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New templates for warnings and information on the course of interview for minor witnesses in criminal proceedings – an improvement or an unused potential?

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A minor witness is especially exposed to secondary victimisation in connection with their participation in criminal proceedings, regardless of whether the interrogation takes place under the ordinary procedure or a protective mode. A way to shield the child from trauma potentially arising from their contact with the justice system – and to enable fuller and more informed participation in the interview – is to inform them of their rights and obligations, in a manner adapted to their age and developmental level. Due to the amendment to the Code of Criminal Procedure by the Act of 13 January 2023 on the change of the Civil Procedure Code and certain other acts, the Minister of Justice was, by statutory delegation, obliged to issue regulations containing new templates of instructions, explanations and information regarding hearings and criminal proceedings, which are addressed, among others, to minor witnesses. In this article, the author analyses and evaluates the templates of instructions issued by the Minister of Justice for minor witnesses, and attempts to answer the question posed in the title: are the new templates an improvement from the point of view of a child being interviewed in criminal proceedings, or did the Ministry of Justice, despite having resources and ability, fail to exploit the potential of the amendment and did not succeed in drafting instruction templates accessible enough for a minor?

Introduction

A minor may participate in criminal proceedings both as a witness and as a victim. This is supported primarily by codes, as well as by case law and scholarly doctrine.¹ The

Act of 6 June 1997 – the Code of Criminal Procedure² explicitly regulates institutions

¹ Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2025, item 46, 304), hereafter as: CPC.

² V. Kwiatkowska-Darul, *Przesłuchanie dziecka w polskiej procedurze karnej – zagadnienia ogólne*, „Dziecko Krzywdzone” 2004, no 6, p. 1; I. Zieniewicz, *Prawno-kryminalistyczna problematyka przesłuchania małoletniego w procedurach prawnych*, „Nowa Kodyfikacja Prawa Karnego” 2018, vol. I, p. 161;

applicable to a minor witness, for example in Art. 171 § 3 CPC (if the person being questioned is under 18 years of age, the activities involving him/her should, if possible, be carried out in the presence of a legal representative, actual guardian or an adult indicated by the person being questioned, unless the good of the proceedings prevents this or the person being questioned objects to it), Art. 189 point 1 CPC (no oath is taken from persons under 17), and also Art. 185a CPC (hearing of a minor victim of a crime involving violence or threat, or of crimes from Chapters XXIII, XXV and XXVI of the Criminal Code).

From the point of view of a minor's activity as a participant in criminal proceedings, as well as due to the lack of procedural capacity (expressed *espressis verbis* under Art. 51 § 2 CPC), their participation is most visible when giving testimony as a witness, because that role is of a personal nature.³ The interrogation of a minor in criminal proceedings may be

conducted either under the ordinary procedure⁴ or the protective procedure regulated in Art. 185a–185c and 185e CPC.⁵

As literature in the field indicates, a child who learns that they will be interviewed experiences fear and stress from this, a sense of helplessness, lack of faith in their abilities, or even hatred.⁶ The procedural situation the minor is in is often not understood by them, and their intellectual and socio-emotional development

(*wybrane zagadnienia proceduralne*), „Państwo i Prawo” 2006, no. 3, p. 78.

⁴ The standard procedure is based on Art. 177 of the Polish Code of Criminal Procedure and, in general terms, means that the child is interviewed in the same way as an adult. That is, during the preparatory proceedings, the child is questioned by the authority conducting the investigation, for example at a police station or in the office of the public prosecutor's office, and during the judicial proceedings, the questioning takes place in the courtroom by the court. This mode of questioning applies to a minor witness when the conditions for conducting a protective hearing are not met. J. Podlewska, *Regulacje prawne dotyczące przesłuchiwanie dzieci w Polsce* [in:] *Przesłuchanie małoletniego świadka w postępowaniu karnym. Poradnik dla profesjonalistów*, Warszawa 2018, s. 7.

⁵ The protective procedure for interviewing is regulated by Art. 185a–185c and 185e of the Code of Criminal Procedure – its purpose is to prevent secondary victimisation of the person being interviewed in criminal proceedings and to minimize the imbalance of power between the interviewer and the interviewee. A protective hearing is conducted during a court session with the participation of an expert psychologist, in a Child-Friendly Interview Room. K. Makaruk, P. Masłowska, *Ochrona małoletniego*, pp. 65–67; D. Brulińska, D. Dajnowicz, *Dziecko jako świadek w procesie karnym w ujęciu teoretycznym i praktycznym*, „Nowa Kodyfikacja Prawa Karnego” 2015, vol. XXXV, p. 88; A. Budzyńska, *Psychologiczna perspektywa*, p. 20; I. Zieniewicz, *Prawno-kryminalistyczna*, p. 161.

