# EU COMMON MINIMUM STANDARDS FOR CRIMINAL PROCEEDINGS WITH RESPECT TO VICTIMS OF CRIME

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ABSTRACT

*This article explores the implementation of common minimum standards in Polish criminal procedure, particularly focusing on the protection and rights of victims of crime. With Poland's accession to the European Union, the country has aligned its criminal legislation with EU directives, including the key Directive 2012/29/EU, which has improved the position of victims in criminal proceedings. This article focuses on how the Polish legal framework has integrated these minimum standards through its core criminal laws, including the Code of Criminal Procedure, while highlighting essential victim rights such as protection, compensation, and access to justice. Moreover, the article addresses the unique challenges posed by the need to balance state power and individual dignity under criminal law. Special attention is given to victims' protection against secondary victimization and the need for procedural safeguards. It underscores the broader impact of EU-driven legislative changes and their role in shaping a more just and supportive environment for victims across member states.*

KEYWORDS

*EU*
*Poland*
*criminal proceedings*
*common minimum standards*
*victim's rights*

## 1. Introduction

While European states were not united in the common organism of the European Union, each of them created their own policy for criminal legislation, separately from the others. Entry into the European Union system automatically meant that certain guidelines and recommendations binding this Union system together and arising directly from it, began to be translated into national legislation, including those concerning criminal

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https://doi.org/10.55073/2025.1.255-279

matters[2]. Given the fact that criminal law is an important and sensitive element of state legislation, it is worth considering what the minimum standards applicable to criminal procedure are and how they function, which have been adopted directly into national law in Poland from the European Union, particularly with regard to the protection of the most vulnerable subjects such as victims of crime.[3]

## 2. The legal basis for conducting criminal cases in Poland

In order to take a structured approach, it is important to note that the criminal law system in Poland is based on three basic codes.

The first is the Act of 6 June 1997 Criminal Code[4]. This piece of legislation sets out the fundamental rules for the way in which individuals incur criminal liability, covering inter alia, description of the offence, circumstances excluding the unlawfulness of the act, rules for the sentencing, issues related to the statute of limitations for incurring criminal liability, provides for a catalogue of penalties and criminal measures, etc.

The second is the Act of 6 June 1997, Code of Criminal Procedure[5]. Formal criminal law is also called procedural criminal law, criminal process or criminal procedure. Formal criminal law is a set of legal provisions regulating the rules of conduct of public authorities in criminal cases, the rules of their initiation and conduct, and the procedure and forms for carrying out particular procedural actions. Criminal law also provides a catalogue of powers and duties of procedural authorities, defines a catalogue of procedural parties together with their rights and duties, and a catalogue of procedural authorities and other participants in criminal proceedings. Moreover, it lays down the rules for collecting, recording and introducing into criminal proceedings the evidence collected in the case.[6] There is a close relationship between formal criminal law and substantive criminal law. Formal criminal law plays a subordinate role to substantive criminal law, by activating and implementing substantive criminal law.[7]

The third is the Act of 6 June 1997, the Executive Penal Code[8], containing the provisions necessary for the enforcement of sentences imposed in criminal proceedings or other decisions taken therein[9]. In particular, the provisions of the Executive Penal Code contain rules for the execution of penalties, punitive measures, compensatory measures (to make good the damage caused by the crime), precautionary measures, and other decisions made in criminal proceedings, etc.[10]

2 | Schütze, 2021; Kaczorowska-Ireland, 2016; Horspool and Humphreys, 2012; Barnard and Peers, 2023; Davies, 2009; Garnett and Parsons, 2017, pp. 502–516; Moorhead, 2012, p. 125.
3 | Greer, 2007, pp. 20–49; McCart, Smith, and Sawyer, 2010, pp. 198–206; Bakker, Morris and Janus, 1978, pp. 143–148; Maguire, 1991, pp. 363–433; Cohen and Miller, 1998, pp. 93–110; Hembree and Foa, 2003, pp. 187–199.
4 | Act of 6 June 1997 – Penal Code. (Journal of Laws of 1997, No. 88, item 553).
5 | Act of 6 June 1997 – Code of Criminal Procedure. (Journal of Laws of 1997, No. 89, item 555).
6 | Skorupka, 2017, p. 26.
7 | Dudka and Paluszkiewicz, 2021, p. 22.
8 | Act of 6 June 1997 – Executive Penal Code (Journal of Laws 1997 No. 90 item 557).
9 | Gerecka-Żołyńska and Sych, 2014, p. 17.
10 | Kuć, 2017, p. 19.

## 3. The peculiarities of the criminal law system in the state as a background for determining minimum standards

The aforementioned three legal acts in force in Poland form the foundations of criminal law. They are the pillars of the criminal law system in the state, which is triggered by the unauthorised entry of an individual into the area of orders and prohibitions characteristic of criminal law. This criminal legislation is an essential element of the state's criminal policy.[11] Nevertheless, there are many types of policies in place in every country, from with social policy, health policy, insurance policy, economic policy to criminal policy.[12] Therefore, it is often assumed that all restrictions on an individual's negative behaviour which is contrary to the law falls within the scope of the state's criminal policy in the broadest sense.[13] Thus, 'penal policy is one element of criminal policy, by which we mean a system of diverse and interrelated state and social measures aimed at preventing crime, removing the causes of and circumstances conducive to crime, and reducing as far as possible—under the given conditions—the possibility of criminogenic factors of all kinds'.[14] There is no doubt that 'criminal policy originates within criminal law and is embodied by the application of that law in practice'.[15] It presupposes the activation of criminal sanctions defined in the law that take away or restrict a person's natural freedom in various respects, from property to liberty.[16] However, in the light of this, there is no doubt that criminal policy, with its legal elements, is a very sensitive element within the functioning of the state.[17] It shapes the state's attitude towards the individual and also distinguishes a given state from other states. Criminal law, together with the criminal policy pursued by the state, is an example of the state's monopoly on power. Criminal policy, as an internal element of the functioning of the state, can never and should never be delegated outside the borders of the state. It applies within the state and is an immanent feature of the state. Criminal policy is characterised by its multifaceted nature and its strong links to and source being located directly in the public authority of a state. This is because both substantive criminal law and formal (procedural) criminal law are areas of public law, unlike, for example, civil law, which belongs to private law. The very fact that we are dealing with public law sets per se a kind of interesting characteristic. Indeed, public law (ius publicum) can be defined as a set of legal norms whose main task is to protect the public interest, i.e. all individuals and entities functioning in the public interest[18]. It is worth mentioning here that the distinction between public law and private law has its roots in Roman law[19]. The well-known Roman term is '*publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utylitatem: sunt enim quaedam publice utilia quaedam privatim*', meaning that 'public law is that which concerns the

