**EXTRACT FROM POLISH CRIMINAL PROCEDURE CODE**

# **Provisions regarding rights of victims in criminal procedure applicable also to victims of torture, cruel treatment etc.**

# **CHAPTER 4. THE AGGRIEVED PARTY.**

**Art. 49. Definition.**

§ 1. The aggrieved party is either a natural or a legal person, whose legal interest was infringed or threatened by an offence.

§ 2. The following entity without legal personality may also act in the capacity of the aggrieved party:

1) a state or self-government institution,

2) another organisational entity having legal capacity by virtue of separate provisions.

§ 3. An insurance company can also be considered an aggrieved party to the extent that it compensates or is obliged to compensate any damage caused by an offence to the aggrieved party.

§ 3a. In cases concerning offences against employees referred to in Articles 218-221 and in Article 225 § 2 of the Criminal Code, organs of the National Labour Inspectorate may exercise the rights of the aggrieved party if, within the scope of their activity, they revealed the offence or requested that proceedings be initiated.

§ 4. In the case of offences, as a result of which an institution or an organisational entity referred to in § 2 suffered damage to property and the bodies of the aggrieved institution or organisational entity are not acting on their behalf, the authorities of state control may exercise the rights of the aggrieved party, if within the scope of their activity they revealed the offence or requested that proceedings be initiated.

**Art. 49a. Order to remedy damage or compensate for harm.**The aggrieved party and the public prosecutor may submit a motion referred to in Article 46 § 1 of the Criminal Code, by the end of the judicial proceedings at the main trial.

**Art. 50. Limitation of rights.**During court proceedings, the rights of the aggrieved party as defined in Articles 53 cannot be exercised by a person who is appearing in the same case in the capacity of the accused, with the exceptions provided for in Articles 497 and 498 § 3.

**Art. 51. Representation.**

§ 1. In case of an aggrieved party who is not a natural person, actions in the proceedings are accomplished by the body authorised to act on its behalf.

§ 2. If the aggrieved party is a minor or is fully or partially incapacitated, his rights are executed by his legal representative or by a person, under whose permanent care the aggrieved party remains.

§ 3. If the aggrieved party is incompetent, particularly due to age or health, his rights may be executed by the person under whose permanent care the aggrieved party remains.

**Art. 52. Death.**

§ 1. In the case of the aggrieved party’s death, the rights that would have been vested in him may be executed by his next of kin or his dependants, and if there are no such persons or they are unknown, by the public prosecutor acting *ex officio*.

§ 2. If the authority conducting the proceedings has information concerning the aggrieved party’s next of kin or dependants, it shall instruct at least one of them of their rights.

**CHAPTER 5. THE SUBSIDIARY PROSECUTOR.**

**Art. 53. Entitled entity.**In the case of offences prosecuted *ex officio,*the aggrieved party may act as a party to the proceedings in the capacity of the subsidiary prosecutor alongside the public prosecutor or in his place.

**Art. 54. Declaration of intent to act.**

§ 1. If the indictment was submitted by a public prosecutor, the aggrieved party may declare, by the beginning of the judicial proceedings at the main trial that he will act in the capacity of the subsidiary prosecutor.

§ 2. The public prosecutor’s withdrawal of the indictment does not deprive the subsidiary prosecutor of his rights. The aggrieved party, who previously has not used the rights of subsidiary prosecutor may, within fourteen days of being informed of the withdrawal of the indictment by the public prosecutor, declare that he will join the proceedings in the capacity of the subsidiary prosecutor.

**Art. 55. Subsidiary indictment.**

§ 1. If a decision refusing to initiate the proceedings or discontinuing the proceedings in the case mentioned in Article 330 § 2 is reissued, the aggrieved party may, within a month of the above decision being served, submit an indictment to the court with a copy for each defendant and for the prosecutor. Article 488 § 2 applies accordingly. Articles 339 § 3 point 43a and 396a do not apply.

§ 2. An indictment submitted by the aggrieved party should be drawn up and signed by an attorney, subject to the conditions set forth in Articles 332 and 333 § 1.

§ 3. Any other person wronged by the same offence may join the proceedings by the beginning of the judicial examination at the main trial.

