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PROTECTION OF THE AGGRIEVED PARTY'S RIGHTS IN THE APPEAL PROCEEDINGS[2]

I. Introduction

The aggrieved party in an appeal proceedings has the same rights as in a first-instance judicial proceedings. Therefore, regulations which should be applied to aggrieved parties as participants of an appeal proceedings should be those shaping their rights and obligations, as included in the chapters of the Code of Criminal Proceedings Act of 6 June 1997[3], concerning procedure before the court of first instance, as well as in the general section of this legal act.

Despite the same catalogue of rights and theoretically the same capabilities to act, the role of the aggrieved party in an appeal proceedings is definitely smaller than in preparatory proceedings or a first-instance judicial proceedings. This results from the nature of the appeal proceedings, restricted to revision of procedural decisions passed in the first instance, with very limited evidentiary proceedings. Lack of the aggrieved party's interest in further proceedings often comes into consideration as well, especially if it is not this party or its representative that has been the author of an appeal against the judgment of the court of first instance. This should not wonder, especially in the context of generally low activity of parties in appeal proceedings, leaving the initiative in the hands of the court of appeal. Although the amendments of the Code of Criminal Procedure, as introduced between 2013 and

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3 Consolidated text Journal of Laws 2018, item 1987, as amended.

2016, foresaw an increase of the parties' initiative, allowing evidentiary proceedings before the court of appeal to be conducted to an extent wider than previously, the hitherto practice is no major breakthrough.

II. The aggrieved party in the Polish criminal proceedings

The aggrieved party in the Polish criminal proceedings is the topic of Chapter 4 of the Code of Criminal Procedure, in which it is defined as a natural person or a legal entity whose legal interest has been directly violated or threatened by a criminal offence. An aggrieved party may also be a state or self-government institution or another organizational unit without legal personality, granted with legal capacity by separate regulations (Article 49(1) and 49(2) of the CCP).

Another term quite similar to "aggrieved party" within the meaning of the Code of Criminal Procedure is the victimological term of "victim of crime". This is particularly clear in Article 2(1)(a) of 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[4], defining a victim as a natural person who has suffered harm, including physical, mental, moral or emotional harm or economic loss, which was directly caused by a criminal offence, as well as family members of a person whose death was directly caused by a criminal offence, if they have suffered harm as a result of that person's death. Pursuant to Article 2(1)(b) of the directive, family members include the spouse; a person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis; the relatives in direct line; the siblings and the dependants of the victim. However, under such understanding, the subjective scope of the term "victim" would be narrower compared with the "aggrieved party" which can also be a legal entity, a state or self-government institution or another organizational unit with legal capacity[5]. Under the Polish law, the term "victim" is much narrower than in the directive referenced

4 Official Journal of the European Union L 315, 14.11.2012, pp. 57-73.
5 A.Z. Krawiec, Małoletni pokrzywdzony w polskim procesie karnym, Toruń 2012, p. 111.

above. The Act of 7 July 2005 on the state compensation to victims of certain prohibited acts[6] states in Article 2(1) that a victim is a natural person who, as a result of a prohibited act, has died or suffered grievous bodily injury, disturbance of functioning of a bodily organ or health disorder, lasting for more than 7 days. Therefore, for the purposes of the procedure of granting of state compensation, the term "victim" has only been limited to natural persons aggrieved by gravest crimes against life and health.

An aggrieved party may be a natural person; however, this term has not been defined in the Code of Criminal Procedure or in any other legal act of statutory rank. It appears in the Civil Code Act of 23 April 1964[7], with title II chapter I under the heading "Natural Persons". Pursuant to Article 8(1) of the Civil Code, included in the chapter above, each human has legal capacity since their birth. Therefore, every human is a natural person, regardless of their age.

The second category of entities with the status of an aggrieved party includes legal entities, including, pursuant to Article 33 of the Civil Code, the State Treasury and organizational units granted with legal capacity by specific provisions. These are mainly provisions contained in parliamentary acts of systemic nature, governing the activity of individual types of organizational units, which, by clear instruction of a legal norm, grant legal capacity and capacity to undertake legal action[8]. Examples of such legal entities include territorial self-government units, joint-stock companies, limited-liability companies, banks, cooperatives, associations, funds, labour unions, employer associations, universities, parishes or religious orders[9].

