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The protection of the injured person's rights in Polish criminal procedure

Abstract. The aim of the article is to present the injured person's interests protection directive in Polish criminal procedure. The article also defines terminology of injured person and legal goods offended by offence. In addition it enumerates and describes the rights of the injured person offended by offence established in Criminal Procedure Code. Especially noteworthy are also the rights of a juvenile person injured by offence. The significant matter is also the injured person's rights related to his participation in investigation and judicial proceeding.

Key words: injured person, criminal procedure, penal code, minors, prosecutor.

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Cietušās personas tiesības uz aizsardzību Polijas kriminālprocesā

Anotācija. Raksta mērķis – izskatīt jautājumu par cietušās personas interešu aizsardzību Polijas kriminālprocesā. Rakstā tiek apskatīts «cietušās personas» jēdziens un statuss. Autors arī uzskaita un apraksta cietušās personas, kura par tādu ir atzīta kriminālprocesā ietvaros, tiesības atbilstoši Krimināllikuma normām. Īpaša uzmanība ir veltīta nepilngadīgās personas, kura ir cietusi no kriminālnoziedzuma, tiesību aizsardzībai. Autors arī vērš uzmanību uz to, ka cietušās personas tiesību apjoms ir tieši atkarīgs no tās piedalīšanas izmeklēšanās procesā un tiesvedībā.

Atslēgas vārdi: cietušais, kriminālprocess, Kriminālkodekss, nepilngadīgā persona, prokurors.

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Право пострадавшего лица на защиту в уголовном процессе Польши

Аннотация. Целью статьи является рассмотрение вопроса о защите интересов пострадавшего лица в Уголовном процессе Польши. В статье рассматривается понятие «пострадавшего лица». Кроме того, автором перечисляются и описываются права потерпевшего лица, признанного таковым в рамках уголовного процесса, в соответствии с Уголовно-процессуальным кодексом. Особого внимания заслуживает вопрос защиты прав несовершеннолетних, пострадавших от преступного деяния. Автор также обращает внимание на то, что объем прав пострадавшего, напрямую связан с его участием в расследовании и судебном разбирательстве.

Ключевые слова: пострадавший, уголовный процесс, Уголовный кодекс, несовершеннолетний, прокурор.

Introduction

In the Code of Criminal Procedure of 1997 [1], the legislator indicated that the objective of criminal proceedings shall serve the protection of the interests of an injured person. This directive was found to be embodied in numerous provisions of the Code of Criminal Procedure, where the injured person was granted with certain rights as well as responsibilities to agencies conducting the trial, which have certain duties related to the concern for the injured [2, 25; 12, 47-63; 13, 181-182].

Definition of the injured person

In accordance with Art. 49 § 1 of the CCP, the injured is a natural or legal person, or a public, local government or social institution, even though it has no status of legal person, whose property or rights have been directly violated or threatened by an offence. The Social Security Agency shall also be regarded as an injured person to the extent of the indemnity paid by it to the injured person as a result of the injury caused by the offence, or that which it is obligated to cover. As specified in Art. 49 § 3a of the CCP, also the organs of National Labor Inspectorate are authorized to exercise the rights of the injured in a situation where within the scope of their activity they have discovered an offence or applied for the commence of proceedings (relates to offences specified in articles 218 – 221 and 225 of the Penal Code [3]). The injured person's rights can also be exercised by the agencies of national control (Art. 49 § 4 of the CCP), which, within the scope of their activities, have brought the offence to light or have applied for the institution of proceedings, in cases arising out of offences which have inflicted damage upon the property of public, local government or a social institution and in which the injured institution is not acting [4, 156].

The inflicted or threatened interest might constitute property, material or personal right. Legal interest might be the subject of personal protection of substantive criminal law inflicted by an offence. The criterion of directness means that only the subject whose legal right has been directly inflicted by an illegal act can be qualified as an injured person. [4, 158]

The basic rights of the injured

As specified in Art. 299 § 1 of the CCP, in the course of preparatory proceedings, the injured constitutes a party authorized to act in their own name and according to their own interest. It is not relevant here whether the injured person exercises their right. The injured person can also function as a witness, if they are summoned to give evidence. Obviously, it is not possible to reconcile in one procedure the role of the injured with the role of a suspect (e.g. in cases concerning participation in a brawl [5, 40-47; 6, 350].

In a situation where the injured is not a natural person, all the actions pertaining to the proceedings shall be conducted by agencies authorized to act in this manner (Art. 51 § 1 of the CCP). This regulation relates to the injured being legal persons and national, local government and social institutions having no legal personality. Although the regulation itself concerns acting on behalf of the injured person, it shall be assumed that it also concerns actions on behalf of subjects which are regarded as injured as well as those which exercise the rights of the injured person [7, 392].

