

Fair trial for a victim of crime ? - European standards and Polish experience.



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# Fair trial for a victim of crime ? - European standards and Polish experience.

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- The term fair trial continues to be a source of many controversies in the Polish criminal process doctrine, especially with regards to its semantics. The notion of fair trial described in article 6 of the ECHR may be regarded as a method to define a model of a criminal process in the "guarantee" sense.
- Apart from conflicts in the Polish doctrine regarding the nature of the notion of fair trial (as the supreme procedural principle, the method of defining the process model, or the proceeding method), one must see the source of the fair trial principle in appeal proceedings in the following acts of international law: art. 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and art. 14 of the International Covenant on Civil and Political Rights of 19 December 1966 (Journal of Laws of 1997, no. 38, item 167) as well as the Polish Constitution of 1997.



Fair trial standards (general)

**Convention for the Protection of Human Rights and Fundamental Freedoms**  
Rome, 4.XI.1950

**Constitution of the Republic of Poland,**  
2.IV.1997

**Article 6** Right to a fair trial

1. **In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.** Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

**Article 13 of the Convention**  
**Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

**Article 45**

1. **Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.**  
2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.



The decisions of the European Commission and the ECtHR have produced a body of case law which extends its influence far beyond the parties to the individual case. This is due to the fact, that other Convention states look to the ECtHR judgments for guidance as to the compatibility of their own domestic law with requirements of the Convention. Nowadays, the European Convention on Human Rights has become “a constitutional instrument of European public order in the field of human rights” ” [B. Emmerson at al, 2012, and the literature referred to therein]. .

- It should be also noted, that article 6 (1) of the ECHR does not provide any right to judicial proceedings for the victim of an offence as such. The limited decisions of the ECtHR concerning the victim demonstrate that the rights of the victims are often sacrificed in the name of defendant's right to defence. It is because of the fact, that the Convention was devised as a charter protecting the rights of the person against whom the process is conducted. Today the situation is different. No one doubts now that protection should be extended to cover the rights of the victim in a criminal process.
- With regard to the implementation of the fair trial principle in the victims' rights model, particularly notable is also Article 47 of the Charter of Fundamental Rights of the European Union (2012/C 326/02), which sets out the right to an effective remedy and to a fair trial. In the case law of the European Court of Human Rights and the Court of Justice of the European Union, this Regulation is often invoked in the context of (in conjunction with) Article 13 of the European Convention on Human Rights, which provides for the right to an effective remedy



### Victim's rights as paradigm of human rights

- In victimological literature there is no consensus as to what defines the victim and its role in the criminal justice system. Rather, in this respect four paradigms can be distinguished, which will be referred to as “witness”, “damage”, “harm” and “rights” paradigm [A. Dearing, 2017, pp.9-24]. In the **traditional paradigm, the victim serves as a source of information** as to the circumstantiality of her victimisation, which is understood as an instance of disregard of a state’s criminal laws. As noted in the literature, the role of ‘the porters of the law’ is usually assumed by the injured parties “by selecting which cases will become known to the law enforcement bodies. Even strict observance of the legality principle by the judicial bodies is not going to increase the efficiency of the criminal justice system if the victims’ ‘opportunism’ phenomenon occurs widely.” [C. Kulesza, 1995, p.60]
- What characterises the **damage paradigm** is that the criminal justice system integrates the function, dealing with civil law based claims of individual who, because of a criminal offence, have suffered damage and in this sense figure as an injured party. In turn, the **paradigm of harm** lies in the general assumption that society should help these in need, at least, if they are not to blame for being in such situation [A.Dearing, 2017, pp.13, 15]



