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Questioning a minor in Polish criminal proceedings based on international and European standards

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International legal acts

- directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing council framework decision 2002/629/JHA;
- directive 2011/92/ 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;
- 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;
- United Nations Convention on the Rights of the Child of 1989;
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the United Nations in Resolution No. 2005/20;
- Council of Europe Convention of 12 July 2007 on the Protection of Children against Sexual Exploitation and Sexual Abuse in Lanzarote, also known as “the Lanzarote Convention”.

United Nations Convention on the Rights of the Child of 1989

Child means every human being below the age of eighteen years unless under the law applicable to the child, legal age is attained earlier (art. 1)

All actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (art. 3)

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner (Section 13)

All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity (Section 14)

Lanzarote Convention

Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate (Article 30 section 2)

Article 35 indicates specific solutions related to the procedure of questioning minors in criminal proceedings, including, inter alia, special rooms.

Directives of the European Parliament

In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. Moreover, given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

Interviews with child victims of trafficking should, without prejudice to the rights of the defence, take place without unjustified delay after the facts have been reported to the competent authorities; where necessary, in premises designed or adapted for that purpose; being carried out, where necessary, by or through professionals trained for that purpose (Article 15 section 3)

Polish Code of Criminal Procedure

Article 185a.

§ 1.

In cases related to criminal offences committed with the use of violence or unlawful threat, or defined in Chapters XXIII, XXV and XXVI of the Criminal Code, the injured who as at the moment of questioning is **under 15 years** of age shall be questioned in the capacity of a witness **only when their testimony could be of particular importance** for the resolution of the case, and **only once**, unless significant circumstances are disclosed and there is a need of a repeated questioning to clarify them, or the accused who remained without a defence counsel during the first questioning of the injured demands so.

§ 2.

The questioning shall be carried out **by the court in a session, with the participation of an expert psychologist, immediately**, not later than within 14 days from the date of the receipt of the request. The public prosecutor, defence counsel, and attorney of the injured have the right to participate in the questioning. Also the person indicated in Article 51 § 2 or an adult indicated by the injured referred to in § 1 has the right to be present at the questioning, unless this restricts the freedom of expression of the person subject to questioning. If the accused notified of the procedural action in consideration remains without a defence counsel of their choice, the court shall appoint an ex officio defence counsel for them.

§ 3.

The recording of image and sound of the questioning shall be replayed, and the record of the questioning read, at the main trial.

Polish Code of Criminal Procedure

Article 185 § 4

In cases related to criminal offences listed in § 1, an injured juvenile who at the moment of questioning is **at least 15 years of age** shall be questioned in accordance with the conditions defined in § 1 to § 3, **if there is a justified concern that the questioning in other conditions could have a negative influence on their psychological condition**. In such a case, the provision of Article 185c shall not apply.

Polish Code of Criminal Procedure

Article 185b

§ 1.

In cases related to criminal offences committed with the use of violence or unlawful threat, or defined in Chapters XXV and XXVI of the Criminal Code, a witness who as at the moment of questioning is under 15 years of age shall be questioned in line with the conditions defined in Article 185a § 1 to § 3, if their testimony could be of particular importance for the resolution of the case.

§ 2.

In cases related to criminal offences listed in § 1, a witness juvenile who at the moment of questioning is at least 15 years of age shall be questioned in line with the procedure defined in Article 177 § 1a if there is a justified concern that the direct presence of the accused at the questioning could have a constraining influence on the testimony of the witness or a negative influence on their psychological condition.

Blue Room

- the role of psychologist
- certain premises requirements
- interview room + „technical room”
- equipment requirements

A glimpse into practice

- in more than 99% of the examined cases involving minor victims under the age of 15 the interrogation took place in the presence of a psychologist;
- in about 2/3 of the examined cases the interrogation took place in the so-called blue room;
- examples of good and bad practice;
- marginal application of Article 185a § 4 of the Code of Criminal Procedure.

Conclusion

- Articles 185a-185d of the Code of Criminal Procedure in principle meets international and European standards;
- but it can always be better - the practice of interrogation in blue rooms;
- equal protection for all minors, including those over the age of 15?
- extending the catalogue of acts for which minor victims and witnesses are questioned in a special (protective) manner?