It is worth considering that if the injured person is a minor or is incapacitated, either totally or partially, his rights shall be exercised by his legal representative or by one who has custody of the injured person (Art. 51 § 2 of the CCP). This regulation relates to individuals who do not have the capacity to be a party in criminal proceedings. These individuals include: minors (i.e. under-ages, who did not turn 18 years of age, and women, who have attained 16 years of age judicially granted the consent to marry), totally or partially incapacitated persons [7, 392-393]. As it results from Art. 96 of the Civil Code [8], the statutory representative constitutes a person whose authorization results from the act. The statutory representatives of a minor are his parents (Art. 98 of the Family and Guardianship Code [9]). If both parents are entitled with parental authority then each of them constitutes a statutory representative of the minor. In case where neither of the parents can represent a minor (e.g. if they committed an offence detrimental to the minor), a probation officer established by the court acts on behalf of the minor [10, 126-127]. In Art. 51 § 2 of the

CCP, the legislator also empowered the actual guardian – a person who has constant custody of a minor or a totally or partially incapacitated injured person – to exercise their rights. The term «constant custody» shall be understood as absolute, total and intentional custody since a temporary or periodical conduct of custody resulting from an authorization or from the permission of the person actually conducting the custody does not meet the requirements specified in the article [10, 130].

In a situation when the injured person is handicapped, especially due to old age or poor health, his rights shall be exercised by a person who has custody of the injured person (Art. 51 § 1 of the CCP). This regulation does not require «constant custody» as the condition for exercising the rights of the injured person. In this case, the custody may be temporary, conducted as the result of the injured person's helplessness [6, 100].

As stated in Art 52 § 1 of the CCP, if the injured person dies, his rights may be exercised by his closest relatives or, when they are either absent or not discovered, by a state prosecutor. The definition of the closest relative is to be found in Art 115 § 11 of the Penal Code, according to which the closest relative constitutes a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation, as well as his spouse, and also a person actually living in co-habitation. The rights of the injured person can also be exercised by a prosecutor but only when there is no closest relative of the injured person or when such a person was not discovered. According to Art. 52 of the CCP, the closest relatives and the prosecutor may exercise only those rights of the injured person with which he would be granted if he were alive [7, 398 ; 14, 457-469].

The injured person may file a motion to disqualify a judge in presence of a circumstance which might raise reasonable doubts as to his impartiality in the given case (Art. 42 § 1 of the CCP).

According to Art. 87 § 1 of the CCP, the injured person has the right to retain his representative, who, in the Polish criminal procedure, might constitute an attorney or a legal advisor in the course or preparatory or court proceedings

(in a situation where the injured person acts as the subsidiary or private prosecutor, or civil plaintiff).

According to Art. 306 § 1 of the CCP, the injured person has the right to bring interlocutory appeals against an order refusing to institute an investigation or inquiry. In this case, the injured person has also the right to inspect the files of the case. The appeal shall be brought to the court having jurisdiction over the case within 7 days from the date of delivering the order refusing to institute an investigation or inquiry through the prosecutor who issued or approved the order. The court examining the appeal might maintain or revoke the order completely or partially. It cannot, however, change the order. If the injured person, who submitted a notice of offence and who has not been notified within 6 weeks about the institution or refusal to institute the investigation or inquiry shall have a right to bring an interlocutory appeal concerning the so-called inactivity of an agency. Such a notice shall be submitted to the superior state prosecutor or one authorized to supervise the agency to which the notice has been submitted (Art. 306 § 3 of the CCP). The superior state prosecutor is obligated to verify the notice within the period of 30 days [4, 656-657].

It is worth noticing that in the event that the injured person has filed a complaint only against certain perpetrators of an offence, prosecuted are also other persons whose offences are closely linked with that of the perpetrator indicated in the complaint. This regulation does not concern the closest relatives of the person filing the complaint (Art. 12 § 2 of the CCP). The complaint may be withdrawn in the preparatory proceedings with the consent of the state prosecutor, and in the court proceedings, with the consent of the court, before the commencement of the first-instance hearing, unless the offence involved is that described in Article 197 of the Penal Code. The filing of the motion for the second time shall not be admitted (Art. 12 § 3 of the CCP).

As specified in Art. 9 § 2 of the CCP, the injured person has a procedural initiative. This indicates that he can file motions for performing these actions which the agency may or be obligated to undertake *ex officio*, e.g. investigation or inquiry (Art. 315 § of the CCP, Art. 325a of the CCP)

[4, 55-51]. Such a motion shall meet the requirements provided for procedural writs, specified in Art. 119 of the CCP (every procedural writ should include: the identity of the agency to which it is addressed and the case to which it relates, the identity of the person filing such a writ, the contents of the motion or statement, with reasons thereof, if required and the signature of the person filing the writ).