Moreover, an aggrieved party may also be every state or self-government institution, as well as another organizational unit, granted with legal capacity by separate provisions (Article 49(2) of the CCP). Such an institution is an establishment of public nature, occupied with

6 Consolidated text Journal of Laws 2016, item 325.
7 Consolidated text Journal of Laws 2019, item 1145.
8 S. Szołucha, (in:) J. Skorupka (ed.), Kodeks postępowania karnego. Komentarz, Warszawa 2015, p. 188.
9 K.T. Boratyńska, (in:) A. Sakowicz, K.T. Boratyńska, A. Górski, M. Królikowski, M. Warchoł, A. Ważny, Kodeks postępowania karnego. Komentarz, Warszawa 2015, p. 159.

a specific category of matters, constituting an independent, legal and permanent structure. Therefore, the role of an aggrieved party in a criminal proceedings cannot be played by entities acting illegally, or by units only comprising a component of another institution or established *ad hoc*, only for the sake of fulfillment of a specific task[10].

On behalf of an aggrieved party which is not a natural person, procedural acts are performed by an authority authorized to act on its behalf (Article 51(1) of the CCP). This provision should also be applied to entities considered to be an aggrieved party by the Code of Criminal Procedure (Article 49(3) of the CCP), as well as to entities exercising the rights of the aggrieved party (Article 49(3a) and 49(4) of the CCP)[11].

Another part of the definition of an aggrieved party is the legal interest violated or threatened by the offence. This is an interest exclusively protected by specific provisions of substantive criminal law[12]. The judicial doctrine and case-law predominantly take the stance that this interest is covered by direct (particular, individual) object of protection, and consequently, the direct object of the attempt[13].

The final component of the definition of an aggrieved party is the directness of violation of or threat to the legal interest, the assessment of which is based on the analysis of circumstances of a specific act subject to the proceedings; in particular, the scope of protection and the relation between the attributes of the act and the threat to the legal interest of a specific entity[14]. The directness of violation of or threat to the legal interest of a given person was interpreted most accurately in the court

10 P. Hofmański, E. Sadzik, K. Zgryzek, Kodeks postępowania karnego. Komentarz. Vol. 1, Warszawa 2004, p. 281.

11 *Ibidem*, p. 291.

12 See: A. Muszyńska, Naprawienie szkody wyrządzonej przestępstwem, Warszawa 2010, p. 104.

13 See: W. Posnow, Sytuacja pokrzywdzonego w postępowaniu przygotowawczym w polskim procesie karnym, Wrocław 1991, p. 12; K. Dudka, Wpływ prawa karnego materialnego na ustawową definicję pokrzywdzonego, (in:) Z. Ćwiąkalski, G. Artymiak (eds.), Współzależność prawa karnego procesowego i materialnego w świetle kodyfikacji karnych z 1997 r. i propozycji ich zmian, Warszawa 2009, p. 141; the Supreme Court resolution of 15 September 1999, I KZP 26/99, OSNKW 1999, no. 11-12, item 69; the Supreme Court decision of 23 April 2002, I KZP 10/02, LEX no. 53077; the Supreme Court resolution of 25 March 2003, I KZP 50/02, OSNKW 2003, no. 3-4, item 28; the Supreme Court resolution of 21 October 2003, I KZP 29/03, OSNKW 2003, no. 11-12, item 94.

14 B.T. Bieńkowska, M. Warchoł, Uzyskanie statusu pokrzywdzonego w postępowaniu przygotowawczym – uwag kilka, (in:) B.T. Bieńkowska, D. Szafrański (eds.), Problemy prawa

jurisdiction, indicating that there are no intermediate links in the relation between an act with specific offence attributes and the violation of or threat to this person's interest, which shows that the circle of aggrieved parties may only include the entity whose legal interest has been violated by a criminal act directly, rather than via threatening another interest[15].

Apart from the aggrieved party, participation in a criminal proceedings is open to entities who, while not directly being an aggrieved party, may exercise its rights under particular circumstances. Pursuant to Article 52(1) of the CCP, these may be the aggrieved party's closest relatives or dependants in case of the aggrieved party's death, as so-called substitute parties (if the aggrieved party was not a party to a criminal proceedings at the moment of death) or new parties (when the aggrieved party had already been a party to a criminal proceedings at the moment of death). However, if there are no closest relatives or dependants of the aggrieved party or such persons have not been disclosed, the aggrieved party's rights may be exercised by a public prosecutor, acting *ex officio*.

Another group of entities exercising the rights of an aggrieved party are statutory representatives and persons exercising care for the aggrieved party. If a natural-person aggrieved party does not have the capacity for procedural measures in a criminal proceedings, being a minor or being incapacitated in full or in part, their rights are exercised by their statutory representative (parents, a guardian appointed by a guardianship court or a custodian appointed by a guardianship court) or by a person under whose permanent care the aggrieved party remains (Article 51(2) of the CCP).

Pursuant to Article 51(3) of the CCP, the rights of the aggrieved party being an incapable person, particularly due to their age or health condition, may be exercised by a person under whose care the aggrieved party remains. Therefore, a person who is elderly or ailing to the extent that unaided performance of their basic functions is excluded or highly impeded, including a person who is mentally handicapped or suffering

polskiego i obcego w ujęciu historycznym, praktycznym i teoretycznym. Część czwarta, Warszawa 2013, p. 38.