⁶ The person conducting the interview should be aware that the stress experienced by a minor due to their involvement in criminal proceedings, especially during the interview, leads to faster than usual fatigue – this fatigue can result in elevated blood pressure, heart disease, ulcers, diabetes, colitis, headaches, back pain, depression, skin conditions, anxiety, and increased susceptibility to illness. Children who are victims of sexual offenses, abductions, or violence are particularly vulnerable to these consequences. V. Kwiatkowska-Darul, *Przesłuchanie dziecka*, Kraków 2001, pp. 165–166; J. Kaczmarek, M. Kierszka, *Porwania dla okupu*, Warszawa 2008, LEX.

H. Gajewska-Kraczkowska, *Przesłuchanie małoletniego w postępowaniu karnym: paternalizm a rzetelność procesu karnego* [in:] *Funkcje procesu karnego. Księga jubileuszowa profesora Janusza Tyłmana*, ed. T. Grzegorzczak, Warszawa 2011, pp. 759–760; K. Makaruk, P. Masłowska, *Ochrona małoletniego pokrzywdzonego przed wielokrotnym przesłuchaniem – rozważania w świetle wyników badania jakościowego*, „Dziecko Krzywdzone” 2021, vol. 20 no 1, pp. 65–67; A. Budzyńska, *Psychologiczna perspektywa przesłuchania dziecka* [in:] *Przesłuchanie małoletniego świadka w postępowaniu karnym. Poradnik dla profesjonalistów*, Warszawa 2018, p. 20; Examples of decisions regarding the questioning of a minor in a criminal trial include: Supreme Court judgment of 20 January 2016, case sign. III KK 187/15, Lex no. 1984691; Supreme Court decision of 15 March 2012, case sign. III KK 244/11, Lex no 1167624; Supreme Court decision of 13 February 2020, case sign. IV KK 599/18, Legalis nr. 2532867; Supreme Court judgment of 16 April 2015, case sign. V KK 4/15, Legalis no 1242273; Supreme Court decision of 7 May 2013, case sign. III KK 380/12, Legalis no 731237; Supreme Court decision of 6 July 2006, case sign. IV KK 226/06, Lex no 219845; Supreme Court decision of 20 February 2018, case sign. V KK 351/17, Legalis no 2296454.

³ Supreme Court Resolution of 19 February 2003, case sign. I KZP 48/02, OSNKW 2003, no. 3–4, pos. 23; J. Kosonoga, *Małoletni jako świadek przestępstwa*

adds further difficulty in communicating with adults, strangers (e.g. during the hearing).⁷ Typically they fear: 1) the perpetrator (meeting or confronting them, or that the perpetrator will threaten or be angry with the child, or that giving testimony will lead to rejection by the perpetrator); 2) punishment (the child fears they will be punished for participating or doing something their parents forbade, e.g. walking through a park where they met the perpetrator and were harmed, even though parents expressly forbade them from walking in the park); 3) difficulties in the interrogation process (fear of forgetting something, making mistakes, not knowing answers, not understanding questions; what if they want to drink or use the toilet), and 4) worsening of the family situation (fear that if they tell what happened, it will worsen the family situation or cause rejection).⁸ Providing the minor with knowledge about the hearing and its course and what is expected of them gives them some sense of safety and may positively affect the quality of their testimony.⁹

Since the legislator predicted the child's possibility to appear as a witness in criminal proceedings, it is appropriate to ensure the minor can prepare for participation in this act – at least by receiving basic information about its course in advance. Informing a minor witness of their rights and obligations should be carried out with care, in a way adapted to their age and developmental level. Preparing the child for the interrogation and clearly informing them of

their rights and duties in the criminal process increases the child's ability to give precise and comprehensive accounts of experienced events, as well as soothes possible negative effects related to participation in the interrogation.¹⁰

