

NATIONAL REPORT



**Victims of Crime
Implementation Analysis
of Rights in Europe**



VOCIARE
Victims of Crime
Implementation Analysis
of Rights in Europe

promotor



**Victim Support
Europe**

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DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission. Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. Hence, the present national report aims to assess the practical implementation of the Victims' Directive in Poland.

After thorough assessment, it was possible to conclude there are still some deficiencies or difficulties with the practical implementation of some provisions of the Directive. In this context, attention may be given to the issue of **victims' right to avoid contact with the offender**. In this respect, a lot depends on the practice of particular authorities. It is not everywhere and not always the case that the building conditions allow for physical separation of victims from offenders. Waiting rooms for victims and perpetrators are not separate. Although court facilities as well as buildings of authorities conducting pre-trial proceedings are continuously being modernized on a large scale in Poland, there is still a considerable number of old buildings where it is impossible to guarantee a full separation of victims from offenders.

The issue of translation services should also be included in the challenges related to the implementation of solutions or mechanisms provided for in the Directive. While there are provisions in the Polish law requiring the authorities to appoint an interpreter whenever it is necessary to properly carry out the proceedings, it is sometimes difficult to provide efficient translation services immediately, especially when it comes to rare languages which are not often used in Poland.

Implementation of the provisions of the Directive in the pragmatics of the everyday functioning of criminal investigation authorities sometimes encounters difficulties related to the high workload. For example, crime victims sometimes have to wait at the Police station in order to report a crime or give a testimony. Another problem is the reluctance of some authorities to institute proceedings in which the search for evidence and determining the circumstances of the incident requires a considerable amount of time, effort and resources. In such cases, the authorities are sometimes more likely to refuse to initiate proceedings or discontinue them, despite the victim making a formal complaint. All such decisions are subject to judicial review, as they are subject to appeal, but even if the court reviews the operation of the authorities, the proceedings are extended, and the collection of evidence in the case may be more difficult.

However, it is also necessary to recognize the good practices applied by the competent authorities, which contribute to the practical guaranteeing of exercising the rights of victims of crime. One of these types of practices is the development and widespread use of a **written guidance**, which is commonly used at police stations and prosecutor's offices, and which is distributed to all victims of crime. This simple document allows each authority of the proceedings to provide a crime victim with **information** about what rights he/she can use and how to proceed in criminal proceedings. Subsequently, attention should also be drawn to the **Questionnaire form** which allows to make an **assessment in order to determine the specific protection needs of victims**. It is a tool thanks to which a particular officer conducting the proceedings and having contact with a crime victim can carry out an analysis of the needs of such a person.

Undoubtedly, one of the good practices related to the implementation of the Directive is the increasingly frequent utilisation of separate interview rooms for children. In many courts, friendly rooms for child victims or witnesses of crimes have been created in recent years. Thanks to this, it is possible to conduct evidence proceedings out of the courtroom, which in case of interviewing child victims gives them greater comfort and freedom of speech. Such rooms are being created regularly in court buildings, and their design and equipment is adjusted to the specific needs of child victims.

In conclusion, it should be stated that this report, completed within the context of project VOCIARE, provides an overview of the practical implementation of the Directive in Poland. The analysis of the individual provisions of the Directive and their comparison with the national regulations allows to conclude that the provisions of the Directive have been transposed into the national law and are applied in practice. Difficulties with the practical application of some provisions result not so much from the lack of implementation, but rather are the result of some infrastructural delays, or are related to the need to adapt the practice of conduct used for years to new conditions. There is no doubt, however, that the rights of victims of crime in Poland are respected in a more comprehensive and broader way than before the entry into force of the Directive 2012/29/EU.

INTRODUCTION

The purpose of the present report is to assess the practical implementation of the Victims' Directive in Poland in the context of project VOCIARE – Victims of Crime Implementation Analysis of Rights in Europe.

For this purpose, an adequate methodology was created and adopted. The first two steps taken in order to begin this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews.

Desk research was the first stage of national research. It included research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are related to victims' rights. It collected and systematized existing quantitative and qualitative information on the research topic, covering, for example, statistics on the situation of victims, academic literature on the topic of victims' rights implementation, media reports on the topic, relevant NGO researches and government reports to Intergovernmental Organisations.

The national online survey was a particularly important tool for the research as it enables a much broader evidence base and allows for statistical analysis. It consisted of closed-ended questions directed at organisations and practitioners having contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles

and rights provided by the Directive are transposed into Polish law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

Furthermore, after such thorough analysis, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These are very important chapters in this report, since they provide practices which might be good practices to be implemented by other Member States and be maintained in Poland, and they also provide information on what is lacking or failing in the practical implementation and can be improved. This is vital for Poland itself and for other Member States which might present similar less positive aspects. The final chapter will provide a conclusion of this report.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was transposed into Polish law and was carried out in several legal acts. First, the amendment to the Code of Criminal Procedure Act should be indicated. This act of law introduced guarantees regarding certain rights of crime victims. The Code of Criminal Procedure introduced e.g. the right of non-Polish-speaking victims to obtain translated versions of judgments issued in the course of the proceedings, the right not to disclose the personal data of victims in the files of proceedings, the right of victims to be accompanied by a person of their choice during the proceedings, the right to obtain information and instruction about the rights of victims, the possibility of conducting an interview remotely by using audio-video technology.

An extensive change was introduced by the entry into force of the new Act of 28 November 2014 on protection and assistance for victims and witnesses. It introduced a number of solutions resulting from the Directive, including, in particular, protection measures and specific forms of assistance provided to victims and witnesses. The Act regulated the manner of proceeding while providing victims and witnesses with specific forms of assistance such as material assistance, assistance in obtaining shelter, psychological assistance, and personal protection.

Another change in the Polish legislation was the extension of the scope of assistance provided from the Victims Assistance and Post-penitentiary Assistance Fund. This fund is regulated by the provisions of the Executive Penal Code, which have been extended in connection with the implementation of the Directive. The Executive Penal Code introduced a category of assistance financed from the abovementioned Fund for victims of crime and their closest persons. This made it possible to allocate significant funds used by NGOs to provide comprehensive assistance to victims of crime.

In any case, some provisions foreseen in the Directive were already present in the Polish law. Some of the existing solutions have been changed, expanded or modified. Nevertheless, it should be recognized that, under Polish law, the Directive has been implemented in its entirety.

Overall, the Directive has changed the way of formal treatment of victims of crime in the Polish criminal law. Currently, victims, are not considered to be merely a source of evidence, but are treated subjectively as persons whose specific individual rights have been violated as a result of a crime, and who therefore have specific protection needs. Moreover, victims may still be a party to the criminal proceedings and may take an active part in the proceedings, while exercising the rights which they are entitled to. In addition, victims have the right to access support provided as part of an extensive system.

When describing the legal framework of this study, it is necessary to explain certain definitions. In this study, the concept of victim is used in a twofold sense. A victim of crime is above all a person defined in the Directive in the provision of Article. 2 para. 1 lit. a). However, it should be borne in mind that a victim within the meaning of the Polish Code of Criminal Procedure is a natural or legal person whose legal interest has been directly violated or threatened by a crime. However, not every victim must participate in criminal proceedings as a party. Frequently, the role of the victim is limited to the role of a witness. This does not mean that such victims are deprived of their rights under the Directive.

At the same time, it is possible for the victim to act as an auxiliary prosecutor. The auxiliary prosecutor is the victim who appears in criminal proceedings along with the public prosecutor (Police or prosecutor). Adoption of the role of the auxiliary prosecutor by the victim depends solely on the victim and requires appropriate notification to the authorities conducting the proceedings. An auxiliary prosecutor may participate in the proceedings as a party, and is entitled to all procedural rights, as he/she has an independent position in the criminal proceedings. The distinction between the victim and the auxiliary prosecutor is important from the point of view of the role of the victim of crime in criminal proceedings under Polish law.

The legal provisions discussed in this report regarding the procedural rules of criminal proceedings with respect to individual rights of victims were in principle enacted in the current form as a result of the implementation of the provisions of the Directive. The systemic position of the victim, who as a result of certain actions may become a party to the criminal proceedings in the capacity of an auxiliary prosecutor, was developed in the regulations which were in force before Poland's accession to the European Union. On the other hand, the provisions of the criminal procedure were amended and adapted to the requirements of the Directive as a result of the entry into force of the Directive. In addition - as discussed in more detail further in the report - as part of the process of implementing the provisions of the Directive on the national level - the Act on Protection and Assistance to Victims and Witnesses was passed, which introduced previously non-existent solutions to the Polish legal order. Moreover, the implementation of the Directive compelled the national authorities, including the Ministry of Justice, to take actions related to the pragmatics of the functioning of the authorities, which resulted in, among others, the development of a standardized content of the guidelines provided to victims, and the development of a questionnaire to assess victims' needs.

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) 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.

The definition of "victim" in Polish national criminal law is broad and covers all persons referred to in Article 2 para. 1 lit. a) of the Directive. The definition of the victim contained in the Code of Criminal Procedure is even wider than the definition contained in the Directive, because it covers both natural persons and legal persons¹. Victims are natural and legal persons whose legal interest has been directly violated or threatened by a crime. The definition functioning in the Polish criminal law system does not exclude any person from being considered a victim, regardless of origin, age, race, sex, or beliefs. This means that every legal entity - both a natural person and a legal person - can be treated as a victim in criminal proceedings.

¹ A natural person is any human being from the moment of birth till death. A legal person is an organizational unit - an entity to which the act of law gives legal personality. A legal person has full legal personality, has legal rights and obligations and the capacity to perform legal acts. Legal entities in Polish law are the State Treasury, as well as other entities to which the act of law grants legal personality, such as commercial law companies or local government units.

The definition of victim refers only to a violation of or a threat to a particular legal interest by an action qualified as a crime. Therefore, if it is possible to determine that a criminal action has resulted in the violation of or even a threat to the legal interest of a given person, then such person is treated as a victim. This refers to all interests protected by the law, including health, life, freedom, property.