11 | Krajewski, 2019, p. 41.
12 | Opałek, 1986, p. 238.
13 | Pływaczewski, 2021, p. 115.
14 | Krukowski, 1982, p. 94.
15 | Migdał, 2008, p. 125.
16 | Wielec, 2017, p. 151.
17 | Jaroch, 2023, p. 29.
18 | Liżewski, 2018, p. 47.
19 | Kania-Chramęga, 2021, p. 119.

system of the Roman state, private law that which concerns the benefits of individuals, for there are some [norms] generally useful, some private'[20].

In light of these preliminary assumptions, it is possible to try to outline the peculiarities of criminal law as a characteristic element of public law in the state and, at the same time, as a characteristic element of the state's criminal policy.

The first peculiarity of the field of criminal law, is a very pronounced lack of equality of position between the entities within legal relationships arising and functioning in this area. In this field, one party is always the state and its organs, while the other party is often an individual functioning in that state, who – in *statu esse* – is subject to the authority of that state. The point is that the norms of public law are addressed to all those who make up and function within a given society. While it is society that is sovereign vis-à-vis its authority, it is the authority that governs and provides security for society. This concept is very familiar in legal theory and philosophy and in legal doctrines in the form of the concept of the social contract.[21] Very briefly, it can be assumed that, according to the aforementioned theory of the social contract, legitimate power over society (the state) is built on a common consensus, because it derives from the granting of consent by society to this power to undertake, vis-à-vis this society, various actions, some of which are even highly offensive actions.[22] An element of this agreement is the consent of society to the use of repressive measures against its members by the state authority in order to maintain, among other things, social peace and order.[23] However, it is the use of these kind of summary measures, characteristic of criminal law, which often involves interference with individual rights. This, moreover, is precisely the essence of the criminal law system. An elementary feature of it, which also partly derives from the aforementioned social contract, is the *ius puniendi*, which belongs exclusively to the state authority, and thus the exercise of the so-called right to punish the individual as a response to that individual's behaviour, if such behaviour is incompatible with the standards of the state.[24] The community agrees to grant the state the very dangerous right to punish individuals, doing so in the spirit of the assumption that the authority will do so to a certain extent and with respect for certain universal guarantees and titular minimum standards. Therefore, this element in the form of the right to punish belonging only to the state authority makes it the dominant power vis-à-vis the individual. It is the criminal law system, as a set of regulations, everywhere in the world that is characterised by the aforementioned lack of equality of subjects.

The second feature of the area of criminal law – apart from the presented lack of preservation of equal positions of subjects – is the use of the repressive element. For nowhere else are the elements of repressive influence on the individual by the authorities so strongly developed as in the field of what is broadly understood as criminal law. Repression can be defined as a set of sanctions, envisaged as a reaction to the unlawful behaviour of all members of a community; it is a harsh, often violent measure used as a

20 | Żeber, Rominkiewicz and Szymoszek, 1998, p. 11.
21 | Porębski, 1986, p. 220.
22 | Peno, 2015, p. 81.
23 | Zamęcki, 2011, p. 15.
24 | Kania, 2017, p. 33.

form of pressure, punishment or retaliation.[25] Repression is an immanent feature of the field of criminal law, and moreover a necessary one due to its effectiveness and observance, as well as for prevention. Substantive criminal law is a field where the principles of criminal responsibility are presented, the forms of offences are defined, there are exemptions from criminal responsibility and, finally, penalties are provided for the offences in question. Any criminal punishment is a particularly harsh measure based on the aforementioned coercive element, which is specific to the area of criminal law, and can only be imposed by a state authority. Criminal punishment is activated because of the negative behaviour of the perpetrator of a crime as a response to the crime they have committed. Criminal punishment – depending on its type – entails a certain degree of freedom (for example – through loss of liberty), moral or economic discomfort for the perpetrator and his or her family.[26] It is worth noting that several objectives of criminal punishment can be distinguished between. One major objective is that of justice, which is understood as a response to the crime committed and as a kind of reparation and compensation for the wrong that has been done to society by committing the crime. Another purpose is the preventive purpose, where the punishment is intended to have a rehabilitative and educational effect on society and is intended to prevent recidivism. A further purpose is the compensatory purpose of punishment, which is that of repairing the damage caused by the crime and compensating the victim.[27]

The third feature is the conflictuality of this field, or perhaps more precisely the axiological conflictuality, i.e. the occurrence of collisions and clashes of certain guiding values. Prima facie, the very essence, and assumptions of the criminal field in their simple juxtaposition provoke a conflict. One example is the value of human dignity, which is fundamental to all democratic legal systems and thus regarded as the supreme value at the heart of the basis of criminal proceedings conducted in any democratic state.[28] In this spirit, the Polish Constitution of the Republic of Poland emphasises the idea of respect for human dignity in the preamble, stating that the inherent and inalienable dignity of the human person is the source of human freedoms and rights, and then in the provision of Article 30, maintaining that the inherent and inalienable dignity of the human person is the source of human freedoms and rights. It is thus recognised that 'freedoms and rights find their justification in the very humanity and dignity of the human person. No one can deprive a person of this dignity, for it is inalienable. Freedoms and rights are not established, but declared, guaranteed and protected. The legislator's task is merely to formulate them in normative terms'[29]. Dignity as a source of rights requires taking into account the individual with all his or her potentialities and directing this right towards the development of the state and the individual'[30]. The provision of Article 30 of the Constitution therefore treats dignity not only as a foundation of rights, but also as a value and a legal norm [31]. The same is true of international and European Union legislation, where dignity is also