As the Supreme Court stated in its decision of 7 May 2019: “the instruction should be given with due diligence and reliability, in a full, precise and understandable manner, so as to exclude the possibility that it might qualify as misleading instruction or a lack of instruction. Essentially, it is about such a mode of delivery that, in the case of rights the participant is entitled to in proceedings, will simply ensure the actual possibility of using them.”¹¹ While one should fully agree with the Supreme Court's position, in the situation where the person being interviewed is a minor, both written and oral instruction should, as far as possible, be concise, simple, not rely on verbatim recitation of statutory texts, begin with an indication of rights rather than codes. Moreover, in the written version of the instruction, its content should, as far as possible, also be presented graphically, use colors to make it visually attractive to a child, employ larger font, and divide the text into sections.¹²

⁷ A. Budzyńska, *Psychologiczna perspektywa...*, p. 19.

⁸ A. Budzyńska, *Przygotowanie małoletnich świadków do udziału w przesłuchaniu* [in:] *Przesłuchanie małoletniego świadka w postępowaniu karnym. Poradnik dla profesjonalistów*, Warszawa 2018, p. 57.

⁹ A. Gadomska, *Przygotowanie do przesłuchania małoletniej ofiary w charakterze świadka*, „Prokuratura i Prawo” 2008, no. 7–8, p. 194; J. Zmarzlik, *Przygotowanie dziecka do uczestnictwa w przesłuchaniu* [in:] *Dziecko wykorzystywane seksualnie. Diagnoza, interwencja, pomoc psychologiczna*, ed. M. Sajkowska, Warszawa 2010, p. 60; A. Budzyńska, *Przygotowanie małoletnich świadków do przesłuchania w procedurach karnych. Szkolenie dla profesjonalistów. Scenariusz zajęć*, Warszawa 2015, p. 9; D. Brulińska, D. Dajnowicz, *Dziecko jako świadek...*, p. 94.

¹⁰ A. Gadomska, *Przygotowanie do przesłuchania...*, no. 7–8, p. 194; K. Osiak-Krynicka *Przygotowanie małoletniego do przesłuchania w Przyjaznym Pokoju Przesłuchań – aspekty praktyczne i teoretyczne*, „Folia Iuridica Universitatis Wratislaviensis” 2021, vol. 10, no. 2, pp. 181–196; J. Kaczmarek, M. Kierszka, *Porwania dla okupu*; J. Kosowski, *Zasada informacji prawnej w polskim procesie karnym w świetle art. 16 k.p.k.*, Warszawa 2011, p. 386.

¹¹ Supreme Court decision of 7 May 2019, case sign. II KZ 12/19, Lex no 2694660.

¹² M. Kornak, *Małoletni jako świadek w procesie karnym*, Warszawa 2009, pp. 199–201; K. Osiak, *Kryminalistyczno-procesowe aspekty przesłuchania w trybie art. 185a k.p.k.*, „Prokuratura i Prawo” 2018, no. 6, pp. 137–156; J. Zmarzlik, *Przygotowanie dziecka...*, pp. 58–79; J. Kosowski, *Pouczenie świadka w procesie karnym a kwestia odpowiedzialności karnej (zagadnienia wybrane)* [in:] *Problemy stosowania prawa sądowego. Księga ofiarowana Profesorowi Edwardowi Skrętowiczowi*, ed. I. Nowikowski, Lublin 2007, pp. 318–335; *idem*, *Regulacje ustawy z dnia 28 listopada 2014 r. o ochronie i pomocy dla pokrzywdzonego*

The legislator seems to recognize the need for proper instruction of a minor witness about their rights and duties, as well as preparing them for participation in the hearing, because by way of the Act of 13 January 2023 amending the Civil Procedure Code and certain other acts,¹³ it amended Art. 171 and 300 CPC and added Art. 185f CPC, providing statutory delegation for the Minister of Justice to issue regulations containing templates of instructions and templates of information on the course, manner and conditions of hearing, taking into account the need for comprehension by the persons being interviewed.