The practical application of the above definition is not very difficult. In the case of crimes against life, health, property and freedom, the authorities conducting the criminal proceedings grant the status of a victim of crime to victims of this kind of crime, and in cases where the victim has died as a result of a crime, his/her relatives receive the status of victims. In the Polish criminal law, the definition of closest relatives who may be considered victims includes the following: spouse, ascendants (parents, grandparents, great-grandparents, etc.), descendants (children, grandchildren, great-grandchildren, etc.), siblings, spouse's relative in the same line or degree, adopted persons and their spouse, as well as partners who are not in a formal relationship.

Difficulties of interpretation sometimes appear in the case of environmental crime (e.g. environmental pollution), offenses against the administration of justice (e.g. false testimonies), or offenses against the credibility of documents (e.g. falsification of documents). In this type of crime, it is sometimes difficult to show that in a given situation there was a direct violation of or threat to the legal interest of a particular person. Persons who treat themselves as victims of such crimes are not always allowed to participate in the proceedings as victims, because the judicial authorities, especially at the stage of preparatory proceedings, do not find any justification for treating a specific person as a victim. For example, a person who gives false testimony does not directly infringe the legal interest of the person against whom he/she falsely testifies. In such situations, the rights of victims of crime are protected by appropriate appellate measures and judicial review of activities carried out in the preparatory proceedings.

ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.

The exercising of the right to understand and be understood takes several forms in the Polish penal procedure. First of all, pursuant to the provisions of the Code of Criminal Procedure (Article 16), the authority conducting the proceedings should, where necessary, provide participants with information about their duties and their rights. This applies both to situations in which the Act contains a provision that obliges a given authority to give instruction, but also to situations where the law does not explicitly impose such a duty. This regulation obviously applies to crime victims as well.

The most common practice of criminal proceedings is to give victims instructions in two forms. The person conducting the given proceedings at the Police or the Prosecutor's Office usually provides the victim with verbal information about the rules and stages of the proceedings. However, regardless of this, each victim receives written guidelines on the rights and obligations of victims in criminal proceedings. Information in writing is given to every victim regardless of their physical condition or existing disabilities.

In addition, the system of support centres (run by NGOs) for victims of crime and witnesses in Poland actively participates in the provision of necessary assistance to crime victims. One of the purposes of this assistance is the exercising of the right to understand and be understood.

One of the forms of practical application of the right to understand and be understood is the obligatory participation of an interpreter when there is a need to interview a hard of hearing or mute person or a non-Polish-speaking person (Article 204 of the Code of Criminal Procedure). Therefore, in situations when the victim of a crime is a person who is unable to communicate with the Polish authority conducting the proceedings, then the regulation ensures the obligatory participation of an interpreter in this type of activity.

Assessment of victims' communication needs is made by the authority that is in contact with the victim. This assessment is conducted on the basis of observations and findings made during the authority's contacts with the victim. Frequently, the needs of victims are recognized by the authority on the basis of requests, motions and signals made by victims in oral or written form.

In practice, the right to understand and be understood is updated in the course of specific proceedings, especially during the interview. Information provided to all victims is standardized and contains strictly defined content. Victims with intellectual disability receive additional explanations in the oral form from the authorities conducting the proceedings, sometimes also in writing although this requires special preparation. When the victim is an intellectually disabled person, the authorities try to maintain contact with the guardians of such persons in order to ensure that the victims exercise their full rights.

Victims of crime are entitled to be accompanied by a person of their choice during their contact with the competent authority. In this respect, there are no restrictions either in the law or in the practice of the proceedings. Victims of crime can benefit from the support of a person of their choice, in particular when the victim requires assistance as a result of a crime.

In recent years, various forms of providing information to crime victims have been used by the authorities. Written and visual materials containing the most important information about the rights of victims are regularly developed e.g. by the Ministry of Justice. These materials are distributed primarily in prosecutor's offices and in courts. In addition, it is becoming more common to use the Internet to disseminate information, including by publishing the materials and information addressed to the victims on the websites of law enforcement agencies. The use of social media is becoming more and more popular, although this information channel is still not very popular with the justice system.

ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

The right to receive information from the first contact with the competent authority is carried out in the form of guidance given by the authorities of criminal proceedings, i.e. the Police and public prosecutor. These authorities are obliged to provide instructions on the rights and obligations of the participant in the proceedings. At the first contact of the victim of crime with the criminal investigation authority, the victim receives a written guidance which contains the following information:

- 1) The right to use the help of a representative
- 2) The right to use the free-of-charge assistance of an interpreter/translator during the proceedings
- 3) The right to appeal against decisions taken in the proceedings
- 4) The right to participate actively in the proceedings, including the submission of applications, participation in hearings
- 5) The right of access to the case files

- 6) The right to use the mediation procedure
- 7) The right to be notified when the person remanded in custody is released from or has escaped detention
- 8) The right to demand compensation for the damage caused by the crime
- 9) The right to submit a request for notification about the charges against the accused, the date and place of the hearing, or the court sitting during which the proceedings may be discontinued, conditionally discontinued or conviction of the accused without a hearing
- 10) The right to apply for state compensation for victims of certain prohibited acts
- 11) The information that the details of the place of residence and place of work of the victim are not disclosed in the case files
- 12) The right to apply for protection of the Police in the event of a threat to the life or health of the victim or his/her relatives, as well as the right to receive personal protection or assistance in changing the place of residence if the degree of risk is high,
- 13) The right of the victim and the closest persons to receive free medical, psychological, legal, material and rehabilitation assistance in the Assistance Network for Crime Victims

The guidance model and the scope of information to be provided to the victim are specified in the national law in the Regulation of the Minister of Justice of 13 April 2016 on specifying the model of guidance on the rights and obligations of the victim in criminal proceedings (Journal of Laws, item 514).

The information referred to herein takes the form of a written document which is given to victims during the first contact with a competent authority. Most often the police officer or prosecutor handling the case gives the victim a written document in which the abovementioned information is presented. This information is also available in electronic form on the authorities' websites. The criminal investigation authorities have ready-made documents containing the above information, hence it is possible to give these documents to victims of crimes immediately during the first contact of the victim with the authority. If necessary, the authorities may explain to victims the rights they have. Nevertheless, it should be pointed out that the authorities and individual officers do not give legal advice to victims nor do they advise on taking certain procedural steps.

ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.

The victim's right to receive written acknowledgement of their formal complaint has been transposed into the Code of Criminal Procedure. According to art. 304b of the Code of Criminal Procedure, at the request of victims reporting a crime, they receive written acknowledgement of their formal complaint, including the date and place of its receipt, the identification of the receiving authority together with contact details, the case reference, details of the victim's identity, time and place of the criminal offence concerned and a brief description of the offence and the damage caused. The victim should be instructed about this right. This regulation guarantees each victim the right to receive written acknowledgement of their formal complaint. The authority conducting the criminal proceedings is obliged to instruct the victim about the fact that the victim has such a right.

The Code of Criminal Procedure provides for obligatory participation of an interpreter in all activities where there is a need to interview a person who does not speak Polish. A translator is also appointed in every situation when it is necessary to translate into Polish a letter written in a foreign language (Article 204 § 2 of the Code of Criminal Procedure). The victim is therefore given the opportunity to make a complaint in a language other than Polish, and the authority conducting the criminal proceedings is obliged to translate this type of complaint into Polish. If there is a need to hear the victim, the participation of an interpreter is guaranteed.

Verification of the knowledge of the Polish language is based on the person's statement. The authorities conducting criminal proceedings are not equipped with tools which would allow them to verify a person's actual knowledge of the Polish language, nor do they conduct examinations or any kind of language proficiency tests. Polish regulations on criminal proceedings do not provide

for this type of verification. Therefore, the competent authority conducting criminal proceedings will appoint an interpreter for a particular action whenever the person in relation to whom the action is to be conducted states that he/she does not speak Polish sufficiently.

The acknowledgement of the formal complaint is issued in the official language of Poland, i.e. in Polish.

The acknowledgement of the formal complaint allows the victim to follow the course of the proceedings, to put forward motions, and to request access to the case files. Moreover, the acknowledgement enables the victim to prove to other authorities that he/she has made the formal complaint. Such a document may be used in civil court proceedings, before social welfare authorities or in the course of applying for assistance in victim support centres (which are mostly run by NGOs).

Written acknowledgement of the formal complaint of a crime is in practice issued to victims who make a formal complaint and request acknowledgement. The issuing of written acknowledgement to the victim is not always done automatically after the authority receives the complaint. Sometimes the authorities receive a formal complaint from the victim, initiate and conduct criminal proceedings, and consequently bring charges against the offender without providing the victim with written acknowledgement of the complaint. However, whenever a victim requests a written acknowledgement, this type of acknowledgement is issued.

ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.

The Code of Criminal Procedure, which defines a victim in a broad manner, introduces a twofold nature of a victim's participation in criminal proceedings. A victim is every person whose legal interest has been violated or threatened with a criminal act. A victim who has made a formal complaint of an offence does not automatically become a party to the criminal proceedings. In cases where the victim does not enter the proceedings as a party, his/her role may be limited to that of a witness. All persons who report to the competent criminal investigation authority as victims are informed about their rights and duties and their role in criminal proceedings. The scope of information provided to such persons is very wide. Victims receive written information on their rights during the first contact in the course of the proceedings, including in particular information on the right to obtain information about the status of the case, the right to active participation in the proceedings, access to case files, and the right to challenge certain procedural decisions.

On the basis of the information obtained, the victim has the right to access the criminal proceedings as an auxiliary prosecutor. In the situation of submitting an application for participation in the proceedings as an auxiliary prosecutor, the victim becomes a party to criminal proceedings and acts on an equal basis with any other party to the proceedings. Such persons are notified about all activities in the proceedings, can participate in them, may submit motions and actions, may complain about decisions taken in the proceedings. In court proceedings, they appear alongside or instead of the public prosecutor, where they have all the rights of a party to legal proceedings.

