THE PROCEDURAL POSITION OF THE INJURED PARTY IN THE CRIMINAL CASES IN POLAND

PROCESNÉ POSTAVENIE POŠKODENÉHO V TRESTNÝCH VECIACH V POĽSKU

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ABSTRACT

The article is devoted to the possibilities of exercising the victims' rights in the criminal proceedings in Poland. The author refers to the article by M. Strkolec published recently in Studia Iuridica Cassoviensia, in which the instructive observations about the position of the injured party in Slovak criminal trial were made, as well as de lege ferenda proposals have been put forward. The author takes a view from a Polish perspective and share some experience. In addition to comments on the positive law, it also presents selected findings made thanks to extensive research program devoted to the practical issues of the position and activity of the victim in the Polish criminal trial.

ABSTRAKT

Článok je venovaný možnostiam uplatnenia práv obetí v trestnom konaní v Poľsku. Autor poukazuje na článok M. Štrkolca, nedávno uverejnený v Studia Iuridica Cassoviensia, v ktorom boli uvedené poučné postrehy o postavení poškodeného v slovenskom trestnom konaní, ako aj návrhy de lege ferenda. Autor poskytuje pohľad z poľskej perspektívy, a tiež určité skúsenosti s uvedeným. Okrem poznámok k pozitívnemu právu, poskytuje aj niektoré vybrané zistenia, ku ktorým dospel vďaka rozsiahlemu výskumnému programu venovanému praktickým otázkam postavenia a úkonom obete v poľskom trestnom procese.

1. INTRODUCTION

The Martin Strkolec's paper on procedural status of the injured person was published In Studia Iuridica Cassoviensia[2]. In his paper the author points out a number of practical issues. Due to the obvious similarities between the legal systems in this part of Europe and the community of some historical experiences, some of these observations may give the Polish reader the impression of déjà vu. Therefore, broadening the comparison with the Polish law and its development relevant to the injured party might be a good idea here.

The Polish Criminal Procedure Code (Kodeks postępowania karnego) of 1928, which replaced the previous regulations (Russian, Prussian and Austrian, still binding 1918-1928), referred to the victim of a crime very briefly. According to Article 61, an injured party (pokrzywdzony) was defined as a person, "whose legally protected value has been directly violated or threatened." The essence of the definition hasn't change since then. It is based on the notion of "dobro prawne" (legally protected value, as in German "Rechtsgut")[3]. The most

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[2] ŠTRKOLEC, M, Procedural status of the injured person in the legal order of the Slovak Republic in comparison with its legal regulation in the Czech Republic, Studia Iuridica Cassoviensia 2020, vol. 8, issue 1, p. 99.

[3] English translations of the legal provisions in this article are based mostyly on the translation available in C.H.Beck Publishers legal information system Legalis. However, the traditionally accepted English translation "legal interest" (for example: in Legalis) seems to be is not entirely accurate here.

important rights of the aggrieved person was a right to prosecute in privately prosecuted cases and also in some publicly prosecuted cases (instead of the public prosecutor or together with him).

The situation changed with the entry into force of another Criminal Procedure Code of 1969. The regulation was more extensive. However, still the rights of the aggrieved party were quite limited. Hence, it required a specific supplement by the source of the law known at that time, i.e. the "Guidelines of the administration of justice and judicial practice". Such guidelines were issued by the Supreme Court in 1977 and contained 22 points specifying (and in fact creatively developing) the statutory regulation[4].

Much attention was paid to the injured party in the course of works undertaken on the new Criminal Procedure Code (hereinafter "CPC"). With the entry into force in 1997, this code included the general rule concerning the injured person.