25 | Wielki Słownik Języka Polskiego. [Online]. Available at: https://wsjp.pl/haslo/podglad/33819/represja/4620735/w-polityce - odczyt na dzień 1 X 2024 (Accessed: 1 October 2024).
26 | Miłek, 2008, p. 253.
27 | Chmieliński, 2013, p. 33.
28 | Wielec, 2017, p. 154.
29 | Winczorek, 2000, p. 47.
30 | Wiśniewski and Piechowiak, 1997, p. 19.
31 | Granat, 2014, p. 3.

a supreme value.[32] However, dignity is often in conflict or even collision with the field of criminal law. For example, the use of preventive measures, subjecting an individual to examinations, criminal isolation, etc. all mean that, despite the fact that dignity is the highest value, it can often be affected by repressive interference by the public authorities involved in criminal proceedings. The same is true in the field of criminal law, which is, of course, also recognised as the basis and core value of criminal proceedings[33], however, it will not always be able to be known without any limitations. Classically, originating from Aristotle and developed by St Thomas Aquinas, the concept of truth means 'the correspondence (adequacy) of the content of a judgment with the actual state of affairs to which that judgment refers (*veritas est adaequatio conformitas intellectus et rei*).[34] In the context of criminal proceedings, material (objective) truth is the findings made by the relevant procedural authority reflecting a true, i.e. real and actual, account of the event, which is the substructure for a specific decision in criminal proceedings.[35] Formal truth, on the other hand, is an established account that is merely the unilateral result of an authority's action, taken on the basis of evidence and recognised only by that authority, or on the basis of other findings presented by the parties or other authorities involved, in complete isolation from the actual course of events that give rise to criminal proceedings[36]. Here, the aforementioned collision occurs when the truth, despite the possibility of knowing it, nevertheless is not or cannot be known. This fundamentally leads to a situation in which, although the truth is an important element of the determination in criminal proceedings, we do not succeed in knowing it at all costs. A limitation to learning the truth is, for example, the evidentiary prohibitions functioning in Polish criminal proceedings, which are treated as direct blocks to learning the truth and are binding in the name of protecting other values. Examples of these prohibitions include the prohibition of evidence of confessional secrecy or the prohibition of evidence in the form of journalistic secrecy.[37]

A fourth feature of the criminal law system is its hermeticity, by which it is understood as something closed and inaccessible to external influences[38]. This is because the vast majority of criminal law is primarily the domestic law of a country with negligible international connotations and influences. Criminal law, as the core and main element of a state's criminal policy, is essentially a closed system, belonging to and modelled only internally. The hermeticity of criminal law therefore consists in the fact that it is each individual state which creates its criminal law system, its solutions and its criminal policy, intended for its citizens who will be subject to criminal responsibility if committing a criminal act. In this sense, the hermetic nature of criminal law must be understood as an independent system specific to a particular state, designed by that state as part of its criminal policy. Sometimes it is partly susceptible to external factors. Among other things, it is not possible for external organisations, e.g. the EU, to shape a catalogue of penalties or define a crime as a basis for criminalising an act in a given country. Criminal law is clear in this respect and depends only on decision-making factors within the

32 | Polak and Trzciński, 2018, p. 257.
33 | Oręziak, 2020, pp. 187–196.
34 | Izydorczyk, 2014, p. 111.
35 | Boczek, 2020, p. 21.
36 | Kmiecik and Skrętowicz, 2009, p. 85.
37 | Wielec, 2012, p. 143.
38 | Nowadays, the influence of new technology on criminal proceedings is noticeable, see: Karski and Oręziak, 2021, pp. 55–69; Oręziak and Świerczyński, 2019, pp. 257–275; Oręziak, 2019.

state. European integration, on the other hand, can, to a certain extent, set the general direction of a country's criminal law system by focusing on setting universal minimum standards.

## 4. The concept of the victim as a fundamental participant in a criminal case

The term victim does not appear in Polish criminal legislation. It is a concept from the field of victimology[39]. Victimology itself is the area of study which deals with victims of crime and the study of their role in the genesis of crime, in particular the identification of factors that create vulnerability to becoming a victim of crime and methods to prevent this process.[40] The concept of victim is therefore a largely academic one.

On the other hand, in legal terms, in the context of criminal proceedings in Poland, the concept that directly relates to the concept of victim is the concept of victim[41]. Here, the situation is completely different, as the term victim is a term directly defined and functioning in the provisions of the Code of Criminal Procedure. This refers to the provision of Article 49 of the Code of Criminal Procedure, where the injured party is a natural or legal person whose legal interests have been directly violated or threatened by an offence. In addition, the wronged party may also be a non-corporate entity, i.e. a state or local government institution or other organisational unit to which separate provisions confer legal capacity. An insurance company is also considered a wronged party to the extent to which it has covered the damage caused to the wronged party by the offence or is obliged to cover it. In Poland, in cases of offences against the rights of persons performing gainful employment, sometimes the authorities of the State Labour Inspectorate may exercise the rights of the wronged party, if only within the scope of their activity they have disclosed the offence or requested the initiation of proceedings. On the other hand, in cases of offences by which damage has been caused to the property of an institution or an organisational unit, if the body of the wronged institution or organisational unit does not act, the rights of the injured party may be exercised by the state control authorities which, within the scope of their activity, have disclosed the offence or have requested the initiation of proceedings.[42]

39 | Maliszewski and Lewandowski, 2023, p. 61.
40 | Kuźniarowska, 2019, p. 116; Bieńkowska, 2000, p. 79.
41 | Park and Len-Ríos, 2010, pp. 591–606; Larson, 1940, p. 467; Sandoval-Villalba, 2009, pp. 243–282; Allan and Carroll, 2017, pp. 10–32; Kvastek, 2021, p. 65.
42 | Kulesza, 1995, p. 17; Czarnecki, 2019, p. 26.

