

NORMATIVE AND NON-NORMATIVE LIMITATIONS OF VICTIMS' PROTECTION SYSTEM IN POLAND

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1. Present legal situation of victim in Polish criminal proceeding

Position of victims in Polish criminal proceedings is continuously changing. Status of person injured by the crime went really great distance, from total oblivion to almost number one matter. This complete turnover was caused by influence of EU legislation concerning victims situation in criminal proceedings. Implementation of them, especially Council Framework Decision of 15 March 2001 2001/220/JHA on the standing of victims in criminal proceedings, changed perception of victims' status. Before this moment victims were regarded only as a source of information about committed crime. No special regulations ensuring protection of injured person¹ were provided. Whole effort of, as well European legislation, as Polish one was focused on rights and guarantees of perpetrator. That situation might caused the feeling of total discrimination and double-victimization which resulted in many negative consequences. Victims were reluctant to cooperate with law enforcement authorities fearing that this might bring only aggravation of their situation. However, implementation of mentioned framework and further the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA has changed status of victims in Polish criminal proceedings, there is still lot to be done on this area. Existing limitations might be divided into two categories: normative and non-normative. They are strictly combined together impacting the present status of victim in criminal proceedings in Poland. The common mistake is separate recognition of this factors which brings many misunderstandings on this field. There is high need of new approach to this issue which included both kind of limitations. There will be no development without awareness of it.

¹ Polish criminal law does not use the term 'victim of crime', but 'injured party of the crime'. Differences between these two are not just terminological,¹ so they cannot be used interchangeably. It is agreed upon that the most accurate term to use would be 'potentially injured party' as introduced in victimological studies. The normative definition of 'injured party' is found in Art. 49 of the *Code of Criminal Procedure*. Scholarly literature emphasises that using term 'victim of crime' prejudices the fact of committing the crime on victims' damage before a legally valid decision about the criminal liability of the person prosecuted. C. Kulesza: *Projekt Europejskiej Dyrektywy z dnia 18 maja 2011 r., w sprawie wsparcia i ochrony ofiar w świetle prawa polskiego [The draft European Directive of 18 May 2011 on support and protection of victims under Polish law]*, *Prokuratura i Prawo* 2011, nr 12, p. 5; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego, Komentarz [Code of Criminal Procedure, Commentary]*, 2007, t. I, s. 308.

2. Normative limitations in access to legal aid

General act that regulates situation of victims in Polish criminal proceedings is code of criminal proceedings (hereafter: CCP)². There are also many other legal regulations determining position of victims. Nevertheless the code is the most important legislation and it should provide the same level of protection to the victims as it does to a perpetrator. Unfortunately there are some situations that offender has more rights that it is ensured to the victims. The most important one that needs to be mentioned is “right to information”. This basic right has a great value especially in criminal proceedings. Of course it has many dimensions and aspects, that’s why here it will be described only in general. Information provided to every participant of proceedings create possibility to gain the full access to rights and obligations during criminal trial. Without this knowledge one might have much worse position than others. Criminal proceedings authorities to fulfill a “fair play” standards of a trial must ensure that information provided to each and every participant will be equal. Existing regulations do not pursue that standards.

Just before first interrogation suspect of a crime receives whole package of information regarding his rights and obligation during the whole trial. Authorities are obliged to act like that by the power of article 300 of CCP That means that the alleged offender has entire picture of his position, not only in present stage of the proceedings, but also in future ones. Inexplicable is that victims has not the same entitlement. There is no regulation in on CCP level that obliges bodies conducting proceedings to familiarize victim with his right and obligations³. According to this position of victims is much worse in very beginning of the trial. Victims’ access to legal aid is strictly limited by the lack of that kind of regulations. Without being informed person injured by a crime might not exploit its rights, i.e. right to pledge a civil action in criminal trial or pledge a motion for compensation. These are very important guarantees that might be use only till certain moment of the proceedings. Having no knowledge about it complicates victims position and expose them to bear the burden of civil proceedings which might last for additional couple of years.

² Ustawa z dn. 6 czerwca 1997 r., Kodeks postępowania karnego [Code of Criminal Procedure] (Dz. U. z 1997 r., Nr 89, poz. 555 ze zm.), available at: <http://www.lex.pl/akt-prawny/-/akt/dz-u-97-89-555-u> (29 November 2013).