2. POSITION OF THE INJURED PARTY – GENERAL REMARKS

The shortest summary of the position of the victim in the criminal proceedings in Poland today is as follows:

1. The injured party is a party to preparatory procedure ie the stage before the case is transferred to court – the inquiry in most serious cases and the investigation in all the other publicly prosecuted cases (Article 299 CPC).
2. After the case is transferred to the court, the injured party normally loose the status of the party. Only exception is debating the prosecutorial motion of the conditional discharge (conditional discontinuation) – according to Article 341 of CPC the injured party enjoys some rights of the party to proceedings.
3. If the injured party wishes to be a party to the court proceedings (mainly at the main hearing), he /she may assume the position of the auxiliary prosecutor and prosecute along with the public prosecutor (Article 54 CPC).
4. If the preparatory procedure is discontinued and the injured party successfully challenges this decision, it is possible (after meeting some further requirements) to file the indictment independently. In such cases the injured party assumes the position of the subsidiary auxiliary prosecutor and acts not together, but instead of the public prosecutor (Article 55 and Article 330 CPC).
5. The above points refer to the publicly prosecuted cases but not the privately prosecuted ones. In the latter group of cases the injured party may act as a private prosecutor (in some exceptional cases the public prosecutor may institute or take over the prosecution and the case is no longer the privately prosecuted case – Article 60 CPC).

   Of course numerous detailed questions arise in respect of the particular rights of the victim – both acting as a party and without the status of the party.

The general rule or principle related to the participation of the injured party (pokrzywdzony) in criminal proceedings was introduced only in 1997. According to Article 2 § 1 CPC, "The provisions of this Code are to ensure that in the course of criminal proceedings:

1. the offender is identified and called to criminal responsibility, and that such responsibility is not imposed on an innocent person,
2. by the correct application of measures provided for by criminal law, and by the disclosure of the circumstances that facilitated the commission of the offence, the aims of criminal procedure are fulfilled not only in combating the offences, but also in preventing them, as well as enhancing the rule of law and the principles of social co-existence;
3. legally protected interests of the injured party are taken into consideration, and

[4] Orzecznictwo karne, dodatek do Problemów Praworządności, 1977, nr 3, item 18.

4. the case is resolved within a reasonable period of time."
5. In 2015 the words ", with due respect for his or her dignity" have been added to point 3.

The provision related to injured party should be read in the context of the remaining part of Article 2 § 1 CPC. According to Polish legal writing, Article 2 § 1 pkt 3 CPC should be understood as a general rule and the detailed position of the injured party should be reconstructed from particular rights of such person[5].

Next similarity to Slovak position is that also in Poland the law devoted to the protection of the victims (and other witnesses as well) has been enacted. The Act on protection and assistance of aggrieved person and witness of 28th of November 2014[6] was one of the elements of the "Great Reform" of the broader complex reform of Polish criminal procedure in the years 2013-15 called "Great Reform", together with the changes enacted between 2013 and 2015 in force since 1 July 2015.[7] Many of the new solutions introduced by the "Great Reforms" were reversed soon afterwards, already in 2016, by the new government, but the changes related to injured party remained (with small exceptions).

The measures of protection and assistance listed in the Article 3 of the Act are: protection during the procedural activity, personal protection and assistance in the change of the place of stay. New regulations do not refer directly to the procedural rights of the aggrieved person in the criminal cases, with the exception of the specific manner of the service (delivery) of the pleadings and other documents to the protected victim or witness.

3. SPECIFIC PROBLEMS OF THE PARTICIPATION OF THE INJURED PARTY

3.1. Expedited procedures

The Author of the paper in SIC pays attention to the problems arising from the application of the Article 204 of Slovak Criminal Proceedings Code ("super fast investigation"). In these cases, a compensation claim made by an injured party in preparatory proceedings cannot be exercised in a timely manner (i.e. by the end of a super accelerated investigation under the provision of Article 204 of the Criminal Proceeding Code), because the procedure of a penal order (criminal order) is often applied. Therefore, the injured party has no opportunity to participate in open hearing and to present his case. Even if the prosecutor or the defendant did submit a statement of opposition to such a penal order, the injured party would not be able to effectively demand compensation at the trial, as his/her motion was not submitted within the 48-hour period specified by the CPC for a super-fast investigation.