Distinction between the role of victims in criminal proceedings has a fundamental impact on the scope of information received in the course of the proceedings. However, it should be emphasized above all that once the victim complains to the criminal investigation authority (to the Police, to the prosecutor's office), the person receives, without any request, written information containing a broad review of the rights and obligations of victims in criminal proceedings. This information is provided to victims immediately after they make the complaint. As a result, the victims may decide at the beginning of the proceedings whether they want to actively participate in the proceedings as a party and then attend the proceedings as an auxiliary prosecutor, or whether they remain only in the role of an injured party.

In the latter case, victims are not informed of every action in the case. However, they do receive information about a possible decision not to proceed with or to end an investigation or not to prosecute the offender. Such persons are also informed by the prosecuting authorities about bringing an indictment against the offender to court. This information is sent to the victim at the same time as the indictment is sent to the court.

The victim has the right to receive information from the authority conducting the proceedings on the status of the case, as well as the right to inspect the case files. This right is exercised at the request of the victim and it is granted by the authority conducting the proceedings.

Information given in writing to victims is usually limited to this form. Informing victims about their rights is not about broadly discussing the rights of the victims or their status in criminal proceedings. Of course, always in the case of specific questions from a victim, the person conducting the proceedings is obliged to provide the victim with relevant explanation. Nevertheless, the right to information is not about giving legal advice to the victim. If victims, for various reasons, are unable to defend their rights or use their rights in the course of criminal proceedings by themselves, they are entitled to legal aid. It may be legal assistance in the form of a representative of the victim assigned ex officio, or legal assistance including comprehensive advice within the framework of assistance provided by the network of victim support centres. Written information provided to victims is available in Polish, while victims who do not speak Polish have the right to use the assistance of an interpreter.

ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.

Pursuant to the provisions of the Code of Criminal Procedure, the translator's/interpreter's participation in criminal proceedings is guaranteed whenever there is a need to perform any activity involving a non-Polish-speaking person (Article 204 of the Code of Criminal Procedure). This guarantee applies also to victims with hearing impairments or mute, if communication with such persons in writing is insufficient. Situations in which there is no translator's/interpreter's participation in the activities are not frequent, because without an expert translator/interpreter the authority is usually unable to carry out procedural acts, hence the appointment of an translator/interpreter is in the interest of the victim as well as the authorities conducting the proceedings.

In practice, the authorities do not perform the assessment of the knowledge of the Polish language. The necessity to provide a translator/interpreter is determined based on the decision of the authority conducting the proceedings. The authority makes the decision after obtaining the victim's statement that his/her knowledge of the Polish language is sufficient or that a translator/interpreter is necessary.

The Code of Criminal Procedure ensures that a victim who acts as an auxiliary prosecutor and who does not speak Polish sufficiently, receives a decision subject to appeal or a decision ending the proceedings together with a translation; with the consent of the auxiliary prosecutor, it may suffice to publish a translated decision ending the proceedings, if it is not subject to appeal.

In a criminal trial, the accused has the right to free-of-charge assistance of an translator/interpreter, which is standardized in the Code of Criminal Procedure. Although there is no

analogous regulation in the Polish law which would give victims the clear right to a translator/interpreter, it should be acknowledged that the code obligation of provision of the assistance of a translator/interpreter at every stage of the proceedings when it is necessary due to lack of knowledge of the Polish language, also gives victims a guarantee of obtaining the translator's/interpreter's assistance in activities with their participation.

The possibility to deny interpretation and translation if this would unreasonably prolong the proceedings was not included in the provisions of the criminal procedure. Therefore, whenever there is a need to interview a non-Polish-speaking person, there is an obligation to appoint a translator/interpreter to participate in the activities.

The authorities conducting the criminal proceedings, when guaranteeing the right to use the assistance of translators/interpreters, use the services of certified translators. The list of certified translators is kept by the Ministry of Justice. The largest number of translators are available for the most popular languages such as English, German, French and Russian. In the case of rare languages, the right to obtain a translator's/interpreter's assistance may be limited, because there are only up to a dozen certified translators of some rare languages in Poland.

The authorities of the criminal proceedings do not verify the quality and correctness of the translations. A person who has the status of a certified translator is thoroughly verified at the stage of granting such status in a separate procedure. The procedure ensures that the quality of certified translation/interpretation in Poland is very high.

There are no statistics regarding how quickly translator's/interpreter's assistance is provided to victims of crime in practice. However, based on the results of the interviews, the delays in accessing the translation/interpretation services occur mostly in the case of rare languages.

ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

The support system for crime victims in Poland is being developed and improved continuously. Currently, there are two ways of exercising the right to use services of institutions and organisations providing assistance to victims. One element of the system is institutional support from state authorities and local government, which includes the support of social assistance institutions. This support is limited in nature, but can be long-term. The second element of the support system for victims is actions taken by the state using a specially designated fund called the Justice Fund - Fund for Victim Support and Post-Penitentiary Assistance. It is a state fund targeted at provision of assistance to victims and witnesses, counteracting crime and provision of post-penitentiary assistance.

As part of this fund, every year the Ministry of Justice distributes funds e.g. to non-governmental organizations and appoints them to run support centres for victims of crime. Each centre provides legal, psychological and psychiatric support to victims of crime. This support can be extended to provision of material assistance and shelter. The centres also have funds allocated for translator/interpreter services for people who do not have sufficient knowledge of Polish.

Currently, support services for crime victims are provided in each province (voivodeship) throughout the country. Support services offered at support centres for victims and witnesses are provided by specialists. Each centre employs the first contact person who is responsible for determining the scope of necessary support and suggesting the necessary assistance. The centres guarantee specialists on duty every day (except public holidays) both on-site and by telephone (each centre

has its own phone number). Victims who come to the centres receive information about the scope and form of support provided. Legal, psychological and psychiatric help is guaranteed at a high level, because it is provided by authorized and properly trained professionals. The assistance is of a broad nature, it is not a one-time occurrence, it can be continued for an appropriate period of time necessary from a factual and rational point of view. The assistance is free-of-charge.

Access to victim support is relatively easy, but undoubtedly people living outside the largest urban centres may have some difficulty in accessing this type of support. This is due to the fact that support centres for victims of crime are more often located in larger cities with larger populations. There are fewer victim support centres in smaller towns.

It should be emphasized that victims may be reimbursed for travel expenses to the place where assistance is provided. It should also be pointed out that assistance to victims is provided promptly, and the system guarantees provision of psychological or psychiatric support no later than within 14 days.

It is also important that the system of assistance to victims of crime is aimed at cooperation between the criminal investigation authorities and organizations providing assistance. In the case of a threat to the mental health of the victim, witness or their closest persons, the authority conducting operational and investigative activities or inspection proceedings or preparatory proceedings or the court is obliged to inform the victim or witness about the possibility of obtaining psychological assistance provided by stakeholders that received a subsidy for this purpose. On the other hand, stakeholders performing the tasks described above inform all law enforcement agencies and courts operating in their territory about the support provided and the scope of this support.

Provision of support to victims under the system described above depends on the assessment of the needs of a given person and reasons for the application submitted. This application should be in writing and should describe the reasons for the person being considered to be a victim of crime. On this basis, the person is provided with specific support.

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.

The system of support centres is financed by the Ministry of Justice and is conducted primarily by non-governmental organizations. Under this system, crime victims are provided with legal, psychological, psychiatric and material assistance, including assistance in understanding the rights and obligations of a given entity in criminal proceedings. The combination of legal and psychological assistance makes it possible to achieve the effect of the victim making actual use of the right to understand and be understood. It should be emphasized that, in accordance with the provisions of the Act on Protection and Assistance to Victims and Witnesses, in the case of a threat to the psychological health of the victim, witness or their closest persons, the authority conducting operational and investigative proceedings or inspection proceedings or preparatory proceedings or the court informs the victim or witness about the possibility of obtaining psychological assistance provided by stakeholders. This regulation makes it possible to provide support to victims whose perception and reception capabilities are disturbed in a permanent or temporary manner. It is important to note that crime victim support centres also offer the assistance of foreign language interpreters and sign language interpreters in the provision of their services. In this way, assistance can be directed to people who do not speak Polish, as well as to deaf people.

Assistance provided under the support system for crime victims is broad. First of all, when victims get in touch with the first contact person, they receive information about the most important rights and options available to them, information about other institutions providing specific support, as well as basic consultancy and advice. Subsequently, while obtaining specialist assistance, the victims can benefit from professional legal advice as well as psychological or psychiatric support. The support system is targeted at the special needs of crime victims.

It is possible that support may be granted by one institution or one non-governmental organization. However, in cases where the potential or capabilities of an organization are not sufficient, the assistance provided to the victim comes from several organizations.

There is no formal dependence of the scope, type and form of support provided to victims on the crime category. Nevertheless, support provided to victims of the most serious crimes is undoubtedly of a wider nature, and is also provided to a greater extent. In the case of minor crimes, one-off support may be sufficient, while victims of severe crimes require long-term and more comprehensive support. The type and scope of support provided to crime victims depends on the nature of the consequences of a prohibited act and the necessary assistance they entail.

The support system for crime victims is based on two types of activities. The first element is social support, guaranteed by competent public social welfare institutions. These institutions provide social assistance, including material help, shelter, and psychological assistance. The second element of the victim support system is the nationwide network of assistance centres for victims of crime. These centres provide free-of-charge support to crime victims in the following areas: legal aid, psychological support, psychiatric support, assistance of translators (including sign language interpreters), reimbursement of travel costs to the place of assistance, covering costs of health services, medications, medical devices, including dressing materials, orthopaedic items and auxiliary materials, to the extent necessary in the therapeutic process for the damage to health resulting from the crime or its consequences, covering expenses related to education in schools and public kindergartens, covering expenses related to childcare in nurseries and children's clubs, organizing and financing of trainings and courses raising professional qualifications as well as covering costs of exams confirming vocational qualifications, covering expenses of temporary accommodation or providing shelter, financing periodic subsidies to current rent commitments and payments for heating energy, electricity, gas, water, fuel, solid and liquid waste collection, adaptation of a flat or a house to the needs of a crime victim who suffered loss of physical fitness as a result of crime, financing travel by public transport or covering transport costs related to obtaining benefits, covering food costs or food stamps, covering the purchase of clothes, underwear, footwear, cleaning and personal hygiene, financing the costs of an organized trip of an eligible child victim. The centres operate as part of a publicly funded network. All judicial authorities are informed on the functioning of the centres on an ongoing basis, and then they provide this information to victims, who thus gain knowledge about where and who they can apply to.

