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Practice of Questioning Minor Witnesses in Criminal Proceedings in Light of Survey Studies*

Praktyka przesłuchiwania małoletnich świadków w procesie karnym w świetle badań ankietowych

ABSTRACT

A minor may be questioned in a criminal trial as a witness. This issue does not currently raise doubts, and the admissibility of these questioning stems from, among other things, the provisions of the Criminal Procedure Code, as well as from judicial decisions and views presented in the scholarly literature. The questioning of a minor is carried out, depending on the circumstances of the case and the age of the witness, in the ordinary mode or the protective mode. However, in any case, regardless of the mode of questioning, the procedural authority is obliged to ensure that this procedural act is carried out in a way that protects the child from secondary victimisation and allows child's rights to be exercised. In order to examine whether these standards are complied with, as well as to determine how this procedural act is carried out in practice, a survey was conducted among judges adjudicating in Polish common courts, from 5 to 30 April 2022. This article presents the survey results and their evaluation. The paper takes into account the changes introduced by the Act of 13 January 2023 amending the Act – Civil Procedure Code and certain other acts.

Keywords: minor; secondary victimisation; criminal procedure; witness; testimony

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INTRODUCTION

There is no lower age limit for questioning a person as a witness in the Polish criminal procedure. Therefore, a minor can act in this role, including victims and those who only have information about the offence concerned. The admissibility of questioning a child as a witness in criminal proceedings is based on both legislation, literature and case law. In the Act of 6 June 1997 – Criminal Procedure Code,[1] the provisions expressly allow the possibility of questioning a child. *Ad exemplum*, according to Article 171 § 3 CPC, if the person is under 18 years of age, the procedural acts with their participation should be carried out, if possible, in the presence of a statutory representative or actual guardian or an adult person designated by the person being questioned, unless the interest of the proceedings prevents this or the person being questioned objects this.[2] The provisions that also govern this matter are: Article 189 (1) CPC (the oath shall not be taken by persons under 17 years of age) or Article 185a CPC (the questioning as a witness of a minor who is victim to a crime with the use of violence or threat to use violence and also a crime under Chapters XXIII, XXV and XXVI of the Criminal Code).

Regarding the admissibility of questioning a minor as a witness, scholars in the field argue that despite the fact that the child's physical, mental and social development has not yet ended, this does not automatically mean that the child's narrative is implausible. Preschool-age child can also accurately remember events that he or she witnessed or experienced, and has a good memory.[3] Therefore, the procedural authority should not abandon questioning a minor due to minor's young age. In certain situations, it is a crucial source of evidence and absolutely irreplaceable. The exclusion of such a witness would lead to the elimination of the possibility to hold the perpetrator liable and the continuation of the harm, which would offend the principles of legalism and substantive truth in criminal proceedings.[4]

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[1] Consolidated text, Journal of Laws 2025, items 46 and 304, hereinafter: CPC.

[2] This article takes into account the amendments made to the CPC by the Act of 13 January 2023 amending the Act – Civil Procedure Code and certain other acts (Journal of Laws 2023, item 289), which, pursuant to its Article 14, are effective from August 2023.

[3] R. Koper, *Badanie świadka w aspekcie jego ochrony w procesie karnym*, Warszawa 2015, pp. 197–201; D. Brulińska, D. Dajnowicz, *Dziecko jako świadek w procesie karnym w ujęciu teoretycznym i praktycznym*, "Nowa Kodyfikacja Prawa Karnego" 2015, vol. 35, pp. 86–87; K. Łakomy, *Minor Victim Representation in Cases of Crimes Committed by Family Members in Polish Law*, "Studia Iuridica Lublinensia" 2020, vol. 29(5), pp. 181–196.

[4] H. Gajewska-Kraczkowska, *Przesłuchanie małoletniego w postępowaniu karnym – paternalizm a rzetelność procesu karnego*, [in:] *Funkcje procesu karnego. Księga jubileuszowa profesora Janusza Tylmana*, ed. T. Grzegorczyk, 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(1), pp. 65–67; A. Budzyń-

The judicature does not question the admissibility of questioning a child as a witness in criminal proceedings, as evidenced by a significant number of rulings on the conduct of the questioning of a child and ways to protect the child against the negative effects of this procedural act.[5] However, it is necessary to point out the most crucial ruling, which has become a kind of signpost setting the direction of the case law for other courts on the admissibility of questioning a child. It is the judgment of the Supreme Court of 15 January 1980, in which it was explicitly stated that "mentally incompetent persons or children are not excluded from the group of witnesses. The inability to recognize the meaning of an act in terms of its moral and social content does not mean the inability to remember the act and provide its description".[6]

If there are no provisions in the Code of Criminal Procedure defining an age limit for the possibility of questioning a person as a witness, the procedural authority, when deciding on the legitimacy of summoning a child as a witness, must not use the child's age as the sole criterion for the admissibility of questioning the minor, but should also take into account the minor's actual capacity to acquire and reproduce observations, i.e. a set of characteristics allowing certain circumstances to be registered in consciousness, correctly reproduced and communicated to the procedural authority.[7]

In the Polish criminal procedure, there are two modes of questioning a minor: ordinary and protective.[8] The ordinary mode is based on Article 177 CPC and in the model approach involves questioning the child like an adult, i.e. in pre-trial proceedings by the person conducting these proceedings, e.g. at the police station or at the prosecutor's office, while in judicial proceedings in the courtroom by the court. The parties, i.e. also the suspect/accused, defence counsel, attorney and expert witness, may take part in such a procedural act. The questioning of this type should, if possible,

ska, *Psychologiczna perspektywa przesłuchania dziecka*, [in:] *Przesłuchanie małoletniego świadka w postępowaniu karnym. Poradnik dla profesjonalistów*, Warszawa 2018, p. 20.

[5] Examples of rulings providing for the possibility of questioning a minor in criminal proceedings include: judgment of the Supreme Court of 20 January 2016, III KK 187/15, LEX no. 1984691; decision of the Supreme Court of 15 March 2012, III KK 244/11, LEX no. 1167624; decision of the Supreme Court of 13 February 2020, IV KK 599/18, Legalis no. 2532867; decision of the Supreme Court of 6 July 2006, IV KK 226/06, LEX no. 219845; decision of the Supreme Court of 20 February 2018, V KK 351/17, Legalis no. 2296454.

[6] Judgment of the Supreme Court of 15 January 1980, III KR 428/79, Legalis no. 21859.

[7] E. Gruza, *Psychologia sądowa dla prawników*, Warszawa 2009, pp. 141–144; R. Koper, *op. cit.*, pp. 197–201; A. Gadomska, *Przygotowanie do przesłuchania małoletniej ofiary w charakterze świadka*, "Prokuratura i Prawo" 2008, no. 7–8, pp. 181–183; M. Błaszczyk, *Problematyka przesłuchania małoletniego w procesie karnym – w świetle nowelizacji art. 185a i 185b Kodeksu postępowania karnego*, "Wojskowy Przegląd Prawniczy" 2013, no. 4, pp. 76–77.