15 The Supreme Court decision of 25 March 2010, IV KK 316/09, OSNwSK 2010, no. 1, item 645.

from mental disorders, unless they have been incapacitated in full or in part, should be considered an incapable person. The participation of the person exercising care does not preclude personal exercise by the aggrieved party of their own powers, including effective submitting of a motion for prosecution in case of offences prosecuted on a motion[16].

III. Rights and obligations of an injured party in a criminal proceedings

An aggrieved party in a criminal proceedings conducted by public indictment due to harm itself is only a party to preparatory proceedings. In order to become a party to a judicial proceedings, the aggrieved party has to assume the role of an auxiliary prosecutor through submission, until the beginning of the legal proceedings, of a statement of their wish to act in this capacity (Article 54(1) of the CCP), or through bringing of an indictment to the court in case of repeated issuance of a decision on decline to institute or discontinuation of a proceedings within a month since being served the notification of such a decision (Article 55(1) of the CCP in conjunction with Article 330 § 2 of the CCP). In the former case, the auxiliary prosecutor is termed as a secondary one, and in the latter case – as a subsidiary one. Regardless of the manner of obtaining of the auxiliary prosecutor status, the aggrieved party has identical powers of a party. In particular, it can:

- submit procedural motions, including motions as to evidence (Article 368 of the CCP);
- be present at the entire hearing (Article 384(2) of the CCP) and generally at sessions of the court (Article 96(1) and 96(2) of the CCP);
- ask questions to examined persons (Article 370(1) of the CCP) and address each issue subject to resolution (Articles 367(1) and 367(2) of the CCP);
- deliver the summation (Article 406(1) of the CCP);

16 See: the Supreme Court judgment of 5 January 1973, III KR 192/72, OSNKW 1973, no. 4, item 49.

– at its own expense, receive one copy each of audio or video recording of a thus recorded procedural action (Article 147(4) of the CCP);
– bring an appeal against a judgment by the court of first instance (Article 444 of the CCP), a complaint against a summary judgment passed in a proceedings by writ of payment (Article 506(1) of the CCP), cassation against a valid judgment by a court of appeal, completing the proceedings, and against a valid decision by a court of appeal to discontinue the proceedings and apply a detention order specified in Article 93a of the Penal Code Act of 6 June 1997[17] (Articles 519 and 520(1) of the CCP), as well a motion for reopening of a judicial proceedings completed with a final decision (Article 542(1) of the CCP).

In a private-complaint proceedings, the aggrieved party, as a private prosecutor, is a party to the proceedings and has a similar scope of powers and obligations as an auxiliary prosecutor in a public-complaint proceedings, with consideration to differences between both proceedings.

An aggrieved party which has not acceded to the judicial proceedings as a party only has the powers clearly granted thereto by the provisions of the Code of Criminal Procedure and is termed as a quasi-party by the doctrine[18]. The catalogue of powers of the aggrieved party has been broadened following the latest criminal procedure reform, introduced by several legal acts: the Act of 27 September 2013 on the amendment of the Code of Criminal Procedure Act as well as certain other acts[19], Act of 20 February 2015 on the amendment of the Penal Code Act as well as certain other acts[20], Act of 11 March 2016 on the amendment of the Code of Criminal Procedure Act as well as certain other acts[21], and the Act of 28 November 2014 on the protection and assistance to the

17 Consolidated text Journal of Laws 2018, item 1600, as amended.
18 See: T. Grzegorczyk, (in:) T. Grzegorczyk, J. Tylman, Polskie postępowanie karne, Warszawa 2011, p. 310.
19 Journal of Laws 2013, item 1247, as amended.
20 Journal of Laws 2015, item 396.
21 Journal of Laws 2016, item 437, as amended.

aggrieved party and witness[22]. Some of them resulted from the necessity to adapt the provisions of the national law to the requirements of the Directive 2012/29/EU.