The injured person and their legal representatives should be admitted to participate in the inquiry or investigation actions, which cannot be subsequently repeated at the trial, unless there is a danger of loss or distortion of evidence in case of delay (Art. 316 § 1 of the CCP). The doctrine considers the following actions as non-repeatable: view of the place of crime, view and bodily examination, exhumation, experiment during the proceedings, searches (of premises, other places, a person, his clothing), taking blood and excretory samples, the presentation of a person or thing [11, 982].

The prosecutor may also authorize the injured person to participate in other investigation or inquiry actions, however, in a particularly justifiable case, the state prosecutor may, by means of an order, deny such a request if the interests of the investigation or inquiry so require, or refuse to procure the appearance of a suspect deprived of liberty if it would involve serious difficulties (Art. 317 of the CCP). In the course of inquiry or investigation, the injured person may submit a motion demanding that the suspect be heard by the court, in case of a danger that the suspect cannot be heard at the hearing (Art. 316 § 3 of the CCP).

In the event of admitting evidence based on an opinion issued by experts, a scientific institute or a specialized establishment, the agency conducting the trial is obligated, as specified in Art. 318 of the CCP, to serve the injured person and their representatives with the order of the admission of this evidence, and permit them to participate in the examination of experts and to acquaint themselves with the opinion, if such has been prepared in writing [11, 985].

An important right of the injured person is that the injured person is permitted to examine the files pertaining to the case and to copy them (Art. 156 § 1 of the CCP) as well as to file motions concerning being provided with copies of files pertaining to the case at their expense (Art. 156 § 2 of the CCP).

The injured person might order certified copies to be made from the files of the case he was party to or was legally allowed to participate in, as well as documents deriving from him or drafted with his contribution (Art. 157 § 3 of the CCP).

The injured person as the subsidiary prosecutor has the right to file motions for evidence, be present at the trial, ask the interrogated persons questions and file for appeal. In case of an appeal rendered by a Voivodship Court – the appeal should be prepared and signed by the lawyer (Art. 446 of the CCP).

Injured person rights in Polish criminal procedure with no doubt facilitate in claiming law in front of courts. Injured person interests protection directive that establishes his rights and imposes duties on process authorities is sign of Polish legislator care for subjects injured by offence.

References:

1. Act of June 6, 1997 – Code of Criminal Procedure, (Dz.U. (Journal of Laws) of 1997, No. 89, item 555 as amended)
2. E. Bieńkowska, L. Mazowiecka, Prawa ofiar przestępstw, Warszawa 2009,
3. Act of June 6, 1997 – Penal Code (Dz. U. of 1997, No. 88, item 553, as amended)
4. K. T. Boratyńska, Pokrzywdzony, [in:] K. T. Boratyńska, A. Górski, A. Sakowicz, A. Ważny, Kodeks postępowania karnego. Komentarz, Warszawa 2012,
5. M. Pieńkowska, Bójka i pobicie w polkim kodeksie karnym na tle rozwiązań historycznych, Kortowski Przegląd Prawniczy, nr 1, 2012,
6. W. Grzeszczyk, Kodeks postępowania karnego. Komentarz, Warszawa 2012,
7. P. Hofmański, E. Sadzik, K. Zgryzek, Kodeks postępowania karnego. Tom I. Komentarz do artykułów 1-296, Warszawa 2011,
8. Act of April 23, 1964 – Civil Code (Dz. U. of 1964, No. 16, item 93, as amended)
9. Act of February 25, 1964 – Family and Guardianship Code (Dz.U. of 1964, No. 9, item 59)
10. Z. Krawiec, Małoletni pokrzywdzony w polskim procesie karnym, Toruń 2012,
11. J. Grajewski (ed), Kodeks postępowania karnego. Komentarz, Warszawa 2010
12. Orłowska-Zielińska, K. Szczechowicz, Regulacje procedury karnej w aspekcie praw zagwarantowanych art. 6 ust. 3 EKPC, [in:] R. Sztymilera, J. Krzykowskiej, Problemy z sądową ochroną praw człowieka, Olsztyn 2012, T II,
13. J. Viktorová, J. Čentěš, Uplatnenie nároku na náhradu škody pri daňových trestných činoch, [in:] Policajná teória a prax. – Roč. 8, č. 3-4 (2000).
14. K. Szczechowicz, J. Szczechowicz, Zadośćuczynienie za doznaną krzywdę w przypadku śmierci pokrzywdzonego, [in:] Z. Ćwiąkalskiego, G. Artymiak, Karnomaterialne i procesowe aspekty naprawienia szkody, Warszawa 2010.