§ 4. The public prosecutor may join the proceedings initiated by an indictment submitted by the subsidiary prosecutor at any time. In such circumstances, the offence is prosecuted *ex officio* and the aggrieved party, who submitted the indictment, enjoys the rights of a subsidiary prosecutor referred to in Article 54. The withdrawal of the indictment by the public prosecutor requires the consent of the aggrieved party, who submitted the indictment.

**Art. 56. Limitation of participation.**

§ 1. The court may limit the number of subsidiary prosecutors appearing in the case if it is necessary to secure a correct course of proceedings. The court decides that a subsidiary prosecutor cannot participate in the proceedings, if the maximum number of prosecutors defined by the court is already involved.

§ 2. The court also decides that a subsidiary prosecutor may not participate in the proceedings if it finds out that he is not an authorised person or that his indictment or declaration on joining the proceedings was submitted after the expiry of the prescribed term.

§ 3. The court’s decision when issued pursuant to § 1, as well as the court’s decision when issued pursuant to § 2, when it concerns the subsidiary prosecutor specified in Articles 54 § 1 or 55 § 3, cannot be appealed against.

§ 4. A subsidiary prosecutor not participating in the proceedings for reasons specified in § 1, may, within seven days of the decision being served, present to the court his position in writing.

**Art. 56a. Translation of the decision.**A subsidiary prosecutor, who does not have a sufficient command of Polish**,**shall be served with the translation of the decision subject to appeal or ending the proceedings. If the decision is not subject to appeal and the subsidiary prosecutor consents, it is sufficient that the translated decision ending the proceedings is announced.

**Art. 57. Withdrawal of accusation.**

§ 1. A subsidiary prosecutor who withdrew an accusation cannot join the proceedings again.

§ 2. If the public prosecutor is not involved in the proceedings, the court notifies him that the subsidiary prosecutor has withdrawn the accusation. The proceedings are discontinued if the public prosecutor does not join the accusation within 14 days of receipt of the above notification. The decision on discontinuation may also be issued by the court referendary.

**Art. 58. Death of subsidiary prosecutor.**

§ 1. The death of the subsidiary prosecutor does not stop the proceedings; his next of kin or his dependent may join the proceedings in the capacity of the subsidiary prosecutor at any stage.

§ 2. In the case of death of the subsidiary prosecutor who independently supported the accusation, Article 61 applies accordingly.

**CHAPTER 6. THE PRIVATE PROSECUTOR.**

**Art. 59. Entitled entity.**

§ 1. The aggrieved party may submit and support an indictment in the capacity of a private prosecutor in cases concerning offences prosecuted upon a private accusation.

§ 2. Any other person wronged by the same offence may join the proceedings already initiated until the beginning of the judicial examination at the main trial.

**Art. 60. Prosecutor's intervention.**

§ 1. In the case of offences subject to a private accusation, the public prosecutor initiates the proceedings, or joins any proceedings already initiated, if the public interest so requires.

§ 2. The proceedings then run *ex officio*and the aggrieved party that submitted a private accusation enjoys the rights of a subsidiary prosecutor. Articles 54, 55 § 3 and 58 apply to the aggrieved, who did not submit a private accusation.

§ 3. If the public prosecutor that joined the proceedings subsequently withdrew his accusation, the aggrieved party in the proceedings reacquires the rights of a private prosecutor.

§ 4. The aggrieved party who failed to submit an indictment may, within a final time limit of fourteen days from being notified of the fact that the public prosecutor dropped the charges, submit an indictment, or a declaration, that he will support the indictment in the capacity of a private prosecutor. If no such a declaration is submitted, the court or the court referendary discontinues the proceedings.

**Art. 60a. Translation of the decision.**A private prosecutor, who does not have a sufficient command of Polish**,**shall be served with the translation of the decision subject to appeal rending the proceedings. If the decision is not subject to appeal and the private prosecutor consents, it is sufficient that the translated decision ending the proceedings is announced.

**Art. 61. Death of private prosecutor.**

§ 1. In the event of the private prosecutor’s death, the proceedings are suspended and his next of kin or his dependant may assume the rights of the deceased. The decision to discontinue the proceedings may also be issued by the court referendary.

§ 2. If, within a final time limit of three months from the death of a private prosecutor, the authorised person fails to assume the rights of the deceased, the court or the court referendary discontinues the proceedings.