Above all, changes have covered certain regulations included in Chapter 4 of the CCP, concerning essential issues related to the aggrieved party. The wording of the provision defining the aggrieved party has changed in the extent concerning an entity without legal personality, making the acquisition of this status dependent on having the legal capacity. A significant change, resulting from the necessity to adapt the Code of Criminal Procedure to the definition of a family member from Directive 2012/29/EU, was addition in Article 52(1) of the CCP of the aggrieved party's dependant as a person authorized to exercise their rights in case of death. An analogous change affected Article 61(1) of the CCP, concerning the private prosecutor and his death during the course of a criminal procedure. Another amended provision of large significance for the protection of the interests of an aggrieved party in a criminal proceedings was Article 49a of the CCP. The legislator has extended the time limit for submitting a motion for imposing by the court of an obligation to redress the damage caused by the offence in full of in part or to compensate for the suffered harm (Article 46(1) of the Penal Code). Previously, the aggrieved party had to submit such a motion at the latest until the moment of completion of their first examination at the main hearing, whereas today, the motion can be submitted until the moment of closure of the judicial proceedings at the main hearing. This opens a possibility to also submit the motion under consideration in a reopened first-instance proceedings after the judgment is annulled by a court of appeal and the case is referred back. It should be noted that if the ordering of the obligation to redress the damage or compensate for the harm is significantly impeded, the court may, alternatively, order vindictive damages up to 200 000 zlotys on behalf of the aggrieved party, and if the aggrieved party has died as a result of the offence perpetrated by the convicted offender, vindictive damages on behalf of the closest relative whose life position has significantly deteriorated as a result of the aggrieved party's death (Article 46(2) of the Penal Code).

22 Journal of Laws 2015, item 21.

Another block of amended regulations is related to the auxiliary prosecutor, being the focus of Chapter 5 of the Code of Criminal Procedure. Due to the correction of the principle of accusatorial procedure and replacement of the institution of abandoning of prosecution by a public prosecutor with the institution of withdrawal of indictment, such institution binding the court adjudicating in the case (Article 14(2) of the CCP), a necessity has arisen to modify the provision concerning accession of an auxiliary prosecutor to the case. The new wording of Article 54(2) of the CCP provides an aggrieved party who has not exercised the powers of an auxiliary prosecutor before the withdrawal of the indictment by the public prosecutor with an option to submit a statement of accession to the proceedings as an auxiliary prosecutor within 14 days since they are notified of the withdrawal of the indictment by the public prosecutor.

If an aggrieved party acting as an auxiliary prosecutor or a private prosecutor has an insufficient command of the Polish language, they have been granted with additional guarantees, exceeding the hitherto norm of Article 204 of the CCP. Namely, a decision subject to appeal or completing the proceedings is served to such an entity jointly with a translation, and with the aggrieved party's consent, one may limit oneself to pronouncement of a translated decision completing the proceedings, if it is not subject to appeal (Articles 56a and 60a of the CCP). The regulation above results from implementation of Directive 2012/29/EU which, in Article 7, has guaranteed the right of oral and written translation to a victim of a crime.

A provision of key importance from the viewpoint of the aggrieved party's right of procedural information is Article 300(2) of the CCP, which has appeared in the Code of Criminal Procedure following the amendment of 27 September 2013. As many other regulations strengthening the procedural and non-procedural guarantees of the aggrieved party, it is an aftermath of Directive 2012/29/EU, establishing, in Article 4, a minimal standard of information to be offered to each victim by the competent authority from their first contact with this authority. Beside typical procedural powers concerning participation in legal proceedings, submitting of procedural motions, using a representative or interpreter, or participation in mediation with a suspect,

the Polish legislator, making new amendments of the provision under consideration, guaranteed the aggrieved party to receive information concerning the possibilities to use the procedural and non-procedural institutions recently introduced into the Polish legal system. Therefore, the aggrieved party should be instructed on the option of redress of the damage by the defendant or of receipt of state compensation, access to legal assistance, protection and aid measures mentioned in Act of 28 November 2014 on the protection and assistance to aggrieved parties and witnesses, support from the Victim Support Fund and the Post-Penitentiary Assistance Fund, as foreseen in Article 43(8) of the Executive Penal Code[23], the option of issuance of an European protection order, organizations of support to aggrieved parties, and the possibility of reimbursement of costs incurred in connection with participation in the proceedings. Moreover, the aggrieved party should be instructed on the contents of Article 337a of the CCP, i.e. on the necessity to notify them, at their request, by the procedural authority on the date and place of the hearing or session concerning conditional discontinuance of the proceedings (Article 341(1) of the CCP), conviction of the defendant without a hearing (Article 343(5) of the CCP), discontinuance of the proceedings pursuant to Article 17(1) items 2-11 or due to obvious lack of factual grounds for indictment, as well as on the charges of prosecution and the legal classification thereof.

Moreover, Directive 2012/29/EU has provided the victim with direct support of a person indicated thereby in contacts with a procedural authority (Article 3(3)) and in the activities of preparatory proceedings (Article 20(c)). It should be stated that the new Article 299a(1) of the CCP, guaranteeing that a person indicated by the aggrieved party may be present during actions involving this party in the course of preparatory proceedings, unless it prevents or significantly impedes the performance of the action, has fully adapted the national law to European standards.