## 5. European Union law as a determinant of minimum standards in criminal matters

Given the specificities outlined above and the particularities of criminal law analysed, it is now worth turning to an analysis of the European Union's legislation and legislative initiatives specifically oriented towards criminal law.

Poland has been a member of the European Union for many years. The date of Polish accession to the European Union is 1 May 2004, when Poland, along with nine other countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia and Slovenia were granted full membership of the community[43]. It is worth mentioning that Poland's accession to the European Union was the result of a very complicated and long period of transition, which came immediately after the collapse of the communist system in the whole of Central and Eastern Europe.[44] Of course, being already a full member of the European Union, Poland adopts the designated legislative directions of the highest bodies of the Union[45]. In criminal matters, these will be a series of directives that oblige the Polish authorities to construct certain solutions in the area of criminal law.

However, the point of reference in this analysis is the position of the victim and, in terms of criminal law, the position of the victim. Therefore, European Union directives in this context should be concerned with protecting and significantly improving the position of the victim throughout the entire sequence of procedural steps in a criminal case. Thus, among others, European Union legislation in the form of the Directive of the European Parliament and of the Council of the European Union of 25 October 2012. (2012/29/EU) implementing the Directive on the rights, support and protection of victims of crime establishing minimum standards and replacing the Council Framework Decision (2001/220/JHA)[46] resulted in changes to the criminal law in Poland, mainly to the rules of criminal procedure.[47]

43 | Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union OJ L 236, 23.9.2003, pp. 17–930.

44 | Chruściel and Kloc, 2013, p. 89.

45 | Bicchi, 2010, pp. 976–996; Toshkov, 2010; Bondarouk and Mastenbroek, 2018, pp. 15–27; Bachtrögler, Fratesi and Perucca, 2020, pp. 21–34; Steunenberg and Rhinard, 2010, pp. 495–520; König and Luetgert, 2009, pp. 163–194.

46 | 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 OJ L 315, 14.11.2012, pp. 57–73.

47 | Bieńkowska and Mazowiecka, 2009.

This Directive aims to ensure that victims of crime receive adequate information, support and protection and are able to participate in criminal proceedings. It obliges Member States to ensure that victims are recognised and treated in a respectful, sensitive, personalised, professional and non-discriminatory manner in all their contact with victim support services or restorative justice services, or with competent authorities acting in the framework of criminal proceedings. In doing so, the rights set out in this Directive shall apply to victims in a non-discriminatory manner.

Particular importance is attached here to the protection of the child. Where the specific type of victim is a child, then in the application of this Directive, Member States shall ensure that the child's best interests shall be a primary consideration, to be assessed on a case-by-case basis. Priority shall be given to an approach tailored to the child, taking into account the child's age, level of maturity, views, needs and concerns. The child and the person with parental responsibility for the child or the child's other legal representative, if any, shall be informed of any measure or right specifically addressed to the child. According to the directive, the concept of victim covers a natural person who has suffered harm, including physical, mental, moral or emotional harm or material loss, directly caused by a criminal offence and family members of a person whose death has been directly caused by a criminal offence, where they have suffered harm as a result of the death of that person. The term 'family members' means the spouse, a person who is in a close and continuous relationship with the victim in a common household, relatives in the direct line, siblings and dependents of the victim. The term 'child' here means any person under the age of 18.

This directive introduces a number of victims' rights, which have to be implemented in the field of criminal law area in the Member States. At the same time, these victims' rights form the nucleus of minimum standards in the field of criminal law.

The first group of these standards pertains to the general position of the victim's rights in a criminal case. Here, the victim has the right to understand and be understood, which means that the relevant internal legal acts of the state should include solutions to help victims understand and be understood from the moment of their first contact with the competent authority and during any further necessary interactions with them as part of the criminal proceedings, as well as when receiving information from these authorities. This will be achieved by ensuring that information is provided to victims in simple and accessible language, either orally or in writing. It is also important that the delivery of information considers the personal characteristics of the victim, including any types of disabilities that may affect the victim's ability to understand or be understood. Another right in this group is the right to receive information from the moment of first contact with the competent authority. This means that from the moment of initial contact and without unnecessary delay, victims should be offered basic information, including: the procedures for reporting a crime and the victim's role in such procedures; how and under what conditions the victim can obtain legal advice; legal assistance, and other forms of support; how and under what conditions the victim can receive protection, including protective measures; how and under what conditions the victim can receive compensation; and how and under what conditions the victim is entitled to both oral and written translation services. Other rights granted to victims are those when filing a report of a crime. This means that victims should receive written confirmation from the relevant authority of the Member State that a formal report of the crime has been submitted, including basic information about the reported offense. In turn, the general right to receive information