In Polish criminal procedure both the accelerated (super-fast) procedure and the penal order procedure exist (both have been labelled "special procedures", together with the procedure in privately prosecuted cases and – up to 2015 – simplified procedure). The difference is, that there is no possibility of issuing the penal order if the accelerated procedure has been applied. After the "accelerated" case is transferred to court, the main hearing is mandatory and it should be commenced immediately. On the other hand, differently than in many other legal systems, there is no specific simplified (not necessarily accelerated) investigation provided for the penal order. In the less serious cases (the basic limit is also the maximum imprisonment not exceeding 5 years), the penal order may be issued, if in particular, individual case no imprisonment (even conditionally suspended) is "in concreto" needed. The decision is taken after the case is transferred to the court, basing on the file of the particular case and no motion of the prosecuting authority is needed.

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5 SKORUPKA J., Kodeks Postępowania Karnego. Komentarz, C.H.Beck, Warszawa 2020, p. 10.

6 Journal of Laws of the Republic of Poland, 2015, item 21.

7 Ustawa o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw z dnia 27 września 2013 r., Journal of Laws of the Republic of Poland, 2013, item 1247 and Ustawa o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw z dnia 20 lutego 2015 r., Journal of Laws of the Republic of Poland, 2015, item 396.

In the accelerated cases the practical scope of the victims' activity are sparse. Certainly this is one of the important reasons for criticism towards this procedure[8]. However, in case of penal order according to Article 506 § 1 of Polish Criminal Procedure Code, "The accused and the prosecutor may file an objection with the court that issued a penal order within a final time limit of seven days of its service." It is clear, that this provision refers both to public and the auxiliary prosecutor[9]. It does not cover the injured party before obtaining this status. Until the changes of CPC in 2019 it was making the objection right of the injured party illusive. If the injured persons intends to preserve their status of the party after the case is transferred to the court, he or she is declaring it at the beginning of the main hearing (before the start of taking the evidence). If, however, the case was dealt with at the in-camera session closed to public, the injured party had little opportunity to learn about it. That is why, taking into account the dominating view, that such declaration must be made before the penal order is issued [10], the injured party had been practically deprived of this opportunity. Fortunately, in 2019 the Article 505 § 1 CPC was changed and today not only the prosecutor, defendant and the defence counsel, but also the injured party receives the copy of the penal order. Moreover, according to § 2 of this Article "Along with a copy of the judgment, one should deliver an instruction citing the provisions on the law, time limit and manner of lodging an objection and the consequences of not filing it. The injured party should also be instructed that the condition for the objection is to submit an objection within the time limit referred to in Article 506 § 1, not later than simultaneously with the declaration of acting as an auxiliary prosecutor." The right of injured party to make an objection (within 7-days limit) is entirely realistic today. Perhaps it can be some clue here?

3.2. Right to compensation

In respect of civil claim for compensation of the damages resulting from the crime and the criminal law compensation order, especially the latter underwent the evolution over the years.

Interesting change happened in 2015 – the possibility of filing a civil claim within criminal procedure was entirely abolished and the criminal law compensation was renamed in the statutory (Criminal Code) classification from a penal measure (like disqualification from driving, disqualification from exercising specific profession) to "compensatory measure" (together with forfeiture and exemplary damages). Other statutory changes (for example – exemption of this measure from the ordinary directives of sentencing) transformed the nature of the compensation order to clearly and undoubtedly civil law.

Therefore, two parallel instruments – civil claim and criminal law compensation order ceased to be two concurring ways of compensation. After 2015 the way of compensating the damages resulting from an offence is single civil law oriented compensation order in the criminal case (Article 46 Criminal Code).

At a first glance it looks like the move seriously disadvantageous to the injured person. However, this conclusion would be misleading. Due to evolution of the criminal law compensation order – the instrument incomparably easier to invoke from the point of view of the injured person, the civil claim was simply disused and played no important role within the system in recent years. From the victim's point of view it had been enough just to ask for the criminal law compensation (even orally at the main hearing, before its end). If so, virtually no

[8] For more details see: ŚWIATŁOWSKI A., Historia pewnej kompromitacji. O przywróceniu trybu przyspieszonego w sprawach o przestępstwa" [w:] Problemy penologii i praw człowieka na początku XXI stulecia; Księga poświęcona pamięci Profesora Zbigniewa Hołdy, B.Stańdo-Kawecka, K.Krajewski (eds.), WoltersKluwer, Warszawa 2011, pp. 251-266.