**Prohibition on obtaining the evidence by tortures , cruel treatment etc.**

**DIVISION V. EVIDENCE.**

**CHAPTER 19. GENERAL PROVISIONS.**

**Art. 168a. Evidence obtained illegally.**Evidence shall not be treated as inadmissible exclusively due to the fact that it was gained in violation of procedural law or by commission of a prohibited act referred to in Article 1 § 1 of the Criminal Code, unless it was gained by a public official in connection with the performance of his duties as a result of manslaughter, wilful commission of a grievous bodily injury or deprivation of freedom.

**Art. 171. Mode of examination, right to ask questions.**

§ 1. A person giving testimony should have the possibility of expressing himself freely, within the limits resulting from the purpose of a given procedure, and only then may questions intended to supplement, clarify or control the testimony be asked.

§ 2. Apart from the agency conducting the examination, questions may only be asked by the parties, defence counsels, attorneys, and experts. Questions are asked to the testifying person directly, unless the agency conducting the examination orders otherwise.

§ 3. If the person giving testimony is not yet fifteen years old, procedures in which he takes part should, if possible, be conducted with the attendance of a legal representative or a *de facto*guardian, unless it is contrary to the interest of the proceedings.

§ 4. A testifying person should not be asked questions suggesting the answer.

§ 5. It is prohibited to:

1) influence the statements of the testifying person by means of force or illicit threat,

2) use hypnosis, chemical substances or technical means in order to influence psychical processes in the body of the testifying person or allow control of the unconscious reactions of the body in connection with the examination.

§ 6. The agency conducting the examination disallows questions mentioned in § 4, as well as questions irrelevant to the case.

§ 7. Explanations, testimonies and statements made in circumstances precluding freedom of speech or obtained against the prohibitions mentioned in § 5, may not constitute evidence.

**Provisions regarding protection of witnesses including victims of torture, cruel treatment etc.**

**CHAPTER 21. WITNESSES.**

**Art. 184. Anonymous witness.**

§ 1. In case of a justified concern of a danger to the life, health, freedom or property of considerable value of a witness or his next of kin, the court and, in preparatory proceedings, the public prosecutor, may decide to keep confidential circumstances enabling the identification of a witness, including his personal information, if such information is not relevant to the case. The proceeding in this case is conducted without the participation of the parties and is secret, being considered “confidential” or “strictly confidential”. In any ruling, the information referred to in the first sentence is omitted.

§ 2. If the ruling mentioned in § 1 is issued, the circumstances referred to therein is reserved to the exclusive knowledge of the court and of the public prosecutor and, if needed, also the Police officer conducting the investigation. The transcript of the examination of the witness may be made available to the accused or his defence counsel exclusively in a manner precluding the possibility of disclosure of the circumstances referred to in § 1.

§ 3. The witness is examined by the public prosecutor and by the court, which may delegate one of the members of its panel to conduct this procedure, in a place and manner precluding the disclosure of the information mentioned in § 1. The public prosecutor, the accused and his defence counsel have the right to participate in the examination of a witness conducted by the court or by a delegated judge. The provisions of Article 396 § 3 second sentence apply accordingly.

§ 4. If the examination of a witness is conducted with the use of technical devices allowing this procedure to take place at a distance, the transcript of this procedure, if conducted with the participation of specialists, should contain names, surnames, areas of expertise and type of activities undertaken. The provisions of Article 205 § 3 do not apply.

§ 5. The witness, the accused and, during court proceedings, also the public prosecutor may file an appeal against a decision imposing the obligation of confidentiality with regard to information referred to in § 1. The appeal must be filed within three days. An appeal against a decision issued by the public prosecutor is considered by the court competent to hear the case. The appeal hearing is conducted without the participation of the parties and is secret, being considered classified as “confidential” or “strictly confidential”.

§ 6. If an interlocutory appeal is successful, the transcript of the examination of a witness is destroyed. The destruction thereof is mentioned in the case files.

§ 7. A witness may, before the closing of judicial examination before the court of first instance, request the annulment of the decision referred to in § 1. The decision concerning this request is subject to interlocutory appeal. The provision of § 5 applies accordingly. If the request is granted, the transcript from the examination of the witness is disclosed in its entirety.

