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‘Children in Criminal Procedure – Friendly Law’: Analysis of the Government Draft Amendments to Some of the Legal Acts in Poland

- **ABSTRACT:** *The considerations undertaken in the scientific article constitute an analysis and evaluation of the solutions included in the government’s legislative proposal aimed to change the provisions of the Code of Criminal Procedure, the Family and Guardianship Code, and the Law on the System of Common Courts with regard to the position of minor victims. The legislative initiative is a significant change that aims to improve the protection of children participating in criminal procedures. This legal act’s draft indicates the provision of a special position to children in the criminal procedure. If children happen to be the aggrieved parties in criminal procedures, they deserve to be met by the court and participants with exceptional awareness and sensitivity. I am of the opinion that the criminal procedure must be structured in such a way that the participating children feel safe. The judiciary should aim to be child-friendly. It is extremely important that children feel understood as well as they understand the new legal reality in which they find themselves. In this analysis, I have referred to the regulations on the protection of children’s rights under the international law and the law of the European Union. In this study, I have laid emphasis on the point that the proposed legislative solutions should meet the assumptions of the European directives issued by the European Union institutions as well as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, the main act on the protection of children’s rights issued by the Council of Europe.*
- **KEYWORDS:** protection of children’s rights, protection of crime victims, criminal procedure, improvement of legislation, minor child, aggrieved person.

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1. Introduction

On 24 February 2021, during the Week of Assistance to Victims of Crime, the Ministry of Justice² announced a set of 21 draft amendments to the legislation entitled 'Child-friendly law'. These amendments were prepared with a view of strengthening the sense of security of children involved in criminal proceedings as the victims or witnesses of crime.

The explanatory notes to the draft act have pointed out³ the extensive analyses of Polish and international legal regulations⁴ concerning the participation of minors in criminal procedures carried out prior to the preparation of the amendments proposed by the government. The drafters also considered the postulates raised in the jurisprudence, the doctrine of the criminal process, and the results of empirical research.

The conceptual core of the work was the idea of child-friendly justice. An idea that has been specifically set out in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice⁵ as well as in the report of the European Union Agency for Fundamental Rights titled 'Child-friendly Justice: Perspectives and Experiences of Professionals on Children's Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States'.⁶

The idea refers to 'justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the children's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adaptable, focused on the needs and rights of the children, and respectful of the rights of children, including the rights to due process, to participate in and to understand the proceedings, to respect private and family life, and to have integrity and dignity'.⁷

Based on the analyses performed, the drafters of the act developed legislative solutions that, as they indicate,⁸ had been construed so as to be minor-friendly and prevent any situation where anxiety and fear of criminal procedures would be a barrier

2 Press release of the Polish Ministry of Justice on the child-friendly law – groundbreaking changes for the youngest, <https://www.gov.pl/web/sprawiedliwosc/prawo-przyjazne-dzieciom--przelomowe-zmiany-na-rzecz-najmlodszych> (Accessed: 21 March 2021).

3 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

4 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of the victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L.2012.315.57, hereinafter Directive 2012/29/EU); Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L.2011.335.1, hereinafter Directive 2011/93/EU).

5 Council of Europe, 2012.

6 Council of Europe, 2015.

7 Council of Europe, European Union, 2012, p. 17; Stalford, 2017, p. 208.

8 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

to children's revealing offences to their own detriment. The proposed legislative amendments were adapted to the specific needs of children due to their age, maturity, personality, and the nature of the crime committed against them. They introduced the principle of communication between the representatives of the justice system and minors in a way that they understand, and they also aimed to provide protection to minors from the experiences of re-victimisation and secondary trauma during their participation in legal procedures.

The proposed legislation for the protection of children's interests calls for the presentation and analysis of government-drafted amendments, which we have done so in this paper.

2. The right to have a child-friendly interview

The amendments to certain legal acts, as drafted by the Ministry of Justice, call for a number of changes in view of the need to improve the standard set to protect the children giving testimony.

