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Victims' Evidence-related Activity in Criminal Cases in Poland: Insights from a Research Project

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The article presents results of extensive research on the evidence-related activity of victims in criminal cases in Poland. In the research project funded by the National Science Centre 567 criminal cases from district and provincial courts were examined. Six determinants of evidence-related activity were selected (e.g. participation in the interrogation of a witness or expert in an investigation or in the examination at the main hearing), and the relationship between these determinants and the type of case were analysed. The obtained results made it possible to formulate conclusions about the evidence-related activity of the aggrieved parties and to indicate issues that deserve further research.

Key words: victims' activity, evidence, Polish criminal procedural law, evidence-related activity

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1. Introduction

In recent years, the status of victims of crime has been significantly strengthened in Polish criminal justice. The importance of the aggrieved person is expressed in Art. 2 of the Criminal Procedure Code (CPC) (*Kodeks postępowania karnego*) and is partially repeated in Art. 297 of the CPC. In addition to such obvious goals and values of criminal proceedings as the pursuit of material truth and a fast trial (not to mention the constitutional right to defense and the presumption of innocence), it has been pointed out that victims are also important: criminal proceedings should consider and take into account the legally protected interests of victims and respect their dignity.

Considerations concerning aggrieved parties in Polish criminal proceedings should begin with their definition and a brief description of their role. The statutory definition of the aggrieved party (*pokrzywdzony*) can be found in Art. 49 of the CPC, which indicates that this is a natural or legal person (including the state or a local government agency or other organizational unit which has been granted

legal capacity), whose legal interest (*dobro prawne*) has been either directly violated or threatened by a crime.[1] In accordance with Art. 87 § 1 and § 2 of the CPC, this person may act on their own or with assistance from a professional attorney. If unable to bear the costs of hiring an attorney, the aggrieved party may request a professional representative appointed and paid for by the state. Obviously, if the aggrieved party is a legal person, an authorized body acts on their behalf, for a minor or an incapacitated person, a parent or guardian acts on their behalf. Moreover, if the aggrieved person is not legally incapacitated but is infirm due to old age or poor health, their rights may be represented by a person under whose care they remain (Art. 51 of the CPC). A victim who does not speak Polish has the right to receive decisions (together with a translation), which can be appealed against, or which conclude the proceedings (Art. 56a of the CPC). They also have the right to free assistance from an interpreter; this norm is not directly included in the Criminal Procedure Code, but can be found in Art. 5 § 2 of the Act on the Organisation of Common Courts (*Ustawa – Prawo o ustroju sądów powszechnych*).

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Under Art. 299 § 1 of the CPC, the victim is a party to preliminary proceedings (inquiry or investigation), whereas during the main trial they may act in several different roles. Firstly, in publicly prosecuted offences, when the prosecutor has filed an indictment, at the beginning of the main hearing the aggrieved party may submit a statement under Art. 54 § 1 of the CPC and act as an auxiliary prosecutor. Doing so means that the victim, being a party to the trial, has the right to both support the prosecutor's indictment and to representation of their own rights during the main hearing.[2]

1 For a more detailed discussion of the definition of the aggrieved party and their rights and obligations, see e.g. D. Kużelewski, "Protection of the Aggrieved Party's Rights in the Appeal Proceedings", in *Fairness of the New Model of Polish Criminal Appeal Proceedings in the Context of Delivered Research*, C. Kulesza ed. (Temida 2, 2019), 220–216; A. Światłowski, "The Procedural Position of the Injured Party in the Criminal Cases in Poland", *Studia Iuridica Cassoviensia* 10 (2022) No. 1, 149–148; *Basic Rights and Obligations of a Victim of Crime*, http://www.warszawa.po.gov.pl/en/page/single/section/16/subsection/32/alias/basic_rights_and_obligations_of_a_victim_of_crime.html (access: 5.1.2024); C. Kulesza, "Conflict Between the Rights of Victim of a Crime and the Rights of the Accused under the German and Polish Justice System in the Context of the Case-law of European Courts", *Studia Iuridica Lublinesia* 29 (2020) No. 4, 137–136; D. Czerwińska, "Victim's Legally Protected Interests in Criminal Trial under the Constitution of the Republic of Poland and the European Convention of Human Rights", *Ius Novum* 14 (2020) No. 1, 76–71.