[9] See decision of the Supreme Court of 24.9.1997 r., case number I KZP 13/97, Orzecznictwo Sądu Najwyższego – Izba Karna i Wojskowa, Nr 11–12, item 100), STEFAŃSKI R.A., Przegląd uchwał, Wojskowy Przegląd Prawniczy 1998, Nr 3–4, p. 158; KAROLCZYK P., Sprzeciw od wyroku nakazowego, Prokuratura i Prawo 2006, nr 7–8, p. 89.

[10] STEFAŃSKI R.A., Postępowanie nakazowe w znowelizowanym kodeksie postępowania karnego, Prokuratura i Prawo 2003, nr 7–8, p. 22; KAROLCZYK P., Sprzeciw od wyroku nakazowego, Prokuratura i Prawo 2006, nr 7–8, p. 87.

victims bothered themselves with preparing the civil claim and meeting all the ordinary requirements of such action developed earlier in the civil procedure.

3.3. Access to information

Also in 2015, the injured party had been added in Article 321 CPC to the list of subjects entitled to the final disclosure of the material gathered in the preparatory stage. Former wording: "If there are grounds to close an investigation, at the request of the suspect and his defence counsel to be allowed to review the material of the proceedings, the agency conducting the proceedings informs the suspect and the defence counsel of the date on which they may review the said material (...)" was replaced with: "If there are grounds to close an investigation, at the request of the suspect, injured party, defence counsel or attorney to be allowed to review the material of the proceedings, the entity conducting the proceedings informs the applicant of the possibility of reviewing the file and of the date on which the files may be reviewed (…)"

In this way, the injured party obtained an equal position with the suspect. Both parties may have requested the access to the evidence gathered by the prosecution during the investigation of inquiry. Needless to say, this change was very important from the point of view of the equality of arms as well as contradictoriness - the leading idea of the reform. Certainly that is one of many reasons for the criticism we may direct at the retreat from the "Great Reform" already in 2016.

In respect of the injured person's access to the file on the earlier stage - in the course of the investigation or inquiry – according to Article 156 § 5. "If there is no need for ensuring the correct course of proceedings or protecting an important interest of the State - in the course of preparatory proceedings - parties, defence counsels, attorneys and guardians are allowed to review case files, make or obtain copies of case files; this right is also vested in the parties after the conclusion of preparatory proceedings. The agency conducting preparatory proceedings decides with respect to granting access to case files and making copies by issuing orders (…)." In 2018 the regulation was supplemented with the new sentence 2 of this Article: "If the injured party is denied access to case files, he should be informed about the possibility of obtaining such access in another date. After the suspect or his defence counsel have been notified about the possibility of being acquainted, at the end of preparatory proceedings, with the material gathered in its course, the injured person, his attorney or guardian cannot be denied access to case files or the right of making or obtaining copies."

It means, that after a short break the injured party regained, at least partly, the right to be acquainted with the material gathered in the preparatory stage of the proceedings. The difference is, that this right is not guaranteed within the institution of disclosure, and the "ordinary" access to the material of the pre-trial stage and partly depends on the decision of the police or prosecutor.

4. PARTICIPATION

The problem of the participation of the victim, in person or through a representative, in the individual investigative acts performed by law enforcement authorities at the preparatory stage of criminal proceedings is not an issue in Polish criminal procedure. This difference results from the difference between respective provisions of Slovak and Polish Criminal Procedure Codes - Article 213 of the Slovak and Article 299 of the Polish CPC (granting the aggrieved party the status of a party to the preparatory proceedings) respectively.

Similarly, in respect of the problems discussed in relation to article 271 (1) and Article 274 (2) of Slovak CPC (right to put questions and to make a final speech), Polish legal regulation seems to prevent from such unfavourable phenomena. According to Article 367 § 1 Polish CPC, "The presiding judge enables the parties to express themselves with regard to every issue to be resolved." In respect of the final speeches, according to 406 § 1 Polish CPC "After the closing

of the judicial process, the presiding judge allows the parties, their representatives (…) to make their closing arguments. The order of making closing arguments is as follows: the public prosecutor, the auxiliary prosecutor, the private prosecutor (…), the defence counsel and the defendant. Representatives of the parties in the proceedings speak before the parties."

