Police apply the "Police Procedure for dealing with

⁴² Monika Porwisz, "Kwestionariusz indywidualnej oceny pokrzywdzonego i świadka," *Kontrola państwowa* 69, no. 3 (2024): 80–94; Rozporządzenie Ministra Sprawiedliwości z dnia 2 lutego 2025 r. w sprawie określenia wzoru kwestionariusza indywidualnej oceny pokrzywdzonego i świadka (*Journal of Laws* 2025, item 161).

⁴³ Lidia Mazowiecka, "Z problematyki reagowania na przemoc wobec kobiet," *Prokuratura i Prawo*, no. 12 (2015): 118–27.

a person who has experienced sexual violence.”⁴⁴ In the case of victims who have experienced sexual violence, the Polish Police should already from 2015 follow a specific procedure for dealing with them. Such a procedure was developed by an expert team of the Feminoteka Foundation as part of the “Stop Rape” project, in cooperation with the Government Plenipotentiary for Equal Treatment. The Feminoteka Foundation has also developed procedures for a medical facility to deal with a person who has experienced sexual violence. At this point, we should outline that interests of victims of rape and other violent crimes, especially women and children, as it was previously argued, are taken care by NGOs supporting the victims.⁴⁵

There is also a separate procedure for dealing with people who may be victims of human trafficking. It was already in 2016 that an order was introduced by the Police Chief Commander on the performance of the Police in certain tasks in the detection of human trafficking. For this purpose, a questionnaire was developed to help identify the crime and an instruction on rights for the alleged victim of human trafficking.⁴⁶ At this point, it is worth mentioning that the La Strada Foundation plays an important role in providing support to victims of human trafficking. Practically since 1995, this Foundation has been fighting human trafficking in all its aspects. In particular, it offers legal, psychological, medical and social assistance. This Foundation conducts training for the Police, Border Guard, Public prosecutors and judges. It also undertakes preventive activities aimed at preventing human trafficking.⁴⁷

Despite some critical remarks, there are many positive amendments introduced into the Polish legal order which aim to respect the fundamental rights of the most vulnerable victims. This human rights-based approach

⁴⁴ Wytyczne Prokuratora Generalnego z dnia 18.12.2015 dotyczące zasad postępowania w sprawach o przestępstwo zgwałcenia, PG VIIIG 021/58/15; Lidia Mazowiecka, ed., *Zgwałcenie. Definicja, reakcja, wsparcie dla ofiar* (Warsaw: Wolters Kluwer, 2016).

⁴⁵ Mazowiecka, “Z problematyki reagowania na przemoc,” 118–27.

⁴⁶ Zarządzenie nr 14 Komendanta Głównego Policji z dnia 22 września 2016 r. w sprawie wykonywania przez Policję niektórych zadań w zakresie wykrywania handlu ludźmi (Journal of Law of Polish National Police, item 61); Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (OJ L, 2024/1712, 24 June 2024), accessed January 10, 2025, <https://eur-lex.europa.eu/eli/dir/2024/1712/oj>.

⁴⁷ La Strada, accessed February 22, 2025, <https://strada.org.pl/>.

is concerning such important questions, as protective measures, the right to state compensation, respect for victims' dignity during their hearings or interrogation. Specifically, children are becoming more visible subjects in the criminal proceedings. Their rights must be fully respected and, in cases of crimes committed with any violence or criminal threats, against sexual freedom and morality, against family and guardianship, and against liberty and they should testify only in premises that meet certain standards.⁴⁸

5. Conclusions

In recent years a trend towards strengthening crime victims' rights has been observed through a number of amendments introduced into the Polish legal order to reach a certain compatibility with EU law. Generally, we may resume that Polish regulations are to a large degree accountable with the current Union's tendency towards strengthening the victim's rights, including their "access to justice." The content of the Victim's Directive 29/2012 is largely reflected in the Polish legal order. The problem of exercising those rights, however, lies in the lack of their practical application. Therefore, we can fully argue for improvement of such a situation. This could be achieved, for example, by introducing mandatory trainings for all persons who come into contact with victims of a certain type of crime or better mechanisms for financing psychological support for victims.

Turning to the latest amendments introduced by the Polish legislator, particularly the important Article 52a of the Code of Criminal Procedure, its provisions do not provide for any negative consequences in the event of

⁴⁸ Ordinance of the Minister of Justice of 28 September 2020 on preparing examination conducted under Articles 185a–185c of the Code of Criminal Procedure (Journal of Laws, item 1691); Radosław Nieniałowski, Centrum Szkolenia Policji, *Organizacja i zasady funkcjonowania przyjaznego pokoju przesłuchań dzieci* (Legionowo: Wydział Wydawnictw i Poligrafii Centrum Szkolenia Policji, 2018); Anna Zofia Krawiec, "Warunki przeprowadzania przesłuchania w trybie art. 185a–185c k.p.k.," *Prokuratura i Prawo*, no. 7–8 (2016): 88–99; Rozporządzenie Ministra Sprawiedliwości z dnia 13 stycznia 2025 r. w sprawie określenia wzorów informacji o przebiegu, sposobie i warunkach przesłuchania dla osób przesłuchiowanych w trybie określonym w art. 185a–185c k.p.k. oraz art. 185e k.p.k. (Journal of Laws 2025, item 59); Rozporządzenie Ministra Sprawiedliwości z dnia 22 września 2024 r. w sprawie sposobu przygotowania i przeprowadzenia przesłuchań w trybie określonym w art. 185a–185c oraz art. 185e Kodeksu postępowania karnego oraz warunków, jakim powinny odpowiadać pomieszczenia przeznaczone do przeprowadzania takich przesłuchań (Journal of Laws 2024, item 1477).

carrying out activities without receiving the relevant statement of the victim. Conducting a procedural action contrary to the requirements provided for in this provision will not result in the invalidity of such an act. Its practical application then raises concerns, as the provisions should be used already at the first contact with the procedural authority, while it is difficult to determine at this stage what actions will factually take place. Further, the victim may not have sufficient understanding as far as the meanings of particular procedural actions are concerned. This may lead to some doubts as to whether the procedural authorities are prepared to apply the provisions covered in this article and they are financially secured, in this regard. The weakness of doing “justice” for victims is also revealed by the granting of state compensation to victims. The reasons for this state of affairs are seen, both in the imperfection of the adopted regulations, especially as to the procedure itself, and the insufficient awareness of the victims in this regard as well.

To conclude, despite all legal regulations adopted in Poland, and also much engagement of NGO's, it seems that there is still a necessity to work out the norms aiming at more effective participation of lawyers in criminal proceedings, for exercising the victims' rights in the legal practice. The obligatory trainings for police officers, public prosecutors and criminal judges are much recommended. This could enable a better exercising of the victims' rights, through practical application of the existing laws. Hence, still the challenge appears to be the EU strategy on victims' rights (2020–2025), and also full implementation of the Victims' Rights Directive with the proposed amendments.

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