- According to the theme of this presentation, **the paradigm of rights** is considered to be paramount, in which the victim is conceived a person whose rights - to life to physical and sexual integrity, to property etc. - are protected by criminal law and who is therefore directly concerned when an offence is committed. As G. F. Kirchhoff has been emphasizing for years, as long as the traditional justification for punishment saw only the offender and the state, we now justify punishing in a different way. Today we believe that justice consists of a triangle with the corners: state, offender and victim [G. F.Kirchhoff, 2017]
- The rights of crime victims are intrinsic to human rights. As noted in the literature, the human rights of victims can be divided into three categories : primary, secondary and tertiary rights. [A. Dearing, 2017] The term 'primary rights' denotes an individual's rights the violation of which constitutes the criminal offence, while the term 'secondary rights' refers to the rights the victim has because of the violation of her primary rights. It is argued that a victim of crime holds three secondary rights, namely to justice, to non-recurrence (protection against repeat victimisation) and to respectful treatment (protection against 'secondary victimisation'). Tertiary rights are rights of victim's serving to implement their secondary rights, in particular within the framework of criminal proceedings.



- The principal purpose of the Convention is the protection of the rights of individuals from infringement by states. However, the Court has recognized that, if the rights declared in the convention are to be protected effectively, certain provisions must be read as imposing positive obligations on the state. These positive obligations protect victims (and potential victims) of crimes, and others (notably witnesses) whose rights must be infringed during the criminal process. Among these obligations, deserve special attention obligations to prevent infringements of rights under Article 2 and 3 of the ECtHR [B. Emmerson at. al., pp.785-790 and the ECtHR judicature referred to therein].
- In particular, it is worth pointing out that in *Osman v. UK* the Court establishes two separate but related such obligations. The positive obligation to have “effective criminal law provisions” to protect the art.2 rights of individuals that lies on the state as a whole. That obligation extends from the law itself to enforcement procedures and systems : there must be courts, police, prosecutors and so forth. Related positive obligation is to take *operational* measures in order to secure the protection of art.2 rights in circumstances where particular persons are at risk. The taking of operational measures will usually be a matter for the police, but the state is ultimately responsible for ensuring that art.2 rights are protected.



- **Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.**
- The main goal of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings (Article 1 point 1). According to the title this Directive lays down minimum standards and Member States may extend the rights set out in this Directive in order to provide a higher level of protection [C. Kulesza, 2014].
- It is very important to underline, that the rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence (preamble, point 15). Such an assumption can be found in both the preliminary provisions of European codes of criminal procedure and in amendments introducing into these codes new rights for victims.
- Among the rights granted to victims by the Directive the following can generally be distinguished: provision of information and support (chapter 2), participation in criminal proceedings (chapter 3) protection of victims and recognition of victims with specific protection needs (chapter 4)





- In the context of fair criminal proceedings for victims, one can distinguish protection rights and procedural rights. The procedural rights of crime victims may be exercised through adoption of two models: (a) rights to active participation in the proceedings model or (b) services model. In the case of the former, the procedural rights of victims are rights in personam and the victim themselves has the rights of a litigant party. The services model regards a victim as a party to whom the state authorities (judicial bodies) provide specific services [J.J.M. Van Dijk, 1986]. In most European criminal justice systems, elements of both of the models can be found. You can, however, be noted that the German system of criminal process includes main elements of the model of procedural rights, in the French system elements of both models are in equilibrium, and the English justice system adopted mainly service model [C. Kulesza, 2014].



- The Directive provides also right to protection of victims with specific protection needs during criminal proceedings (article 23-24 of the Directive Article 24 of the Directive supplements the catalogue of measures under Article 23 with special safeguards for children:
  - (a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;
  - (b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
  - (c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