about the case ensures that victims are informed without undue delay of their right to obtain important information about the criminal proceedings initiated because of the report of a crime against them. Upon request, they should also receive information such as decisions to discontinue or close the investigation, or not to prosecute the perpetrator, details of the date and location of the trial, and the nature of the charges against the perpetrator, etc. This group of rights also includes the right to oral and written translation services. This means that victims who do not understand or speak the language of the criminal proceedings should be provided, upon request, with free oral translation services – depending on their role in the criminal justice system – at a minimum during all interviews or hearings conducted by investigative or judicial authorities, including police interrogations, as well as oral interpretation during their active participation in the trial and any necessary hearings. The last right in this group is the right to access victim support services. This ensures that victims, according to their needs, have free access to confidential victim support services before the start of criminal proceedings, during the proceedings, and for an appropriate time after their conclusion. Family members also have access to victim support services according to their needs and to the extent of the harm suffered as a result of the crime committed against the victim. The right to support from victim support services includes at least the provision of information, advice, and assistance regarding victims' rights, including the use of national compensation schemes for damages resulting from the crime, and support related to the victim's role in criminal proceedings, including preparation for participation in the trial. The second group of victims' rights consists of rights that guarantee fair and just participation in criminal proceedings. The first right is the right to be heard. This ensures that victims have the opportunity to be heard during the criminal proceedings and to present evidence. When a child who is a victim is being questioned, their age and maturity must be appropriately taken into account. Another right in this group is the right to appeal a decision not to prosecute. This guarantees victims, in accordance with their role in the criminal justice system, the right to appeal a decision not to prosecute. The procedural rules for such an appeal are determined by national law. The next right is the right to safeguards in the context of restorative justice services. This right is also in line with Recommendation No. CM/Rec(2018)8 of the Committee of Ministers of the Council of Europe for member states concerning restorative justice in criminal matters[48]. It is understood that 'restorative justice' is a process that enables those harmed by a crime and those responsible for the harm, if they voluntarily agree, to actively participate in resolving the issues arising from the crime with the help of a trained and impartial third party. Restorative justice often takes the form of a dialogue (direct or indirect) between the victim and the offender; other individuals directly or indirectly affected by the crime may also be involved if appropriate. These may include supporters of the victims and offenders, relevant services, or members or representatives of the communities impacted by the crime. Depending on the country and management approach, restorative justice may include, among other things, mediation between the victim and the offender.[49] In this sense, 'restorative justice' is a process that allows those harmed by a crime and those responsible for the harm, if

48 | Recommendation CM/Rec(2018) 8 concerning restorative justice in criminal matters. [Online]. Available at: https://search.coe.int/cm#{%22CoEIdentifier%22:[%2209000016808e35f3%22],%22sort%22:[%22CoEValidationDate%20Descending%22]} (Accessed: 1 October 2024).

49 | Filip, 2010, p. 5.

they voluntarily agree, to actively participate in resolving the issues arising from the crime with the help of a trained and impartial third party. Restorative justice is 'often a way of responding to crime which focuses on the needs of the victim, enabling all those directly affected by the crime – victim, offender, their families, and community members – to actively participate in the process of repairing the harm done.'[50] Here, the right is aimed at avoiding so-called re-victimization.[51] Therefore, in order to protect the victim from secondary and repeat victimization, intimidation, and retaliation, Member States take measures to be applied during the provision of restorative justice services. The right to legal aid, as provided in the directive, ensures victims have access to legal assistance if they have the status of a party in criminal proceedings.

Another right is the right to reimbursement of costs, which grants victims participating in criminal proceedings the possibility of obtaining reimbursement for expenses incurred due to their active involvement in the proceedings, according to their role in the criminal justice system. The right to the return of property ensures that, based on a decision of the competent authority, victims promptly receive the return of any recoverable property seized during the criminal proceedings, unless it is necessary for the purposes of the proceedings. The right to a decision on compensation from the offender during criminal proceedings guarantees victims the right to obtain, within a reasonable timeframe, a decision regarding compensation from the offender, unless national law stipulates that such a decision is made in a separate legal proceeding.

The final right is for victims residing in another Member State, which ensures the possibility of taking appropriate measures to minimize difficulties when the victim resides in a Member State other than the one where the crime was committed.

The third group consists of the rights of victims with specific needs. This group begins with the right to protection. According to the directive, without prejudice to the right of defense, Member States ensure the availability of measures to protect victims and their family members from secondary and repeat victimization[52], intimidation, and retaliation – including measures to mitigate the risk of emotional or psychological harm – and to protect the dignity of victims during questioning or while giving testimony. Another right in this group is the right to avoid contact with the offender. In this sense, Member States are required to establish the necessary conditions to ensure that victims and, if necessary, their family members can avoid contact with the offender in the premises where criminal proceedings are conducted, unless such contact is required in the interest of the proceedings. The right to protection of victims during the investigation phase ensures that, without prejudice to the right of defence and in accordance with judicial discretion, Member States ensure that during the investigation: victims' interviews are conducted without undue delay after the crime has been reported to the competent authority. An important right is the protection of privacy. Here, according to the directive, Member States ensure that competent authorities can take appropriate measures during criminal proceedings to protect the privacy, including the personal characteristics and image of victims and their family members. Additionally, Member States ensure that

50 | Łukawska-Malicka, 2022, p. 43.
51 | Tkacz, 2020, p. 118; Bieńkowska, 2007-2008, p. 67.
52 | Wolhuter, Olley and Denham, 2008; Farrell, 1992, pp. 85–102; Rock, 2017, pp. 30–58; Green, 2012, pp. 107–134; Walsh et al., 2003, pp. 233–238; Hope and Trickett, 2008, pp.37–58; Roccato, 2007, pp. 119–141; Brunt, Mawby and Hambly, 2000, pp. 417–424.

competent authorities can take all lawful measures to prevent the public dissemination of any information that could lead to the identification of, for example, a child victim. An interesting right for victims in this group is the individual assessment to determine the victim's specific protection needs. This means that Member States ensure that victims are subjected to a timely individual assessment, in accordance with national procedures, to identify specific protection needs, particularly the risk of secondary and repeat victimization, intimidation, or possible retaliation. Special attention is given to children in this regard. The directive outlines the right to protection for child victims during criminal proceedings, which includes firstly, during the investigation, all interviews with a child victim can be recorded audiovisually, and these recordings can be used as evidence in criminal proceedings. Secondly, during the investigation and trial, in accordance with the role of victims in the criminal justice system, the competent authorities shall appoint a special representative for the child victim if – under national law – the persons exercising parental authority cannot represent the child victim due to a conflict of interest between them and the victim, or if the child victim is unaccompanied or separated from the family. Thirdly, if the child victim has the right to legal counsel, they shall have the right to their own legal counsel and representation, in their own name, in proceedings where there is or could be a conflict of interest between the child victim and the persons exercising parental authority.