This is due to the fact that, under the Polish Code of Criminal Procedure, a child victim cannot exercise his/her rights independently because of his/her minority status. In the course of the proceedings, a child must be represented by an adult, either his/her statutory representative or *de facto* guardian (Article 51 § 2 of the Code of Criminal Procedure).⁹ A child victim is 'excluded' from being required to participate in criminal procedures. His/her active attendance is necessary only when there is a 'personal source of evidence', for instance, when they give testimony as a witness.

When children give testimonies, they are having a personal and direct contact with the justice system. They are independently exercising their rights and performing their obligations in the given situation.¹⁰ Being interviewed is always a challenge for children, for they find themselves in a completely new legal reality. They are also required to report the circumstances of a crime, which often entails the reporting of traumatic experiences.

Following the recognition of the specific situation children are put in when they are required to give testimonies in criminal proceedings, 'protective interviewing arrangements' were introduced in the Polish criminal procedure (Article 185a of the Code of Criminal Procedure),¹¹ which have been amended a number of times since. Currently, these arrangements are as follows:¹²

- as a rule – there has to be a single-session interview, unless essential circumstances are revealed, the clarification of which warrants another interview, or

9 Paluszkiewicz, 2020, argument no. 3; Dudka, 2016, p. 15; Eichstaedt, 2018, argument no. 7.

10 Mierzwińska and Lorencka, 2016, p. 35.

11 Podlewska and Trocha, 2012, p. 143.

12 Horna, 2014, p. 14.

the defendant, who did not have a defence advocate during the first interview of the minor, requests this;

- children are always interviewed by the court (children may not be interviewed by any other authority, such as a police officer and public prosecutor);
- obligatory participation of an expert psychologist in the interview;
- a closed catalogue of interview participants (court, expert psychologist, prosecutor, defence advocate, counsel of the victim, and the representative of the minor or an adult identified by the minor, only if this does not restrict the freedom of expression of the interviewee);
- prohibition of the participation of the offender in the interview;
- obligatory recording of the interview using an image and sound recording device (Article 147 § 2a of the Code of Criminal Procedure); and
- interview held obligatorily in a room specially assigned for this purpose, i.e., a 'friendly interviewing room' (Article 185d of the Code of Criminal Procedure).

These specific conditions for providing evidence are not available to all children. The procedure adopted to interview children depends on their age, mental health, and the nature of the crime.

The Polish legislators decided that child victims and witnesses of crimes committed via the use of violence or an unlawful threat, crimes against sexual freedom and morals, and crimes against the family and guardianship, and crimes against freedom, who at the time of interview are under the age of 15, would always be asked to provide evidence under 'protective arrangements'.

Older child victims (15 to 18 years of age) of the above-mentioned crimes may benefit from the specific protection under strictly defined circumstances, that is, when there is a legitimate concern that providing evidence otherwise could have a negative impact on their mental condition. It is important to note that the adolescent witnesses (15-18 years old) of the above-mentioned crimes are excluded from this protection regime.

The applicable legal regulations significantly differentiate the situation of minors when it comes to interviewing. They provide different levels of security guarantees with regard to their well-being, interests, and process guarantees. Notably, if children cannot use the 'protective interviewing arrangements', they are required to provide evidence the same way as an adult. This means that the circumstances of a crime will be narrated to them a number of times during a criminal trial (without the support of a psychologist) held in the courtroom, or in the office of a prosecutor/police officer, in the presence of many people, including the offender.

The government proposal aims to systematise the situation of child interviewees. The legislative drafters¹³ pointed out that the current legal regulations do not fully comply with international standards, namely the ones set by Directive 2012/29/EU of

¹³ *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and the replacing Council Framework Decision 2001/220/JHA (OJ L.2012.315.57, hereinafter Directive 2012/29/EU). They partly comply with the standard set by Directive 2011/93/EU of the European Parliament and the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and the replacing Council Framework Decision 2004/68/JHA (OJ L.2011.335.1, hereinafter Directive 2011/93/EU).