[8] M. Wielec, M. Horna-Cieślak, P. Masłowska, *Przesłuchanie małoletniego pokrzywdzonego po nowelizacji Kodeksu postępowania karnego wprowadzonej ustawą z dnia 13 czerwca 2013 r. o zmianie ustawy – Kodeks karny oraz ustawy – Kodeks postępowania karnego – wyniki badań aktowych*, "Prawo w Działaniu. Sprawy Karne" 2019, no. 39, pp. 69–98.

be conducted in the presence of a statutory representative or an actual guardian or an adult designated by the person being questioned, unless the interest of the proceedings precludes it or the person being questioned objects to this (Article 171 § 3 CPC). This mode of questioning will apply to a minor witness when there are no grounds for questioning under the protective mode,[9] which includes the provisions of Articles 185a to 185c and 185e CPC, and its purpose is to prevent secondary victimisation of the person being questioned in a criminal trial and to minimize the disparities between the questioned and the interviewer. The questioning in the protective mode is performed at a court hearing with the participation of an expert psychologist in a Friendly Interviewing Room.[10] As a rule, it can be carried out only once and takes place without the participation of the suspect/accused person. This mode can be used in four cases. First, in relation to a minor who is a victim of a crime committed with the use of violence or unlawful threat or the crime specified in Chapters XXIII, XXV and XXVI of the Criminal Code, if at the time of the interview he/she is under 15 years of age and only if the victim's testimony may be relevant for the settlement of the case and only once, unless there are significant circumstances that require a re-examination or if the motion for evidence put forward by the accused who did not have a defence counsel at the time of the first examination of the victim has been accepted (Article 185a § 1 CPC). Secondly, in the case of a juvenile victim who was 15 years old at the time of questioning, when there is a concern that the questioning carried out in other conditions could have a negative impact on his/her mental state (Article 185a § 4 CPC). Thirdly, the protection mode may be used for questioning a witness to a crime committed with the use of violence or unlawful threat or defined in Chapters XXV and XXVI of the Criminal Code, if the witness is under 15 years of age at the time of the interview. The fourth situation, in which the protective mode of questioning applies, results from Article 185c §§ 1 and 2 CPC. According to these provisions, the victim of a crime referred to in Articles 197 to 199 of the Criminal Code, who was 15 years of age at the time of questioning, shall be questioned under protective mode.[11]

Regardless of the mode of questioning, a minor during the questioning has the right to refuse to testify, the right to refuse to answer questions, the right to demand exemption from testimony in a situation of a particularly close relationship with the accused, the right to prepare to participate in the questioning, the right to protection against secondary victimisation, the right to refuse to submit to inspection

[9] J. Podlewska, *Regulacje prawne dotyczące przesłuchiwania dzieci w Polsce*, [in:] *Przesłuchanie małoletniego świadka…*, p. 7.

[10] K. Makaruk, P. Masłowska, *op. cit.*, pp. 65–67; D. Brulińska, D. Dajnowicz, *op. cit.*, p. 88.

[11] M. Zbrojewska, A. Małolepszy, *Dziecko jako świadek w procesie karnym*, "Studia Gdańskie" 2011, vol. 28, pp. 106–108; K. Osiak-Krynicka, *Nowe zasady przesłuchania w trybie art. 185c Kodeksu postępowania karnego osoby pokrzywdzonej przestępstwem z art. 197–199 Kodeksu karnego*, "Folia Iuridica Universitatis Wratislaviensis" 2019, vol. 8(2), pp. 149–163.

and examination, and the right to request that the hearing be closed to the public for the duration of the questioning. On the other hand, the obligations of a minor witness related to the questioning are: the obligation to appear, the obligation to remain at the disposal of the procedural authority, the obligation to testify and tell the truth, and the obligation to undergo inspection and examination.[12]

Each child is different and has different sensitivities and responses to the questions that are asked, so it is difficult to identify one specific and repetitive model for interviewing a child.[13] However, based on the available literature, it is possible to distinguish certain rules that should always be followed by interviewers of minors, regardless of the mode of questioning, stage of the criminal proceedings and the questioning authority. First of all, the procedural authority should prepare the questioning, including drawing up a plan for the interview, and choose the time and place of the interview according to the age, health status and personal characteristics and traits of the minor, as well as to read the case file. Starting from the very moment of meeting the child, the interviewer should take steps to protect the minor from secondary victimisation and try to create a pleasant, safe atmosphere, showing the child acceptance and understanding. When talking to a child, one should express one's interest in his or her words and address him or her using his or her name or in the form he or she likes, and maintain eye contact, but without excessive constant observation.[14] A person interviewing a minor should speak slowly, clearly and calmly, avoiding the use of legal phraseology. Lack of understanding of the vocabulary used by the interviewer leads to communication disruption and may result in the withdrawal of the child. Therefore, the interviewer should not only formulate sentences in an understandable way, but also inform the minor that in a situation of finding something incomprehensible, the minor should ask about it.[15] In situations where a child uses a particular terminology, even vulgarity, to describe e.g. a body part, the interviewer cannot instruct the child that "these are indecent words and you must not say so".[16] It follows that the child perhaps is not aware of other terms, and if the interviewer prohibits their use, the child will not be able to reliably describe what has happened. During questioning,

[12] K. Osiak, *Prawa i obowiązki małoletniego pokrzywdzonego, które przysługują mu podczas przesłuchania w trybie art. 185a Kodeksu postępowania karnego*, "Dziecko Krzywdzone" 2016, vol. 15(4), pp. 87–104.

[13] J. Symber, *Sytuacja dziecka jako świadka w procesie karnym – ochrona prawna dziecka w postępowaniu karnym*, "Studia Ełckie" 2019, no. 2, p. 295.

[14] J.E.B. Myers, *Dziecko jako świadek*, [in:] *Przyjazne przesłuchanie dziecka*, ed. M. Sajkowska, Warszawa 2007, p. 22; A. Budzyńska, *Jak przesłuchiwać dziecko. Poradnik dla profesjonalistów uczestniczących w przesłuchiwaniu małoletnich świadków*, Warszawa 2007.

[15] M. Kornak, *Małoletni jako świadek w procesie karnym*, Warszawa 2009, p. 184; K. Osiak, *Kryminalistyczno-procesowe aspekty przesłuchania w trybie art. 185a k.p.k.*, "Prokuratura i Prawo" 2018, no. 6, p. 149; A. Gadomska, *op. cit.*, p. 185.

[16] K. MacFarlane, J.R. Feldmeth, *Przesłuchanie i diagnoza małego dziecka*, Warszawa 2002, p. 46.

the child should not be interrupted, even if he/she deviates from the main subject, since interruption would mean that the interviewer does not want to hear about his or her experience, and the minor would no longer want to talk about the incident.[17]

RESULTS OF THE SURVEY STUDY ABOUT QUESTIONING MINORS DURING CRIMINAL PROCEEDINGS

In order to examine whether the standards guaranteeing the exercise of the minor's rights and protecting the minor from secondary victimisation are observed in criminal proceedings, as well as to determine how this procedural act is carried out in practice, from 5 to 30 April 2022, I conducted an online survey among judges adjudicating in common courts in Poland. I drafted an electronic survey form using the Google Form on the Google website.[18] I asked the Association of Polish Judges "IUSTITIA" for help in sending out a link to the survey.[19] The questionnaire consisted of 20 single-choice and/or multiple-choice questions, which concerned selected aspects of questioning a minor in criminal proceedings under the ordinary mode (questioning under general rules) and the protective mode (questioning under the rules set out in the provisions of Articles 185a to 185c CPC). The survey was completely anonymous, and 69 judges took part in it, including 44 women (64.7%) and 23 men (33.8%), while 2 respondents refused to indicate their gender. The data on the type, departments and seat of courts in which the respondents adjudicate are presented in Tables 1–4.

Table 1. Court departments in which the surveyed judges adjudicate

Department	Number of respondents	Percentage of respondents
Criminal	61	89.7
Family and juvenile	5	7.4
Civil	1	1.5
Other	1	1.5

Source: own elaboration.