It should be mentioned here, that a significant part of criminal cases in Poland is concluded with one of the "consensual" instruments provided for the first time in the CPC of 1997. Particularly important here is Article 335 of the CPC, enabling the issuing of a sentence at a session (not at an open main hearing) and imposing on the accused a penalty previously agreed (before drawing up the application) with the suspect. A slightly similar possibility is provided for in Article 387 of the CPC, according to which, at the initial stage of the main hearing (not later than the end of the initial statement of the last of co-defendants), the defendant may file a motion for sentencing to a specific penalty. In other words, the defendant proposes particular penalty. If the court consider this punishment to be sufficient and the testimony of the defendant (and more broadly: the case itself) does not raise any doubts - it may "jump" directly to the sentencing, without taking any evidence at the main hearing. Similar instrument may be found in Article 338a CPC, the difference is that the accused should submit the motion before the service of the notification of the date of the trial.

Both in case of "sentencing off the trial" and "voluntary subordination to the penalty" (article 335 CPC and Article 387 CPC respectively) the injured party may object before such bargained sentence is delivered.

5. SOME DATA FROM EMPIRICAL RESEARCH

5. 1. Methodology

A research program financed by the National Science Centre entitled „Pokrzywdzony jako uczestnik postępowań represyjnych. Czwarty wierzchołek trójkąta?"[11] was conducted in the years 2016-2020 in the Department of Criminal Procedure, Jagiellonian University, Kraków[12].

As part of the program, extensive file research and opinion polls among practitioners were carried out.

First, 567 court files were examined, of which 454 (80.1%) were cases from district courts (the lowest level courts) and 113 (19.9%) from provincial courts (middle level courts, ruling on most serious cases). The files were examined in four appellate circuits: Kraków, Wrocław, Białystok and Gdańsk (4 provincial courts and 12 district courts)[13].

The pool of examined cases included 31% of crimes against property, 15% of crimes under the narcotic drugs act, 13% of crimes against road traffic safety, 11% of crimes against life and limb, 3.1% of cases against sexual freedom and decency, 1.7% crimes against freedom, 3% against family and guardianship, 2% economic cases, 1% crimes prosecuted by private prosecution and 19% other cases. Some of them were victimless crime.

The data had been analysed in the Statistica program basing on the classical model of cross tabulations (contingency tables) examining the relationship between two variables that are nominal and dichotomous, using the index - the (Pearson) chi-square test (a test of independence)[14].

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[11] The research team were: prof. D.Szumiło-Kulczycka, dr P.Czarnecki, P.Winiarski, P.Dębowski, M.Popiel, R.Wszołek, A.Leszczyńska. We owe gratitude to late prof. W.Dadak for the invaluable methodological advice. Principal investigator was prof. A.Światłowski.

[12] The injured party as a participant in repressive criminal proceedings. The fourth vertex of triangle?; No.2016/23/B/HS5/00437.

[13] For more details see: ŚWIATŁOWSKI A., CZARNECKI P., Wstęp (in:] Pokrzywdzony jako uczestnik postępowań represyjnych. Czwarty wierzchołek trójkąta?, C.H.Beck, Warszawa 2021, p. XVI-XVII.

[14] The Cramer's V coefficient was sometimes used, with the number of degrees of freedom (df) and the probability limit of 0.05. It should be kept in mind that the chi-square test does not measure either the strength or the direction of the relationship between certain relationships, but it can be inferred from Cramer's V ranging from 0–1. According to the latter index, the closer the value is to 1, the stronger the dependence, and the closer to 0, the weaker the dependence.

5.2. Auxiliary prosecution

According to Article 53 CPC in publicly prosecuted cases the injured party may act as a party – auxiliary prosecutor either alongside or instead of the public prosecutor.