The drafters¹⁴ argued that all children should be guaranteed the right to a friendly interview, irrespective of the crime they had witnessed or been a victim of.

It was highlighted that international standards, such as the ones set by Directive 2011/93/EU, specifically regulate the situations of the child victims of certain crimes associated with high trauma (such as sexual abuse). Directive 2012/29/EU clearly stipulates that, whenever children's situation and their individual needs so require, the criminal process must be shaped in such a way that each minor is guaranteed a sense of security and the highest level of protection. There were various examples provided of such situations. One such instance is when a child's parents are the victims of a road accident. While reporting of the circumstances of the event may undoubtedly have a very negative impact on the child's mental condition, the current criminal procedure regulations do not initiate any 'protective interviewing arrangements' for the child in such a case.¹⁵

The drafters¹⁶ have further argued that both the pieces of EU law define a 'child' as any person below 18 years of age, and that they call for the provision of special treatment until a child reaches the age of majority. Thus, it is not acceptable that adolescents, solely due to their age, would be provided a lower level of protection than younger children, and would be treated on par with how the adults are treated.

The government draft act¹⁷ has also pointed out the criminal-procedural situation of minors who come of age during a criminal process. There was a rule put in place in this regard. According to the rule, if a victim or a witness has given a testimony under the protective arrangements as a child, then, even if he/she has reached 18 years of age when called again to report the circumstances of a crime, he/she will still be entitled to give the interview under 'protective arrangements'.

In view of the above, the drafters have proposed that the legal regulations concerning the 'protective interviewing arrangements' be given the following wording in the Code of Criminal Procedure.¹⁸

14 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

15 This also, *inter alia*, in: Ł. Mrozek, 'Czynności procesowe z udziałem małoletniego – wybrane zagadnienia (przesłuchanie, okazanie, konfrontacja)' in *Kurator procesowy dla małoletniego pokrzywdzonego. Prawne i psychologiczne aspekty udziału małoletniego w postępowaniu karnym.* (Warszawa, Fundacja Dajemy Dzieciom Siłę): 23.

16 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

17 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

18 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

1) Article 185a:

§ 1. *In cases of offences committed with the use of violence or unlawful threats or specified in chapters XXIII,¹⁹ XXV²⁰ and XXVI²¹ of the Criminal Code, a child victim shall be interviewed as a witness only where their testimony may be of significant importance for the resolution of the case, and only once, unless essential circumstances are revealed, the clarification of which warrants another interview, or the defendant, who did not have a defence advocate during the first interview of the minor, requests the admission of such evidence.*

§ 2. *The interview shall be conducted by the court at a session with the participation of an expert psychologist, immediately, not later than within 14 days from the date of receipt of the request. The public prosecutor, defence advocate, counsel of the victim or guardian representing the child, as referred to in Article 51 § 4, shall have the right to participate in the interview, unless their participation is obligatory. The person mentioned in Article 51 § 2 or 3²² or an adult identified by the victim, as referred to in § 1, shall also have the right to be present at the interview, if this does not restrict the freedom of expression of the interviewee. If the defendant, who has been notified of such interview session, does not have a private defence advocate, the court shall appoint an ex officio defence advocate. The provisions of Article 185c shall not apply.*

§ 3. *At the main hearing, the recorded image and sound of the interview shall be replayed, and the interview report shall be read out.*

§ 4. *The provisions of § 1-3 shall also apply in cases of offences not listed in § 1, in particular, in cases of offences specified in chapters XIX,²³ XX²⁴ and XXI²⁵ of the Criminal Code, if there is a legitimate concern that interviewing of a minor victim in other conditions could have a negative impact on their mental condition.*