As a result of the entry into force of that amendment, the Minister of Justice issued four new regulations: 1) regulation of the Minister of Justice of 7 November 2024 on defining templates of written instructions on the rights and obligations of suspect, victim and witness;¹⁴ 2) regulation of the Minister of Justice of 7 November 2024 on defining templates of written explanations for suspect,

victim and witness regarding the scope of their rights and the manner and conditions of interrogation;¹⁵ 3) regulation of the Minister of Justice of 31 October 2024 on defining templates of information on the course, manner and conditions of interrogation of suspects and witnesses under 18;¹⁶ and 4) regulation of the Minister of Justice of 13 January 2025 on defining templates of information on the course, manner and conditions of interrogation for persons interrogated under Art. 185a–185c and 185e CPC.¹⁷

The aim of the article is to evaluate the new templates of instructions and information on hearings for minor witnesses contained in the regulations of the Minister of Justice. Furthermore, the author will attempt to answer the question posed in the title: whether their introduction is an improvement or whether, in creating them, the Ministry of Justice did not fully use the possibilities at its disposal and missed the opportunity to help and support the minor witness before their participation in the most difficult evidentiary act in criminal proceedings.

i świadka w kontekście ochrony pokrzywdzonych przez przemocą domową [in:] *Prawnokarna ochrona pokrzywdzonych przemocą domową*, ed. M. Kopec, Lublin 2017, pp. 63–76.

¹³ Act of 13 January 2023 amending the Civil Procedure Code and certain other acts (Journal of Laws 2023, item 289, 535).

¹⁴ Regulation of the Minister of Justice of 7 November 2024 on templates of written instructions on the rights and duties of suspect, victim and witness (Journal of Laws 2024, item 1658), hereinafter referred to as: „RegWritInst”. This regulation implements within its Directive (EU) 2012/13 of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (EU Official Journal L42, 01.06.2012, p. 1), Directive (EU) 2012/29 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, replacing Council Framework Decision 2001/220/JHA (EU Official Journal L315, 14.11.2012, p. 57), Directive (EU) 2011/99 of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L 338, 21.12.2011, p. 2) Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.05.2016, p. 1).

I. Analysis of the Templates of Instructions on Rights and Obligations for Minor Witnesses

First, the regulation of the Minister of Justice of 7 November 2024 on defining templates of written instructions on the rights and obligations of suspect, victim and witness is

¹⁵ Regulation of the Minister of Justice of 7 November 2024 on templates of written explanations for suspect, victim and witness regarding their rights and the manner and conditions of interrogation (Journal of Laws 2024, item 1659) hereinafter referred to as: „RegWritExp.”

¹⁶ Regulation of the Minister of Justice of 31 October 2024 on templates of information regarding the course, manner and conditions of hearings for suspects and witnesses under 18 years of age (Journal of Laws 2024, item 1645).

¹⁷ Regulation of the Minister of Justice of 13 January 2025 on templates of information about the course, manner and conditions of interrogation for persons questioned under Art. 185a–185c and 185e of the CPC (Journal of Laws 2025, item 59).

analysed. It entered into force on 15 November 2024 and contains six attachments, of which Attachment No. 6 is addressed to a minor witness – template of instructions on rights and obligations of a witness under 18.

A preliminary review of the content and appearance of Attachment No. 6 (RegWritInst) allows the conclusion that the Minister's actions should be welcomed, because compared to the previous instruction, which provided no adjustment for minor witnesses, the new template is a definite *novelty* and a huge aid for the minor witness, who often faces fear and uncertainty about the hearing.¹⁸ However, a deeper interpretation of Attachment No. 6 (RegWritInst) reveals that the phrasing and appearance of instructions for minors interviewed in both ordinary and protective mode raise serious concerns.

First of all, attention must be drawn to the fact that the text of the template is too long – it has 16 pages, whereas it should have, especially for younger children, a maximum of 4–5 pages – the younger the child, the harder it will be for them to concentrate and review the entire content of the template, especially as the layout does not visually capture attention.¹⁹ Although certain contents are placed in boxes and highlighted with colors, firstly their appearance (and the content itself) is almost a carbon copy of the instruction template for persons over 18 (Attachment No. 5 of RegWritInst). Secondly, it appears that those who drafted the instruction templates forgot that children and adolescents use language of different degrees of complexity. How is an 8–13-year-old supposed to understand text that is also addressed to a 16- or 17-year-old, who is at a completely different stage of education and development?²⁰ Separate templates should therefore have been developed for minors under, say, 10/12 years old, and minors above that age.

¹⁸ A. Budzyńska, *Psychologiczna perspektywa...*, p. 19.

¹⁹ A. Kamza, *Rozwój dziecka. Wczesny wiek szkolny. Seria: Niezbędnik Dobrego Nauczyciela* (ed. A.I. Brzezińska), Warszawa 2014, pp. 33–39.