In the pool of examined cases, in 260 cases (46%) the injured party was active in the preparatory proceedings (inquiry or investigation). The activity was understood as either submitting an evidence motion, an appeal or a request to participate in the procedural activities during the preparatory proceedings. However, interrogation of the injured party as a witness was not treated as an activity, nor was the simple notification of a crime. On the other hand, the injured persons relatively rarely used the assistance of professional representatives at this stage (advocates or attorneys-at-law). It happened in 58 cases only, which constituted 10.2% of the total. It was almost always (53 cases) the attorney of choice (not ex officio). The ex officio attorney appointed to the victim in the preparatory proceedings appeared only in less than 1% of cases. The interest of the injured party in the result of the case seems to increase at the stage of court proceedings[15]

The injured party acted as an auxiliary prosecutor in 75 cases (13,2% of all examined cases). The victims most often decided to participate in this capacity in court proceedings in cases against property, life and limb and against sexual freedom. It is also worth adding that in 16 cases the injured persons acted instead of a public prosecutor as subsidiary prosecutors and in 2 cases as private prosecutors.

A similar relationship was shown by the injured person's tendency to use the assistance of a legal representative in court proceedings. Of course, it is about an injured party who has obtained the status of an auxiliary prosecutor (auxiliary or subsidiary or private). The attorney representing the injured party in court proceedings appeared in 78 cases (13,8%). It was still the rule that it was an attorney by choice (67 cases). The ex-officio attorney appeared in only 11 cases (1.5%).

It seems to be interesting how participation in the case as an auxiliary prosecutor, as well as using the assistance of a professional attorney could influence the course of the proceedings and the ruling (in particular, compensatory measures). First of all, it should be noted that the participation of the injured party in the court proceedings did not show any statistically significant relationship with the choice of a "consensual" form of closing the case. Out of all cases examined, in one of such forms (mainly Articles 335 and 387 of the CCP), 247 cases were disposed of, i.e. 43,6% of the total. It does not matter whether the injured party took part in the case as an auxiliary prosecutor, or whether an attorney participated in the case.

On the other hand, there was a relationship between the fact of participating in the court proceedings as an auxiliary prosecutor and the type of sentence passed in the case, although it requires additional commentary. The injured party was more likely to act as a party in the pool of cases ending with acquittal (43%) and discontinuation (15%) than in cases with convictions (10%) or conditional discharge (3%). It seems to confirm an intuition about the possible phenomenon of unrealistic expectations of some allegedly injured persons to obtain conviction, despite the lack of grounds for this.

On the other hand, further data (not to be discussed here) confirm the hypotheses that the active participation of the injured party in court proceedings (in person or assisted by the attorney) causes more frequent questioning of witnesses at the main hearing (compared to other cases), extends the time of the trial and increases the likelihood of an appeal. The measurable effect to the victim is the increase in the likelihood of obtaining compensation measures, and the compensation is higher. It is also worth noting that it does not matter whether the aggrieved

[15] For more details see: SZUMIŁO-KULCZYCKA, D. Wpływ udziału pokrzywdzonego na postępowanie sądowe, [in:] Światłowski A., Czarnecki P. (eds.), Pokrzywdzony jako uczestnik postępowań represyjnych. Czwarty wierzchołek trójkąta?, C.H.Beck, Warszawa 2021, p. 213-229.

party acts independently as a party in criminal proceedings or uses the assistance of a professional attorney.

According to Article 55 CPC the injured party may assume the position of the subsidiary auxiliary prosecutor instead of the public prosecutor and file the own subsidiary indictment. It is also possible that during the trial the public prosecutor waives his indictment and the auxiliary prosecutor remains the only prosecutor in a particular case.

Initially the subsidiary indictment was not particularly popular. In 2000 it was as few as 62 cases, in 2002 – 89. After the alterations of CPC it was 652 in 2008 (with only 40 convictions), in 2014 it was 1866 cases with 218 convictions. In recent years it is ca. 2000 cases per year.

J. Kluza estimates, that the subsidiary indictment is filed in 1 case out of 5 in which it is available (two non-prosecution decisions and favourable ruling of the court after such decision was challenged)[16].