§ 5. *If, at the time of re-interviewing, the victim has reached 18 years of age, the provisions of § 1-3 shall apply, if there is a legitimate concern that interviewing in other conditions could have a negative impact on their mental condition. At the request of the victim, re-interview may be carried out pursuant to Article 177 § 1a.²⁶*

19 This chapter of the Criminal Code regulates the crimes carried out against freedom.

20 This chapter of the Criminal Code regulates the crimes carried out against sexual freedom and morals.

21 This chapter of the Criminal Code regulates the crimes carried out against family and guardianship.

22 The person mentioned in Article 51 § 2 or 3 of the Code of Criminal Procedure is a statutory representative or *de facto* guardian of a child or a disabled person.

23 This chapter of the Criminal Code regulates the crimes carried out against life and health.

24 This chapter of the Criminal Code regulates the crimes carried out against public safety.

25 This chapter of the Criminal Code regulates the crimes carried out against safety in transport.

26 Article 177 § 1a provides that the interview may be held with the use of technical devices that enable remote communication for the purposes of this procedure, with there being simultaneous direct transmission of image and sound.

2) Article 185b:

§ 1. *In cases of offences committed with the use of violence or unlawful threats or specified in chapters XXV²⁷ and XXVI²⁸ of the Criminal Code, a witness who at the time of interviewing is under 15 years of age shall be interviewed under the conditions specified in Article 185a § 1-3.*

§ 2. *In cases of offences listed in § 1, a minor witness who at the time of interviewing has reached 15 years of age shall be interviewed under the conditions specified in Article 185a § 1-3, if there is a legitimate concern that interviewing in other conditions could have a negative impact on their mental condition.*

§ 3. *The provisions of § 1 and 2 shall not apply to a witness being an accomplice in the prohibited act for which the criminal proceedings are being carried out, or a witness whose act is related to the act for which criminal proceedings are being carried out.*

§ 4. *The provision of Article 185a § 4 and § 5 shall apply mutatis mutandis.*

3. Children's right to understand and be understood

The idea of 'child-friendly justice'²⁹ clearly emphasises the principle that, from the moment children come in contact with the judicial system or other competent authorities, children should be ensured of their right to information regarding the rights, obligations, systems, and procedures. Information should be provided to children in a manner that takes their age and maturity into consideration, and in a language that is both understandable as well as gender and culture sensitive. It is also indicated that children should directly receive information and contacting of parents or legal representatives should not function as an alternative through which children are informed.

The same approach is visible in the construction of the regulations of Directive 2012/29/EU, which (in Article 1(2), namely third sentence, Article 3, Article 4, and Recital 21) points to the need to guarantee every victim, including child victims, the right to information, the right to understand, and the right to be understood in the course of legal procedures.

As Trocha rightly argued,³⁰ the right to information is the fundamental right with which everything begins. In her study, she quoted the speech of the Commissioner on Citizen's Rights and the speeches of the other representatives of the Polish criminal process. They emphasised on the point that improper information to victims about their rights makes it difficult for them to be assisted and limits their activity in the criminal process.

27 This chapter of the Criminal Code regulates the crimes carried out against sexual freedom and morals.

28 This chapter of the Criminal Code regulates the crimes carried out against family and guardianship.

29 Council of Europe, European Union, 2012, p. 21.

30 Trocha, 2015, p. 17.

The author also made reference to the following point: '(...) children often do not know what is going on in their case, they are surprised by evidence taking activities with their participation, they do not understand why they have to report on events again and again or why they have to talk about them to some people and not to others.'³¹

The report '*Child-friendly justice—Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU member states*'³² has brought out the benefits that both the child and the justice system gain when minors are ensured the right to information. The benefits are as follows:

- relieving of children's anxiety when facing a potentially intimidating justice system;
- well-informed children gain greater trust and confidence in themselves and in the judicial system; and
- they moving forward feel more secure and talk more freely, which means their statements are taken into consideration, and they can participate in the proceedings with more conviction.