²⁰ *Ibidem*.

Unfortunately, Attachment No. 6 RegWritInst also fails to explain the content of codes about which the witness is instructed rather, the text is paraphrased in the second-person singular and uses formulations and terms without presenting their meanings (e.g. auxiliary prosecutor, mediation proceedings, temporary arrest, discontinuation of proceedings, expert opinion, expert, consul, full legal capacity), the understanding of which may be difficult even for an adult without legal training.

Attention must also be paid to the instruction in Attachment No. 6 RegWritInst for a minor witness – which does not begin with rights but with duties, including the duty to appear and information on consequences of non-appearance and the possibility of imposing a penalty, detention and compulsory bringing or arrest on the minor or their legal representative. Setting aside the fact that this instruction contradicts the law – because until reaching age 17 such consequences cannot be applied to a minor witness – it may be paralyzing for a child who receives such information before the scheduled interrogation and increase their fear of participation.²¹

Moreover, a substantive error slipped into the instruction: Attachment No. 6 RegWritInst includes content regarding potential liability for minors for giving false testimony, even though a child under 17 bears no such liability. This follows from the fact that Art. 233 § 1 Criminal Code provides for criminal liability for giving false testimony, and a condition for liability is that the witness is instructed about it or takes an oath. Since according to Art. 189 point 1 CPC no oath is taken from persons under 17, and until reaching age 17 the child bears no criminal liability (Art. 10 § 1 Criminal Code),

²¹ K. Osiak, *Prawa i obowiązki małoletniego pokrzywdzonego, które przysługują mu podczas przesłuchania w trybie art. 185a Kodeksu postępowania karnego*, „Dziecko Krzywdzone” 2016, vol. 15, no. 4, pp. 99–100; A. Antoniak-Drożdż, *Przesłuchanie dziecka w procesie karnym – uwagi praktyczne*, „Prokuratura i Prawo” 2006, no. 6, pp. 45–49.

they cannot be liable for giving false testimony in juvenile matters because the conditions in Art. 233 § 1 Criminal Code are not met.²² At this point, a *de lege ferenda* request should be submitted to the legislator to modify the content of the decree and remove the provision on the liability of minors for giving false testimony.

2. Analysis of Written Explanation Templates Regarding the Scope of Rights and the Manner and Conditions of Hearing for Minor Witnesses

On 15 November 2024, along with the Regulation of the Minister of Justice dated 7 November 2024, on specifying written templates for informing suspects, victims, and witnesses of their rights and obligations, another regulation came into force – the Regulation of the Minister of Justice of 7 November 2024, on specifying written explanation templates for suspects, victims, and witnesses regarding the scope of their rights and the manner and conditions of their hearing. This second regulation serves as a supplement to the former and contains six attachments. Of these, Attachment No. 5 concerns minor witnesses and includes a template for explaining the rights and obligations, as well as the manner and conditions of hearing, of a witness under 18 years of age.

At first glance, from the perspective of an adult, especially one with legal education, the content of Attachment No. 5 RegWritExp, does not raise major concerns. It is colorful and contains illustrations, which differentiates

it from other legal documents typically found in criminal case files. It consists of 12 pages. The text is not consolidated but divided into sections. Key information is presented in bullet points and highlighted in bold and blue font. Moreover, attachment 5 RegWritExp, includes illustrations intended to relate to the information provided in the text.

Does the above therefore imply that the work of the Ministry of Justice on developing templates for explanations regarding the scope of rights and obligations, as well as the manner and conditions of hearing a witness under the age of 18, should be positively received? From an adult's perspective, perhaps yes. However, when adopting the perspective of a child, especially a young school-aged one, this view cannot be fully shared. From a substantive point of view, the first concern is the use of terms that may be difficult, or even impossible, for a child to understand, such as: “this is not required to protect your interests,” “cooperation,” “particularly close relationship,” or “disgrace.” The document also raises visual concerns. First, the purple color used in Attachment No. 5 RegWritExp should be more appealing to a child – i.e. that is, more cheerful, warm, and at the same time calming, e.g., dark pink, green, or orange. It would also be worth considering the use of different colors for different sections of the text. Second, the text in Attachment No. 5 should be justified, as in its current form it appears somewhat chaotic.