ARTICLE 10 - RIGHT TO BE HEARD

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

The right to be heard is guaranteed by national law during the preparatory proceedings and court proceedings. In the Polish criminal proceedings, a victim is most often treated as a witness. As indicated above, victims may also participate in the proceedings in the capacity of an auxiliary prosecutor and then their procedural rights, including the right to speak, are wider. Victims who participate as witnesses, are heard at the stage of preparatory proceedings when they have the opportunity to present any speech, which, however, is usually moderated or limited to facts relevant to the legal evaluation of the act and the offender. The second stage of hearing the victims is the stage of court proceedings, during which the witnesses have the right to free expression while giving their testimony again – here the scope of the free expression is controlled by the court.

When victims participate in the capacity of an auxiliary prosecutor, their possibilities of action – including free expression – are wider. Auxiliary prosecutors, as party to the proceedings, may submit their statements in the course of the proceedings and have the right to deliver a final speech which is a summary of the trial. The auxiliary prosecutor has the right to submit evidence in the course of all preparatory proceedings and court proceedings until the hearing is closed. Victims may provide new evidence at any time during the criminal proceedings.

When it comes to **child victims**, they are guaranteed to be heard in favourable conditions and, especially in the case of small children, with the participation of a child psychologist. Article 185a of the Code of Criminal Procedure guarantees that in cases of crimes committed with the use of violence or illegal threat or offences against freedom, sexual freedom and decency, as well as offences against family and custody (e.g. cruelty), a victim who at the time of the hearing is under the age of 15, can be heard as a witness only if the testimony might be crucial to the outcome of the case, and can be heard only once, unless important circumstances emerge which necessitate the victim to be interviewed again, or at the behest of the accused who did not have a lawyer during the first hearing of the victim. The interview is conducted by a court at a sitting with the participation of an expert psychologist. The interview is recorded in an audio-visual form and

then at the hearing during court proceedings, the recorded image and sound of the interview is played back and the interview protocol is read out. Most court buildings are already provided with special interview rooms for children and minors may be interviewed outside the courtroom.

The fact whether a child victim is capable of providing evidence is subject to review by the authority conducting the criminal proceedings. In the case of the categories of crimes described above, it is compulsory for the victim or witness under the age of 15 to be questioned in special conditions. As far as other categories of offences are concerned, it is possible, but not obligatory, to hear a child victim in special conditions. Child witnesses are interviewed outside the courtroom when it is justified by their psycho-physical condition.

ARTICLE 11 - RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.

The end of proceedings always takes a formal expression in the appropriate procedural act. In the case of a decision not to prosecute, two situations are possible. The first is a **decision not to initiate preparatory proceedings** in a given case, which means that the case is not initiated at all for reasons specified in the Code of Criminal Procedure (e.g., the authority comes to believe that the act was not committed or the act does not contain features of a criminal offence). The second form of a decision not to prosecute is a **decision to discontinue the pre-trial investigation**, which also takes place in cases specified in the Code of Criminal Procedure.

In both situations, the authority conducting the proceedings is obliged to issue a written form of the decision, which is served on the victim.

The right to a review of a decision not to prosecute is available to any victim. This means that any person who is found to be a victim of crime can request a review of a decision not to prosecute. Such a request cannot be made by a person making a complaint about committing a crime who does not have the status of a victim. In this situation, the person making the complaint is only informed that the proceedings have not been instituted or have been ended.

If the person making a complaint of the crime is a victim, then such a person has the right to a review of a decision not to prosecute. The request for a review must be in writing.

In some cases, the possibility of an effective review of a decision not to prosecute is difficult due to the fact that in the case of not very serious crimes the authority ending the proceedings is not obliged to justify the decision. In such cases, the possibility of making a request for a review effectively is difficult, although from a formal point of view, such decisions are also open to a review. This means that the victim always has the right to review of the decision not to prosecute or discontinue the proceedings, regardless of whether this decision is justified or not. In the event that the preparatory proceedings take the form of an investigation, and this happens in the case of less serious crimes, the decision not to prosecute does not contain justification. The decision only contains the content of the decision and the legal basis. Such a decision is delivered in writing to the victim, who may then challenge it. The situation is similar in the case of decisions concerning more serious crimes. Decisions regarding this type of acts contain justification. They are delivered in writing to the victim who has the right to challenge such decisions.

A request for a review of the decision of the authority conducting the proceedings (i.e. the police or public prosecutor) is directed to the superior prosecutor's office who supervises the prosecutor's office who made or approved the decision not to prosecute. If the superior prosecutor's office does not revoke or change the decision of the subordinate prosecutor's office, then the matter is directed to the court. In such a case, the decision on the legitimacy of continuing the proceedings and further prosecution is taken by the court.

The right to a review of a decision not to prosecute is victims' right that is not subject to any restrictions. The review is also not subject to any fees.

ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.

Under the Polish Code of Criminal Procedure, restorative justice takes the form of mediation. Mediation is being continuously developed in the Polish legal system.

The Code of Criminal Procedure stipulates that a court or court clerk and, in the preparatory proceedings, a prosecutor or other competent authority conducting this proceeding may, on the initiative or with the consent of the accused and the victim, refer the case to an institution or a person authorized to carry out mediation proceedings between victims and defendants. Both victims and defendants are instructed about this possibility, and informed about the goals and principles of mediation proceedings.

The Code guarantees the voluntary nature of mediation. Participation in the mediation of both the accused and the victim is voluntary, and no authority conducting the proceedings has legal or factual possibility to force parties to participate in mediation. In the case of a consent to participate in mediation, each party always has the possibility of withdrawing this consent at every stage of the proceedings. The rule is that the mediation proceedings should not last longer than one month.

The person who conducts the mediation proceedings is a mediator. The mediator must conduct mediation in an impartial and confidential manner. The mediator cannot be a judge, prosecutor, assistant judge or prosecutor, a juror or an officer of the authority entitled to prosecute offences. In addition, the mediator may not be a person whose impartiality is doubtful in any way, e.g. when the case concerns the mediator or a member of his/her family.

Before starting the mediation proceedings, the victim receives an instruction on the purposes of mediation and forms and rules of its conduct. Mediation may be conducted by an authorized person or an institution appointed to conduct mediation proceedings. District courts keep a

register of persons and institutions authorized to conduct mediation proceedings and mediators are selected from this register. A specific person of a mediator or institution is indicated in the decision of the authority that directs (with the consent of the parties) the case to mediation. Both the accused and the victim receive contact details of the person or institution appointed to conduct the mediation.

Mediators receive the case file excluding documents which contain classified information. In addition, mediators do not receive information involving an obligation to keep secrecy related to the performance of a profession or function, nor do they receive materials regarding the health condition of the accused, opinions about the accused, the criminal record of the accused or materials allowing to establish the identity of a witness.

Mediation proceedings are not carried out in the premises occupied by the participants or their families, or in the buildings of the authorities entitled to refer the matter to mediation proceedings. The general rule is direct mediation, which consists in holding a meeting between the parties. However, it is also possible to conduct mediation indirectly. Then there is no direct meeting between the parties, but the mediator conveys mutual positions and information to the parties. After the mediation proceedings are completed, the mediator prepares a report.

This report is prepared to include mediation results. The report provides a settlement if such a settlement was concluded during the mediation. The mediation process itself is confidential and the report does not contain information on the course of mediation proceedings.

At no stage of the proceedings is the victim forced to participate in the mediation, and a settlement may only be the result of free consent of the parties. The participation of an independent mediator guarantees that no authority of the proceedings has any influence on the content of the arrangements made or on the conclusion of any settlement.

ARTICLE 13 - RIGHT TO LEGAL AID

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.

Victims have the right to legal aid if they have the status of parties to criminal proceedings. Victims may turn to the authority conducting the proceedings and request an assignment of legal aid *ex officio* at any stage of the proceedings. It is also possible for victims to appoint an attorney who will represent their interest in the proceedings. In cases where victims cannot afford to appoint an attorney of their choice, they may request legal aid *ex officio*. The right to make such a request applies to any victim in any proceedings irrespective of the type and nature of the offence.

The premise for granting legal aid to a victim is - as in the case of legal aid for the accused - the ability to demonstrate that the person is unable to pay the costs of the legal aid without detriment to their and their family's necessary subsistence.

The court evaluates the application for legal aid *ex officio* based on the state of the case, its nature and complexity, as well as the victim's resourcefulness or ineptitude, health condition or disability. In a situation where the authority considers that legal aid in the form of an attorney-at-law is necessary, then the authority evaluates the condition and financial situation of the victim. This evaluation is carried out on the basis of statements made by the person applying for legal aid. The statements are submitted by filling in a form in which the party applying for legal aid *ex officio* provides the following information: family status, property status, income and source of income as well as expenses and costs necessary for their and their family's subsistence. This information is the basis for the competent authority to grant legal aid *ex officio*.

It should be pointed out that parallel to the system described above, legal assistance to victims is also offered in crime victim support centres run by non-governmental organizations in the system financed by the Ministry of Justice. In these centres, victims receive legal assistance in the form of extensive counselling (without legal representation).

While obtaining legal aid *ex officio* to represent the victim before the authorities of the proceedings requires the demonstration of the circumstances described above, in the case of legal assistance offered in victim support centres, such assistance is widely available and easy to obtain for anyone who is a victim of crime.

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

The reimbursement of the costs of the victims' participation in criminal proceedings depends on their role in the proceedings. In the event that victims limit their role in the proceedings and participate in the capacity of a witness, then they are entitled to reimbursement of expenses incurred, just like other witnesses. According to art. 618b of the Code of Criminal Procedure, witnesses are entitled to reimbursement of earnings or income lost due to their presence at the request of a court or an authority conducting preparatory proceedings.