2 A more detailed discussion of the definition of the auxiliary prosecutor in J. Smętek, M. Szuleka, *Rights of Crime Victims to Have Access to Justice – a Comparative Analysis, Country Report Poland*, (Helsinki Foundation for Human Rights, 2017), 5–4; see also: M. Smarzewski, "Legal Status of the Injured Person in Polish Criminal Proceedings", *Roczniki Nauk Prawnych* 23 (2013) No. 1, 32–34.

Secondly, if the prosecutor has twice discontinued the preliminary proceedings in a publicly prosecuted case (or twice refused to initiate such proceedings), thus clearly showing their lack of interest in prosecuting, the victim may follow the procedure set forth in Art. 55 of the CPC and lodge a subsidiary indictment.[3] As a subsidiary auxiliary prosecutor, the aggrieved party will be able to support their own indictment in a crime that is prosecuted normally under public prosecution (this requires representation by an attorney), thus replacing the public prosecutor in this role.

Thirdly, according to the Criminal Code (CC) (*Kodeks karny*), four crimes (Art. 157 § 2 of the CC – light bodily harm; Art. 212 of the CC – defamation; Art. 216 of the CC – insult; Art. 217 of the CC – violation of bodily integrity) are prosecuted under the private complaint procedure, according to Chapter 51 (Art. 485–499) of the CPC. With these crimes, the law enforcement authorities are generally not involved and there is no investigation. There is only the private prosecutor who is the aggrieved party and who, under Art. 59 of the CPC, is the one who files an indictment on their own. Under Art. 488 of the CPC, the victim may even file a simple oral complaint to the Police, which is forwarded by them to the competent court without conducting preparatory proceedings. The formal requirements of a private indictment are limited as compared with an ordinary and subsidiary indictment: pursuant to Art. 487 of the CPC, it is enough to indicate who is accused of what and which evidence substantiates it. However, in exceptional cases, if required by the 'social interest', the prosecutor may take charge of a private prosecution (Art. 60 § 1 of the CPC). If so, the private prosecutor automatically becomes an auxiliary prosecutor and may act during the main hearing alongside the public prosecutor.

In all other cases, the aggrieved party may act during court proceedings only as a personal source of evidence, not as a party to the trial, and their activity is limited to the role of a witness. The aggrieved party may then obtain knowledge about the case by participating in the main hearing from the very beginning; therefore, they are examined first before other witnesses (Art. 384 § 2 of the CPC).

Due to the fact that evidence-related activity, for obvious reasons, refers to the parties to the proceedings, further considerations will be limited to situations in which the victim has been a party as an auxiliary prosecutor, a subsidiary auxiliary prosecutor, or a private prosecutor. In the Polish criminal procedure, the parties are eligible to apply to take evidence (along with the court, which may take evidence *ex officio* – Art. 167 of the CPC) and to express their views on each issue to be decided (Art. 367 § 1 of the CPC). It should be pointed out that, pursuant to Art. 9 § 2 of the CPC, participants who are not parties to the case may request of the court the need to perform certain actions *ex officio*; however, this is not common, and it is believed to be an exception to the general principle of the evidence-related activity of parties. Moreover, parties may participate in all evidence-related activities and ask questions (Art. 171 § 2 of the CPC). An aggrieved party who is acting as an auxiliary prosecutor may ask questions directly after the public prosecutor, and their attorney may ask questions right after the aggrieved party (Art. 370 § 1 of the CPC). An aggrieved party who is a party to the procedure may also file an appeal in the scope of their *gravamen*.