As it was already emphasised in the earlier part of the article, children as special participants of criminal proceedings, due to their sensitivity and immaturity, need to be provided with special protection through the introduction of separate legal regulations. These regulations would regulate their status and refer to their rights and obligations in a way that would be adapted to their level of maturity and psycho-physical development.³³ In accordance with the detailed recommendations formulated in the Guidelines, information and counseling should include activities performed by persons representing the judiciary aimed at properly informing the respective child and its parents, *inter alia*, about the child's rights, the system and procedures in which the child participates or will participate, about the position of the child in the proceedings, the manner in which the interview is conducted, the possible consequences of the proceedings, the available protective measures, the existing mechanisms for verifying decisions relating to the child.³⁴ It should be especially respected in the criminal procedure which due to its repressive nature is characterised by a significant interference with the rights and freedoms of an individual. Therefore, it is so important that children are sufficiently informed in an appropriate manner about their rights and obligations.

The currently applicable Polish criminal procedure contains legal regulations related to the right to information. The Code of Criminal Procedure includes provisions which define a legal obligation for a procedural authority to provide information to participants in proceedings about their obligations and rights regarding the procedural activities in question. The principle of the right to information is also one of the basic principles of the criminal process, which arises from Art. 16 of the Code of Criminal

31 Ibidem.

32 Council of Europe, European Union, 2015, p. 53.

33 Podlewska, 2018, p. 10.

34 Mazowiecka, 2016, pp. 9–13.

Procedure.³⁵ It constitutes a directive on the provision of information by procedural authorities to participants in proceedings, if it is important for the protection of their rights and interests. The implementation of this principle is manifested in the information obligation imposed on the procedural authorities when performing specific procedural activities, which was mentioned above.

However, the instruction-giving procedure is a standard one, which is identical for everyone. It does not differentiate the situation of children in terms of their needs that are related to them obtaining information about their rights, obligations, and the structure of the process. Due to the special role of the child in the criminal procedure and its sensitivity, the legislator considered it necessary to formulate the legal obligation towards the procedural organs to inform the child about their rights and obligations incumbent on them in a manner adapted to their maturity and psycho-physical condition.

As a result, the government draft act proposed an introduction to the Code of Criminal Procedure.³⁶

1) A general rule that emphasizes on the necessity and importance of giving specific instructions and information to minors. This been brought out in the following provision:

Article 16 § 3 of the Code of Criminal Procedure. If a participant in the proceedings is a person who is under 18 years of age, a fully or partially incapacitated person or a disabled person, the instruction should be adapted to their age and health condition, including mental health and mental development.

2) Precise regulation, which imposes on the interviewers the obligation to specifically instruct and inform the participating children the respective procedure, through which the situations of a child and an adult in terms of the right to information are clearly differentiated. This has been brought out in the following provision:

Article 300 § 3a. Not later than before the first interview, a minor witness shall be instructed about the rights and obligations referred to in Article 177, 182-183, 185a-185b, 186-192 and the manner and conditions of the interview, as referred to in Article 185a.

3) Precise regulation, which obligates the Minister of Justice to develop a written model instruction for minors. As the representative of the Ministry of Justice pointed out,³⁷ these instructions will be in the form of pictorial graphic tips through which children can learn about why they give evidence, what rights they have, and who and where to ask for assistance during criminal proceedings in an accessible way. This has been brought out in the following provision:

Article 300 § 4a. The Minister of Justice shall define, by way of a regulation, the model of the instruction referred to in § 3a, with regard to the imperative that the minor understands the instruction.

³⁵ Kulesza and Starzyński, 2020, pp. 28–30.

³⁶ *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

³⁷ Press release of the Polish Ministry of Justice, *Prawo przyjazne dzieciom – przełomowe zmiany na rzecz najmłodszych*, <https://www.gov.pl/web/sprawiedliwosc/prawo-przyjazne-dzieciom---przelomowe-zmiany-na-rzecz-najmlodszych> (Accessed: 21 March 2021).