Third, the illustrations used do not help in understanding the content – they seem random and decorative rather than functional. Importantly, they are not colored but black, which may further increase a child's anxiety. While discussing the illustrations, attention should also be paid to the image of Pinocchio that appears crossed out in the document. While it may be understandable that the author intended to explain to the child that one must not lie when testifying, from both a psychological and educational perspective, this has been done improperly. Not only does the image fail to explain the difference between truth and lies or

²² Amicus curiae brief of the Helsinki Foundation for Human Rights from 2013; A similar position was also expressed by the Minister of Justice in a letter dated 29 May 2009 addressed to the Commissioner for Human Rights, in which he stated that a witness who is under 17 years of age is not given an oath and is therefore not subject to criminal liability for an act under Art. 233 § 1 of the Penal Code and cannot be warned of criminal liability, but should be advised that false testimony, i.e. giving false testimony or concealing the truth, is conduct criminalized as a crime (PRO-494684-II/05/DK).

encourage the child to tell the truth, but it may also cause fear that lying will result in being ridiculed (as Pinocchio's nose is often used jokingly in everyday speech). Furthermore, the child may feel that only they will bear the consequences of lying – whereas in reality, false testimony harms the accused, who may be unjustly convicted.

Moreover, while reading Attachment No. 5 RegWritExp, one may question the validity for issuing both a notice of rights and obligations for underage witnesses and a separate document explaining its contents. Why did the legislator, instead of issuing a single regulation containing a short, comprehensible, and plainly written notice, assign the Minister of Justice the task of issuing two regulations, each with attachments, where understanding one is dependent on becoming familiar with the other, and the combined content spans dozens of pages? For example, Attachment No. 6 RegWritInst addressed to witnesses under 18 years of age has 16 pages, and the explanation template for this notice, provided in Attachment No. 5 RegWritExp, is 12 pages long – totaling 28 pages. This means that a minor must read 28 pages to fully and consciously understand their rights and obligations in criminal proceedings. However, given the format and content of Attachments No. 6 and No. 5, they will still require the assistance of a parent or guardian. An 8-year-old child, even if able to read the text, would not be capable, considering attention span at that age, of reading such a volume of material in one sitting.²³

For these reasons, Attachment No. 5 RegWritExp does not allow for an unambiguous positive assessment of the adopted regulation. Therefore, *a de lege ferenda* postulate should be formulated, not only to shorten and make the content of the notice more appealing, but also to create one comprehensive document addressed to underage witnesses. Such a document should include both the notice itself and an explanation of key aspects of the child's hearing, in a way

that is understandable for minors of all ages, or alternatively, to issue separate notices for minors under 12 and those aged 12 and above.

3. Analysis of Templates for Information about the Course, Manner and Conditions of Hearing for Minor Witnesses

From the perspective of a minor witness, in addition to the Minister of Justice's regulation of 7 November 2024 regarding the templates of written notices of rights and obligations for the suspect, victim, and witness, and the regulation of 7 November 2024 on the templates of written explanations for suspects, victims and witnesses regarding the scope of their rights and the manner and conditions of interrogation, the following are also significant – the regulation of 31 October 2024 concerning templates of information about the course, procedure and conditions of interrogation of suspect and witness who have not reached 18 years of age, and the regulation of 13 January 2025 regarding templates of information about the course, procedure and conditions of interrogation for persons interrogated under the regime specified in Art. 185a–185c and 185e of the Polish Code of Criminal Procedure.²⁴ These regulations are particularly important because they include attachments addressed to witnesses under 18, providing information about hearing rules, location, presence of people during the interrogation, and how the evidentiary act unfolds.

Moreover, the existence of these regulations constitutes a form of implementation of the minor's right to prepare for participation in a hearing, which for a child questioned under the ordinary procedure results from Art. 171 § 8 CPC (according to which prior to the first hearing a person who has not reached 18 years of age receives information about the course, manner

²⁴ Regulation of the Minister of Justice of 22 September 2024 on the manner of preparing and conducting hearings under Art. 185a–185c and 185e of the CPC and the conditions for premises to be used in such hearings (Journal of Laws 2024, item 1477).