Note: ✓ = usually implemented, ◻ = partly implemented, × = not implemented

## Children's right to protection and safety in Europe



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	BG	DE	EE	ES	FI	FR	HR	PL	RO	(England and )	UK (Scotland)
General statutory provisions to fulfil the right of the child to be heard	×	×	✓	✓	✓	✓	✓	◻	✓	×	✓
Statutory provisions for providing free legal aid to children including access to legal representation	✓	◻	✓	✓	◻	✓	×	✓	✓	×	×
Statutory provisions for the right of a child to reduce the length of proceedings and to have the matter determined by impartial authority or judicial body	◻	◻	×	✓	◻	×	◻	×	◻	✓	×
Training and specialisation of professionals involved	×	✓	✓	◻	✓	✓	◻	✓	×	✓	✓
Guidelines and tools for professionals involved	✓	✓	✓	×	✓	✓	✓	✓	✓	✓	✓
Procedures to provide support to a child before, during and after hearings	×	✓	✓	◻	✓	◻	◻	◻	◻	✓	✓
Existence of screens, separate rooms, child-friendly facilities with technological equipment	◻	✓	✓	✓	✓	✓	✓	✓	◻	✓	✓
Controlled contact with other parties in the judicial proceeding	×	◻	◻	✓	✓	◻	◻	✓	×	✓	✓
Legal obligation to keep the child safe from harm and to protect children when involved in judicial proceedings specifying procedural safeguards	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓
Statutory provision for the right to privacy and confidentiality at all stages of the proceedings, including state regulations of media	◻	✓	◻	✓	◻	◻	◻	✓	◻	◻	◻

Note: ✓ = usually implemented, ◻ = partly implemented, × = not implemented

Children's right to protection and safety in Europe, Source: FRA 2014



- **The victims' rights in the Polish CPP.**

According to art. 2 of the Polish CPP of 1997 the provisions of the Code are to ensure that in the course of criminal proceedings legally protected interests of the aggrieved party are taken into consideration while respecting his dignity.

1. **Victim's rights to active participation in the criminal proceedings.**

- Polish criminal justice system like the German system is based on the principle of legality and upholds the model of procedural rights. Therefore, the victim is a party to the preparatory proceedings and during the trial he may exercise the rights of subsidiary prosecutor or private prosecutor. Code is awarded to the victim the right to lodge a subsidiary complaint when the public prosecutor redeems proceedings. A new approach to art. 14 § 2 CPP required to safeguard the interests of subsidiary prosecutor, which should not be deprived of their rights due to the fact that the public prosecutor withdraws the indictment. Provided, therefore, a design change in the art. 54 § 2 of the Code of Penal Procedure, according to which the withdrawal of the indictment by the public prosecutor does not deprive the rights prosecutor, the victim, who previously did not use the powers prosecutor will be able to, within 14 days of being notified of the withdrawal by the public prosecutor's indictment, declare that joins to act as prosecutor. However, a successful prosecutor's accession to the circumstances stated above rule will require assistance from an attorney. An attorney may be appointed by the victim (agent of choice) or appointed by the president of the court.



Victim as:	Party to preparatory proceedings	Side auxiliary prosecutor	Subsidiary auxiliary prosecutor	Private prosecutor
<b>Rights</b>	<ol style="list-style-type: none"><li>1. to receive confirmation of a crime notification</li><li>2. to submit a complaint about the failure to prosecute</li><li>3. to participate actively in the preparatory proceedings:<ul style="list-style-type: none"><li>- knowledge of the case file;</li><li>- participation in evidential activities</li><li>- submission of evidence;</li><li>- appeals against the decision of the prosecutor and of the Police;</li></ul></li><li>3. right to mediation</li><li>4. right to use the help of an interpreter</li><li>5. right to use a proxy, including an attorney ex officio.</li><li>6. submission of an application for damages</li><li>7. filing an appeal against a judgment of conditional discontinuance of proceedings;</li><li>8. opposition to plea bargaining</li></ol>	<ol style="list-style-type: none"><li>1. Status of the procedural party.</li><li>2. He/she has the right:<ul style="list-style-type: none"><li>- to participate in hearings at the trial to submit evidentiary motions, and speak on any matter</li><li>- to give consent or challenging court decisions during trial</li><li>- to submit of an application for damages</li><li>- to use a proxy, including an attorney ex officio</li><li>- to participate in final speeches</li><li>- to lodge an appeal and cassation against the judgment</li></ul></li></ol>	<ol style="list-style-type: none"><li>1. Status of the procedural party</li><li>2 He/she has the same rights as the side auxiliary prosecutor.</li></ol>	<ol style="list-style-type: none"><li>1. Status of the procedural party</li><li>2 He/she has the same rights as the auxiliary prosecutor and moreover:<ol style="list-style-type: none"><li>2. The court must discontinue proceedings if:<ul style="list-style-type: none"><li>- the private prosecutor will withdraw from accusation (after the commencement of the court proceedings - with the consent of the accused)</li><li>- the prosecutor is reconciled with the accused (especially during mediation)</li></ul></li></ol></li></ol>