Undoubtedly, the fact that the Polish criminal procedure is composed of mixed models (it combines elements of inquisitorial and adversarial procedures, with a clear dominance of the former) is very important for the position and activity of the aggrieved person.

It is extremely difficult to characterise the Polish criminal procedure using a simple label. As Andrea Ryan points out,[4] the modern concept of an adversarial trial may be understood slightly differently depending on the legal and cultural conditions of a given country. This word has a partly different meaning for a representative of the continental law system and for a lawyer from a common law courtroom.[5] Moreover,

3 More information about the requirements of the subsidiary indictment act in Smarzewski, *Legal Status*, 34–33.

4 A. Ryan, "Comparative Procedural Traditions: Poland's Journey from Socialist to 'Adversarial' System", *The International Journal of Evidence & Proof* 20 (2016) No. 4, https://journals.sagepub.com/doi/10.1177/1365712716655169#con (access: 5.1.2024).

5 The same conclusion may be found in other papers, e.g. J.W. Diehm, "The Introduction of Jury Trials and Adversarial Elements into the Former Soviet Union and Other

nowadays it is difficult to identify purely adversarial or purely inquisitorial models. A plethora of countries have combined solutions, in common law countries there are some examples of the court's evidentiary initiative (i.e.: the right to appoint a single joint expert in place of private experts representing the parties). On the other hand, in civil law countries, we may find a number of elements from the adversarial system.[6]

The prosecutor is present only in less than every fourth case, enabling the defendants and their defence counsels to have an adversarial dispute with him or her in a minority of cases.

In the period 2013–2015, legislators tried to change this model by emphasizing adversarial solutions, but this was quickly thwarted in 2016, and the former model was reintroduced. Therefore, the participation of a prosecutor in criminal proceedings is limited to serious cases:[7] the percentage of cases heard in which a prosecutor participated decreased from about a half to less than a quarter between 2014 and 2019 and it continues to be very low. When the prosecutor does not take part in the main hearing, it is the judge who reads out the indictment.[8] The aforementioned change, which sought to make the Polish criminal procedure more adversarial, obliged the prosecutor to participate in the main hearing, which in our opinion was an appropriate solution as long as the prosecutor was the one preparing and supporting the indictment.

Unfortunately, this reform was reversed, and the Polish procedure has recently moved far away from the adversarial model. The prosecutor is present only in less than every fourth case, enabling the defendants and their defence counsels to have an adversarial dispute with him or her in a minority of cases. It should be remembered that this is also important for the aggrieved party, who may be interested in influencing this dispute. Lack of the prosecutors' involvement undoubtedly affects the position of the victim and the chances of satisfying their legitimate interests in a criminal trial without the need to refer to other proceedings.

2. Theoretical assumptions of the research project based on case files

Since the role of the victim is so significant in the Polish criminal procedure, extensive case files research, foreign practice research, as well as opin-

Inquisitorial Countries", *Transnational Law & Policy* 11 (2001) No. 1, 5–16.

6 See I. Jankowska-Prochot, *The Position and the Role of the Expert Witness in the Anglo-Saxon and Adversarial Criminal Procedure*, academicon.pl, 147–148 (access: 5.1.2024).

7 It must be emphasized here that currently the presence of the public prosecutor at the main hearing is not compulsory in every case. The public prosecutor must participate only in some serious cases. Briefly, in the Polish criminal procedure there are two models of preparatory proceedings: the first one is called "śledztwo", which is a formalized procedure dedicated especially to serious crimes punishable by more than 3 years' imprisonment or when the perpetrator is a public official; the second one is "dochodzenie", which is dedicated to other cases. Under Art. 46 § 2 of the CPC, the prosecutor's presence during the main hearing is mandatory only in cases where the "śledztwo" was conducted as a preliminary proceeding (ca. 14% of all cases).