If a witness needs to be assisted or accompanied by another person, then the person accompanying the witness will also be reimbursed. In addition, pursuant to art. 618a of the Code of Criminal Procedure, witnesses are entitled to reimbursement of travel expenses - from their place of residence to the place where the proceedings are conducted at the request of the court or the authority conducting the preparatory proceedings - in the amount of rational and appropriate travel costs incurred, using their own car or other appropriate means of transport.

Victims may also appoint an attorney. As a rule, expenses related to the appointment of a lawyer or attorney are covered by the party who appointed him/her. Therefore, if victims appoint an attorney of their choice, they must cover the expenses related to the appointment of such a representative.

The decision on the costs of proceedings is made after the court proceedings have been completed. If the defendant is acquitted, then the fees related to the appointment of the victim's representative are not reimbursed either by the accused or by the State Treasury. In this case, the victim has to bear the costs of the legal representation she/he has established. If, however, as a result of court proceedings, the accused is convicted, the victim participating in the capacity of an auxiliary prosecutor will receive reimbursement of expenses incurred from the convicted person.

Expenses incurred for legal representation of a victim by an attorney are determined by the authorities conducting the proceedings under the provisions of the relevant regulation of the Minister of Justice², which establishes the rates for the activities of representatives who are advocates or legal advisers. These rates, however, do not have the character of official prices, therefore it is possible that the actual cost of representation incurred by a victim is different from the rate provided for in the provisions of the Regulation.

The auxiliary prosecutor do not receive reimbursement of expenses incurred for commuting to the court or to the authority conducting the proceedings, unless he/she also participates in the proceedings in the capacity of a witness.

² Regulation of the Minister of Justice of 22 October 2015 on fees for legal advisors (consolidated text: Journal of Laws of 2018, item 265).

Regulation of the Minister of Justice of 22 October 2015 on fees for attorneys' activities (Journal of Laws, item 1800, as amended).

ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.

There are no regulations in Polish law regarding the condition, quality or form in which property previously seized should be returned to the owner. For this reason, it is impossible to ensure that the vulnerability of victims is taken into account in the process of returning objects to victims. Therefore situations in which returned items may still contain traces of blood or other traces of crime are potentially possible.

The right to return of property is exercised on the basis of the provisions of the Polish criminal procedure by ensuring the return of seized property which is no longer required for the purposes of criminal proceedings³. The authority conducting the proceedings decides whether the items seized for the purposes of criminal proceedings are still required and necessary for the continuation of the proceedings. If it is found that the items seized have already been used in the proceedings as evidence and can be returned, the authority decides to return them. There are no regulations in the Polish criminal procedure regarding deadlines by which property must be returned to the victim. The authority conducting the proceedings decides about the disposal of detained property.

As pointed out in the literature on the subject: "Items which should be considered to be irrelevant to the proceedings, are those which are not useful either to establish the essence of the crime or to detect its perpetrator, or to prove his perpetration"⁴. Items which are indispensable to the proceedings and which are in no way superfluous or recoverable include material evidence which protects traces of crime (footprints, shoeprints, tyre tracks, traces of blood, smell, etc.), including on specific objects (e.g. clothing), even if their properties make it difficult to attach them to the case files, or technical measures to record the course of the proceedings (video recordings, audio tape, etc.). Therefore, they are not subject to return to their owner (e.g. the victim) or forfeiture, but should be kept as traces of crime and its preservation, in the form of material evidence." [T. Grzegorzczuk, Code of Criminal Procedure. Volume I. Commentary, Lex 2014]. Items which are necessary for the purposes of criminal proceedings, because they contain, for example, traces of crime, are evidence of the act committed, and are not recoverable. The loss of this type of objects is detrimental to the victim who has the right to claim the remedy of such damage by the offender, e.g. by paying the appropriate sum of money.

³ Article 230 § 2 of the Code of Criminal Procedure

⁴ see the Provision of the Supreme Court of 19 May 1999, I KZP 13/99, LEX No. 46044, RA Stefański, Kodeks, p. 237

ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

In accordance with the Penal Code, the court which hears the case is the authority responsible for imposing an obligation to redress the damage caused by the offender. If the offender becomes convicted, and – in the course of criminal proceedings - the victim of crime has made an application to be awarded the repair of the damage or compensation for the harm suffered from the offender, the court is obliged to include in the final decision the obligation to remedy the damage by the perpetrator of the crime. The adjudication of this obligation takes place in the course of a criminal trial, while the court, awarding the redress of the damage, uses civil law (Article 46 of the Penal Code).

If the adjudication of the obligation to repair the damage or payment of compensation is significantly impeded, the court may order instead punitive damages of up to PLN 200,000 in favour of the victim, and in the event of the victim's death as a result of the crime committed by the convicted offender, the court may order punitive damages in favour of the victim's closest person whose life situation has significantly deteriorated as a result of the victim's death. In the event that more than one such persons have been established, the punitive damages are determined for each of them.

A decision on compensation, redress or punitive damages does not prevent the unsatisfied part of the claim from being pursued through civil proceedings. This means that if the victim received only a part of the required amount, or in his/her opinion the awarded amount does not correspond to the amount of damage caused by the offender, the victim has the possibility to claim his/her further rights through a civil trial. It should be emphasized that in civil proceedings, a victim of crime no longer participates in the capacity of a victim but as a party to civil proceedings, which entails the necessity to pay court fees related to the conducting of civil proceedings. In practice, it

often happens that victims of crime are not interested in seeking additional compensation in the course of civil proceedings. Although everyone has the right to apply for exemption from court costs, the civil trial also involves other problems for each participant in such proceedings. In the first place, a person seeking damages in the course of a civil trial has to prove his/her claims. The civil court is of course bound by the criminal court's findings, so if the criminal court determines the perpetrator of the crime and finds him/her guilty of committing the crime, in a civil trial the victim of the crime does not have to prove the claim again. Nevertheless, the victim is obliged to prove the amount of damage suffered, and possibly the circumstances of the event that may affect the amount of compensation. Moreover, the civil proceedings are usually quite long-lasting, and victims of crimes who participated in the criminal proceedings are often not interested in starting another trial. Such circumstances may affect the resignation of victims from pursuing claims through civil proceedings, which does not mean that such proceedings do not take place. On the contrary, many victims of crimes who believe that, in the course of the criminal proceedings, the court did not grant them compensation or sufficient compensation, conduct civil proceedings, especially when the offender is potentially financially capable of paying the dues.

In the event that a victim of crime cannot receive compensation for lost earnings, medical treatment and rehabilitation costs, or funeral expenses from the offender or offenders, and when it is also impossible to cover these costs from other sources (e.g. insurance or social assistance), there is a possibility for the victim to apply for financial **compensation from the State Treasury**. However, this applies only to crimes which result in the victim's death or serious damage to health, impairment of the functioning of a bodily organ or health disturbance lasting more than 7 days. This compensation is granted by the court in the course of a separate procedure at the request of the victim.⁵

According to statistical data collected by the Ministry of Justice, the average duration of criminal proceedings in district courts in 2017 was 7.7 months and in regional courts 5 months. The cited statistics involve criminal proceedings of all kinds, and thus both cases in which the victims apply for compensation, as well as cases in which there are no such applications. As far as civil litigation is concerned, the average time of hearing such cases in 2017 was 8.5 months in district courts, and 10.8 months in regional courts. This applies to all civil cases recognized in the procedural mode, so the statistics also include cases in which persons who are victims of crime claim compensation or redress from the offenders.⁶

⁵ Act of 7 July 2005 on State Compensation of Victims of Certain Forbidden Acts, Journal of Laws of 2016, item 325

⁶ Basic information on the activities of common courts - the first half of 2017 compared to previous statistical periods, Ministry of Justice, Warsaw, July 2017, <https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/download,2779,0.html>

ARTICLE 17 – RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

The provisions of the Polish criminal procedure do not differentiate the rights of victims depending

on the origin or place of residence of a given victim. At the same time, there are certain guarantees and procedural rights that allow for the actual exercise of the rights of victims who are resident abroad.

In the first place, it should be pointed out that victims who do not speak Polish have the right to the assistance and participation of an interpreter during the interview. In the case of a victim who participates in the criminal proceedings in the capacity of an auxiliary prosecutor, decisions subject to appeal or decisions ending the proceedings are delivered to the victim together with a translation.

The proceedings involving victims who are citizens of other Member States are conducted in the same way as in the case of victims who are Polish citizens. Difficulties which occur in this type of cases result from the need to translate certain documents or to use legal assistance of the authorities of other countries. These are procedural problems that have an effect on the duration of the proceedings. Translation of documents is time-consuming, as is the exchange of documents and information between authorities of different countries. This kind of activities may have a real impact on the delay of the proceedings, but there are no statistics available as to whether delays in action affect the exercise of victim's rights in the other States.

On the basis of the Polish practice, it is not possible to distinguish or indicate countries with which cross-border cooperation is better or worse. Undoubtedly, the frequency of contacts with the countries located closer affects the efficiency of cooperation. Nevertheless, it should be recognized that cross-border cooperation with all Member States is carried out on a similar basis.

Victims who are resident abroad are treated in the same way as victims who are resident in Poland. The authorities of the criminal proceedings receive the complaint and conduct an interview with the assistance of an interpreter as soon as possible. Interpreters are not on permanent duty at the offices of the authorities, but are called by the police or prosecutors. Therefore, immediately after an interpreter arrives, activities such as interviewing the victim are carried out. The victim receives from the authorities all guidance and information to which she/he has the right in accordance with the provisions of the Directive and the relevant provisions of the national law. On the website of the National Public Prosecutor's Office there are guidance formulas on the rights and obligations of victims in criminal proceedings translated into 13 languages, which can be used by the authorities of the proceedings, so that each authority does not have to translate the same documents into foreign languages. Thanks to this solution the authorities can, if necessary, immediately print a translated document containing appropriate instructions in the language used by the victim. Victims are also fully informed about the right to report a crime in their country of residence.

When Polish authorities receive a complaint regarding a case in which the authority of another

Member State is competent, the Polish authorities immediately transmit such complaint to the competent authority.