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Protection of the victim-witness	Victim who is below the age of 15	Victim of Sexual crime	Anonymous witness ( <i>in cognito</i> )	Every victim
scope and basis of application	Victim of violence, including sexual and domestic violence	An adult victim of sexual offenses	Danger to life, health or significant property	
right to anonymize personal data	P/A - only address of residence and work	P/A - only address of residence and work	Yes	P/A - only address of residence and work
duty of court interrogation in a "blue" room with special equipment	Yes	Yes	No	No
obligation to record the hearing and reproduce them at the trial	Yes	Yes	No	P/A - if there is a fear that he will not appear at the hearing
no contact with the accused during the hearing outside the trial	Yes	Yes	P/A - no direct eye contact	No
hearing in the form of video-conferences	Yes	P/A - re-hearing if the victim is afraid of the accused	Yes	P/A- if there is a fear that he will not appear at the hearing
physical protection during procedural activities and after in the event of a threat from the accused	Yes	Yes	Yes	Yes
possibility of excluding the audience of the trial	Yes	Yes	Yes	Yes
possibility of excluding the accused from the courtroom during the testimony of the witness	Yes	Yes	Yes	Yes
the possibility of using the help of lawyer or/and a trusted person	Yes	Yes	Yes	Yes
assistance in changing place of residence and financial assistance in the event of significant danger to life, or health of a witness or his family (most serious crimes)	Yes	Yes	Yes	Yes



- **The effectiveness of victims' rights in the light of research.**
- In the Polish criminal justice system, the effective rights of an injured party (crime victim) to active participation in the criminal proceedings can be analysed at various stages of the proceedings. As evidenced by a study by the Police Academy in Szczytno (conducted in 2012–2015 on a sample of 7710 police investigations), injured parties are the main source of the initial crime report (79%); witnesses (outsiders) initiated Police action only in 13% of the cases, whereas the Police's own actions resulted in the revelation of information on a crime in merely 2% of the cases. The study suggested that the Police's response to a crime was swift, as in 95% of the cases, they took action as early as on the day of the incident. A questionnaire survey conducted in 2013 in all of Poland's 16 provinces by the National Police Headquarters showed that 51% of people who had reported a crime were satisfied with the manner in which the police officers treated their report [A. Choromańska, M. Porwisz, 2016 ].
- The national Police activities assessment survey conducted in 2014 by the Centre for Public Opinion Research (Centrum Badań Opinii Społecznych – CBOS) on a representative sample of 1098 Poles showed that 67% of those polled assessed the Police's work positively; 2014 citizens were unsatisfied, whereas the 'difficult to say' answer was given by 11% of those polled (CBOS study, March 2014).