8 For more information, see P. Sowiński, "Development of the Institution of Court Proceedings during the First Instance Main Hearing", *Ius Novum* 11 (2017) No. 2, 145–143. The author also briefly emphasized the problem of who should read the indictment when there is only a non-public prosecutor in the case.

ion polls of legal practitioners were carried out in the period 2016–2020 as part of our research project at the Department of Criminal Procedure at the Jagiellonian University, funded by the National Science Centre, No. 2016/23/B/HS5/00437, entitled "The injured party as a participant in repressive criminal proceedings. The fourth vertex of the triangle." As part of the initial case files research, 567 court case files were examined in four provincial courts (in Krakow, Bialystok, Torun and Wroclaw) and 12 district courts (three in the district of each of the above-mentioned provincial courts). These cases were selected by purposive sampling: we chose all subsidiary indictment cases, as well as an appropriate number of private prosecution and public prosecution files in cases where the aggrieved party typically appears, namely fraud and traffic accidents.[9] In this paper we present selected findings from the whole research project. We focus only on several evidence-related activities of victims at every stage of the criminal procedure.

In addition, the opinions of legal practitioners regarding the status and activity of victims during the proceedings were examined during the second stage of this research project. A research questionnaire was sent out, both in the traditional paper-based form and as an online link, to members of the following professions: judges (adjudicating in criminal cases), prosecutors, advocates, and attorneys-at-law (dealing with criminal matters). In total, 696 questionnaires were sent; 397 completed questionnaires were returned (approximately 57%), of which slightly more than 100 were in paper form. The survey consisted of 28 questions or statements, for which the respondent could indicate their opinion according to a five-point Likert scale: "Fully agree", "Rather agree", "Hard to say", "Rather disagree" and "Strongly disagree." In addition, the questionnaire contained two open-ended questions.

3. Victims' activity in the opinion of legal practitioners

One of the statements in the practitioners' survey read as follows: "Most victims are not interested in protecting their interests in the criminal trial." The following responses were obtained.

As we may see in Table 1, most of the judges, more than half of the advocates, half of the attorneys-at-law and only a third of the prosecutors chose affirmative answers here. The answer "hard to say" was selected by the biggest share of the prosecutors (interestingly, it was the least frequently chosen response by attorneys-at-law). On the other hand, as many as half of the attorneys-at-law and barely every sixth judge disagreed with this statement. As can be seen, views on this issue are strongly influenced by the profession. Since almost half of the judges are convinced that victims are not interested in protecting their rights, it may suggest that the aggrieved parties (properly notified, if they are not witnesses in the case) either are not present at the main hearing at all, or are present, but are passive. It seems that they should receive elementary encouragement in the form of instructions from the judge, explaining the role of the auxiliary prosecutor, because although they receive information about it during the preliminary proceedings and in the correspondence from the court,[10] they sometimes cannot even answer a simple question whether they want to join the case as an auxiliary prosecutor or not.

4. Victims' activity based on the case file analysis

Before starting the research, we hypothesized that the victims' activity (including collecting evidence) was moderate. The evidence-related activity of the victim and of their legal representatives was considered present when at least one of the following questions was answered in the affirmative:

9 For more information about this research (methodology, selection of cases, hypotheses), see *Pokrzywdzony jako uczestnik postępowań represyjnych. Czwarty wierzchołek trójkąta?* (The Victim as a Participant in Repressive Proceedings. The Fourth Apex of the Triangle?), A. Światłowski, P. Czarnecki eds. (C.H. Beck, 2021), XV–XIX.

10 See Article 6 of the Directive 2012/29/EU of the European Parliament and of the Council of October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

Table 1. Legal practitioners' opinions regarding victims' interest in protecting their interests in criminal proceedings

	Advocates	Prosecutors	Attorneys-at-law	Judges	Total
Strongly agree	36	18	21	47	122
%	45	11.84	32.82	46.53	30.73
Rather agree	10	32	12	21	75
%	12.5	21.05	18.75	20.79	18.89
Hard to say	9	34	7	15	65
%	11.25	22.37	10.94	14.85	16.37
Rather disagree	14	47	18	16	95
%	17.5	30.92	28.12	15.84	23.93
Strongly disagree	11	21	6	2	40
%	13.75	13.81	21.87	1.98	10.08
Total	80	152	64	101	397
%	100	100	100	100	100