³ There is only prosecutors’ obligation that comes from § 167 of the Prosecutors’ Office Regulation whereas the police obligation can be found in § 19 of the Guidelines of the Commander in Chief of Police – Commander in Chief of Police (2012): Wytyczne nr 3 Komendanta Głównego Policji z dnia 15 lutego 2012 r. w sprawie wykonywania czynności dochodzeniowo – śledczych przez policjantów [Guidelines of the Commander in Chief of Police on Conducting Police Investigation] (Dz. Urz. KGP z dnia 16 lutego 2012); see also: Association of Prosecutors of Republic of Poland (2002) Uchwała II Krajowego Walnego Zjazdu Członków Stowarzyszenia Prokuratorów RP w sprawie "Zbioru Zasad Etycznych Prokuratora" z dnia 25 maja 2002 roku [Resolution of the General National Congress of the Association of Prosecutors of the Republic of Poland on the Standards of the Ethical Prosecutor on 25 May 2002].

Position of victims and a perpetrator, especially according to right to information must be equal⁴. Both of them should have the same chances during the proceedings. It is not the matter of authorities if they are going to make use of it. One cannot forget that right to information concerns not only privileges but obligation as well. Perpetrator and victims must be aware of every obligation. It is important not only for participants but also for authorities. Fair trial provides feeling of justice for victim which allowing better cooperation between Police, prosecutors, judges, and victims. It was noted by legislator, and the nearest amendment of CCP ensures right to information for victim on the same conditions as perpetrator has. That means that full, broad access to legal aid will be regain.

Second normative limitation that need to be mentioned is lack of regulations concerning special, vulnerable groups of victims. It is obvious that some groups of citizens are more vulnerable and needs much more attention than others. Conducted researches shows that among that kind of groups we might find:

- elders,
- juveniles,
- sex crimes victims,
- hate crimes victims,
- domestic violence victims,
- human trafficking victims,

Special protection of them must be provided. Of course not always there is a necessity to implement regulations regarding all of vulnerable groups on CCP level. Authorities should be aware of types of crime committed in each state and numbers of injured person that need that kind of protection. Those who are the most vulnerable and numerous should gain the special guaranties during trial. The best example of that kind of treatment is juvenile protection in Polish criminal proceedings. Juvenile victims of certain crimes (i.e. sexual abusing) can be interrogated only by judge accompanied by a psychologist, and it can be conducted only once. Unfortunately that kinds of provisions are still very rare, and has exceptions which limit their application. Law should protect the weakest participants of criminal proceedings. Courtroom cannot be a place where victims not only gets no assistance, but can suffer double-victimization process. To avoid that kind of situation authorities must be prepared and have perfectly designed tools for aiding.

3. Non-normative limitations in access to legal aid

Non-normative limitations are factors which have the same impact on the present status of victim in criminal proceedings but cannot be changed by simple amendment. It makes them

⁴ E. Bieńkowska, L. Mazowiecka, *Uprawnienia pokrzywdzonego przestępstwem*, Warszawa 2012, p. 24.

much harder not only to notice but also to accept. Unfortunately there is common trend to underestimate that kind of factors and its impact on existing situation of victims in criminal proceedings. Among that limitation we can point on two, the most important ones, that is: legal awareness of society and Bodies approach. Each of them needs different kind of actions.

Social legal awareness is without doubt a commonly used term and most often it is intuitively recognized, both in the realm of science and in public life. It may, however, be difficult to precisely define it. This issue mostly touches upon fields from between sociology and legal sciences. The subject of the term in question remains knowledge of law, whose level is determined mostly by activity of the state and its institutions in this field, but also by the content and means of communication of law⁵. Legal awareness is shaped by a range of factors. Functioning of law applying entities, the way of communicating any changes in legislation to society, decisions made in individual matter and individual cognitive abilities of a recipient of legislation and his attitude towards them are not without significance for legal awareness.

As it comes from recent studies legal awareness of society in Poland is still at a very low level. It's rising systematically but not in the pace which could be acceptable. There are many reasons for that situation, but among them we can point on the most important ones. First of all we can observe huge difference in law knowledge among citizens. In urban centers, where people are more educated, basic knowledge on legal aspects of being a victim exist on satisfactory level. The biggest problem is on rural areas, where people are undereducated and their access to legal aid is strictly limited. Very often the problem is much deeper than one might even imagine. Basic difficulties concern communication with that kind of people. Lawyers, and representatives of NGO's organizations should use special, very simple language to reach that kind of person. Frequently incomprehensible is the concept of a crime – victims do not know that the crime was committed, they accept the situation as something normal, i.e. domestic violence or sexual abuse. That means that the general effort should concentrate on rising people awareness on what is the crime and what kind of possibilities they have. Without that kind of actions those person will remain vulnerable for crimes.

We also have to remember that rural areas are very specific. Reporting a crime on small village where everybody knows each other is not an easy task. There should be created special ways of communication between i.e. Police or social care in order to avoid stigmatization in their small society. There could not be acceptance of situation where victims starts to feel guilt because of committed crime.