Judges adjudicating in criminal departments constituted 89.7% of the respondents, in family and juvenile departments – 7.4%, in civil departments – 1.5%, and in other departments – 1.5%.

[17] J.E.B. Myers, *op. cit.*, p. 22; A. Budzyńska, *Jak przesłuchiwać dziecko…*, p. 27.

[18] The form available at https://docs.google.com/forms/d/18kzEtlcYeTVazpERAXjGHwi3Qk8IkO2f8Y9CsZ7-yxs/edit?hl=pl (access: 12.5.2022).

[19] Link to the survey: https://docs.google.com/forms/d/1Qm_z8oNlUPIQY_IPyn7eEAOgSjFBWB1Qgrz7cU2oOdM/edit (access: 12.5.2022).

Table 2. Court in which the surveyed judges serve

Court	Number of respondents	Percentage of respondents
District Court	56	83.6
Regional Court of first instance	6	9
Regional Court of second instance	4	6
Court of Appeal	1	1.5

Source: own elaboration.

The judges who took part in the survey serve in a District Court – 83.6%, in a Regional Court of first instance – 9%, in a Regional Court of second instance – 6%, and in a Court of Appeal – 1.5%.

Table 3. Seat of the court of service of the respondents

Seat	Number of respondents	Percentage of respondents
City of up to 30 thousand inhabitants	14	20.6
City with over 30 thousand and up to 50 thousand inhabitants	10	14.7
City with over 50 thousand and up to 100 thousand inhabitants	10	14.7
City with over 100 thousand and up to 300 thousand inhabitants	16	23.5
City with over 300 thousand and up to 500 thousand inhabitants	3	4.4
City with over 500 thousand inhabitants	15	22.1

Source: own elaboration.

The seat of the court in which the respondents serve is the city: up to 30 thousand inhabitants – 20.6%, over 30 thousand and up to 50 thousand inhabitants – 14.7%, over 50 thousand and up to 100 thousand inhabitants – 14.7%, over 100 thousand and up to 300 thousand inhabitants – 23.5%, over 300 thousand and up to 500 thousand inhabitants – 4.4%, and over 500 thousand inhabitants – 22.1%.

Table 4. Seniority of respondents

Seniority	Number of respondents	Percentage of respondents
Less than 10 years	7	10
Between 10 and 20 years	28	41
More than 20 and up to 30 years	29	43
More than 30 years	3	4

Source: own elaboration.

The seniority under 10 years was declared by 7 judges, between 10 and 20 years by 28 judges, more than 20 and up to 30 years by 29 judges, and more than 30 years by 3 judges.

Although, as indicated above, both the provisions of the Code of Criminal Procedure, the case law and the literature currently determine the admissibility of questioning a child in criminal proceedings, children have not always been allowed to testify. R. Wiśniacka claimed that children in courts were very undesirable witnesses and were incapable of telling the truth because they could not distinguish it from a lie.[20] A similar position was taken by J. Bossowski, according to whom testimony from children under the age of 7 could not be given much importance due to their naivety in understanding phenomena in life, and that there was an unlimited risk of suggestion and a too narrow range of words and concepts.[21] In the literature on the subject, the greatest opponent of child questioning is E. Locard, who completely rejected the possibility of interviewing minors in criminal proceedings, refusing to give any value to them and postulating the superiority of physical evidence.[22] In view of the above, in the first question of the questionnaire, the judges were asked: Do you think that minors should be questioned as witnesses in criminal proceedings? The question was answered by 67 respondents, and the results are presented in Table 5.

Table 5. Legitimacy of questioning minors as witnesses

In your opinion, should minors be questioned as witnesses in criminal proceedings?		
Variant of response	Number of responses	Percentage of responses
Yes	27	40.3
Yes, both minors under 15 years of age and minors over 15 years of age	30	44.8
Yes, but only minors under 15 years of age	0	0
Yes, but only minors over 15 years of age	4	6
Usually yes	3	4.5
No	1	1.5
Usually not	2	3
I don't have an opinion	0	0

Source: own elaboration.

Table 5 demonstrates that the vast majority of judges are in favour of hearing a child as a witness. This should be assessed as a positive phenomenon because it shows that judges are aware that a minor witness can provide significant testimony in a criminal trial. According to 44.8% of respondents, minors should be questioned as witnesses in criminal proceedings both under and over the age of 15, of which 40.3% of respondents chose the "yes" variant and 4.5% the "usually yes" variant. However,

[20] R. Wiśniacka, *Psychologia zeznań świadków*, "Archiwum Kryminologii" 1933, no. 2, p. 235.

[21] J. Bossowski, *Ewolucja postępowania dowodowego w procesie karnym*, Poznań 1924, p. 24, as cited in A. Gadomska, *op. cit.*, pp. 181–183.

[22] J. Mierzwińska-Lorencka, *Karnoprawna ochrona dziecka przed wykorzystywaniem seksualnym*, Warszawa 2012, p. 95.

6% of respondents stated that minors should be questioned, but only those who are over 15 years of age. Not all the judges agree on whether a child should be questioned as a witness, as 1.5% of the respondents answered "no" and 3% "usually not".

Although neither in the literature nor in the case law the evidentiary value of the testimony of minors is questioned, an important issue in the context of the above considerations is whether this value is comparable to the testimony of adults and whether it differs depending on the age of the minor being questioned. The judges were asked for their opinion on this issue in the second question. This question was answered by 67 respondents, and the results are presented in Table 6.

Table 6. Evidentiary value of juvenile testimony

In your opinion, is the evidentiary value of the testimony by minor witnesses/victims comparable to the testimony of adults?		
Variant of response	Number of responses	Percentage of responses
Yes, both if the testimonies come from minors under 15 years of age and minors over 15 years of age	44	65.7
Yes, but only where the testimonies come from minors under 15 years of age	0	0
Yes, but only where the testimonies come from minors over 15 years of age	3	4.5
Usually yes	14	20.9
No	1	1.5
Usually not	4	6
I don't have an opinion	1	1.5

Source: own elaboration.

Table 6 shows that according to the majority of the respondents (65.7%), the evidentiary value of minor witnesses/victims is comparable to the testimony of adults, both when the testimony comes from minors under 15 years of age and minors over 15 years of age. This demonstrates that judges are aware that both younger and older children can remember and reproduce information in a way that is comparable to adults. However, there are people among the respondents who believe that the evidentiary value of the testimony of minor witnesses/victims is comparable to the testimony of adults, but only when they come from minors who have reached 15 years of age. A total of 7.5% of the respondents opposed equating the evidentiary value of juvenile testimonies with those of adults, and 1.5% of the respondents expressed no opinion on this matter.

In the third question, the judges who are in favor of the questioning of children in criminal proceedings were asked whether there should be a minimum age for interviewing a child. The results are presented in Table 7.

Table 7. Legitimacy of the existence of the lower age limit for witnesses in criminal proceedings

Should there be a minimum age limit for witnesses in criminal proceedings?		
Variant of response	Number of responses	Percentage of responses
Yes	18	27.3
Usually yes	12	18.2
Usually not – please go to question 5	18	27.3
No – please go to question 5	17	25.8
I have no opinion – please go to question 5	1	1.5

Source: own elaboration.

Table 7 shows that more than half (namely 53.1%) of the respondents oppose the existence of a minimum age limit for witnesses in the criminal procedure. This demonstrates that judges are aware that a child's ability to testify is determined not only by the age of the witness, but also depends on other factors, such as the stage of child's development or child's health state. It is worth noting, however, that not all the respondents perceive such a correlation, as 27.3% were in favour of introducting such a limit. No opinion was declared by 1.5% of the respondents.