Further, the government draft act has made a proposal to amend the Law on the Organisation of Common Courts Act (Journal of Laws of 2020, item 2072) by imposing an obligation on the judges adjudicating criminal cases to undergo a specialised training on interviewing children. This has been brought out in the following provision:

Article 82a § 3a. A judge adjudicating in criminal law cases shall participate, every four years, in training and professional development sessions organised by the National School of Judiciary and Public Prosecution or in other forms of professional development, in order to raise specialist knowledge and professional skills for interviewing minors and persons referred to in Article 185c of the Code of Criminal Procedure Act of 6 June 1997 (Journal of Laws of 2020, items 30, 413, 568, 1086, and 1458).

To have the above amendments enacted is extremely important to ensure that the children's right to information, and the right to understand and be understood in criminal proceedings find their implementation in society. The reason for emphasising on the enactment is that the training will allow judges to gain knowledge and skills, particularly of appropriate interviewing techniques, child psychology, and how to communicate in a language that is adaptable to the levels and needs of minors.³⁸

4. Children's right to professional legal representation

As has already been indicated, under the Polish criminal procedure, a victim of a crime cannot appear independently in a criminal process. In such cases, minors are represented by their statutory representatives, most often parents.

In the course of the criminal process, children's representatives may use the professional support of an advocate or an attorney. The relationship between the lawyer and the representative of the minor is referred to as legal counselling.

The costs incurred for obtaining legal counselling are covered either by the parents of minors (i.e., private counsel) or by the state (appointed, public or *ex officio*, counsel).

International regulations such as Directive 2011/93/EU (Recital 32, Article 20(2)) and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice³⁹ have pointed out to the need to provide the children and their representatives participating in a criminal process professional legal representation or legal counselling. This obligation is delegated to the state, and it is the state that is obligated to cover all the costs related to the provision of such legal support, namely the support of an appointed counsel.

In many EU member states,⁴⁰ and also in Georgia,⁴¹ every child victim and their representatives may use the assistance of an advocate or an attorney. However, in

38 *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

39 Council of Europe, European Union, 2012, p. 80.

40 Trocha, 2013, p. 187.

41 Council of Europe, European Union, 2012.

other countries, the entitlement to assistance depends on the nature of the crime committed against children or on their (children's families/guardians) difficult financial situation.

The legal regulations that are currently in force in Poland enable every victim (both children and adults) to avail free-of-charge representation of a public counsel if they duly demonstrate that they are unable to bear the costs of such assistance without hampering the necessary maintenance of themselves and their family (Article 88 in conjunction with Article 78 § 1 CCP).

Empirical research conducted in Poland has shown that the persons entitled to exercise the rights of minors display little in-process activity⁴² and very rarely (a few percent) use the assistance of a professional counsel, either public or private.⁴³

The above data are very disturbing with regard to the protection of the rights and interests of child victims. However, this is undoubtedly a consequence of the fact that the responsibility for exercising the rights of children rests with adults who neither are lawyers nor have the knowledge of the procedures being carried out. Even though they are grown-ups, participation in the criminal proceedings is a serious challenge to them. Additionally, the representatives are emotionally involved in the ongoing proceedings as they directly concern their children, that is those whom they care for. Therefore, it is extremely important that representatives are in a position to benefit from the assistance of the professional counsel, namely professionalism and legal assistance and psychological assistance,⁴⁴ which will undoubtedly be a significant positive factor in the proper protection of the rights and interests of child victims in the ongoing criminal proceedings.

The government draft act implements the above assumptions by indicating that every child victim of a sexual offence and their representatives will receive free assistance from an *ex officio* counsel for the duration of the criminal process.