The files of 85 cases of subsidiary accusation have been examined. Only in 57 of these cases the auxiliary prosecutor participated in the main hearing, 18 were active at the pre-trial stage, and 27 were active at the stage of court proceedings.[17]

5.3. Special procedures and bargained cases

Taking in account the criticism directed at the super accelerated investigation and penal order, it may be interesting to take a look at the position of the injured party in the special procedures in Poland.

Out of all cases analysed, 344 were decided in ordinary procedure, 7 in ordinary procedure after the objection to penal order, 84 in simplified (abolished in 2015) 77 were privately prosecuted case, 27 were disposed of with the penal order and in 19 cases no information was extracted from the file. Not a single case was disposed of in an accelerated procedure.

In total of 106 cases the defendants were sentenced off trial according to art. 335 § 1 CPC (especially in road accident and deception cases.). Art. 335 § 2 CPC was applied in only 13 cases (mostly road accident), Article 338a CPC in 2 cases (aggravated deception[18] and deception), art. 387 CPC in 24 cases (two thirds of them – deception and aggravated deception cases). In 410 cases the researchers encountered no bargaining.

As for the attendance at a session (or a hearing) in cases where Article 335 § 1, Article 335 § 2, Article 338a and Article 387 of the Code of Criminal Procedure have been applied: by far the strongest relationship ($p = 0.015$) occurred in the case of Article 387 CPC, which should not come as a surprise.

It is surprising, however, that in two-thirds of the examined cases the aggrieved party was not present anyway. This is probably due to the fact that the injured persons often consider the presence of their professional attorney as sufficient, and do not feel the need to "look after" the case themselves.

When it comes to the level of significance, the following are the cases referred to: Article 335 § 1 ($p = 0.270$) Article 335 § 2 ($p = 0.33$) and Article 338a ($p = 0.518$). This does not allow us to draw too far-reaching conclusions about the institutions themselves (p-factor above 0.05), but the very order or frequency of these institutions is interesting.

Victims exercised their right to be present at a hearing or a session in almost every fifth case out of all bargained, while in the remaining cases their personal presence was recorded only in 2 out of 31 cases. Dependence ($p = 0.015$) occurred in the case of Article 387 of the Code of

[16] KLUZA J., Skarga subsydiarna pokrzywdzonego w postępowaniu karnym w ujęciu prawnoporównawczym, Studia Prawnicze i Administracyjne 2017, Nr 3, p.4.

[17] For more details see: WINIARSKI P., Subsydiarny akt oskarżenia czyli tzw. skarga subsydiarna w procesie karnym, [in:] Światłowski A., Czarnecki P. (eds.), Pokrzywdzony jako uczestnik postępowań represyjnych. Czwarty wierzchołek trójkąta?, C.H.Beck, Warszawa 2021, p. 341-156.

[18] Aggravated deception is a deception over 200 000 PLN (or of a significant cultural value).

Criminal Procedure and the next places were taken by cases involving: Article 335 § 1 (p = 0.270) Article 335 § 2 (p = 0.33) and Article 338a (p = 0.518).

6. INJURED PARTY IN THE EYES OF LEGAL PRACTITIONERS

The questionnaire (in a traditional form and same time as an internet link) was sent to experts working in the field of criminal law – judges, public prosecutors, advocates and attorneys-at-law - in all eleven appellate circuits. An invitation to fill out a questionnaire was sent to total 696 professionals. The questionnaires were filled out by 397 respondents. It constitutes 57.04% of addressees. The largest part was constituted by questionnaires completed by prosecutors (38.3%), 25.4% came from judges, 20.2% from advocates and 16.1% came from attorneys-at-law[19].

The survey, apart from the section devoted to socio-demographical data on respondents, consisted of 28 questions in a form of statements with the cafeteria of answers according to the 5-point ordinary Likert scale:

1. Strongly agree
2. Agree
3. Neither agree nor disagree/hard to say
4. Disagree
5. Strongly disagree

The remaining 2 questions were open-ended, therefore the respondents could share their suggestions, proposals or observations regarding own experience in respect of the injured persons and their position in the criminal cases.