The fourth question has been addressed to the respondents who believe that there should be a minimum age limit for witnesses. The judges were asked to fill in the age at which it should be possible to question a minor in a criminal trial. The question was open-ended and 33 people responded. The following were indicated as suggestions for the minimum age limit for questioning a minor as a witness: 3 years – 5 respondents, 4 years – 2 respondents, 5 years – 3 respondents, 6 years – 6 respondents, 7 years – 2 respondents, 8 years – 2 respondents, 10 years – 2 respondents, 11 years – 1 respondent, 12 years – 2 respondents, 13 years – 1 respondent, 15 years – 4 respondents. There were also 7 answers, rightly arguing that it is impossible to determine a specific age limit, because it is different for each child, and the assessment of whether a child can testify should be made by an expert psychologist individually, depending on the type of case and the degree of child's development, as well as the child's ability to communicate their observations.

The conditions for questioning a minor under the protective mode set out in Articles 185a to 185c and Article 185e CPC offer a greater chance for the child to avoid secondary victimisation compared to the questioning in the ordinary mode. Since the child should be protected against the negative consequences of participation in criminal proceedings, perhaps a good solution would be to extend the protective mode to all minors, regardless of the offence involved. Therefore, in the fifth question, the judges were asked about the reasonableness of maintaining the division of the modes of questioning a minor as a witness into the ordinary mode and the protective mode in the form provided for in the Code of Criminal Procedure. The answer was provided by 67 survey participants. The results are presented in Table 8.

Table 8. Reasonableness of preserving the current division of the modes of questioning a minor as a witness

In your opinion, should the division of the modes of questioning a minor as a witness into the ordinary mode and the protective mode, as currently provided for in the provisions of the Criminal Procedure Code, be preserved?		
Variant of response	Number of responses	Percentage of responses
Yes	25	37.3
Usually yes	10	14.9
Yes, and the protective mode should be extended also to minors over 15 years of age	12	17.9
No	2	3
Usually not	0	0
No, the option of questioning a minor under the general rules should be ruled out, and in addition to the protective mode, special rules of questioning should be created for minors who are not questioned under the protective mode	17	25.4
I don't have an opinion	1	1.5

Source: own elaboration.

The answers of the respondents, presented in Table 8, show that less than one-fifth of the respondents were in favour of keeping the questioning modes as they are now and extending the protective mode to minors over 15 years of age. A total of 25.4% stated that there should be an exclusion of the possibility to interview a minor under the general rules and that special interview rules for minors who are not interviewed under the protective mode should be established beside the protective mode. In contrast, 35 of judges are willing to maintain only the existing distinction between protective and ordinary modes. A lack of opinion in this respect was expressed by 1.5% of the respondents. This demonstrates that judges perceive the need to increase protection against secondary victimisation of minors who currently have to testify under the ordinary procedure.

As noted above, a minor who is questioned during criminal proceedings as a witness has numerous rights and obligations. It is therefore the procedural authority's responsibility to instruct the questioned person about these rights and obligations. However, there are positions presented in the literature that minors should not be informed about these rights because they are not in a position to make an informed decision about their willingness to exercise them.[23] In light of the above, the sixth question is whether they instruct minor witnesses of their rights: to refuse to testify, to answer questions, to request exemption from testifying, insofar as they have such a right. A total of 67 respondents replied. It follows that they do not have any doubts as to the appropriateness of instructing minor witnesses of their rights, as 100% of them have declared that they practice such an instruction.

[23] Doubts were expressed in this regard by, e.g., K. Paszek and K. Pawelec (*Prawo małoletniego do odmowy złożenia zeznań*, "Prokuratura i Prawo" 2008, no. 12, p. 13).

Regardless of whether the person being questioned is an adult or a minor, the rights of a witness related to testifying are of a personal nature, which means that only the person who has these rights can decide to exercise them. However, there is no consensus among scholars in the field in this respect and there are positions according to which in the case of minors, it should be the child's statutory representative to decide on behalf of the child about the exercise of the right to refuse to testify.[24] Therefore, in the seventh question, the judges as those responsible for questioning children have been asked whether minors should decide on their own to exercise the right to refuse to testify, answer questions, and file a request for exemption from testifying. The seventh question was answered by 67 respondents. The results are presented in Table 20.

Table 9. Independence of a minor witness in deciding whether to exercise his or her rights

In your opinion, should the questioned minor independently decide whether to exercise their right to refuse to testify, answer questions, or file a request for exemption from testimony?		
Variant of response	Number of responses	Percentage of responses
Yes, because these are witness rights related to testifying and are of a personal nature	61	91
Yes, but they can do so only after reaching the age of 13 due to the inability to understand relevant instruction	4	6
No, because due to their age, they do not have the capacity to perform procedural actions on their own and such a decision is made for them by their statutory representative	0	0
No, such a decision is made for them by their legal representative	0	0
I don't have an opinion	1	1.5
Other? What kind?	1	1.5

Source: own elaboration.

Table 9 shows that as many as 91% of the respondents believe that the decision to exercise the right to refuse to testify, answer questions, or apply for exemption from testifying should be made by the minor themselves, and not by their legal representative, as these rights are independent. However, according to 6% of respondents, a minor witness may decide on his or her rights on their own, but only after reaching the age of 13, due to the inability to understand relevant instruction. Again, 1.5% of the respondents expressed no opinion in this regard. It should be

[24] Resolution of the Supreme Court of 19 February 2003, I KZP 48/02, OSNKW 2003, no. 3–4, item 23; J. Kosonoga, *Małoletni jako świadek przestępstwa (wybrane zagadnienia proceduralne)*, "Państwo i Prawo" 2006, no. 3, p. 78; M. Jachimowicz, *Prawo do odmowy składania zeznań przez osobę najbliższą*, "Prokurator" 2007, no. 1, p. 75; P.K. Sowiński, *Prawo świadka do odmowy zeznań w procesie karnym*, Warszawa 2004.

noted that the answer "Other? What kind?" was selected by only one respondent, who stated: "Of course, depending on the age, the child must be explained what these rights mean". This is a very valuable point, because the instruction on rights, adapted to child's age and degree of development, increases the chances that the child will understand it and will consciously decide to exercise these rights.

Another question also regarded an issue that stirs controversy among scholars in the field, namely the practice of instructing a minor witness about criminal liability for giving false testimony. The controversy is due to the fact that, according to Article 10 § 1 of the Criminal Code, criminal liability may be borne by a person over the age of 17, and therefore a minor who is under the age of 17 should not be instructed on such liability.[25] In the eighth question, the judges were asked to state whether they were instructing the minor, interviewed as a witness, of criminal liability for giving false testimony. A total of 67 respondents replied. The results are presented in Table 10.

Table 10. Instructing minor witnesses about criminal liability for false testimony

Do you instruct a minor being questioned as a witness about criminal liability for false testimony?		
Variant of response	Number of responses	Percentage of responses
Yes, regardless of the age of the minor	4	6
Yes, but only minors between 13 and 17 years of age	3	4.5
Yes, but only minors who are at least 17 years old, because those younger are not criminally liable for false testimony	34	50.7
No	3	4.5
No, but I instruct them on liability for a criminal act under the Act on proceedings in juvenile matters*	23	34.3
I have not questioned a minor as a witness at all	0	0

* Currently, according to the Act of 9 June 2022 on the support and rehabilitation of juveniles (consolidated text, Journal of Laws 2024, item 978).