§ 8. If it transpires that at the time when the decision referred to in § 1 was issued there was no justified concern for the safety of the life, health, freedom or property of considerable value of a witness or his next of kin, or that a witness has intentionally given false testimony or his identity was disclosed, in preparatory proceedings the public prosecutor and, in court proceedings, the court, upon the request of the public prosecutor, may annul this decision. The provisions of § 5 apply accordingly. The transcript of the examination of a witness is disclosed in its entirety.

§ 9. The Minister of Justice shall determine by way of a regulation a manner and conditions for submission of the application for the decision referred to in § 1, of examining a witness to whom such a decision relates, and of the preparation, storage and availability of to the transcripts of the examination of such a witness, as well as the acceptable manner to refer to his testimony in judgments and writs, bearing in mind the necessity of adequate protection of information identifying the witness against unauthorised disclosure.

**Art. 185a. Verification of an aggrieved party in the capacity of a witness**

§ 1. In cases concerning offences committed with the use of violence of illegal threat or defined in Chapters XXIII, XXV and XXVI of the Criminal Code, an injured party who is below the age of 15 at the time of the examination testifies as a witness only once, unless important circumstances come to light, the clarification of which requires a second examination, or unless the accused who was not assisted by a defence counsel during the first testimony so demands.

§ 2. The examination is conducted by the court with the attendance of an expert psychologist. The public prosecutor, the defence counsel and the attorney of the aggrieved party may participate in the examination. The person mentioned in Article 51 § 2 or an adult person indicated by the aggrieved party referred to in § 1 may attend the examination, if this does not limit the freedom of expression of the person giving testimony. If the accused notified of this procedure does not have a defence counsel of his own choice, the court appoints for him a defence counsel ex officio.

§ 3. The transcript from the examination is read at the main trial. If the vision and sound of the hearing were recorded, they should be played.

§ 4. In cases concerning offences referred to in § 1, a minor injured party who at the time of the examination has attained 15 years of age, is examined in the conditions specified in § 1-3, if there is a justified concern that the examination carried out in different conditions might have a negative impact on his mental state.

**Art. 185b. Conditions of examination of a minor.**

§ 1. In cases concerning offences committed with the use of violence or illegal threat or offences defined in Chapter XXV or XXVI of the Criminal Code, a witness who, at the time of testifying, is not yet 15 may be subject to an examination upon conditions defined in Article 185a § 1-3, if his testimonies may be of vital importance to the case.

§ 2. In cases concerning offences referred to in § 1, a minor injured party who at the time of the examination has attained 15 years of age, is examined in the conditions specified in Article 177 § 1a, if there is a justified concern that a direct presence of the accused might hinder the witness’s testimonies or have a negative impact on his mental state.

§ 3. The provisions of § 1 and 2 do not apply to a witness, who co-perpetrated the offence, with which criminal proceedings are concerned, or to a witness, whose offence is connected with the offence, with which criminal proceedings are concerned.

**Art. 185c. Examination of aggrieved party in the capacity of a witness.**

§ 1. In cases concerning offences referred to in Articles 197-199 of the Criminal Code, report of the offence submitted by the aggrieved party should be limited to the most important facts and evidence.

§ 2. The examination of the aggrieved party in the capacity of a witness is conducted by the court in a hearing, which may be attended by the public prosecutor, the defence counsel and the attorney of the aggrieved party. At the main trial, the vision and sound recording of the examination is played and the transcript of the examination is read.

§ 3. If it is necessary to repeat the examination of the aggrieved party in the capacity of a witness, the examination is carried out in the conditions specified in Article 177 § 1a, if there is a justified concern that a direct presence of the accused might hinder the witness’s testimonies or have a negative impact on his mental state.

§ 4. If the examination is carried out with the participation of an expert psychologist, at the request of the aggrieved party it should be ensured that the expert psychologist be of the same gender as the aggrieved party, unless this might hinder the proceedings.

**Art. 185d. Premises used for examination.**

§ 1. Examinations referred to in Articles 185a-185c are carried out in the premises adequately adapted for this purpose in the seat of the court or out of it.

§ 2. The Minister of Justice shall define by way of a regulation the modality of preparing the examinations referred to in § 1 and the requirements that must be fulfilled by the premises dedicated to carry out such examinations, including their technical equipment, bearing in mind the necessity of securing the freedom of expression and security of the examined persons.