The final example of reinforcement of the aggrieved party's position in the reformed Polish criminal procedure, worth presenting in this study, is the aggrieved party's option to bring objections against a motion for conviction of the defendant without a hearing (Article 343(2) of

23 Consolidated text Journal of Laws 2019, item 676, as amended.

the CCP). Such solution strengthens the aggrieved party's negotiating position in case of aspiration by the parties and the procedural authority to develop conditions of a sentence which would be acceptable to all interested parties without conducting a hearing. The court may only recognize a motion submitted by the public prosecutor and accepted by the defendant if the aggrieved party, duly notified of the date of the session, does not object it. In such a case, the interest of the aggrieved party is guaranteed even more strongly, thanks to the new wording of Article 343(1) of the CCP, enabling the court to make the acceptance of the motion for conviction without a hearing dependent on the redress of the damage in full or on compensation for the suffered harm by the defendant.

IV. The aggrieved party's activity in an appeal proceedings in the light of file research

According to the methodology assumed in this monograph, the analysis of research findings includes two periods for which the dividing date is 15 April 2016, i.e. the moment of entry into force of the latest parliamentary act reforming the Polish criminal procedure. Files of 595 criminal cases from courts of three appeal jurisdictions (Białystok, Łódź and Warsaw) were made available to the research team. In 232 cases (93 in the Białystok appeal jurisdiction, 45 in the Łódź jurisdiction and 94 in the Warsaw jurisdiction), the decisions by the court of appeal were passed before 15 April 2016, whereas in the remaining 363 cases (119 in the Białystok appeal jurisdiction, 159 in Łódź and 85 in Warsaw), they were passed after that date. In the tabular comparisons presented below, the letter "n" denotes the number of entities or appeals against decisions of courts of first instance, brought thereby. These numbers are compared with other data, which helps achieve of percentages enabling comparisons between individual appeal jurisdictions.

Table no. 1. Participation of an auxiliary prosecutor in the cases under research in absolute numbers and in %, compared with the number of cases in a given appeal jurisdiction

Appeal jurisdiction	Before 15 April 2016		After 15 April 2016		Total	
	n	%	n	%	n	%
Białystok	35	37.63	43	36.13	78	36.79
Łódź	12	26.67	68	42.77	80	39.22
Warsaw	32	34.04	19	22.35	51	28.49
Total	79	34.05	130	35.81	209	35.13

Source: Authors' study.

In order to draw conclusions concerning the aggrieved party's activity in an appeal proceedings, it is necessary to make an analysis of participation of this entity in the capacity of a party (more specifically, an auxiliary prosecutor) in the cases under analysis. The data obtained from the analysis of case files indicate relatively low interest of aggrieved parties in participation in judicial proceedings in the capacity of a party, i.e. an auxiliary prosecutor. Ratios for the period before 15 April 2016 are very similar, both for every appeal jurisdiction and for all three combined. Excluding the Łódź jurisdiction, where an auxiliary prosecutor appeared statistically in 1/4 of the analyzed cases, this ratio in the other jurisdictions and in total amounted to approx. 1/3. On the other hand, in cases where the court of appeal passed a sentence after 15 April 2016, deviations from the typical 1/3 ratio are more distinct – for the Łódź appeal jurisdiction, it exceeds 42%, and for the Warsaw jurisdiction, it only slightly exceeds 22%. Due to the fact that in the Łódź jurisdiction, distinctly more cases completed after 15 April 2016 were analyzed than before that date, the highest ratio in this appeal jurisdiction for the total number of examined cases, reaching 39%, is not surprising. Deviation in the opposite direction can be seen in the Warsaw jurisdiction where the ratio under discussion did not exceed 30%. Due to large discrepancies in the number of cases made available for research from individual jurisdictions, taking account of the dividing date of 15 April 2016, such results cannot be considered fully representative; nevertheless, the general trend of participation of auxiliary prosecutors at the level of 1/3

of cases evidences low interest of aggrieved parties in active participation in a judicial proceedings.

Table no. 2. Participation of a representative of an auxiliary prosecutor in the cases under research in absolute numbers and in %, compared with the number of cases in a given appeal jurisdiction

Appeal jurisdiction	Before 15 April 2016		After 15 April 2016		Total	
	n	%	n	%	n	%
Białystok	26	27.96	19	15.97	45	21.23
Łódź	7	15.56	26	16.35	33	16.18
Warsaw	18	19.15	14	16.47	32	17.88
Total	51	21.98	59	16.25	110	18.49

Source: Authors' study.

A more even distribution is shown by ratios of participation of auxiliary prosecutors' representatives in judicial proceedings. On the other hand, the values of those ratios are significantly lower for auxiliary prosecutors. Excluding the almost 28% share of representatives in examined cases from the Białystok appeal jurisdiction before 15 April 2016, values between 15% and 22% were recorded for all other cases. In total, considering all appeal jurisdictions and both periods of time, representatives of auxiliary prosecutors are appointed by about a half of all auxiliary prosecutors. Under the conditions of compulsory representation by a lawyer concerning appeals brought against judgments by regional courts, restrictions in the possibility of appeal by auxiliary prosecution are clear.