Source: own elaboration.

Table 10 shows that the majority of respondents instruct minor witnesses about criminal liability for giving false testimony, including 6% of them regardless of age, and with more than 50% only instructing those over 17 years of age, as these do not bear criminal liability for giving false testimony before reaching that age, and with 4.5% only instructing minors between 13 and 17 years of age. The practice

[25] Amicus curiae opinion by the Helsinki Foundation for Human Rights of 2013. A similar position was also expressed by the Minister of Justice in a document of 29 May 2009 addressed to the Commissioner for Human Rights, in which he stated that a witness who is under 17 years of age, and thus is not subject to criminal liability for an act under Article 233 § 1 of the Criminal Code cannot be warned of criminal liability, but should be instructed that false testimony, i.e. testimony of untruth or concealment of the truth, are behaviours penalised as a crime (PRO-494684-II/05/DK).

of not instructing the minor of the criminal liability was declared by 38.8% of the respondents, with 4.5% not instructing at all, while 34.3% instruct on the liability for a criminal act under the Act on proceedings in juvenile matters. Thus, these answers show that the vast majority of judges are aware of the fact that the minor is not criminally liable for giving false testimony and, consequently, they do not instruct minors in this respect. This practice should be assessed positively.

Questioning a minor in criminal proceedings is one of the most difficult evidentiary acts in the criminal procedure. This difficulty is exacerbated by the fact that the person who interviews the child may lack skills and experience in working with children. As a result, instructing the child about his or her rights during questioning can be a very difficult task and the further course of this procedural act often depends on the effect of this instruction. Therefore, in the ninth question, the judges were asked what, in their opinion, would make it easier for judges to instruct minor witnesses about their rights. Multiple options could be selected. The results are presented in Table 11.

Table 11. Solutions to facilitate instructing minor witnesses about their rights

In your opinion, what would make it easier for judges to instruct minors questioned as witnesses about their rights?		
Variant of response	Number of responses	Percentage of responses
Regular training of judges	41	61.2
Information brochures for judges	11	16.4
Prior preparation of the minor for questioning, carried out by an expert psychologist	51	76.1
Information brochures for minors and their parents or guardians	38	56.7
I don't have an opinion	2	3

Source: own elaboration.

Table 11 shows that for the vast majority of respondents (76.1%), the greatest facilitation when instructing minor witnesses about their rights would be if the child had been prepared in advance for questioning by an expert psychologist. The second preferred solution was regular training of judges (61.2%) and the third was information brochures for minors and their parents or guardians (56.7%). However, according to the respondents, information brochures for judges are the least helpful facilitation, since only 16.4% of the respondents have supported this option. The low interest of judges in the need for brochures on how to instruct minors about their rights may mean that the respondents are not completely sure that such a brochure could prepare them thoroughly for this procedural act.

Interviewing a minor in criminal proceedings carries the risk of the child experiencing secondary victimisation. Therefore, the interviewer should take steps aimed at facilitating the minor to face the situation. In order to find whether the judges saw a need for this, in the tenth question, the respondents have been asked

to state the solutions they use or would use when questioning a minor at a hearing. As with question nine, the respondents were able to tick multiple answers. A total of 67 respondents answered. The results are presented in Table 12.

Table 12. Solutions applied to a minor witness questioned at a hearing

Which of the following solutions do you use (would you use) when questioning a minor as a witness at a hearing? (You can select multiple answers)		
Variant of response	Number of responses	Percentage of responses
Instructing the minor on rights and obligations in a way the minor understands	65	97
Ensuring that the minor understands the content of the question	62	92.5
Allowing the minor to testify in a sitting position	53	79.1
Use of simple language, adapted to minor's age and degree of development	66	98.5
Showing patience and understanding for the witness's situation	63	94
Ensuring that the questions asked by the parties are not of a victimising nature	63	94
Other. What kind?	6	9

Source: own elaboration.

Table 12 shows that 98.5% of the respondents use or would use simple language appropriate to minor's age and stage of development during the questioning of a minor as a witness; 97% of them instruct or would instruct the minor about rights and obligations in a way that is understandable to the minor; 94% show or would show patience and understanding for the situation of the witness and make sure or would make sure that the questions asked by the parties are not of a victimising nature. In addition, 92.5% of respondents make sure or would make sure that the minor understands the content of the question, and 79.1% allow or would allow a child to testify in a sitting position. The option "Other. What kind?" was chosen by 6 respondents and they indicated the following solutions: 1) assuring the child that no one wants to judge or assess him/her; 2) ensuring the presence of a same-sex psychologist in cases against sexual freedom and against family and care; 3) conducting a friendly introductory interview; 4) allowing the testimony to be given in the absence of the accussed or carring out the questioning in the form of a videoconference in separate courtrooms. However, according to 2 judges, minors should not be questioned at the court hearing at all.

Pursuant to Article 171 § 3 CPC, if the person is under 18 years of age, the procedural acts with their participation should be carried out, if possible, in the presence of a statutory representative or actual guardian or an adult person designated by the person being questioned, unless the interest of the proceedings prevents this or the person being questioned objects this. The judges were asked for their opinion

on the use of such a solution at a court hearing in question 11. The answers were given by 67 respondents. The results are presented in Table 13.

Table 13. Presence of the minor's parents or guardians at the court hearing pursuant to Article 171 § 3 CPC

In your opinion, is the participation of a statutory representative or guardian in the questioning of a minor under Article 171 § 3 CPC a good solution at the court hearing?		
Variant of response	Number of responses	Percentage of responses
Yes, because it has a positive effect on the minor's testimony	1	1.5
Yes, as long as it does not disturb the minor testifying	27	40.3
No, I do not see such a need	5	7.5
No, because his/her presence may embarrass the minor and limit the scope of information provided by the minor	29	43.3
I don't have an opinion	1	1.5
Other? What kind?	4	6

Source: own elaboration.

Table 13 shows that the judges' opinions on the participation of the parent or guardian in the questioning of a minor at a court hearing are divided. According to 40.3% of the respondents, the participation of a parent or guardian during such questioning is a good solution, as long as the parent or guardian does not interfere with the child's testimony. On the other hand, as many as 43.3% of the respondents are against such a solution, as the parent or guardian could have an embarrassing effect on the minor and limit the scope of the information provided by him/her, while 7.5% see no need for their presence at all. Only 1.5% of the respondents expressed no opinion in this regard. The option "Other. What kind?" was chosen by 4 judges, and their comments were as follows: "The minor should not be questioned at the court hearing"; "Yes, with the proviso that the above-mentioned persons are not parties to the proceedings. If they are parties to the proceedings, I try, if possible, to question the minors in the absence of the aforementioned persons at the court hearing"; "It all depends on what the case is about and whether the parents' participation hinders the testimony. If it does not hinder, I find that the presence of the parent has a calming effect on the child"; "I do not question children under 15 years of age in the courtroom, but in the blue room with a psychologist, the parent watches over the questioning in a separate room".

Questions 12 to 19 concerned the questioning of a minor under the protective mode. Pursuant to Article 185a § 2 CPC, Article 185b § 1 CPC and Article 185c § 2 CPC, questioning under this procedure takes place at a court session with the participation of an expert psychologist, whose task during this procedural act is primarily to assist the judge in carrying it out and to support the minor being questioned.

In question 12, the respondents were asked to indicate what criteria they are guided by when selecting an expert psychologist to participate in the questioning. The answers were given by 67 respondents. The results are presented in Table 14.