According to the criminal procedure, it is possible to perform activities using videoconferences. The application of these solutions is becoming more frequent. There are no statistics indicating in what number of cases activities involving victims are conducted using the methods of video conferencing and telephone conference calls. However, it should be pointed out that in general these methods are used wherever the technical conditions allow for such communication.

ARTICLE 18 - RIGHT TO PROTECTION

Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

As a result of the implementation of the Directive, the Polish legal system passed, among others, the law on protection and assistance for victims and witnesses.⁷ Pursuant to the adopted regulations, protection and assistance measures for victims and witnesses were introduced into the legal system. The protection and assistance measures include:

- 1) Protection for the time of procedural action;
- 2) Personal protection;
- 3) Assistance with changing the place of residence.

The protection and assistance measures are granted by the provincial Chief of Police in whose province the victim, the witness or their closest relatives reside.

Protection may be granted for the duration of the procedural action in a situation where there is a threat to the life or health of the protected person. **Protection for the time of the procedural action** may consist in the presence of Police officers close to the protected person during the procedural act with his/her participation, on the way to the place where this activity is conducted or on the way back.

It is also possible to assign **personal protection** to the victim or witness or to the closest persons. Personal protection may be provided in the case of a high degree of threat to the life or health of a protected person in connection with criminal or fiscal criminal proceedings, if there is a need for long-term protection, in cases whose examination at first instance falls within the jurisdiction of

⁷ Act of 28 November 2014 on Protection and Assistance to Victims and Witnesses (Journal of Laws of 2015, item 21).

the district court (as a rule serious crimes and grave crimes), and in cases of abuse and rape, as well as in other cases in which personal protection is particularly justified.

Personal protection may consist in:

- 1) Permanent presence of Police officers close to the protected person;
- 2) Temporary presence of Police officers close to the protected person;
- 3) Temporary observation of the protected person and his/her surroundings;
- 4) Informing the protected person of safe places and time and safe way of moving;
- 5) Determining the scope, conditions and manner of contact between a protected person and other persons.

In addition to the above-mentioned forms of assistance, the legislation also provides for **assistance in changing the place of residence**. This assistance may be provided in the event of a high degree of risk to the life or health of a protected person in connection with criminal or fiscal criminal proceedings, if long-term protection is required, and other protection and assistance measures may be insufficient, in cases which should be examined at first instance in the jurisdiction of the district court (i.e. in cases of serious crimes and grave crimes) and in other particularly justified cases. Assistance with changing the place of stay consists in undertaking organizational activities enabling the protected person to stay in a different place than before by:

- 1) Provision of temporary accommodation, ensuring the satisfaction of basic living needs;
- 2) Assistance in renting a flat;
- 3) Assistance in moving into or adapting new accommodation;
- 4) Assistance in arranging important issues related to the change of the place of residence (e.g. handling official matters, informing the institution about a change of place of residence).

A person who has been assisted in changing the place of residence, who has no livelihood or cannot take up work because of a threat to their life or health, can be provided with financial assistance for:

- 1) Satisfying basic life needs;
- 2) Covering all or part of the costs of temporary accommodation or a rented flat;

- 3) Covering the costs of obtaining medical care, if this person is not subject to compulsory health insurance.

The protection and assistance measures are provided by the competent Chief of Police at the written request of the victim or witness, or at the request of the authority conducting the activities or preparatory proceedings, or at the request of the court.

In the event of a threat to the mental health of the victim, witness or persons close to them, the authority conducting operational and investigative or inspection proceedings or preparatory proceedings or the court informs the victim or witness about the possibility of obtaining psychological assistance provided by victim support organisations that received a subsidy from the Victims Assistance and Post-Penitentiary Assistance Fund (Justice Fund).

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

(2) Member States shall ensure that new court premises have separate waiting areas for victims.

Authorities conducting preparatory proceedings and courts strive to provide victims with the right to avoid contact with the offender. Where possible, criminal proceedings are conducted separately in relation to the victim and the offender. However, it should be remembered that the criminal procedure guarantees the accused person participation in all activities of the preparatory and court proceedings. For this reason, the person accused of a given crime cannot be denied participation in activities in which the victim takes part. The address details of the victim are not revealed to the offender, thus protecting the possible access of the offender to the victim.

In many buildings of law enforcement authorities, i.e. at police stations, in prosecutor's office buildings, it is difficult to provide a separate room for victims and offenders. In such cases, the authority conducting the proceedings seeks to ensure that actions concerning victims and perpetrators are not carried out at the same time. A similar situation applies to court buildings where usually there are no separate waiting rooms.

In the case of certain procedural acts, participation of the victim and the perpetrator is considered necessary. This concerns such activities where simultaneous and joint undertaking of specific actions by both the victim and the offender is necessary. Such activities include, among others, confrontation between the victim and the perpetrator, where in the course of the procedural act the authority tries to determine the course of the event by comparing answers to a question asked at the same time to the victim and the offender. Another activity in which the necessary presence of the victim and the perpetrator may be considered is a visit to the scene of crime. In the course of such activities, it may be necessary to explain specific circumstances of the incident both by the victim and the perpetrator.

ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

The Polish criminal procedure contains guarantees for the protection of victims' rights in criminal proceedings, including in preparatory proceedings. Such guarantees are part of the whole legal system. First of all, it should be emphasized that victims have the right to and are free to choose their legal representative. The victim's attorney has the right to participate in all activities during the pre-trial investigation as well as in court proceedings, including the right to access the case files. The victim's attorney can always be present during proceedings conducted with the participation of the victim. The authorities of the proceedings do not limit this right, nor do they affect the victim's freedom to choose an attorney.

The authorities of the proceedings strive to carry out the activities with the participation of the victim as quickly as possible, while the law does not provide for specific deadlines for such actions. The provisions of the Polish Code of Criminal Procedure regulate only the maximum duration of preparatory proceedings, which in principle may last up to three months (or up to two months when it comes to investigations that are carried out in the case of lesser crimes). There are also no regulations regarding the number of interviews of the victim. Such interviews are, as a rule, carried out once during the pre-trial investigation. However, the number of interviews depends on the complexity of the case, and possibly on the need to explain newly revealed circumstances, or confront the testimony of the victim against the testimonies of other people, as well as on extraordinary circumstances. The rule, however, is to hear the victim one time.

In relation to child victims, procedural actions taken with the participation of children are usually conducted with the participation of an expert child psychologist, who assesses the ability of the minor to participate in the activities. In court, during the course of the proceedings, children are heard in specially designated and prepared interview rooms, and not in the courtroom. The authorities of the proceedings strive to interview child-victims only once.

In principle, medical examinations are carried out only once. The examinations take the form of expert opinions of doctors of a given specialty. These opinions are usually made on the basis of a single examination. Multiple medical examinations may occur in situations where the complexity of the problem requires the opinions of physicians of several different specializations based on more than one examination. It is also possible to subject the victim to more than one medical examination in a situation where the medical opinion prepared cannot be used for criminal proceedings for specific reasons, e.g. it raises doubts, contains deficiencies or has been prepared in a defective manner. Then it is necessary to develop a new opinion, and thus it is usually necessary to subject the victim to another medical examination. However, these are rare and exceptional situations.

ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

In the course of criminal proceedings, the competent authorities undertake specific actions aimed at preserving and protecting the victim's privacy. In the event that the victim of a crime asks the authority conducting the proceedings to protect her/his privacy, then the authority of such proceedings is obliged to protect both the victim's details and image. In practice, this means e.g. not disclosing the victim's data to the offender. When the offender is given access to the case file, he/she does not have access to the victim's data, as these data are stored in a separate place.

Dissemination of this type of information, including dissemination by the media, constitutes a violation of personal rights and may involve specific civil sanctions. Such sanctions include financial responsibility. Moreover, a civil court may order the removal of violations of personal rights (e.g. removal of information, photos) and may order specific behaviour, e.g. making an apology.

Measures to protect the victim's privacy are applied to every victim regardless of the type of crime committed. The protection of privacy cannot be connected with violation of procedural rights of the offender. It should be remembered that as a rule, the offender has the right to participate in the proceedings, as well as the right to access the files of the proceedings. On the other hand, the victim has the right to maintain his/her privacy.

The media are obliged to respect the victims' right to privacy. Therefore, the media cannot publish full personal details of victims or their image without the consent of the victims. Any violation of these rules may involve liability for violation of personal rights. These sanctions are civil in nature, and so they may take place in the event of a civil procedure being initiated by a person whose personal rights have been infringed. Such a procedure may also be initiated by the prosecutor, but it should be pointed out that the involvement of the prosecutor's office in such situations is rare.

ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

Pursuant to the provisions of the Act of 28 November 2014 on protection and assistance for victims and witnesses (Journal of Laws of 2015, item 21), protection and assistance measures for victims and witnesses have been established for situations when there is a threat to life or health of these persons in relation to pending or completed criminal proceedings involving a victim or witness or fiscal criminal proceedings involving a witness. According to art. 2 of this Act, when assessing the degree of threat to the life or health of victims, witnesses or their closest persons, the following criteria are taken into account: victims' personal properties and conditions, relationship with the offender, the type, manner and circumstances of the crime committed and motivation of the offender. This assessment is carried out primarily at the stage of preparatory proceedings. The authorities assess if there are specific protection needs and then determine and apply appropriate special protection measures.

As a result of the entry into force of the Directive, the institutions responsible for its implementation in Poland noticed the necessity to implement the provisions on individual assessment of victims to identify specific protection needs. It was a new institution, previously unknown to the Polish criminal procedure. In view of the need to implement the provisions of the Directive, and taking into account the need to standardize the methodology for the application of an individual assessment of victims' needs throughout the country, the Questionnaire for individual assessment of victims' specific protection needs was developed.

The Questionnaire is intended to assist Police officers and prosecutors in making an individual assessment of victims' needs and in determining what protection and assistance measures should be applied in a given case. The Questionnaire contains only those measures whose application is optional and depends on the decision of the authority conducting the proceedings. The questionnaire is meant to help the authorities to decide whether and to what extent they should apply specific protection measures. The Questionnaire does not include any obligatory

measures aimed at helping victims, whose application is required by the provisions of the Code of Criminal Procedure (e.g. interviews with child victims being conducted in special premises other than the courtroom, and in the presence of a psychologist).