²³ A. Kamza, *Rozwój dziecka...*, pp. 33–39.

and conditions of the hearing. The information includes a descriptive or graphic presentation of the course, manner and conditions of the hearing. At least 3 days should go by between delivery of the information and the date of the hearing, unless the interests of the proceedings preclude it), and for a child questioned under the protective procedure it arises directly from § 9 section 1 point 2 of the Regulation of the Minister of Justice of 22 September 2024 on the manner of preparing and conducting hearings under the procedure specified in Art. 185a–185c and 185e of the Code of Criminal Procedure and the conditions that the rooms intended for conducting such hearings should meet, according to which before the hearing an expert psychologist conducts a preliminary conversation with the witness in the hearing room in order to establish contact with them, determine or recognize their current physical, mental, emotional state, acquaint them with the course and location of the hearing and, if necessary, reduce their level of anxiety and fear, and indirectly from Art. 185f § 2 of the Code of Criminal Procedure, pursuant to which before the first hearing, a person questioned under the procedure specified in Art. 185a–185c and 185e receives information about the course, manner and conditions of the hearing. The information includes a descriptive or graphic presentation of the course, manner and conditions of the hearing. At least 3 days should go by between delivery of the information and the date of the interrogation, unless the interests of the proceedings preclude it.

With respect to a minor witness questioned under the ordinary procedure, the information referred to in Art. 171 § 8 of the Code of Criminal Procedure was presented in Attachment No. 2 to the Regulation of the Minister of Justice of 31 October 2024 on the determination of templates of information about the course, manner and conditions of the hearing of the suspect and witness who have not reached 18 years of age.²⁵ Analysis

of the content of Attachment No. 2 referring to a witness under 18 years of age allows for the formulation of the following conclusions. First, it appears that the content of such information visually should be more attractive to its addressees. An interesting solution would be for example the addition of a drawing of the courtroom, indicating the witness's location, where the minor will stand during the hearing, and in the case of an interview in preparatory proceedings – a drawing of the room in which the interrogation takes place. Secondly, it would be easier for minors to understand if more colors were applied to the content and key phrases or words were bolded. It would also be useful to justify the text. Thirdly, objections are also raised by the volume of the text – the instruction has 10 pages. Fourthly, the text of Attachment No. 2 should be differentiated in terms of difficulty for children below and above 12 years of age. One can certainly assume that a child, for example 7 years old, as long as they will not have difficulty reading the text, may have difficulty understanding it. Thus a postulate must be formulated here for refining the content of Attachment No. 2 both visually and dividing this content by the age of its addressees.

As for minors interviewed under the protective procedure, the information referred to in Art. 185f § 3 of the Code of Criminal Procedure was presented in Attachments 1–3 to the Regulation of the Minister of Justice of 13 January 2025 on the determination of templates of information about the course, manner and conditions of hearings for people being questioned under the procedure specified in Art. 185a–185c CPC and Art. 185e CPC. Analysis of the content of Attachment No. 1 containing the template information about the course, manner and conditions of the hearing of the victim being questioned under the procedure specified in Art. 185a CPC, Attachment No. 2 containing the template information about the

²⁵ Regulation of the Minister of Justice of 31 October 2024 on templates of information regarding the course, manner and conditions of hearings for suspects and

witnesses under 18 years of age (Journal of Laws 2024, item 1645).

course, manner and conditions of the hearing of the witness questioned under the procedure specified in Art. 185b CPC, and Attachment No. 3 containing the template information about the course, manner and conditions of the hearing of the victim questioned under the procedure specified in Art. 185c CPC allows for the formulation of the following conclusions. First of all, one should appreciate the legislator's action in which they introduced the obligation for the Minister of Justice to create templates of such information. Nevertheless, it seems that the content of such information visually should be more attractive to its readers. An interesting solution would be for example including a drawing of the hearing room, waiting room and technical room, which would allow easier imagining of the space in which the hearing will take place. Although Attachments 1–3 contain a drawing of the hearing room, its quality and execution, as well as colors, do not create a friendly and safe impression, and the other drawings added to the content look as if they were pasted in randomly and do not contribute anything meaningful. It would therefore be worth replacing them with other graphics related to the content and made in better quality. Moreover, it would be easier and more attractive for minors if more colors were applied and the important phrases or words were bolded. It would also be worthwhile to justify the text and describe in bullet points the stages of the hearing and highlight the rights that apply during the hearing.