Table 14. The main criterion for selecting an expert psychologist for the questioning in protective mode

What is your primary motivation when selecting an expert psychologist to participate in the questioning of a minor as a witness under the protective mode?		
Variant of response	Number of responses	Percentage of responses
Availability	19	28.4
Competence	11	16.4
Experience in working with children	17	25.4
Experience in working with a particular expert	18	26.9
Other? What kind?	2	3

Source: own elaboration.

On the basis of the data contained in Table 14, it can be concluded that in the selection of an expert psychologist, judges are most often guided by the availability of the expert (28.4%). The second most frequently indicated criterion that a judge takes into account is experience in working with a given expert (26.9%). The psychologist's experience in working with children is primarily guided by 25.4% of respondents, and 16.4% by his competence. Two judges selected the answer "Other? What kind?". One of the respondents pointed out that when selecting an expert, he is guided primarily by the expert's competence and experience in working with children, and if he does not have one, then by availability, while the other stated that there is a lack of expert psychologists in his workplace.

Question 13 concerned the use by the judge of the assistance of an expert psychologist in instructing the minor about his or her rights and obligations. The answers were given by 67 respondents. The results are presented in Table 15.

Table 15. Expert psychologist in instructing the minor on his or her rights and obligations

Do you (would you) use the assistance of an expert psychologist in instructing the minor about his/her rights and obligations when questioning a minor as a witness in the protective mode?		
Variant of response	Number of responses	Percentage of responses
Yes, always	17	25.4
Usually yes	4	6
It depends on the person of the minor and the possibility of establishing contact with him/her	38	56.7
Usually not	3	4.5
Never	5	7.5

Source: own elaboration.

Table 15 shows that 56.7% of respondents make the use of the assistance of an expert psychologist in instructing their child about their rights and obligations dependent on the minor and the possibility of establishing contact with him/her. On the other hand, 25.4% in each case use (would use) such assistance, and 6% chose the "usually yes" option. According to the declarations of 4.5% of judges,

they are unlikely to instruct the minor together with an expert psychologist, and 7.5% never use such a solution.

In the wording of Article 185a § 2 CPC, Article 185b § 1 CPC and Article 185c § 2 CPC the legislature used the phrase "with the participation of an expert psychologist", which may mean that the expert during the questioning under the protective mode is not only a passive observer, but may also be an active participant assisting the judge. Question 14 aimed at determining whether the judges allow the active participation of an expert psychologist in the questioning of a minor and therefore they were asked to indicate the variant that best describes the manner in which they conduct the questioning in the protective mode. The answers were given by 67 respondents. The results are presented in Table 16.

Table 16. Model for conducting the questioning of a minor in the protective mode

Please select from the following the option that best describes how you would conduct the questioning of a minor in the protective mode		
Variant of response	Number of responses	Percentage of responses
I interview and the expert observes the course of questioning	36	53.7
We interview together	29	43.3
The expert talks to the minor and I observe the course of the questioning	2	3
I have not questioned a minor as a witness at all	0	0

Source: own elaboration.

Table 16 shows, firstly, that the respondents have experience in questioning children and, secondly, that two models of questioning minors in the protective mode are most often used in practice. According to the first one, declared by 53.7% of the respondents, it is the judge who talks to the child, and the expert psychologist is a passive observer of this activity, and the second one consists in conducting a joint hearing by the judge and the expert. On the other hand, 3% of the respondents have indicated that there are also situations in which the expert is talking to the child and the judge passively observes the course of the questioning.

It follows from § 5 of the Ordinance of the Minister of Justice of 28 September 2020 on the manner of preparation of the questioning carried out pursuant to Articles 185a to 185c CPC that persons mentioned in Article 51 § 1 CPC may be present together with the minor in the interview room, and an adult indicated by the minor. However, the participation of these persons poses the risk of disrupting the proper course of this procedural activity and negatively influencing the quality of the minor's testimony, as these persons may even unconsciously influence the person being questioned and restrict his/her freedom of expression. Therefore, in question 15, the respondents were asked to provide information on whether they had ever denied participation in the questioning in protective mode of persons

from Article 51 § 1 CPC and an adult designated by the minor to participate in the questioning, or had led them out of the interview room. The answers were given by 68 respondents. The results are presented in Table 17.

Table 17. Denying persons mentioned in Article 51 § 2 CPC to be present in the interview room

Have you ever denied persons mentioned in Article 51 § 1 CPC and an adult indicated by the minor to participate in the questioning or asked them to leave the interview room?		
Variant of response	Number of responses	Percentage of responses
Yes	32	47.1
Sometimes	11	16.2
Never	25	36.8
I have not questioned a minor as a witness at all	0	0

Source: own elaboration.

Table 17 shows that all the persons who answered question 15 had experience in questioning minors, of which 47.1% declared that they had sometimes not allowed persons from Article 51 § 2 CPC and an adult indicated by the minor to participate in the questioning or asked them to leave the interview room, and 16.2% did so sometimes. On the other hand, 36.8% of respondents did not use such a solution. This means that a large number of respondents are aware of the negative consequences that may be associated with the presence of statutory representatives during the questioning of a minor.

Pursuant to Article 185a § 2 CPC, a questioning in this mode shall be conducted "no later than within 14 days from the date of receipt of the application". This expression raises doubts in the legal literature as to whether the time limit is of an imperative or instructive nature.[26] Therefore, in question 16, judges, as entities bound by this time limit, have been asked what, in their opinion, is the consequence of exceeding it. The answers were given by 68 respondents. The results are presented in Table 18.

[26] K. Dudka, *Opinia do projektu ustawy o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw*, druk poselski nr 3251, https://www.sejm.gov.pl/Sejm8.nsf/opinieBAS.xsp?nr=3251 (access: 26.8.2025); J. Zagrodnik, Ł. Chmielniak, M. Klonowski, A. Rychlewska-Hotel, *Komentarz do art. 185a*, [in:] J. Zagrodnik, Ł. Chmielniak, M. Klonowski, A. Rychlewska-Hotel, *Kodeks postępowania karnego. Komentarz praktyczny do nowelizacji 2019*, Warszawa 2020; C.P. Kłak, *Opinia do projektu ustawy o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw*, druk poselski nr 3251, https://www.sejm.gov.pl/Sejm8.nsf/opinieBAS.xsp?nr=3251 (access: 26.8.2025).

Table 18. Nature of the time limit under Article 185a § 2 CPC and Article 185c § 2 CPC

In your opinion, what is the consequence of exceeding the 14-day time limit referred to in Article 185a § 2 CPC and Article 185c § 2 CPC?		
Variant of response	Number of responses	Percentage of responses
Exceeding it does not affect the possibility of conducting the questioning and using this evidence in criminal proceedings	63	92.6
Ineffectiveness of the questioning, resulting in the inability to use this evidence in further proceedings	0	0
I don't have an opinion	5	7.4

Source: own elaboration.

Table 18 shows that the vast majority of respondents (92.6%) believe that the 14-day time limit set in Article 185a § 2 CPC and Article 185c § 2 CPC is of an instructive nature and the fact of exceeding it does not affect the possibility to carry out the questioning and use this evidence in criminal proceedings. The lack of opinion as to the consequences of exceeding this time limit was expressed by 7.4% of the respondents. Moreover, none of the respondents pointed out the ineffectiveness of such a questioning as a consequence, resulting in the inability to use this evidence in further proceedings. This may indicate, on the one hand, that judges do not see interpretation problems related to the nature of the time limit specified in Article 185a § 2 CPC, and, on the other hand, that such an interpretation makes it possible to avoid the ineffectiveness of the act of questioning a minor and the need to conduct it again, thus protecting the child from secondary victimisation.