Anyone who is not supported by a private counsel will have the choice to use a public counsel for assistance. This person is required to have the highest qualifications. They must have specific experiences of handling cases involving minors or must have completed specialised training on the principles of the representation of children, their rights, and needs. More importantly, the role of a professional lawyer *ex officio* does not end with the child he/she is representing has come of age. It continues until the end of criminal proceedings.

An *ex officio* counsel is, as a rule, obliged to get to know the children they are representing, and inform them about the actions taken, the course of the proceedings and how they conclude, and the consequences of the actions taken in their legal situation in a manner that is understandable and adaptable to the children's level of development or maturity.

42 Krawiec, 2012, p. 327.

43 Trocha, 2013, pp. 59–60.

44 Kulesza, 2012, p. 118.

Thus, the legislative drafters have proposed that the legal regulations concerning public counsel should carry the following wording in the Code of Criminal Procedure:

*Article 89a § 1. In criminal proceedings, a minor victim shall have assistance of a counsel in cases of offences specified in Chapter XXV of the Criminal Code.*⁴⁵

*Article 89b § 1. The provision of Article 89a § 1 shall not apply in the case referred to in Article 51 § 4.*⁴⁶

Article 89c. § 1. If the minor referred to in Article 89a § 1 has no private counsel, the president of the court, the court or the senior judicial clerk of the court competent to hear the case, and in the preparatory proceedings the public prosecutor, shall immediately appoint for their benefit a public counsel, who shall demonstrate specific knowledge of matters concerning minors or have completed training on the principles of representation of children, their rights and needs.

§ 2. The obligation on the appointed public counsel to take in-process actions shall survive the minor's reaching the age of majority.

§ 3. The authority conducting the proceedings shall release the public counsel if the victim or the persons referred to in Article 51 § 2 or 3 have arranged for assistance of a private counsel.

§ 4. If the mental development, health condition and level of maturity of the minor victim allow it, the appointed public counsel shall contact them immediately and shall inform them about the actions taken, the course of the proceedings and how it should conclude, as well as about the consequences of the actions taken for their legal position, in a manner which is understandable and adapted to their level of development and maturity.

Article 89d § 1. The participation of the appointed public counsel in the hearing shall be obligatory.

§ 2. The provision of § 1 shall apply to the sessions attended by the victim.

Article 89e. Article 84, 86 § 2 and 89 shall apply to the appointed public counsel mutatis mutandis.

Article 89f. The Minister of Justice shall define by way of a regulation the manner to provide the minor victim with assistance of a public counsel who is an advocate or an attorney, including the method to establish a list of public counsels and to appoint the same, having regard to the need to ensure the proper course of the proceedings and to provide immediate

45 This chapter of the Criminal Code regulates the crimes carried out against sexual freedom and morals.

46 Article 51 § 4 CCP applies to a guardian representative who acts on behalf of a child in criminal proceedings when the offender against the child is one, or both, of their statutory representatives. As the drafters have pointed out: '(...) in such a case, the minor is guaranteed a professional level of representation by a guardian who is an advocate or an attorney, who should demonstrate specific knowledge of matters concerning the child, of the same type or similar by type to the case in which child representation is required or has completed training on the rules of representation of children, their rights or needs.' Drawn from *Explanatory notes to the draft act amending the Code of Criminal Procedure Act and certain other acts.*

legal assistance to the minor victim by persons with specific knowledge of matters concerning the minor, or properly trained.

5. Summary

The government draft act is an essential legislative initiative that aims to substantially strengthen the protection of children in criminal procedures. The modern criminal process must take due consideration of the position of victims, in particular, the victims who require exceptional care and sensitivity.

The criminal process must be structured in such a way that the children taking part in it feel safe. The justice system should strive to attain child friendliness. It is extremely important that children feel understood and they understand the new legal reality in which they find themselves.

The proposed legal regulations undoubtedly fulfil the assumptions of the EU directives and the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

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