Summary

The considerations made in this article lead to the following thoughts. First and foremost, one should appreciate the legislator's actions, who provided in the content of the provisions of the Code of Criminal Procedure delegation in Art. 171 § 9, Art. 185f § 3 and Art. 300 § 4 for the Minister of Justice to issue regulations containing attachments addressed to a minor witness presenting instructions, explanations of those instructions, as well as information on

the rules, course and place of hearing, as well as the persons participating in that act. Their release must be regarded with full conviction as a step in the right direction and a change for the better, because until now there have been no such official instructions and information about hearing adapted to the age and level of development of the child, aside from those developed and published by non-governmental organizations. However, after analyzing the content of the Regulation of the Minister of Justice of 7 November 2024 on determining templates of written instructions regarding the rights and duties of the suspect, victim and witness, the Regulation of the Minister of Justice of 7 November 2024 on determining templates of written explanations for the suspect, victim and witness regarding the scope of their rights and the manner and conditions of hearing, the Regulation of the Minister of Justice of 31 October 2024 on determining templates of information about the course, manner and conditions of hearing of the suspect and witness who have not reached 18 years of age, and the Regulation of the Minister of Justice of 13 January 2025 on determining templates of information about the course, manner and conditions of hearing for people questioned under the procedure specified in Art. 185a–185c and 185e of the Code of Criminal Procedure, from the point of view of the best interests of the child, the result of the Ministry of Justice's actions must be regarded as unused potential. This is evidenced by the fact that the Minister of Justice, having financial means and access to expert educators, psychologists and consultations, issued regulations containing templates of instructions, explanations and information for minor witnesses, which are, as shown by the above analysis, poorly thought-through, unrefined, too lengthy, contain random pictures and drawings that do not graphically clarify their content and phrases that may be incomprehensible to their addressees and are virtually contrary to the purpose for which they were introduced, i.e. instructing the child participating in criminal proceedings

in a manner adapted to their age and level of development.

Moreover, one cannot overlook the fact that it is unclear why the legislator did not foresee the creation for the minor, instead of three separate documents totaling nearly 30 pages – a single instruction consisting of 4–5 pages and in a simple, accessible way for the minor using graphics and drawings presenting the rights as well as duties of the minor witness, the place of hearing, its course

and information about people taking part in that action. Crucially, this document should be formulated in such a way as to enable the minor who has reached school age and has acquired the ability to read, to become acquainted with it without the assistance of parents, since one must not forget that not always the situation in which the minor witness or victim who is to be questioned as a witness allows them to obtain support and help from a parent or guardian in preparing for this procedural act.

Abstrakt

Nowe wzory pouczeń i informacji o przebiegu przesłuchania dla małoletnich świadków w procesie karnym – zmiana na lepsze czy niewykorzystany potencjał?

Słowa kluczowe: świadek; przesłuchanie; pouczenie o prawach i obowiązkach; zasada informacji; małoletni; wtórna wiktyimizacja

Małoletni świadek jest szczególnie narażony na wtórną wiktyimizację w związku z jego udziałem w procesie karnym, niezależnie od tego, w jakim trybie odbywa się przesłuchanie – zwykłym czy ochronnym. Sposobem na uchronienie go przed traumą mogącą wyniknąć z jego kontaktu z wymiarem sprawiedliwości, a także na pełniejszy i bardziej świadomy udział w przesłuchaniu jest pouczenie go o przysługujących mu prawach i ciężących na nim obowiązkach w sposób dostosowany do jego wieku i stopnia rozwoju. W związku z nowelizacją przepisów Kodeksu postępowania karnego ustawą z dnia 13 stycznia 2023 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw Minister Sprawiedliwości został w drodze delegacji ustawowej zobowiązany do wydania rozporządzeń zawierających nowe wzory pouczeń, wyjaśnień i informacji dotyczących przesłuchania oraz procesu karnego, które adresowane są także m.in. do małoletniego świadka. Autorka w niniejszym artykule dokonuje analizy i oceny wydanych przez Ministra Sprawiedliwości wzorów pouczeń dla małoletnich świadków oraz podejmuje próbę udzielenia odpowiedzi na pytanie postawione w tytule, czy nowe wzory są zmianą na lepsze z punktu widzenia dziecka przesłuchiwanego w procesie karnym, czy też Ministerstwo Sprawiedliwości mimo posiadanych możliwości i środków nie wykorzystało potencjału płynącego z nowelizacji przepisów i nie sprostało opracowaniu wzorów pouczeń, które byłyby przystępne w odbiorze przez małoletniego.

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