## 6. The field of Polish criminal law as a determinant for minimum standards in criminal cases

As indicated above, the field of Polish criminal law consists of three basic types of codifications (the Criminal Code, the Criminal Procedure Code and the Executive Criminal Code). When analysing this field, it is worth noting that to a great extent, the issue of minimum standards for the victim is the provisions of criminal procedure. Furthermore, it is here that it should first be determined how the position of victims in a criminal case has been safeguarded in the light of the EU directive on victims' rights analysed here. It is the respect for the position of the victim according to this directive that should ensure that victims throughout the EU have the right to equal access to support services, in order to enable victims to benefit fully from the rights that are laid down in the directive. Member States were required to transpose the provisions of this Directive into national law and implement them in practice by 16 November 2015[53].

Due to the extensive nature of Polish procedural and criminal legislation, only a fragmentary and example-based analysis of the title issue will be possible here.

The first of the victim's rights in the Polish legal order, and the most fundamental, is the right to report the possibility of a crime. According to the provisions of Article 303

53 | See Judgment of the Court of 4 December 1974, Yvonne van Duyn v Home Office. Reference for a preliminary ruling: High Court of Justice, Chancery Division – United Kingdom. Case 41-74 (ECLI:EU:C:1974:133); Judgment of the Court of 5 April 1979, Criminal proceedings against Tullio Ratti. Reference for a preliminary ruling: Pretura di Milano – Italy. Case 148/78 (ECLI:EU:C:1979:110).

of the Polish Code of Criminal Procedure, if there is a justified suspicion that an offence has been committed, a decision to launch an investigation shall be issued either ex officio or as a response to a notification of an offence. This decision shall specify the act under investigation and its legal qualification. Additionally, upon learning that a crime prosecuted ex officio has been committed, any person has a social obligation to notify the public prosecutor or the Police. Such notification may be made orally, in which case a report shall be drawn up, or in writing in the form of a written notification addressed to the law enforcement authorities.

Further rights of the victim include the right to legal aid. This is defined, inter alia, by the provision of Article 51 § 2 of the Code of Criminal Procedure, according to which, if the victim is a minor or totally or partially incapacitated person, their rights are exercised by a legal representative or a person under whose permanent custody the victim remains. In addition, if the victim is an incapacitated person, in particular due to age or health, their rights may be exercised by the person in whose custody the victim remains. By contrast, if the victim is not person, procedural actions are carried out on behalf of the victim by the party authorised to act on their behalf. Legal assistance is also guaranteed to the victim by providing them with legal support through the action of their attorney. Therefore, pursuant to Articles 87(1) and 88 of the Code of Criminal Procedure, the victim may appoint an attorney during the course of criminal proceedings. If the victim demonstrates that their financial situation does not allow them to bear the costs of an attorney without harm being caused to themselves and their family, they may apply to the public prosecutor (in pre-trial proceedings) or to the court (in court proceedings) for the appointment of an attorney ex officio. The age of the victim is also relevant, as pursuant to Article 171(3) of the Code of Criminal Procedure, if the victim is under 15 years of age, any actions involving them should, as far as possible, be carried out in the presence of their legal representative or actual guardian, unless this is prevented in the interests of the proceeding themselves. In cases of offences committed with the use of violence or unlawful threats and in cases of offences against liberty, against sexual freedom and morals and against the family and guardianship, pursuant to 185a of the Code of Criminal Procedure, an adult designated by the victim is entitled to be present when the victim is cross-examined, as long as this does not restrict the freedom of expression of the person under cross-examination. The victim may also exclude the judge or prosecutor on the basis of a motion, if any circumstance causes a justified doubt as to their impartiality.

The guarantees outlined above are only examples of the implementation of the European Union Directive referred to. It is worth pointing out that there are several standards for the rights of victims in criminal cases for which the legal bases lies outside the Code of Criminal Procedure.

These bases include the Law of 28 November 2014 on the Protection and Assistance of the Victim and Witness[54]. This Act sets out the terms, conditions and scope of protection and assistance measures for victims and witnesses. The Act applies if there is a threat to the life or health of persons close to the victim or witness in connection with pending or completed criminal proceedings involving the victim or witness or criminal fiscal proceedings involving the witness. Measures of protection and assistance include protection during the trial, personal protection, and assistance with relocation. This protection

54 | Act of 28 November 2014 on protection and assistance for injured parties and witnesses (Journal of Laws of 2015, item 21, of 2024, item 1228).

during a procedural action is the protection that can be given in the event of a threat to the life or health of the protected person during and for the duration of the procedural action. Protection during a procedural activity may consist of the presence of police officers in the vicinity of the protected person during a procedural activity involving them, on the way to the place where the activity is carried out or on the way back. Personal protection, on the other hand, may be granted in the event of a high degree of danger to the life or health of the protected person in connection with criminal or criminal fiscal proceedings. Personal protection may consist of permanent presence of police officers near the protected person, temporary presence of police officers near the protected person, temporary observation of the protected person and the environment in which they are staying, or indicating to the protected person safe places to stay and the time and safe manner of movement in determining the extent, conditions and manner of contact of the protected person with other persons. Furthermore, relocation assistance may be provided in the event of a high degree of danger to the life or health of the protected person in connection with criminal or fiscal criminal proceedings, if there is a need for long-term protection and other means of protection and assistance may be insufficient, in cases whose trial at first instance falls within the jurisdiction of the district court, and in particularly justified cases also in other cases. Assistance in the area of relocation consists of taking organisational measures enabling the protected person to stay in a different place than the previous one by providing temporary accommodation ensuring basic living needs are met, assistance in renting a flat, assistance in moving, and assistance in dealing with important life issues related to the change of residence. A person who has been assisted to relocate and who has no source of income or cannot work because of a risk to life or health may be granted financial assistance to meet basic living needs, to cover all or part of the costs of temporarily providing housing or renting accommodation, and to cover the costs of obtaining certain health care services.

Another example is the issue of legal aid including that implemented in provisions outside the Criminal Procedure Code. One example is the special law of 5 August 2015 on free legal aid, free civic counselling, and legal education[55]. The Act sets out the rules for the provision of free legal aid, the provision of free civic counselling, as well as the rules for the implementation of legal education tasks. Free legal aid and free civic counselling are available to an entitled person who is unable to bear the costs of paid legal aid.[56]

Other rights of the victim include the right to an interpreter, the possibility of mediation, the right to request compensation for damage or harm suffered or the right to information, and the right of access to the case file.