The questionnaire is completed by a police officer or a prosecutor during the first interview or proceeding, based on information obtained from the victim. The questionnaire is never completed by the victims themselves, this is always done by a police officer or a prosecutor. Sometimes the questionnaire is completed at a later date, after obtaining the information necessary to make the right decisions.⁸ When it is impossible or difficult to complete the form during the first meeting due to lack of information, the officer may fill in the form at a later date, after obtaining the missing data. There are no regulations or guidelines regarding how long completion of the form can be postponed. However, bearing in mind the purpose of the form, its completion should take place as soon as possible.

When assessing individual protection needs of a victim, the data and information provided by the victim are taken into account. The victim, in addition to personal details, provides information such as age, information about disability, circumstances of the crime, legal qualification and nature of the crime, information whether the crime qualifies as hate crime or whether there is a relationship between the victim and the offender. The victim is informed about possible forms of assistance and protection, including the right to receive psychological assistance.

During the preparatory proceedings the situation of victims may change significantly, e.g. their health might deteriorate, the attitude of the offender could change, random incidents might happen, etc., which result in a change in the protection needs of the victim. In such cases, the needs of the victims are updated and appropriate preventive actions are taken. The update of the needs of the victim is conducted by repeated verification of the issues covered in the form.

Preparing and completing the Questionnaire allows authorities to assess the protection needs of a victim of crime, which in turn makes it possible to provide the person with the most appropriate form of support in a given case. Some forms of support to victims are beyond the scope of the authorities conducting the proceedings, but in such cases, these authorities provide the victim with instructions concerning places, institutions and forms of support of any other kind (for example the above-mentioned psychological assistance, material support, or shelter).

The questionnaire is stored in a secure manner in the main files of the authority conducting the proceedings. Nevertheless, in the case of granting access to files, the questionnaire is protected against access by outsiders.

⁸ A commentary on the Questionnaire for an Individual Assessment of Specific Protection Needs of Victims, Ministry of Justice, Warsaw 2015, http://www.policja.pl/download/1/180057/Komentarz_do_kwestionariusza.pdf

The questionnaire is a tool developed by state authorities to help police officers or prosecutors to assess the needs of victims. It is a standard document, which, however, allows to make an individual assessment in a specific situation. While the persons completing the questionnaire are regularly trained, also in the field of contact with victims of crime, it should be remembered that the questionnaire is completed by officers of the judicial authorities. For these reasons, the Polish authorities considered it appropriate to provide a tool that would make it easier for police officers/prosecutors to make specific decisions regarding protection measures for victims. The questionnaire is not intended to collect information about victims which is irrelevant to the proceedings, hence in the course of the proceedings the authorities do not collect information about religion, sexual orientation, ethnicity, disability or other sensitive data. Authorities only obtain information from victims which may be relevant to the criminal proceedings being conducted. For example, in order to assess the crime committed and determine the correct sentence, the health of the victim may be significant, especially in situations where the crime committed damaged the victim's state of health.

ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

Special measures to protect victims of crime are used during criminal proceedings, including during preparatory proceedings. Some of the measures referred to in this provision of the Directive have been strictly regulated in the provisions of the Polish criminal procedure.

According to Article 177 § 1a, witnesses may be heard using technical devices that enable carrying out this activity at a distance, with simultaneous direct audio-visual transmission. In court proceedings, a court clerk, an assistant judge or another official employed in a given court shall take part in activities at the place where a witness is present. Additionally, according to Article 390 of the Code of Criminal Procedure, the principle is that the accused has the right to be present at all acts of criminal proceedings. Nevertheless, according to the provision of Article 390 § 2 of the Code of Criminal Procedure, in exceptional circumstances, when it is likely that the presence of the accused could have an effect on the testimony of the co-offender, witness or expert, the judge may order that the accused leave the courtroom during the hearing of the person concerned. The exercise of these competences belongs to the judge's free assessment and decision.

In preparatory proceedings, the application of victim protection measures depends on the decision of a police officer or a prosecutor. Regarding interviews with the victim being carried out in premises designed or adapted for that purpose, the principle has been adopted that in new Police buildings, rooms intended for friendly interview of certain groups of victims (such as child victims) are designed and created. In the existing Police buildings, such rooms have existed for many years, mainly by being adapted through redecoration. Ultimately, every Police building should have, as a standard, a separate room for a friendly interview of victims who have specific protection needs. Hearing victims in a friendly interview room should be performed in the following circumstances: when the victim is in a state of vulnerability because of age, disability, poor knowledge of the Polish language, the type, nature or circumstances of the crime, other factors, when the crime involved the use of violence or a threat of use of violence, when the place of the interview has a negative impact on the sense of safety of the victim, when there is a need to protect the privacy of the victim due to the nature of the act. As a general rule, in the case of children under 15 years of age, the hearing must be carried out in a friendly interview room.

Interviews with the victim are conducted by the same persons in situations where it is reasonable due to the specific circumstances of a given case, due to the need to protect the privacy of the victim, or his/her personal characteristics. The victim is interviewed by the same person when: the victim in the ensuing situation lacks the support of other people, the victim has difficulty in making contact with new people, there is a need to protect the victim's privacy due to the nature of the act.

Interviews are conducted by a person of the same sex as the victim in the circumstances listed in the provision of Article 23 para. 2d. This concerns questioning victims of sexual violence, gender-based violence or violence in close relationships.

The authority conducting the proceedings, performing an individual assessment of the victim's needs, verifies (with the use of the Questionnaire described above) whether there are reasons for a person to be interviewed by a person of the same sex. In addition, the circumstances of a possible waiver of the requirement to be interviewed by a person of the same sex are also verified. If the assessment shows that the victim needs to be heard by a person of the same sex as the victim, then the interview is conducted by a person of the same sex as the victim.⁹

In cases of crimes such as rape, sexual abuse of insanity or helplessness, sexual abuse of a relationship of dependence or critical situation, the complaint of a crime, if it is made by the victim, should be limited to indicating the most important facts and evidence. In the case of such crimes, the hearing of the victim as a witness is conducted by the court at a meeting in which the prosecutor, the defender and the victim's attorney are entitled to participate. At the main hearing, the audio-visual recording of the interview is reproduced, and the interview protocol is read out. If it is necessary to interview the victim again as a witness, at his/her request the hearing is conducted by means of teleconferencing when there is a justified fear that the defendant's direct presence at the hearing could have a restrictive effect on the victim's testimony or a negative impact on his/her mental state. If the hearing takes place with the participation of an expert psychologist, at the request of the victim it is ensured that he/she is of the same gender as the victim, unless this would impede the proceedings.

⁹ A commentary on the Questionnaire for an Individual Assessment of Specific Protection Needs of Victims, Ministry of Justice, Warsaw 2015, http://www.policja.pl/download/1/180057/Komentarz_do_kwestionariuszy.pdf

ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The provisions of the Code of Criminal Procedure guarantee the rights of child victims and the performance of activities with their participation in appropriate conditions.

According to Article. 185 of the Code of Criminal Procedure, in cases of crimes committed with the use of violence or illegal threat or offences against freedom, against sexual freedom and decency or offences against the family and care, child victims who, at the time of the interview, are under 15 are interviewed as witnesses only when their testimony can be significant to the outcome of the case, and only once, unless important circumstances emerge that require the victim to be interviewed again, or at the behest of the accused who did not have a defence lawyer during the first interview of the victim.

The interview is conducted by a court at a sitting with the participation of an expert psychologist. The prosecutor, the defence lawyer and the legal representative of the victim have the right to take part in the interview. An adult person of the victim's choice may be present at the interview unless it restricts the freedom of expression of the person being interviewed. At the main hearing, an audio-visual recording of the interview is reproduced, and the interview protocol is read out.

According to Article 185a § 4 of the Code of Criminal Procedure, in cases of crimes committed with the use of violence or illegal threat or offences against freedom, against sexual freedom and decency or offences against the family and the care of a minor victim, who at the time of the hearing is not under 15 years old, the victim is questioned only once by the judge, with the participation of an expert psychologist, in a friendly interview room, when there is a justified apprehension that an interview in other conditions could have a negative impact on the victim's mental state. In the case of a victim between 15 and 18 years of age, by conducting an individual assessment of his or her needs, the authority starts by assessing whether the interviewing the victim under normal conditions (like an adult, at the Police station or in the public prosecutor's office) will not have a negative impact on his/her mental state. Only when it is established that such an apprehension is not justified, further arrangements can be made. Therefore, if the authority conducting the pre-trial investigation determines or establishes that the apprehension of a negative impact of hearing the victim in other than "friendly" conditions is justified, the authority should submit an application to the court to hear the underage victim under friendly conditions.¹⁰ According to art. 51 § 2 of the Code of Criminal Procedure, if the victim is a minor or a fully or partially incapacitated person¹¹, his or her rights are exercised by a statutory representative or a person under whose permanent care the victim remains. The legal representative of a minor is a parent exercising parental authority or a legal guardian of a minor (in the absence of a parent or deprivation of parental authority). However, according to the case law of the Supreme Court, in cases where the accused is one of the child's parents, the other parent cannot represent the child in criminal proceedings. In such cases, a competent guardianship court must appoint the child's representative, e.g. at the request of the authority conducting the proceedings. The representative appointed by the guardianship court is the curator. It may be a different person, including in particular a professional representative, e.g. an attorney or a legal adviser.

¹⁰ A Commentary on the Questionnaire for an Individual Assessment of Specific Protection Needs of Victims, Ministry of Justice, Warsaw 2015, http://www.policja.pl/download/1/180057/Komentarz_do_kwestionariuszy.pdf

¹¹ When a person is unable to manage his/her behaviour due to mental illness, mental retardation or other type of mental disorder, he/she may be completely or partially incapacitated by the court in appropriate proceedings. A fully incapacitated person is completely incapable of legal actions and a legal guardian acts on his/her behalf. A partially incapacitated person may independently perform certain activities specified by the court, whereas more important activities may be performed by such a person only with the consent of the probation officer. Both the legal guardian and the probation officer are appointed by the court, most often from among family members.