To raise the legal awareness of society, especially in rural areas, many actions have to be undertaken. First of all, there is high need to launch the special educational programs focusing on explanation of what is a crime, and how one can report it. In present situation presenting the rights and obligations of victim in criminal proceedings to whole society without reaching as many as possible with just a basic knowledge is pointless. Second thing is, that in rural areas

⁵ P. Karlik, P. Libertowski, *The role of criminal proceeding in shaping legal awareness if the society*, [w:] *Academic areas of scientific knowledge*, ed. Dominika Czajkowska-Ziobrowska, Poznań 2011, s. 91.

access to legal aid is limited. There is not enough professional lawyers that could assist all those in need. That is why it is so important to develop efficient system of legal aid. There should be special organizations whose representatives must be trained in basic knowledge in law, that they could be the first line of assistance. Existing social centers very often fulfill this type of task but it is still not efficient and effective system. There is a lack of a general idea of how that kind of system should operate. Nevertheless the most difficult obstacle to overcome is economic factor. As long as non-government organization and social centers are under-donated there won't be common access to legal aid.

Approach of the Bodies is second non-normative limitation that deserves to be presented. As it was said it is one of the most if not the most factor that shapes the actual situation of victims in criminal proceedings. Police or prosecutors are commonly the very first to meet the victim and to bring assistance. Thus their approach should be appropriate, they must be sympathetic and show understanding to victims problem even if they are not strictly related to a crime. Nevertheless the first thing which seems to be obvious are personal manners. Injured person cannot meet with arrogance, rudeness or absence of attention. Unfortunately that kind of approach still exist in Polish law enforcement system. It causes many damages and is unacceptable. Because of such a behavior victims are exposed on double-victimization process. It is very dangerous effect. One might accept that the crime was committed but very often it is much harder to accept that authorities that are supposed to bring assistance are reason of even more pain and disgrace. This problem exist especially in domestic violence and in sexual crime field. In such cases the question of the proper approach to the victim is extremely delicate. Once lost trust probably is trust lost forever.

Appropriate approach to the victim is also very important from authorities point of view. Person well treated during the whole proceeding is more likely to cooperate with law enforcement system. Victim very often is the only witness of the crime, so it is crucial for bodies conducting proceedings to get as credible testimony as possible. Victims mistreated refuse not only to cooperate but also to participate in proceedings, they even can withdraw the request for prosecution or not report a crime if the first contact were inappropriate. Thus it is easy to observe that approach of the bodies of all stages of the proceedings is very important.

Unfortunately among some representatives of the judiciary there is a belief that the victim is merely a witness of a crime and does not deserve any special treatment. Furthermore very often they believe that the victim interfere in the conduct of criminal proceedings. Not only they do not constitute aid and support to victims of crime, but often treat them condescendingly, boredom or even with contempt. There are many reasons of such behavior. Some of Police officers, prosecutors or judges were trained during communism times. Some of them just do not realize the necessity of right approach, because they are not trained in this field.

To change existing situation and to emphasize the problem of approach to victims certain actions must be undertaken. Within the project "Improving protection of victims' rights: access to legal aid" special trainings for practitioners were conducted. Participants got knowledge not

only about newest EU legislation but also information regarding psychological aspects of dealing with victims. What is most important they have told that this short training just opened their eyes on crucial problems of approach to a victims. Among participants there were Police officers, prosecutors and judges and all of them stressed that there is high need to conduct such a trainings more often. Conclusion that comes out of it is very simple: bodies of proceeding can handle legal regulations, but there is no regulation how to deal with victims. Knowing the processes taking place in the psyche of the victims authorities could adjust their approach to a certain person. This would allow them not only to avoid double-victimization but also to extract the most important information regarding committed crime. They would have a knowledge of what kind of question they can ask, and what kind of question cannot be asked by any costs. All this means that special trainings concerning psychological aspects of dealing with victims of the crime should be organized. It is very important to train especially young lawyers during their professional training in order to inculcate them appropriate approach till the very begging. Other thing are regular training for more advanced lawyers where they could exchange their experiences. There also should be training designed to show how to deal with particular groups of victims.

4. Summary

As it is easy to notice that normative and non-normative limitations in access to legal aid in Poland are strictly combined together. Nowadays more attention is being paid to normative limitation while forgetting those non-normative. In comparison, in my opinion those non-normative factors are the one of great importance. Their cannot be changed by simple amendment, it takes time, sometimes even long time to invert the society way of thinking and approach of bodies of the proceedings. That is way we should focus not only on legal changes, which of course are important but on rising level of legal education among society as well. The truth is that the sooner we will start to think about normative and non-normative limitation as the combined issues, the better it will be for increasing the access to legal aid in Poland.