A record is drawn up of the questioning of a minor in protective mode. Pursuant to Article 150 § 1 sentence 2 CPC, the record should be read out and a note about this fact should be made before signing. However, the reading out of the record should not be done in the case of questioning a minor due to the fact that it prolongs the whole procedural act and that quoting individual statements may have a victimising effect on the child.[27] Therefore, the judges have been asked in question 17 whether they read to the minor the record having carried out the questioning in protective mode. The answers were given by 68 respondents. The results are presented in Table 19.

Table 19. Reading out of the record of questioning to a minor

After the questioning in protective mode (Articles 185a and 185b CPC), do you read out the record of questioning to the minor?		
Variant of response	Number of responses	Percentage of responses
Yes	18	26.5
Usually yes	4	5.9
Usually not	7	10.3
No	39	57.4
I have not questioned a minor as a witness at all	0	0

Source: own elaboration.

[27] A. Budzyńska, *Realizacja przesłuchania dziecka*, [in:] *Przesłuchanie małoletniego świadka…*, p. 65.

Based on the data presented in Table 19, the conclusion can be drawn that all the judges who answered question 17 have experience in questioning a minor and the vast majority of them are aware that the record of this procedural act should not be read out to a minor. On the other hand, as many as more than a quarter of the respondents declare they read out the record. This is a worrying signal, as this practice increases the risk of the minor experiencing secondary victimisation. This therefore points to the need to provide special training for judges regarding the questioning of a child in criminal proceedings.

The record of questioning a minor also entails the problem of its signature. Pursuant to Article 149 § 1 CPC the minutes of the hearing and the session shall be signed immediately by the chairman and the clerk of the court. As the questioning of a minor in protective mode takes place during a court session, the minor should therefore not sign the record of this act. In order to find out what the practice is in this regard, the judges have been asked whether they require the minor to sign the record after the questioning in protective mode is completed. The answers were given by 68 respondents. The results are presented in Table 20.

Table 20. Requirement for the minor to sign the record of questioning

After the questioning in protective mode (Articles 185a and 185b CPC), do you require the minor to sign the report?		
Variant of response	Number of responses	Percentage of responses
Yes	19	27.9
Usually yes	6	8.8
Usually not	3	4.4
No, because according to the Criminal Procedure Code, the minutes of the court session and the hearing are only signed by the court and the court clerk	40	58.8
I have not questioned a minor as a witness at all	0	0

Source: own elaboration.

Table 20 shows that despite clear indication in Article 149 § 1 CPC only 63.2% of the judges have declared that they do not require, or usually do not require, a minor to sign the protective mode questioning record, because, according to the Code of Criminal Procedure, the minutes of the court session and the hearing are only signed by the court and the court clerk. On the other hand, such a signature is required by as many as 36.7% of the respondents. The results obtained in this respect may indicate that not all judges are familiar with the regulations governing the course of questioning in the protective mode.

Not every judge has the ability to establish proper contact with a child and the aptitude to conduct such an interview. However, it is very important to have such skills, as their absence can affect the conduct of the questioning and increase the risk of the minor experiencing secondary victimisation. Therefore, in question 19, the respondents were asked about the need for solutions aimed at preparing judges

to conduct the questioning of minors, including the introduction of specialisation of judges in interviewing children, the abandonment of assigning judges through drawing by lot to conduct the questioning of minors, and the selection of judges specialising in such questioning who have the necessary competence and skills to conduct such an activity. The results are presented in Table 21.

Table 21. Judges' attitude towards the introduction of specialisation of judges in the field of interviewing children and the abandonment of drawing judges by lot to conduct the questioning of minors

Do you think that should be a specialisation for judges in interviewing children, that the practice of drawing of judges by lot to carry out the questioning of minors should be given up, and that judges specialising in such questioning who have the necessary competence and skills to carry out such an activity should be selected instead?		
Variant of response	Number of responses	Percentage of responses
Yes	30	44.1
Usually yes	17	25
No	10	14.7
Usually not	9	13.2
I don't have an opinion	2	2.9

Source: own elaboration.

A total of 68 respondents answered question 19 and the answers show that the majority of respondents are in favour of introducing specialisation of judges in the field of interviewing children, abandoning the drawing of judges by lots to conduct the questioning of minors and instead the selection of judges specialised in such interviews, who have the necessary competences and skills to carry out such an activity. On the other hand, 27.9% of the judges were against the introduction of such solutions. Only 2.9% of respondents expressed no opinion on this issue.

Question 20 in the survey was of an open nature. The respondents could provide their own comments on questioning a minor in criminal proceedings. Only 17 respondents made use of this option. In their replies, they pointed to the need to introduce special training for judges in the field of psychology and methodology of interviewing children, as the competence of a judge plays a large role during the questioning of a child and not all judges are predisposed to interview children, and the questioning itself is one of the most difficult procedural acts. The respondents also pointed to the need to create Friendly Interviewing Rooms in each court and to equip those already existing with appropriate furniture, toys, drawing materials, drinking water (or also sweets), as well as air conditioning and professional equipment for video and audio recording. The respondents also believe that there is a need to amend the provisions of Article 185a CPC to the extent related to the defence counsel and to create a solution that would provide for the need to appoint a defense counsel also for the suspect, because often the act of questioning the minor precedes the bringing of charges against the suspect and this entails the need for another questioning of the child. Moreover, they also put forward proposals to completely eliminate the possi-

bility of questioning children at the hearing and to introduce mandatory questioning of children in Friendly Interviewing Rooms, as well as to ensure that the questioning, especially in the case of a minor below the age of 13, will be carried out by an expert psychologist under the supervision of a judge. They have also pointed to the fact that there are very few competent expert psychologists who can be summoned to participate in the questioning and obtain evidence-based feedback from them, and that questioning of minors is carried out too early, before other pieces of evidence are gathered.

CONCLUSIONS

The results obtained as part of the research allow for the conclusion that, in the opinion of the judges, minors both under and over the age of 15 should, as before, be heard in criminal proceedings, and that the evidentiary value of their testimony in most cases is comparable to that of adults. The judges, however, do not have a unified position on the very need to introduce a minimum age limit for witnesses and what specifically this limit should be. In the opinion of most respondents, such a limit should not exist, as the child's ability to testify depends not only on his or her age, but also on other factors, and a child who is at least 5 years old may be able to give more valuable testimony than one who is older than 13 years old.

The answers also show that the judges see the need for solutions to protect minors from secondary victimisation and conditions to facilitate their testimony. They appreciate the existence of the protective mode of questioning, at the same time perceiving the need to modify it by extending this mode to all minors, thus eliminating the possibility for them to testify at the court hearing. Judges declare that they instruct minors about their rights and obligations, and in the opinion of most of them, the minors should decide on their own whether to exercise the right to refuse to testify, answer questions, and file a request for exemption from testifying, which should be seen positively as an action consistent with the case law of the Supreme Court and a manifestation of awareness of the personal nature of these rights.[28] The majority of respondents also show the correct attitude when it comes to instructing minors about criminal liability for making false declarations.