It may be interesting to start with the open-ended question 29: "If you consider the definition of the injured party to be incorrect, why?" The answers to this question can be divided into several groups, pointing at: unclear wording, dysfunctionality, the redundancy of the „directly harmed" element and being inappropriate to some specific types of crimes.

At this point, it is necessary to return to the question (statement) 1 from the questionnaire - whether it should be provided for in criminal proceedings to formally grant such a person the status of an injured party - as in the case of a suspect (charging).

In the order from agreement to disagreement, the answers were divided as follows: 127-54-23-56-137, which can be illustrated as a graph formed an almost symmetrical shape of a hanging chain (U-like shape, catenary, sk: reťazová krivka).

It is probably not a surprise that majority of the respondents agreed with the next statement - "The representative of the aggrieved person who is a natural person should still be only an attorney or legal advisor." (343-35-2-7-10).

Four questions (7-10) concerned the controversial and certainly ambiguous issue - the possibility of influence of the injured party on the use of "consensual" instruments – Articles: 335 § 1, 335 § 2, 338a and 387 respectively. The statement was: "Application of the institution under Article … should be subject to the express consent of the victim.". The distribution of answers to these four questions also formed the "hanging chains" – with a balanced agreement and disagreement.

Another question appealed to individual observations and subjective feelings – it was about the approval of the statement that "Most of the aggrieved parties are not interested in protecting their interests in the criminal trial." Here 41% of the respondents fully agreed, 24% rather agreed, 8% had no opinion, 11% rather disagreed and 16% - definitely disagreed.

The whole group of questions concerned the institution of the auxiliary prosecutor. The radical proposal to grant the injured persons the right to file their own indictments as soon as

[19] For more details see: CZARNECKI P., Pokrzywdzony w oczach osób wykonujących zawody prawnicze [in:] Światłowski A., Czarnecki P. (eds.), Pokrzywdzony jako uczestnik postępowań represyjnych. Czwarty wierzchołek trójkąta?, C.H.Beck, Warszawa 2021, pp 43-88.

the preparatory proceedings were discontinued (without meeting the requirements listed in Article 55 CPC) was not popular. Another quite radical proposal was: "In court proceedings, the injured party should be a party to proceedings without the necessity of obtaining the status of the auxiliary prosecutor". In other words: the extension of the regulation already in force at the stage of preparatory proceedings (the injured party is a party to proceedings - Article 299 of the CPC) to the stage of court proceedings (where they currently have to obtain the status of a party). Here, over half of the respondents (53.15%) responded positively to the proposal - 38.54% answered "I strongly agree", and 14.61% answered "I rather agree". In turn, 15.37% of those who replied "I rather disagree" and 23.17% of those who replied "I do not agree at all". Remaining 8.31% indicated "hard to say".

As far as mediation is concerned, only 8.82% of the respondents strongly agreed and 11.84% partially agreed with the statement that "Mediation (Article 23a of the CPC) works properly". 21.41% of the respondents had no opinion, while as many as 19.65% disagreed partially, and 38.29% - strongly. Therefore, there were twice as many people who positively assessed the functioning of mediation in criminal cases than those disagreeing. Consequently - more than half of the respondents disagreed with the statement: "The number of mediated cases is already close to the maximum possible and it is difficult to expect much more of them in the future", while only 13.60% jointly chose both positive answers.

7. CONCLUSIONS

The actual position of the aggrieved party in the legal system is the result of many factors. Modern legal regulation is only one of these factors. The similar socio-economic conditions make us learn from the experience of countries with a similar tradition. So as the observations made against the background of one legal system may have a significant comparative value, I hope that my brief summary of selected points of interest in Polish legal system may be interesting to readers in Slovakia and in other countries.

KEYWORDS

injured person, victim, damages, representative, rights of the injured person, auxiliary prosecutor

KĽÚČOVÉ SLOVÁ

poškodený, obeť, odškodnenie, splnomocnenec, práva poškodených, pomocný prokurátor

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