Table no. 3. The number of appeals brought in the cases under research by representatives of auxiliary prosecutors in absolute numbers and in %, compared with the total number of representatives

Appeal jurisdiction	Before 15 April 2016		After 15 April 2016		Total	
	n	%	n	%	n	%
Białystok	7	26.92	8	42.11	15	33.33
Łódź	2	28.57	9	34,62	11	33,33
Warsaw	9	50.00	6	42.86	15	46.88
Total	18	35.29	23	38.98	41	37,27

Source: Authors' study.

The ratio of appeals brought by representatives of auxiliary prosecutors has been designed slightly differently. They have been related to the number of representatives of auxiliary prosecutors appointed in individual appeal jurisdictions and in total. The activity of auxiliary prosecutors in this regard is highest in the Warsaw jurisdiction, where, on average, every second representative brought an appeal against a judgment of a court, regardless of the time period. In other jurisdictions, these ratios varied from approx. 27% to above 42% (Białystok). In total, in all three appeal jurisdictions, mainly through increased activity of representatives of the Warsaw jurisdiction, the above ratios slightly exceeded 37%.

If the total number of 41 appeals brought by representatives of auxiliary prosecutors is compared with all 595 examined cases, this ratio would only reach 6.89%.

Another issue of significance from the viewpoint of participation of the professional factor on the part of auxiliary prosecution in a criminal proceedings is the ratio of representation of auxiliary prosecutors by representatives to the total number of auxiliary prosecutors. In this case, two categories should be distinguished: representatives of choice and public representatives. It is not surprising that the latter case occurs only occasionally in the criminal proceedings – in the cases under analysis, it was generally below 5%, and exceptionally, in the Warsaw jurisdiction before 15 April 2016, it reached almost 10%. On the other hand,

analogous ratios concerning a representative of choice have a wide range of fluctuation: from slightly over 20% to almost 67%.

Table no. 4. The number of auxiliary prosecutors represented by representatives in absolute numbers and in %, compared with the total number of auxiliary prosecutors

Appeal jurisdiction	Before 15 April 2016				After 15 April 2016				Total			
	of choice		public		of choice		public		of choice		public	
	n	%	n	%	n	%	n	%	n	%	n	%
Białystok	17	48.57	2	5.71	15	34.88	1	2.33	32	41.03	3	3.85
Łódź	8	66.67	0	0.00	15	22.06	2	2.94	23	28.75	2	2.50
Warsaw	8	25.00	3	9.38	11	57.89	0	0.00	19	37.25	3	5.88
Total	33	41.77	5	6.33	41	31.54	3	2.31	74	35.41	8	3.83

Source: Authors' study.

Table no. 5. The scope of challenging by appeal by representatives of auxiliary prosecutors in absolute numbers and in %, compared with the total number of appeals brought by representatives of auxiliary prosecutors

Appeal jurisdiction	Before 15 April 2016				After 15 April 2016				Total			
	in full		in part		in full		in part		in full		in part	
	n	%	n	%	n	%	n	%	n	%	n	%
Białystok	3	42.86	4	57.14	4	50.00	4	50.00	7	46.67	8	53.33
Łódź	0	0.00	2	100.00	4	44.44	5	55.56	4	36.36	7	63.64
Warsaw	4	44.44	5	55.56	2	33.33	4	66.67	6	40.00	9	60.00
Total	7	38.89	11	61.11	10	43.48	13	56.52	17	41.46	24	58.54

Source: Authors' study.

The last of the presented ratios concerns the scope of challenging by appeal by representatives of auxiliary prosecutors in comparison with the total number of appeals brought thereby. These ratios are distorted due to a small number of the appeals brought, which surely affects the

large spread of results – between 0% and 50% in case of challenging in full, and between 50 and 100% in case of challenging in part.

Table no. 6. Grounds for appeal brought by a representative of an auxiliary prosecutor

Ground for appeal	Before 15 April 2016	After 15 April 2016	Total
Article 438(1) of the CCP	7	12	19
Article 438(2) of the CCP	6	12	18
Article 438(3) of the CCP	5	12	17
Article 438(4) of the CCP	6	1	7
Total	24	37	61

Source: Authors' study.