$chi^2 = 56.97$ df = 12 $p < 0.05$

- Did the victim's attorney[11] participate in the questioning of a witness in the preparatory proceedings?
- Did the victim's attorney participate in the questioning of a witness during the main hearing?
- Did the victim's attorney participate in the questioning of an expert[12] during the main hearing?
- Did the statutory representative of the victim participate in the questioning of a witness during the main hearing?
- Did the statutory representative of the victim participate in the questioning of an expert during the main hearing?
- In addition, another indicator of the aggrieved party's activity was taken in account: submission of evidence requests by them or their attorney.

In view of the above, six factors were distinguished; it was then assumed that the evidence-related activity of the aggrieved party or their representatives in a particular case was "high" if at least two out of the six factors obtained in a given case.

Table 2. Number of activity determinants:

1	112
2	61
3	15
4	4
5	0
6	1
total	193

As we can see, there were 193 cases where victims or their representatives were active in taking evidence; in 81 cases, their activity could be labeled as "high." There was just one case (traffic accident, district court) where the presence of every determinant was found.[13]

Three or four factors appeared in 19 cases. These were mainly (11) district court cases. Three of these cases were prosecuted privately; five were started by a subsidiary indictment; eight were publicly prosecuted with the participation of the victim as an auxiliary prosecutor; and three were publicly prosecuted without the participation of an auxiliary prosecutor.

One determinant of evidence-related activity appeared in 112 cases, while two determinants appeared in 61 cases. Interestingly, only two of these cases were concluded in the ordinary procedure as a result of an earlier objection to a penal order: one concerned a traf-

11 For the sake of simplicity, we do not distinguish between the victim, auxiliary prosecutor, subsidiary auxiliary prosecutor, and the private prosecutor in this part of the article.

12 We distinguish an expert from an expert witness, reserving the former name for the person appointed by the procedural authority.

13 This situation was possible only in cases in which there was a legal representative, so it was rather rare.

Table 3. Evidence-related activities of the injured party, depending on the case procedure

	cases with participation of non-public prosecutors									
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%	others under public prosecution	%	total	%
very active	17	22.97	19	33.93	28	30.77	17	5.2	81	14.29
active	30	40.54	21	37.5	16	17.58	45	12.2	112	18.75
passive	27	36.49	16	28.57	47	51.65	284	82.6	374	65.96
total	74	100	56	100	91	100	346	100	567	100

$chi^2 = 129.00$ $df = 6$ $p < 0.05$

fic accident, the other – fraud. The activity that we are interested in was manifested in the participation of a victim's representative in the examination of a witness: in one case, this was the statutory representative of an aggrieved minor; in the other, this was an attorney.

It is worth mentioning that 17 cases in which a minor was aggrieved were found in the research sample (mostly traffic accidents), including two private indictments and three from subsidiary prosecution. In 6 out of the 17 cases, there was not any activity of the aggrieved party; in two of these cases, the victim was not represented in any way (except for, of course, the representation of their interests by the public prosecutor). In addition, five cases were concluded in the ordinary procedure after an objection to a penal order, which may suggest that there is no clear correlation between the objection and the subsequent activity in the case; however, this number is, unfortunately, certainly too low (only 7 such cases in total) for one to draw far-reaching conclusions.

To sum up, the examined cases can be divided into those in which the evidence-related activity of the aggrieved party and their representatives was "high" (more than one occurrence), those in which the activity was visible only once, and other cases. This can be related to the following categories of cases:

- private prosecution;
- public prosecution when the indictment was filed by a subsidiary auxiliary prosecutor;
- public prosecution with the participation of an auxiliary prosecutor;
- other public prosecution (without the participation of any non-public prosecutors).

The examination yielded the following results (Table 3).