- It is worth noting the results of a statistical survey of the decisions to discontinue or refuse to start the proceedings in rape cases – Article 197 of the Penal Code – and the effect of the amendment to the Penal Code of 27 January 2014 on such decisions, which caused sexual offences under Articles 197–199 to be prosecuted ex officio instead of on the wronged person's motion. The survey, which uses statistical information imparted by the General Public Prosecutor and pertaining to the entire country, had the following results [R. Pietryka, 2014] :
- 1. The largest number of such cases were reported in large appellate prosecutor's office's jurisdictions – those with a large number of prosecutorial units and covering highly-populated provinces.
- 2. Preparatory proceedings were started in 75.7% of such cases, on average.
- 3. As many as 11.7% of such cases ended with a valid refusal to start the proceedings and 6.9% of such cases ended with a valid discontinuation of the proceedings prior to their institution, as per Article 308 of the Code of Penal Procedure. Consequently, in nearly 19% of such cases, the preparatory proceedings were not even started.
- 4. In 23.1% of the cases where the preparatory proceedings had started, they were thereafter discontinued with legal validity.
- 5. In 36.2% of the cases where a suspicion of committing a crime had been reported, no charge sheet was filed before a court.
- 6. The distribution of cases pertaining to rapes committed after 27 January 2014 was uneven between individual prosecutorial units.
- 7. Such cases were virtually non-existent in regional prosecutor's offices. ( During the study, the public prosecutor's office consisted of district prosecutor's offices (lowest tier), regional prosecutor's offices, appellate prosecutor's offices and the General Prosecutor's Office headed by the General Public Prosecutor).





- Investigation of records was conducted on the basis of a survey meant to collect details of the act in question, parties to the proceedings and the course of the proceedings. In the cases investigated, 63 injured parties were found – 59 women and 4 men, with 1 case having two injured parties. The analysis of the records of the cases investigated showed that in spite of the amendment of 13 June 2013 having entered into force on 27 January 2014, there were still situations where the prosecuting authorities requested that the injured, or alternatively their representatives, file a petition for the prosecution of the rape reported (14 cases), which resulted from the police officers' lack of legal expertise. Furthermore, the investigation showed that in at least 11 cases, a situation was observed where the decision to close the proceedings had been motivated by the attitude of the injured, who displayed a lack of will to prosecute the rape [R. Pietryka, 2014].
- The main reason which motivated the injured to opt not to prosecute the rapes may have been a certain sense of humiliation which they felt with regard to the rape and the conviction – resulting, for example, from the fact that they were under the influence of an intoxicant or alcohol at the time of the rape – that they shared the responsibility for the rape.
- The scholar also noted a lack of efficient forms of support in that regard, particularly psychological support and legal aid for the victims of rape.



Other studies of the records noted the ineffectiveness of the legal protection of a child victim of cruelty (Article 207 of the Penal Code) during criminal proceedings, in particular failure to use a preventive measure in the form of ordering the perpetrator to vacate the place of their joint residence with the victim, as provided for in Article 275 of the CPP [O. Trocha, 2013].

In the case of 24 injured parties (53%) from prosecutorial surveys, the perpetrator was living with the injured throughout the entire duration of the criminal proceedings. In the case of those proceedings, the judicial bodies were often unable to use preventive measures against the perpetrator, including measures that protect the injured. This was due to the fact that in those cases, as many as 37 perpetrators (82%) were not laid charges against. In court surveys, the percentage of the injured who were living with the perpetrators was slightly different. Throughout the entire duration of the proceedings, a third of the injured lived with their perpetrators (17 injured parties, 36%). There were 25 injured parties with whom the perpetrators were living for some of the duration of the proceedings (only in four of such cases this was due to the use of preventive measures against the perpetrator, whereas in others, this was due to other circumstances). With regard to a child's procedural rights, those studies showed that the persons who exercised the rights actively participated in the proceedings in 25 cases (56%); a lack of such activity was observed in 19 cases (42%). In the court surveys, the activity of the person who exercised a child's rights was as follows: such persons were active in the cases of 18 injured parties (38%), whereas most cases lacked that activity (29 injured parties, i.e. 62% of the cases). Only in the cases of 15 injured parties, the person who represented the minor acted as an auxiliary prosecutor before the court. In other cases, that person was not given the status of a party at the judicial proceedings stage, which naturally significantly weakened the position of the injured minor in the proceedings and prevented them from influencing the course of the trial (32 cases, amounting to 68%). In most of the cases studied, the child was represented by a parent, hence it was the parent who could appoint a representative or lodge a motion for the appointment of a legal counsel.