The victim also has a number of rights in the course of the dynamics of criminal proceedings. Among other things, he or she has the right to lodge legal remedies such as a complaint against a refusal to initiate an investigation or prosecution, which is available to the victim, as well as to the state, local government or social institution that submitted the crime report. For example, free legal assistance includes informing an individual about the applicable legal situation and their rights or obligations, including in connection with pending proceedings or indicating to an entitled person how to solve their legal problem, or drafting a letter, with the exception of pleadings in pending pre-trial

55 | Act of 5 August 2015 on free legal aid, free civic counselling and legal education (consolidated text: Journal of Laws of 2021, item 945, of 2024, item 928).

56 | Jakubiak-Mirończuk, 2021, p. 36.

proceedings, mediation, free of charge, preparation of a draft letter requesting exemption from court costs or appointment of an ex officio legal aid attorney or an advocate, legal adviser, tax adviser or patent attorney, and information on the costs of the proceedings and the financial risks related to the referral to court.

Another example of the protection of the victim's rights is the Act of 7 July 2005 on State Compensation to Victims of Certain Crimes[57]. According to this act, a victim who has suffered specified bodily injury or health disorder as a result of a criminal offence and has not obtained compensation from the perpetrator or from other sources is entitled to claim compensation on the basis of an application to this effect, which shall be submitted within 2 years of the commission of the offence to the district court of the victim's place of residence.

A recent example of the protection of a victim in a criminal case is the Charter of Victims' Rights, which operates in Poland[58]. However, it is not a document in the legal sense of the word. It dates from 1999, when it was drawn up by the Polish Ministry of Justice in cooperation with governmental and non-governmental institutions and organisations; it was promulgated in October 1999 and is a set of applicable rights for victims of crime. This document is not a law, but is primarily intended to provide assistance to any victim in situations where their rights are not respected.[59] It is also defines the specific and central position of the victim of a crime in the actions taken by public authorities such as the police, the prosecution service or the judiciary, who, when collecting evidence in a criminal case and establishing and judging the facts in a criminal case, must bear in mind this special situation in which the victim of a crime finds themselves. To a certain extent, this document is also intended to neutralise or make more predictable and controllable the very strict features of criminal law previously referred to in this paper.

Polish criminal procedure attaches great importance to situations where the victim may be a child. This is, of course, connected with the procedural activity of questioning. In the system of Polish criminal procedure, it is worth noting that a child may be questioned in two ways. The first is that of ordinary interviewing as a witness.[60] In such case, the standards for questioning anyone in criminal proceedings apply, as long as they are assigned the role of witness. This refers to the provision of Article 171 of the Code of Criminal Procedure, and according to these rules, the person being questioned must be allowed to speak freely within the limits set by the purpose of the activity in question, and only then may questions be asked to supplement, clarify or verify the statement. In addition to the authority carrying out the interview, the parties, defence lawyers, attorneys and experts also have the right to ask questions. Questions shall be put directly to the person being interviewed, unless the authority orders otherwise. However, the specific rules for the questioning of a child under this option are that, if the person questioned is under 18 years of age, the activity with his/her participation should, as far as possible, be carried out in the presence of a legal representative, a de facto guardian or an adult indicated by the child, unless this is not possible in the interests of the proceeding,

57 | Act of 7 July 2005 on state compensation for victims of certain prohibited acts (consolidated text: Journal of Laws of 2016, item 325).
58 | Karta Praw Ofiar. [Online]. Available at: https://www.zielona-gora.po.gov.pl/pdf/polska_karta_praw_ofiary.pdf (Accessed: 1 October 2024).
59 | Borowicka, 2003, p. 192.
60 | Cora, 2018, p. 279; Osiak-Krynicka, 2024; Bachera and Chmielewska, 2016, p. 143.

or the child opposes it. In addition, leading questions are inadmissible. Questions put to the witness must not concern their sex life unless this is relevant to the outcome of the case. Furthermore, it is categorically unacceptable to influence the statements of a person being questioned by means of coercion or unlawful threats, the use of hypnosis or chemical or technical means influencing the mental processes of the person or aimed at controlling their unconscious reactions in connection with the interview. Explanations, testimonies and statements made under conditions excluding freedom of expression or obtained in contravention of the prohibitions indicated may not constitute evidence in the course of criminal proceedings. In addition, prior to the first interview, a person under the age of 18 shall be provided with information on the course, manner and conditions of the interview. The information shall contain a descriptive or graphic representation of the course, manner and conditions of the interview. At least three days should elapse between providing this information and the date of the hearing, unless in the interests of the proceedings, this is not possible.

A second mode of questioning known as the protective mode of questioning, has recently been introduced in Poland for cases where a witness is a child and also a victim. This is provided for under Article 185a of the Code of Criminal Procedure, which sets out the rules for questioning a minor victim.[61] The standards arising from this provision introduce a special mode, the main purpose of which is to protect the minor from secondary victimisation, i.e. from being victimised again through the activities of law enforcement and the judiciary. The most important features of this mode are the introduction of the principle of a single interview, cross-examination in a court session with the participation of an expert psychologist, interview in a Friendly Investigation Room, recording of the interview, the absence of the accused during the interview, and the possibility of preparing the minor for the interview. In this context, in cases of offences committed, inter alia, with the use of violence or unlawful threats, offences against liberty, offences against sexual liberty and decency offences against family and guardianship, a victim who has not reached the age of 15 at the time of interview shall be interviewed as a witness only if his/her testimony may be of significant importance for the outcome of the case, and only once. Additional questioning should only take place if significant circumstances have come to light, the clarification of which requires a second interview, or if a request for evidence by the accused is granted, because they did not have a defence counsel when the victim was interviewed for the first time. The hearing shall be conducted by the court in a session with the participation of an expert psychologist immediately, and no later than within 14 days from the date of receipt of the request. The prosecutor, defence counsel and the victim's attorney have the right to participate in the hearing. The victim's representative in the trial (the legal representative or the person under whose permanent custody the victim remains, or an adult person indicated by the victim, shall also have the right to be present at the interview, if this does not restrict the freedom of speech of the person being interviewed. If the accused notified of this activity does not have a defence counsel of choice, the court shall appoint a defence counsel ex officio. At the main hearing, the pre-recorded video and audio recording of the interview shall be played and the record of the interview shall be read out. In addition, one of the new solutions introduced into the area of criminal law in Poland is Article 185e of the Code of Criminal Procedure. This provision introduces the so-called friendly mode of interview for persons with mental