In 41 appeals brought by representatives of auxiliary prosecutors out of all 595 examined cases, a total of 61 grounds for appeal from Article 438 of the CCP were raised. Of interest is the total lack of pleas referencing absolute reasons for appeal under Article 439 of the CCP. Most frequently (19 cases), appeals were brought on the basis of Article 438(1) (violation of substantive law) as well as 438(2) and 438(3) of the CCP (misapplication of the rules of procedure, if it could have affected the content of the decision, and error in fact assumed as a basis of the decision, if it could have affected the content of the decision – 18 and 17 cases respectively). The pleas of grossly disproportionate penalty, punitive measure, vindictive damages, or wrong application or failure to apply a detention order, forfeiture or another measure (Article 438(4)) were only reported 7 times. Although the period after 15 April 2016 accounted for slightly more than 50% of the examined cases than before 15 April 2016, the grounds for appeal under Article 438(1), 438(2) and 438(3) of the CCP were raised twice as often at that time. An exception was the basis from Article 438(4) of the CCP, which was only referenced once after 15 April 2016, and 6 times in the previous period.

Among the violations of substantive law, the appeals predominantly referenced Article 46 of the Penal Code (as much as 13 times),

considered by appellants to have been wrongly not applied by the court. On its basis, the court may order in case of sentencing, and it orders at request of the aggrieved party or another authorized person, applying the provisions of the civil law, the obligation to redress, in full or in part, the damage caused by the offense, or to compensate for the suffered harm (Section 1), and if ordering of such obligation is significantly impeded, the court may decree vindictive damages up to 200 000 zlotys on behalf of the aggrieved party (Section 2). Moreover, in individual cases, representatives of auxiliary prosecutors referenced violations of the following provisions:

- Article 60(3) of the Penal Code (extraordinary mitigation of the penalty);
- Articles 296(1) and 296(3) of the Penal Code in conjunction with Article 9(2) (abuse of powers or breach of the duty and the resulting significant property damage as an unintentional act);
- Article 72(1)(8) of the Penal Code (suspension of enforcement of the penalty and obligation of the defendant for another appropriate behaviour during the probation period, which may prevent repeated offence);
- Article 69(1) of the Penal Code (suspension of enforcement of the penalty);
- Article 41(1) of the Penal Code (decision on prohibition to hold a specific post or to perform a specific profession);
- Article 156(1)(2) of the Penal Code in conjunction with Article 64(1) of the Penal Code (causing of grievous bodily injury as a repeated offence);
- Article 197 of the Penal Code (the crime of rape).

In case of misapplication of the rules of procedure, if it could have affected the content of the decision (Article 438(2) of the CCP), Article 7 of the CCP in conjunction with Article 410 of the CCP (the principle of free appraisal of evidence and the obligation to adjudicate solely on the basis of the entirety of circumstances revealed during the main hearing) was indicated most frequently (8 times). Moreover, grounds referenced quite often included misapplication of, among other things, the

principle of objectivity (Article 4 of the CCP), principle of independence of jurisdiction of a court (Article 8 of the CCP), provisions instituting the premises for discontinuance of a criminal proceedings (Article 17(1) of the CCP), the provision of ordering of vindictive damages on behalf of the aggrieved party, the obligation to redress damage in full or in part or to compensate for the suffered harm (Article 415(1) of the CCP), as well as provisions concerning dismissal of motions as to evidence (Article 170(1) and 170(2) of the CCP).

The most frequently indicated errors in fact assumed as a basis of the decision, if it could have affected the content of the decision, were related to assumption by the court of an insufficient value of the incurred damage, statement that the defendant acted unintentionally, improper findings in the area of compensation and damage, statement that the premises of the offence alleged to the defendant are not fulfilled, and, in general, improper appraisal of evidence by the court of first instance.

The pleas under Article 438(4) indicated adjudication of a grossly lenient penalty (4 cases) and a grossly low amount under the obligation to redress the damage.

In all cases where appeals had been brought by representatives of auxiliary prosecutors, the court of appeal only deemed six pleas valid – one each under Article 438(2) and 438(4) of the CCP before 15 April 2016, and one each under Article 438(1), 438(2), 438(3) and 438(4) of the CCP after 15 April 2016. The measure of minimal activity of representatives of auxiliary prosecutors is the number of motions for admission of new evidence in the appeal proceedings, of which only 9 were submitted in all cases (2 before 15 April 2016 and 7 after this date). It should be noted all those motions as to evidence were recognized by courts.

On the other hand, the efficiency of the brought appeals can be evaluated on the basis of a final decision issued by the court of appeal. Before 15 April 2016, 1 appeal was recognized in full, 24 were not recognized, whereas 5 were recognized partially. The court of appeal upheld 12 judgments, while it amended 6 in part and upheld them in the remaining extent. After 15 April 2016, only 1 appeal was recognized as well, 21 were not recognized, and 4 were recognized partially. 13

judgments were upheld, only 1 was annulled in full and referred back to the court of first instance, 2 were partially amended and upheld in the remaining extent, and 1 judgment was partially annulled.