It is clearly visible that there is an explicit correlation between the evidentiary activity of the aggrieved party or their representative and the type of procedure (indirectly, also the mode of prosecution). It is obvious that the real activity of the victim during the main hearing begins if the public prosecutor is not involved. In cases initiated due to a public complaint and in which there was no auxiliary prosecutor, the passivity of the victim may be clearly seen. In these cases, the victim left the proceedings in the hands of a professional prosecutor: any activity was present in less than every eighth case (high activity in every twentieth case). Meanwhile, the victims' evidence-related activity was seen in half of the cases where an auxiliary prosecutor appeared, 2/3 of cases which involved a private prosecutor, and almost 3/4 of cases which involved a subsidiary prosecutor.

On the other hand, these proportions may be seen as surprisingly low and contrary to the common perception of such cases. Since it is in their interest to prove guilt, it is difficult to imagine that private and subsidiary prosecutors are passive. Furthermore, it is puzzling why they often remain passive during the main hearing. Do they forget that one of the main principles in criminal cases is the presumption of innocence, not the presumption of guilt? Do they rely on courts' capacity to take *ex officio* actions (or even courts' duties in the pursuit of material truth), and do their trial tactics work well? Or is it rather about their belief in the perfection and exhaustive nature of the subsidiary indictment which contains all the informa-

Table 4. Did the aggrieved party or their representative submit evidence motions?

	cases with participation of non-public prosecutors						other public prosecution cases	%	total	%
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%				
yes	45	60.81	38	67.86	32	35.16	46	13.29	161	28.4
no	29	39.19	18	32.14	59	64.84	300	86.71	406	71.6
total	74	100	56	100	91	100	346	100	567	100

$chi^2 = 129.00$ df = 6 $p < 0.05$

Table 5. Did the victim's attorney participate in the questioning of witnesses in the preparatory proceedings?

	cases with participation of non-public prosecutors						other public prosecution cases	%	total	%
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%				
yes	0	0	5	8.93	12	22.64	15	3.9	32	5.64
no	74	100	51	91.07	41	77.36	369	96.1	535	94.36
total	74	100	56	100	53	100	384	100	567	100

$chi^2 = 36.49$ df = 3 $p < 0.05$

tion (and motions) that the court is supposed to take into account during the main hearing?

The specificity of evidence-related activity was reflected primarily in the submission of evidentiary motions by the aggrieved party or their representative. This is an obvious observation since the percentage of affirmative answers to the question of whether the aggrieved party or their representative submitted evidentiary motions is almost the same as in the case of the statement that the aggrieved party was active in the proceedings. A bit surprising in this regard is the significant difference that can be seen only in cases in which an auxiliary prosecutor was active in ways other than just submitting evidence. Generally, we may say that victims who act as prosecutors are involved in evidence-related activity. However, only half of them submit evidentiary motions. As is obvious, such activity is insignificant in publicly prosecuted cases, since the activity of victims is limited to pointing out the necessity of taking a particular action *ex officio*.

Another determinant of victims' activity that was adopted for the purpose of this study was their participation during preparatory proceedings (as a party) in the questioning of a witness. For obvious reasons, there was no such case in private prosecution cases because in this procedure there are no preparatory proceedings.

Interestingly, the number of cases that involved counsel participation in witness examination was relatively high when an auxiliary prosecutor was involved (as many as 10 out of 12 such cases concerned the crime of fraud); although the overall percentage is still not high, such participation took place in one in five cases. As a party to the proceedings and under Art. 317 § 1 of the CPC, at their request an aggrieved party is allowed to participate in preparatory proceedings. Moreover, under Art. 315 § 1 and 2 of the CPC, if a given action is initiated by a party, this party must be allowed to participate in this requested action, and the aggrieved party is informed of this before the first questioning (Art. 300 § 2 of the CPC). However, as can be seen at the level of preparatory proceedings, victims rarely take advantage of this possibility.