ARTICLE 25 - TRAINING OF PRACTITIONERS

Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.

Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.

Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.

Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

As regards the training of professional representatives, i.e. **attorneys and legal advisers**, the obligation to improve their professional qualifications is carried out by professional chambers (Bar Associations), membership of which is compulsory for these persons. Each chamber itself is responsible for the organization of professional training for its members. The subject matter of these training activities depends on the needs reported by the lawyers themselves. The training courses conducted by representatives of other legal professions, including judges and prosecutors, deal with a very wide subject matter among which is the issue of assistance to victims of crime, principles of conducting proceedings with the participation of victims and rules for providing legal assistance to victims.

Judges, prosecutors, attorneys and legal advisers have the obligation of continuous training. The frequency of training is varied, with trainings being organized regularly several times a year. Every person performing one of the abovementioned professions is required to participate in training several times a year - depending on the duration of the training.

The training of the judicial staff and police officers is one of the permanent elements of their functioning. Moreover, in the case of professional groups of lawyers - judges, prosecutors, attorneys, and legal advisers - permanent and systematic training is the legal duty of the person performing each of these professions. The subject matter of the training seminars and courses depends on various factors, including, first and foremost, the thematic scope of the practice performed by the given person, the area in which the person is involved and the unit in which he/she works.

In the case of **prosecutors and judges**, the education process is conducted by the National School of Judiciary and Public Prosecution in Krakow, which is responsible for both the process of educating candidates for judges and prosecutors, as well as training people performing these professions. Among the broad topics of training conducted by the School there are a number of courses devoted to the subject of criminal proceedings, protection of the rights of victims, methodology and principles of conducting activities in criminal proceedings.

ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.

Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.

Government programs and campaigns for the prevention of violence include:

- a) "When You See or You Hear Violence, You Act - Stop Violence Against Children!" - information campaign as part of the W. Stasiak government program to reduce crime and antisocial behaviour for 2016 - 2017. It encouraged the public to inform the police about the cases of child abuse - by Prevention Department of the District Police in Szczecin together with the SOS for the Family Association
- b) "STOP! Violence, When You See It - React, When You Experience It - Reach for Help" - a social campaign, implemented as part of the Protection Program "Supporting Local Government Units in creating a system of domestic violence prevention" by the Ministry of Family, Labour and Social Policy;
- c) "I love. I do not beat." - a campaign as part of the Government's National Domestic Violence Prevention program "Safer Together" aimed at limiting crime and anti-social behaviour;
- d) The National Program for Preventing Domestic Violence for 2014-2020, developed in cooperation of the Ministry of Labour and Social Policy with the Ministry of Interior Affairs

and Administration, Ministry of Justice, Ministry of Health and Ministry of National Education on the basis of Article 10 of the Act of 29 July 2005 on preventing domestic violence (Journal of Laws No. 180 item 1493, as amended) in order to create conditions for more effective prevention of domestic violence;

- f) "Safe Parent Zone" a campaign by the Ministry of Labour and Social Policy, Department of Social Assistance and Integration - National Social Campaign for Domestic Violence Prevention implemented within the framework of the National Program for Domestic Violence Prevention
- g) "Tell someone about THIS" - a campaign addressed to people experiencing violence - financed by the Ministry of Justice from the Justice Fund
- h) "You have the right to react!" - a campaign of the Ombudsman for Children, aimed at changing people's passive attitude when witnessing acts of child abuse and at reducing social acceptance of violence;
- i) "Hitting can teach, but only the bad things" - a social campaign of the Ombudsman for Children aimed at publicizing the problem of violence against children and changing social attitudes, thereby reducing the level of aggression and approval for the use of violence against children.

The above examples are social campaigns involving dissemination of educational and information materials, aiming to draw attention to the problem of violence and pathological behaviours. The materials are meant to sensitize the public to the problem of violence and the need to report it. The campaigns also involve numerous conferences, discussion panels and workshops for support services.

GOOD PRACTICES

Practical implementation of the Victims' Directive on a national basis is associated with the consistent development of good practices. In the context of practices applied in Poland, attention should be paid in particular to a number of solutions.

Right to information

The first is the development and application of a comprehensive guidance model for victims who report crimes to law enforcement and public prosecutor offices. These authorities use a comprehensive written guidance that is given to every victim who reports to the appropriate authority. Thanks to this activity, the information provided to victims about their legal position, rights and rules of participation in criminal proceedings is consistent and uniform. In addition, this information may be taken home by victims and used at a later time. A common formula of this instruction guarantees that victims across the country receive complete and comprehensive information.

Individual assessment

Another solution treated as a good practice is the template of Questionnaire for an individual assessment of specific protection needs of victims. The Questionnaire is aimed at helping police officers and prosecutors to make an individual assessment of the victims' needs and to determine what protection and support measures should be applied in a given case. The use of the questionnaire makes it easier for police officers and prosecutors who come into contact with victims of crimes to identify victims' specific protection needs and, as a consequence, to provide them with the most adequate and indispensable form of assistance. The questionnaire is to help the authorities decide whether and to what extent to apply individual protection measures. The questionnaire is completed only by a police officer or prosecutor during the first interview or procedural act, based on information obtained from the victim.¹²

Child victims' rights

Another example of good practice that has been used for many years on the national level is undoubtedly the organization of child-friendly interviews in courts. More and more courts have rooms of this type, which makes it possible to conduct interviews of child victims in conditions facilitating such children's free speech and protection. Child-friendly rooms are used in cases

when the interview of the child in the courtroom conditions might adversely affect the child's psyche, and consequently have a negative impact on the content of the evidence obtained. Interviewing children in conditions that are friendly to them allows to avoid repeated victimisation of the children when participating in criminal proceedings.

¹² A commentary on the Questionnaire for an Individual Assessment of Specific Protection Needs of Victims, Ministry of Justice, Warsaw 2015, http://www.policja.pl/download/1/180057/Komentarz_do_kwestionariuszy.pdf

GAPS, CHALLENGES, AND RECOMMENDATIONS

As a result of the conducted surveys and interview, and on the basis of an analysis of the implementation of the directive under Polish law, several areas should be pointed out which show some deficiencies, the improvement of which seems to be a matter of time and practice.

Right to understand and be understood

The first element requiring improvement is the issue of understandable communication between authorities and participants in the criminal proceedings. Many of the respondents indicated that the language used by the authorities in the proceedings is often complicated and incomprehensible. In addition, there is still a problem with communication between authorities and participants of the proceedings via the Internet. The authorities are still more willing to make contact in writing, and sometimes by phone. Making contact via the Internet is not very common, which seems to require development, as Internet technologies facilitate access and communication with authorities, as well as bring participants closer to the information they need. Another element of communication which needs to be developed is the use of technology enabling video contact.

Right to translation and interpretation

Another area requiring improvement is also the issue of translation and interpretation services. Services of this kind are not always sufficiently available so that they can be free of charge for crime victims. It seems that this can be improved by informing victims about the possibility of obtaining the assistance of translators and interpreters through non-governmental crime victims support organizations, where victims have the opportunity to receive support of translation and interpretation services while they are provided with legal or psychological assistance.

The problem of interpretation and translation services is connected with the difficulties in immediate receiving of a complaint from a victim of crime when the victim resides in another Member State. It seems that it would be reasonable to strengthen the translation and interpretation services so that victims of crime could be provided with such services more quickly when they make contact with authorities.

Right to avoid contact between victim and offender

One of the challenging areas in ensuring better protection of victims' rights is the adaptation of buildings so that direct contact between the victim and the offender can be avoided.

One of the problems identified in the surveys is the issue of an insufficient number of buildings with separate entrances for the victims. The new buildings are designed with separate entrances and waiting rooms but some of the old buildings are still lacking these solutions. A very rare phenomenon is the separation of toilets for offenders and victims of crime.

Based on the analysis carried out, including the surveys and the interview, it should be pointed out that there are areas in which implementation of solutions is required to enable victims of crime to be protected more effectively and to exercise certain rights in a better way. One of the most important **recommendations** to be formulated is the issue of developing the use of the **Internet technologies** in everyday communication. This involves allowing the participants of the proceedings to use the Internet while making contact with authorities on a larger scale than before. In addition, the development of information technology would enable the use of video technology for conducting interviews (including interviews with children) by means of remote communication.

The second area that requires development and support is the development of **conditions of buildings** in order to provide crime victims with the opportunity to **avoid contact with offenders**. Therefore, it is recommended to continue striving to improve building conditions at police stations, at the prosecutor's offices and in courts by providing separate waiting rooms, entrances, toilets and rooms for the offenders.

CONCLUSION

The analysis of the provisions of the Directive 2012/29/EU in terms of their practical implementation under national law in Poland allows to conclude that the Directive has been implemented and is functioning in practice. In the legislative sphere, it should be pointed out that both by adopting new legal acts and amending the previously applicable provisions, the provisions of the criminal procedure have been adapted to the requirements of the Directive. Under the current legal status, national law includes solutions that are required by the Directive.

In the practical sphere, it should be emphasized that with the passage of time, regulations concerning the protection of the rights of victims of crime are being more and more commonly applied. There are some areas which include issues that are recommended to be improved by taking appropriate action. This applies first of all to the implementation of modern technologies for the communication of participants of criminal proceedings with the authorities of these proceedings. Information technology should be more frequently and more willingly used by authorities to inform participants of the proceedings about the state of the case, about the rights of the victims, and about actions taken. Internet technologies should also be more willingly used during proceedings such as interviews with victims (including children).

Another area where it is recommended to take action in order to improve the existing conditions are efforts to modernize the buildings in which the authorities are located. These activities should aim at ensuring separation of offenders from victims of crime.

Finally, a number of good practices were also highlighted which must be applauded as well as encouraged in other Member States.

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VOCIARE

Victims of Crime
Implementation Analysis
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