A different issue is the practice of appeal against judgments passed by courts of first instance by public prosecutors in the context of action towards protection of the powers of the aggrieved party. From the viewpoint of the latter, appeal against judgments in the area of compensatory measures seems most important. When bringing appeals, public prosecutors referenced violation of substantive law under Article 438(1) of the CCP, and specifically, failure to apply Article 46 of the Penal Code, as the grounds for appeal, only in five cases before 15 April 2016 and in five cases after that date. Only one appeal brought before 15 April 2016 gave a positive effect. In other cases, the court of appeal did not recognize the appellant's request and upheld the decision by the court of first instance. On the other hand, the most frequent ground for appeals brought by public prosecutors was grossly disproportionate penalty (or, less frequently, another measure), considered by the appellant to be too lenient. In this case, 21 appeals in which at least one of the referenced grounds was related to Article 438(1) of the CCP were received before 15 April 2016, while after this date, there were 36 such appeals. The effectiveness of an appeal before 15 April 2016 was relatively low, since only 6 appeals were recognized by the court of appeal and the judgment was partially amended. After 15 April 2016, the efficiency clearly increased, since almost a half of all appeals (16) was considered.

V. Conclusions

The above analysis of findings from file research enables drawing of the following conclusions:

1. The participation of aggrieved parties in the capacity of auxiliary prosecutors in only every third case indicates moderate interest in active participation in a criminal proceedings. Wider admission by the legislator of examination of evidence in an appeal proceedings and restriction of the possibility of cassation

adjudication causing annulment of judgments and referring them back, in favour of far-reaching decision-amending aspect, has not caused any increase in activity on the part of auxiliary prosecution.

2. Using the assistance of a professional representative in less than every fifth case and by much less than a half of auxiliary prosecutors creates even greater barriers for active procedural activity, especially due to the fact of compulsory representation by a lawyer in the area of appeals brought against judgments passed by regional courts. Potential appointment of representatives who have never been occupied with the given case upon passing of an unfavourable judgment, for the purpose of bringing of an appeal, is potentially less efficient in terms of appeal proceedings in comparison with engagement of a legal counsel or advisor from the outset.
3. The ratio of appeals brought by representatives of auxiliary prosecutors to all cases under research is grossly low; it only reached 6.89%. On the one hand, it evidences large stability of first-instance decisions, satisfaction of aggrieved parties with proceedings results, and lack of significant errors made by the court of first instance. On the other hand, as referenced above, it can evidence low activity of auxiliary prosecutors whose role is possibly played by a public prosecutor. Representatives in the Warsaw appeal jurisdiction are surely more active bringing appeals than in the Białystok and Łódź jurisdiction.
4. The distribution of pleas raised in appeals by representatives of auxiliary prosecutors is very even. An almost equal number of violations of substantive law, misapplications of rules of the procedure, if they could have affected the content of the decision, as well as errors in fact assumed as the basis of a decision, if they could have affected the content of the decision, was raised in both periods under research. Pleas of grossly disproportionate penalty, punitive measure, vindictive damages or wrong application or failure to apply a detention order, forfeiture or another measure were less than half that number. The error most frequently appealed against by the auxiliary prosecution is, which comes as

no wonder, failure to apply or too narrow application of Article 46 of the Penal Code, allowing or outright obliging the court to order the obligation to redress the damage caused by the offence or to compensate for the suffered harm. Among violations of rules of the procedure, the most frequently indicated one was violation of Article 7 of the CCP in conjunction with Article 410 of the CCP, i.e. non-compliance with the principle of free appraisal of evidence and the obligation to adjudicate solely on the basis of the entirety of circumstances revealed during the course of the main hearing. It should be stressed that courts of appeal only recognized six pleas in all brought appeals.

5. The research recorded a negligible amount (only 9) of motions as to evidence, submitted to courts of appeal by representatives of auxiliary prosecutors. This does not give a good impression of the procedural activity of the auxiliary prosecution.
6. Very low effectiveness of appeals brought by representatives of auxiliary prosecutors was recorded. Out of all cases, only two such appeals were recognized in full, and more than a dozen were recognized only partially. A vast majority of appeals were not recognized, and the judgment of the court of first instance was upheld in full.
7. The activity of public prosecutors in case of appeal against judgments in favour of the aggrieved party is not high. In both periods under analysis, only five appeals brought indicated violation of substantive law through failure to apply Article 46 of the Penal Code and failure to order the obligation to redress the damage or to compensate as grounds for appeal, and there was only one case when such an appeal was recognized by a court of appeal. Appeals referencing grossly disproportionate penalty and requesting an increase thereof comprised the largest group in terms of number (21 before and 36 after 15 April 2016); simultaneously, they were a significantly more effective measure than appeals referencing violation of Article 46 of the Penal Code. 6 appeals were recognized before 15 April 2016 and as much as 16 after this date.