61 | Wielec, Horna-Cieślak and Masłowska, 2019, p. 69.

or developmental disorders or disorders affecting their ability to perceive or reproduce perceptions, with regard to whom there is a justified fear that interview under ordinary conditions could adversely affect their mental state or would be significantly impeded.[62] Therefore, if a witness has a mental disorder, developmental disorder, disturbance of their ability to perceive or reproduce their perception and there is a reasonable fear that questioning under other conditions than those indicated in this provision would adversely affect their mental state or would be significantly impeded, a witness shall only be heard if their testimony is likely to be of material importance for the outcome of the case, and only once, unless important circumstances come to light, the clarification of which requires a second hearing, or if a request for evidence is granted by an accused person who did not have defence counsel at the time of the first hearing of the witness.

The hearing shall be conducted by the court in a session with the participation of an expert psychologist, no later than within 14 days from the date of receipt of the request. The prosecutor, defence counsel and attorney have the right to attend the hearing. The psychological expert taking part in the hearing should be a person of the gender indicated by the witness, unless this will impede the proceedings. If the witness has problems with verbal communication, the interrogation shall be conducted using the assistive and alternative communication used by the witness. An expert with appropriate knowledge of assistive and alternative communication shall take part in the interview.

## 7. Final conclusions

The aim of this analysis was to identify common minimum standards in the area of criminal law in relation to victims of crime. The mechanism of analysis here was the clash between provisions in regulations originating from the European Union with the specificity of criminal law and legal regulations in this area. It has been attempted to create at least an exemplary model of universal minimum standards for this type of law, which would determine the axis of implementation of EU law into individual systems of national law. There is no doubt that criminal law, broadly understood, is a specific type of law in any legal system of any country. The standards for implementing Union law into national law should respect the specificity and profile of that law. Thus, three elements collide: the first is the specificity and profile of criminal law; the second is the essence and intent of EU legislation in the form of the directive analysed here; and the third is the specific provisions of national law – in this case the area of criminal law in Poland – which have been amended or completely reintroduced in Poland through the implementation of EU law a number of provisions. This has made it possible to establish four fundamental minimum standards.

The first is the standard of individual dignity. The point here is that at the core of criminal law in particular, the individual is often confronted with the omnipotent empire of the state. Indeed, it has been shown that only the state has the power to dispose of a penalty as a legal measure. Punishment is a permanent and recognisable element of the functioning of criminal law and the state has a monopoly on punishment. Therefore, any interference in the internal system of a state, especially in criminal law, even if caused

62 | Wielec and Bojanowski, 2024, p. 147.

by the implementation of an EU directive, must first and foremost respect the standard of human dignity. It takes precedence over all other elements of any legal regulation.

The second is the standard of maintaining reliable information about the situation in which an individual finds himself in the field of criminal law. It is worth recalling here that an individual enters this field by committing a prohibited act, i.e. a crime. By committing this crime, the individual causes (an)other person or persons to become drawn into this field –people who would probably never have been involved in this field of law if a crime had not been committed against them. This arrangement, of course, involves two opposing entities: the perpetrator of the crime and the victim. Both of them – as the two most important forms in criminal law – need to be aware of what is happening in the criminal proceedings taking place in their case. Hence the obligation of the prosecuting authority to inform them of their situation in the criminal case.

The third is the standard of justice, but even more broadly, because of restorative justice. The point is that the evil and harm that has been done to the victim of the crime has been repaired. Restorative justice is an area where the offender and the victim try to have a constructive dialogue about the harm done and what can be done to remedy the situation and try, albeit in part, to restore the situation to that which existed before the crime was committed. It is widely accepted that 'restorative justice is a process in which the parties involved in a particular crime jointly determine how to deal with the consequences of that crime and its consequences in the future'.[63] Therefore, the standard of restorative justice – in a legal context – can be understood as a set of rules that allow certain rules, processes and final results of cooperation between the offender, the victim and society. It should be a kind of azimuth for the creation of such rules in the field of criminal law that would allow the fostering of this very difficult relationship.[64]

The fourth is to eliminate the very unfavourable and damaging process of double victimization. To commit a crime to the detriment of any victim is to always bring harm. In a three-part relationship such as a). the commission of a crime; b). harm; c). the victim, in the first place we see that the source of harm is the commission of a prohibited act, i.e. a crime. However, as indicated above in this analysis, it may be the case that the victim not only feels harm caused by the commission of the offence against him or her, but also that harm occurs immediately after the commission of the offence. This is where the negative process of double victimisation comes in. So, we have two wrongs, the first which is primary, because it arises from the crime, and the second which arises from the circumstances surrounding the crime. In this sense, double victimisation – secondary victimisation is a negative process in which the victim of a crime suffers another, secondary harm from other people – environment, family, relatives or from public authorities, including judicial authorities[65]. It is therefore necessary to create legal solutions that make it possible to understand the situation of the victim.

The four indicators mentioned above are in fact the four basic minimum standards established in the field of criminal law to protect victims of crime.

63 | Marshall, 1999, p. 5; Szczepaniak, 2016, p. 125; Kuliński, 2023, p. 73.
64 | Antoniak, 2012; Bieńkowska, 2008, p. 66.
65 | Ibid. p. 67.

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