A study conducted in 2012 by the Polish Institute of Justice in Warsaw showed a low level of activity of a subsidiary prosecutor. In the case of a subsidiary prosecutor, the study showed a low level (quality) of charge sheets drawn up by lawyers and legal counsels, nearly 51.7% of which were returned by the Chief Justice in order to make good the formal defects [Dudka K, Artymiak G, 2012].

The national court statistics also indicate that whilst the number of cases brought before the court by auxiliary prosecutors grew eightfold in 2005–2011 as a result of the simplifications in the filing of a subsidiary charge sheet, the structure of judgements rendered remained unfavourable to them. The following types of rulings were given for those cases in the aforesaid period of time [[ Dudka K, Artymiak G, 2012]:

Year	2005	2006	2007	2008	2009	2010	2011
Dropping the charge	0	1	0	2	2	5	4
Conditional discontinuances	6	4	9	17	21	27	32
Discontinuances	97	101	123	220	380	521	629
Acquittals	39	40	43	95	169	216	359
Convictions	10	31	23	40	83	138	176



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The low effectiveness of the subsidiary complaints lodged is evidenced by the fact that in the period of time studied, the percentage of convicting judgements and judgements conditionally discontinuing the legal proceedings did not exceed 18%. With regard to the participation of a secondary auxiliary prosecutor, they often do not participate in the proceedings and when they do, they display no evidence-related activity, do not ask questions of those being heard and rarely propose motions as to the evidence. The records suggest that the auxiliary prosecutor is merely an addition to the proceedings, generally an unwelcome one, as they necessitate additional court activities, e.g. summons to the case and sometimes its adjournment

- Auxiliary prosecutors are generally satisfied with convicting judgements, particularly with the sentencing, as they only appealed against such judgements in 5 cases (3%) and in 2 cases via a representative (1.2%) [Dudka K, Artymiak G, 2012].
- 
- Within the framework of the research project 'Is the Polish model appeal proceedings fair?' conducted by the Department of Criminal Proceedings of the Faculty of Law of the University of Białystok, the following aspects of fair appeal proceedings have been analysed:
  - -duration of appeal proceedings;
  - -activity of each litigant party who uses measures of appeal and the degree of their consideration by courts (effectiveness);
  - -the parties' initiative in the matter of evidence;
  - -scope of the hearing of evidence before courts of appeal, including the ability to present new evidence before them;
  -
- As part of the aforesaid research project, a study of the records and a statistical survey have been conducted in three appeal courts' jurisdictions: Białystok (140 cases), Łódź (98 cases) and Warsaw (50 cases).
- In addition, the tables have also used the information obtained from the aforesaid appeal courts as per the Act on Access to Public Information with regard to specification of the duration of the proceedings, stability of the decisions of a court of first instance and the types of decisions of a court of second instance.



### The duration of inter-instance proceedings in 2007-2016

<b>The duration</b>	<b>up to 2 months</b>	<b>over 2 months to 3 months</b>	<b>over 3 months to 6 months</b>	<b>over 6 months</b>
Court of Appeal in Łódź (2748 cases)	21%	41%	28%	9%
Court of Appeal in Białystok (2453 cases)	53%	32%	14%	2%
Court of Appeal in Warsaw(4364 cases)	13%	39%	36%	12%
Average	29%	37%	26%	8%



<b>Total number of appeals</b>				
<b>Appeal Court in Łódź (98 cases)</b>		<b>Appeal Court in Białystok (140 cases)</b>	<b>Appeal Court in Warsaw (50 cases)</b>	<b>Total</b>
defenders	53,27 % (65)	79,45 % (147)	75%(51)	70%
prosecutors	20,93%(18)	31,57 % (42)	27,65 % (13)	33%
proxies of auxiliary prosecutors	14,28 % (2)	36,11 % (13)	60% (3)	33%