More than half of the respondents have stated that they do not instruct minors younger than 17 about such liability, because the minor is not subject to this liability, and 4.5% have declared that they do not instruct the minor about it at all. The statements of the judges show that the act of instructing a child is a very difficult task for them, and that the prior preparation of the child for this activity by an ex-

[28] Judgment of the Supreme Court of 20 January 1981, I KR 329/80, Legalis no. 22449; resolution of the Supreme Court of 19 February 2003, I KZP 48/02, OSNKW 2003, no. 3–4, item 23.

pert psychologist, the development of information brochures for minors and their parents or guardians, but also holding regular training for judges, during which they could obtain information on how to perform it accordingly to the age and degree of development of the child, would greatly facilitate this task. The results of the survey also show that most judges see a need, either for themselves or for other judges, to improve their knowledge of how correctly question children, but at the same time they have the best interests of the child in mind and try to conduct the interview in accordance with the rules, protecting the minor from secondary victimisation, both in the ordinary and protective modes of questioning. The respondents declare that during the questioning they use simple language, adapted to the age and degree of development of the interviewee, they instruct him/her about rights and obligations in a way understandable to the child, make sure that he/she understands the content of the question, while ensuring that the question is not victimising, show patience and understanding for the situation of the child, assuring the minor that no one wants to assess or judge him or her. They are aware that, on the one hand, the parent or guardian can have a tranquilising or, quite the opposite, intimidating effect on the child. Therefore, it seems that they ensure that the presence of a representative or guardian does not prevent the minor from testifying. It should also be noted that statements of the judges show that their concern to protect a minor from secondary victimisation also manifests itself in the holding of such an interview, if possible in the absence of the accused, and the desire to conduct an interview in the presence of an expert psychologist, and in cases of offences against sexual freedom or against family, ensuring that the questioning be carried out by a person of the same sex as the minor.

As regards the questioning of a minor under the protective mode, the research shows that judges, when selecting an expert psychologist, whose presence during the questioning in this mode is obligatory, are primarily guided by their availability. As a second criterion, they indicated the experience in working with a given expert, then experience in working with children, and only then the expert's competence. The judges use the help of an expert to instruct the minor about rights and obligations, but in most cases it depends on the minor and the possibility of establishing contact with him/her. Furthermore, the research has revealed that judges actively participate in the questioning. However, in practice, there are two main models of questioning in the protective mode: the first, in which the judge interviews and the expert passively observes the course of the questioning, and the second, based on joint interviewing by the judge and the expert psychologist. It is rare that it is the expert who talks to the child and the judge passively watches this activity. As in the case of questioning in the ordinary mode, judges try to ensure that the questioning of a minor is conducted properly in the protective mode and sometimes do not allow persons mentioned in Article 51 § 2 CPC and an adult indicated by the minor to participate in the questioning or ask them to leave the interview room.

The research also shows that, in most cases, the record of the questioning is rightly not read out to the minor after the questioning is completed and judges do not require the minor to sign the record. Unfortunately, the opposite situations do occur. A large proportion of the respondents have declared that they read out the record of the questioning to the minor and require the minor to sign it. Such negative actions may be mainly due to a lack of awareness of how this may adversely affect the person being interviewed, and this in turn may be due to a lack of adequate training of judges, and to a certain extent also due to ignorance of the provisions of the Code of Criminal Procedure.

The results also allow us to state that the judges perceive, whether in themselves or in other judges, a lack of skills and predisposition to interview minors. Therefore, they point to the need to introduce mandatory training for judges (which will ensure adequate preparation for this evidence taking activity in a way that allows, on the one hand, to obtain valuable testimony and, on the other, to protect the witness against secondary victimisation) and to establish a specialisation for judges in the field of child interviewing, to refrain from drawing judges by lot to conduct questioning of minors and, instead, to introduce the selection of judges specialising in such questioning. In addition, while the judges appreciate the protective mode of questioning, they point out the need to modify the statutory arrangements to prevent the repeated questioning of minors, as there are situations in which a minor has to be interviewed during the *in rem* phase of proceedings and then courts have to take into account requests for a second interview. Moreover, the respondents pointed to the insufficient number of Friendly Interviewing Rooms and the inadequate state of equipment of existing ones.

It should be emphasized that the legislature, like the judges surveyed, recognized the need to take appropriate action with regard to the procedure for questioning a child and the need to protect him/her from secondary victimisation. Therefore, by the Act of 13 January 2023 amending the Act – Civil Procedure Code and certain other acts, the legislature introduced changes to the Code of Criminal Procedure and the Act of 27 July 2001 – Law on the System of Common Courts, including the following: 1) increasing the protection of the minor against multiple interviews, in such a way that the content of the condition for a second interview contained in Article 185a CPC "unless requested by the accused who did not have a defence counsel at the first questioning" is replaced by the phrase "or if the evidence motion filed by the accused who did not have a defence counsel at the first questioning of the victim is accepted"; 2) the introduction of Article 185f in the CPC, in § 2 of which the legislature provided for the right of a person being questioned under the protective mode to obtain, at least 3 days before the questioning, information about the course, manner and conditions of the questioning; 3) modification of the content of Article 171 § 3 CPC, extending its scope from persons under the age of 15 to persons under the age of 18 and providing for the possibility of participation

in the questioning in ordinary mode also of an adult indicated by the person being questioned; 4) adding § 3a to Article 82a of the Law on the System of Common Courts – which provides for the obligation of judges to take part in training every 4 years, in the following wording: "A judge adjudicating in criminal cases should participate, every four years, in training and professional development courses organised by the National School of Judiciary and Public Prosecution, in order to supplement specialist knowledge and professional skills in the field of questioning persons under 18 years of age, and persons referred to in Article 185c and Article 185e of the Act of 6 June 1997 – Criminal Procedure Code".

Despite the adoption of the Act of 13 January 2023 amending the Act – Civil Procedure Code and certain other acts, which should be considered positively, not all the problems that are related to the examination of a child in a criminal trial, which were pointed out by the judges surveyed, have been eliminated. Therefore, it prompts the following proposals *de lege ferenda* to be put forward to the legislature. Firstly, the protective mode should be extended to all minors, thus eliminating the possibility of questioning them during the court hearing. Secondly, we should also call for the introduction of a judge specialisation system as soon as possible, as well as a system of selection for questioning only those judges who have the predispositions to do so. Thirdly, measures to be taken to properly equip the Friendly Interviewing Rooms and to have them set up in every court should be postulated.

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ABSTRAKT

Małoletni może zostać przesłuchany w procesie karnym w charakterze świadka. Kwestia ta aktualnie nie budzi wątpliwości. Dopuszczalność przesłuchania wynika m.in. z przepisów Kodeksu postępowania karnego, a także z judykatury i poglądów prezentowanych w piśmiennictwie. Przesłuchanie małoletniego przeprowadzane jest – w zależności od okoliczności sprawy oraz wieku świadka – w trybie zwykłym lub ochronnym. W każdym przypadku, niezależnie od trybu przesłuchania, organ procesowy obowiązany jest zapewnić, aby ta czynność odbywała się w sposób chroniący dziecko przed wtórną wiktymizacją oraz umożliwiający realizację przysługujących mu praw. Celem zbadania, czy te standardy są przestrzegane, a także ustalenia, jak w praktyce ta czynność jest dokonywana, w dniach od 5 do 30 kwietnia 2022 r. zostały przeprowadzone badania ankietowe wśród sędziów orzekających w sądach powszechnych. W niniejszym artykule znajduje się omówienie wyników tych badań oraz ich ocena. W pracy uwzględniono zmiany wprowadzone ustawą z dnia 13 stycznia 2023 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw.

Słowa kluczowe: małoletni; wtórna wiktymizacja; postępowanie karne; świadek; zeznania