The participation of the aggrieved party's attorney in the examination of a witness during the main hearing also took place most often in cases with an auxiliary

Table 6. Did the victim's attorney participate in witness questioning during the main hearing?

	cases with participation of non-public prosecutors						other public prosecution cases	%	total	%
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%				
yes	19	25.68	17	30.36	30	32.97	16	4.62	82	14.46
no	55	74.32	39	69.64	61	67.03	330	95.38	485	85.54
total	74	100	56	100	91	100	346	100	567	100

$chi^2 = 71.22$ $df = 3$ $p < 0.05$

Table 7. Did the victim's attorney participate in the questioning of an expert during the main hearing?

	cases with participation of non-public prosecutors						other public prosecution cases	%	total	%
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%				
yes	3	4.05	4	7.14	6	6.59	2	0.58	15	2.65
no	71	95.95	52	92.86	85	93.41	344	99.42	552	97.35
total	74	100	56	100	91	100	346	100	567	100

prosecutor, but this percentage was not significantly higher than in cases that involved a subsidiary and private auxiliary prosecutor. Very rarely, however, such participation occurred in "ordinary" public prosecution cases. Here, however, the involvement of the subsidiary prosecutor's attorney is much greater than in the preparatory proceedings, but – considering the nature of the proceedings, where it is the aggrieved party and their attorney who should be primarily interested in the outcome of the proceedings – it is still not very extensive.

The participation rate of a private prosecutor's attorneys is also low: they participated in the questioning of a witness on average in every fourth case. In privately prosecuted cases it is the victim that bears the burden of proof, so they should take part in the trial with high engagement. However, a private prosecutor does not need to be represented by a professional attorney. It should be mentioned here that the legal consequences of the private prosecutor's absence (Art. 496 § 3 of the CPC) were extended to the subsidiary prosecutor on 5 October 2019 (Art. 57 § 1a of the CPC) and now, in general, the presence of these prosecutors or their representatives at the main hearing is virtually mandatory because unjustified absence is considered as a withdrawal of prosecution and results in the discontinuation of the proceedings. This change seems to be sensible since, as can be seen, the prosecutors do not show much activity; therefore, it seems to be reasonable to motivate them. It would be interesting to verify in further research whether the results of such a restrictive change in the law have significantly influenced the activity of victims, and whether this activity is real or illusory (consisting only of passive participation in the trial).

Interesting results could be expected regarding the participation of the victim's attorney in the examination of an expert during the main hearing. Only 15 such cases were found, of which 13 were cases in which the victim was acting as the prosecutor (private or auxiliary). Therefore, it is highly probable that some correlation with this variable exists, but it is not subject to statistical verification as there were too few cases of such participation in other cases (only 2), hence the chi-square test result is not given. It should be remarked that the activity of the victim's attor-

Table 8. Did the victim's attorney participate in the questioning of a witness or an expert during the main hearing?

	cases with participation of non-public prosecutors						other public prosecution cases	%	total	%
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%				
yes,	19	25.68	18	32.14	33	36.27	16	4.53	86	15.17
both in witness and expert examination	3	4.05	3	5.36	3	3.3	2	0.58	11	1.94
in witness examination	16	21.62	14	25	27	29.67	14	4.05	71	12.52
in expert examination	0	0	1	1.78	3	3.3	0	0	4	0.71
no	55	74.32	38	67.86	58	63.73	330	95.37	481	84.83
total	74	100	56	100	91	100	346	100	567	100

$chi^2 = 80.25$ $df = 3$ $p < 0.05$

Table 9. Did the statutory representative of the victim participate in the questioning of a witness or an expert during the main hearing?

	cases with participation of non-public prosecutors						other public prosecution cases	%	total	%
	private prosecutor	%	subsidiary auxiliary prosecutor	%	auxiliary prosecutor	%				
yes,	0	0	1	1.78	2	2.20	3	0.87	6	1.06
both in witness and expert examination	0	0	0	0	1	1.1	1	0.29	2	0.53
in witness examination	0	0	1	1.78	0	0	2	0.58	3	0.35
in expert examination	0	0	0	0	1	1.1	0	0	1	0.18
no	74	100	55	98.22	89	97.80	343	99.13	561	98.94
total	74	100	56	100	91	100	346	100	567	100

ney during the hearing of an expert before the court undoubtedly differs from the ideas about the reality of a criminal trial, not only those of "ordinary people" but also those of some professionals.