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### Number of appeals during the period of application of different models of appeal proceedings

Number of appeals before model of appeal proceedings before 15.04.2016		Appeal Court in Łódź (17 cases)	Appeal Court in Białystok (93 cases)	Appeal Court in Warsaw (27 cases)	Total (137 cases, 226 appeals)	
defenders		22 (78,56 % of defenders)	125 (80,64% of defenders)	28 (73,68% of defenders)	79 %	
Public prosecutor		5 (31,25 % of prosecutors)	26 (27,95% of prosecutors)	10 (37 % of prosecutors)	30 %	
proxies of auxiliary prosecutor		1 (25% of proxies) (1 appeal lodged by auxiliary prosecutor)	7 (26,92 %) of proxies)	2 (100% of proxies) (4 appeals lodged by auxiliary prosecutor)	31 %	
Number of appeals after model of appeal proceedings after 15.04.2016		Appeal Court in Łódź (33 cases)	Appeal Court in Białystok (46 cases)	Appeal Court in Warsaw (23 cases)	Total (102 cases, 137 appeals)	
defenders		31 (79,48 % of defenders)	43 (79,62% of defenders)	27 (84,37 % of defenders)	80 %	
Public prosecutor		7 (21,87% of prosecutors)	15 (32,6 % of prosecutors)	4 (17,39% of prosecutors)	26 %	
proxies of auxiliary prosecutor		2 (50% of proxies)	7 (63,63% of proxies)	1 (33,33 % of proxies) (1 appeal lodged by auxiliary prosecutor)	56 %	



## The most frequently raised grounds of appeal and their effectiveness

Grounds of appeal (art. 438 pkt 1)-4) k.p.k.)	Defender	Public prosecutor	Auxiliary prosecutor	Total
<b>art. 438 pkt 1) CCP:</b> “the provisions of substantive law were violated,	59	26	8	13% (93)
<b>art. 438 pkt 2) CCP:</b> the provisions of procedural law were violated, if this might have affected the contents of the judgment,	215	41	6	38% (262)
<b>art. 438 pkt 3) CCP</b> the findings on which the judgment is based were established incorrectly, if this might have affected the contents of the judgment,	178	38	7	32% (223)
<b>art. 438 pkt 4) CCP:</b> a penalty or a penal measure imposed is egregiously disproportionate or a preventive or other measure was incorrectly imposed or the court incorrectly failed to impose it.	96	17	3	17% (116)
<b>Number of grounds of appeal</b>	548	122	24	694





## Subjects submitting evidentiary motions

	Appeal Court in Łódź		Appeal Court in Białystok		Appeal Court in Warsaw		Total	
	before 15.04.2016	after 15.04.2016	Before 15.04.2016	after 15.04.2016	before 15.04.2016	after 15.04.2016	before 15.04.2016 (137 cases, 226 appeals)	after 15.04.2016 (102 cases, 137 appeals)
defender	8	6	41	3	2	8	51	17
accused	1	0	2	2	1	0	4	2
public prosecutor	0	0	0	0	0	1	0	1
auxiliary prosecutor	0	0	0	0	0	0	0	0
proxies of auxiliary prosecutors	0	0	1	1	0	0	1	1
Total	9	6	39	6	3	9	51	21
Ex officio	1	0	2	1	0	0	3	1



THE EXAMINATION OF CASE FILES SHOWS IN PARTICULAR THE FOLLOWING  
PHENOMENA:

- LOW ACTIVITY OF THE AUXILIARY PROSECUTORS AND THEIR PROXIES IN  
APPEAL PROCEEDINGS
- LOW EFFECTIVENESS OF APPEALS
- GROWING STABILITY OF THE CHALLENGED JUDGMENTS OF DISTRICT  
COURTS,
- EXTENSIVE DURATION OF APPEAL PROCEEDINGS; AND
- NARROW SCOPE OF EVIDENCE PROCEEDINGS BEFORE THE APPELLATE  
COURTS.