Due to the small number of cases with attorney participation in the examination of an expert before the court, the aggregate results for the examination of a witness and an expert do not differ significantly from those for the examination of a witness.

There were only a few examples of participation of a parent, guardian, or other statutory representative in the proceedings (only 17 in total). Therefore, it is not surprising that the number of cases in which they actively participated in the questioning of a witness or an expert at the trial is not high. However, when presenting the percentage even for such low numbers, we should note that a statutory representative participated in the questioning of a witness or an expert in about 35% of cases in which they appeared at all. From this a tentative conclusion can be drawn that the percentage of this involvement was greater than the percentage of attorneys involved in examinations. However, of course, due to the low figures, this conclusion is more of a speculation than a definite statement.

5. Conclusions

We should be aware that the method of selecting cases preferred those of them where we could expect

a particularly high engagement of victims. Therefore, the results may suggest pessimistic conclusions for the whole justice system. While this activity is in fact moderate in cases where the victims and their representatives may be expected to be highly involved, in other cases their involvement may justifiably be expected to be even lower. This is quite an astonishing observation. It is also intriguing whether victims trust the criminal justice agencies so much that they do not get involved in proceedings as they believe that the notification of a crime committed against them is a sufficient reaction and the rest will be taken care by the law enforcement authorities and courts. Or maybe quite the opposite is true: the lack of victims' activity is caused by their lack of faith in the importance of their role during the procedure and ability to influence reality?

Since victims are generally passive, their passivity may be balanced by the high involvement of the public prosecutor. Unfortunately, in the case of the main hearing the public prosecutor is present only in the most serious cases.

Therefore, if the merely moderate activity of victims and their representatives results from the intensive activity of prosecutors at the stage of preliminary proceedings and the drafting of the indictment, this does not give rise to concern. If this is not the case, however, some changes in the legal provisions should be expected to motivate all participants of criminal procedures to be more involved.

In our opinion, the recent change, referred to earlier, that now forces subsidiary prosecutors or their attorneys to participate in the main hearing may increase victims' activity in the questioning of an ordinary witness or an expert during the main hearing. However, to verify this, it would be necessary to conduct further research on this subject and to compare the results obtained before and after the change in the law. It seems that evidence-related activity should increase noticeably if the non-public prosecutor is obliged to take part in the main hearing. On the other hand, participation is not the same as active participation: the presence of the parties and/or their representatives is not enough if they are not involved in the questioning and if they remain passive. At the same time, there is a possibility that even if the victim is present in court during the main hearing, they might not be active at all.

In our opinion, making the right to receive information about their case efficient should be the first step towards the strengthening of the position of the aggrieved party.

Moreover, the impact of the inquisitorial tradition should not be underestimated. The problem of the lack of evidence-related activity is a consequence of the adopted model of the criminal procedure. During preliminary proceedings it is the public prosecutor who dominates, while the main hearing is subordinated to the judge: at both stages of the procedure the accused is the "responding" actor. A trivial reason for their passivity may be the persistence of the "semi-inquisitorial" model, with the court exercising its right to take the evidential initiative *ex officio*, which may cause the parties to feel partly or entirely released from this obligation.

In our opinion, making the right to receive information about their case efficient should be the first step towards the strengthening of the position of the aggrieved party. The fact is that they receive the information about their rights and duties (in quite an extensive form) both in the preliminary procedure and in court, but this information is written in small print and the language used is not always comprehensible to the average citizen. In more general terms, transforming the semi-inquisitorial model into a semi-adversarial one seems to be the best solution.

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