

## **GUIDANCE FOR THE AGGRIEVED PARTY ON THEIR RIGHTS AND OBLIGATIONS IN PETTY OFFENCE CASES**

- One whose legal interest has been directly infringed or threatened by a petty offence is an aggrieved party (Article 25 § 1) of the Petty Offences Procedure Code [*Kodeks postępowania w sprawach o wykroczenia – KPW*]).
- In case of a death of the aggrieved party, their rights may be exercised by their close relatives/partners (Article 25 § 2) of the KPW).
- An insurance undertaking is considered to be an aggrieved party to the extent that it has covered the damage caused to the aggrieved party by the petty offence or is under an obligation to cover it (Article 25 § 3) of the KPW in relation to Article 49 § 3) of the Code of Criminal Procedure [*Kodeks Postępowania Karnego – KPK*]).
- An aggrieved party which is not a natural person acts through a body authorised to act on its behalf (Article 25 § 3 of the KPW in relation to Article 51 § 1 of the KPK).
- If the aggrieved party is a minor or a fully or partly incapacitated person, their rights are exercised by their statutory representative or by the person who exercises care over them (Article 25 § 3 of the KPW in relation to Article 51 § 2 of the KPK).
- If the aggrieved party is a vulnerable person, in particular due to their age or health condition, their rights may be exercised by the person who exercises care over them (Article 25 § 3 of the KPW in relation to Article 51 § 3 of the KPK).

### **Rights and obligations of the aggrieved party:**

1. The aggrieved party may act as a party in the role of an auxiliary prosecutor along with the public prosecutor or instead of the public prosecutor (Article 25 § 4 of the KPW). As part of this right the aggrieved party may:
  - a) within 7 days from being notified of the motion for punishment being sent to the court, declare that they would act as an auxiliary prosecutor along with the public prosecutor. Upon the lapse of this time limit this right expires (Article 26 § 3 of the KPW),
  - b) in petty offence cases prosecuted upon the request of the aggrieved party – independently file a motion for punishment as an auxiliary prosecutor (Article 27 § 1 of the KPW),
  - c) in petty offence cases other than the ones prosecuted upon the request of the aggrieved party, the aggrieved party may file a motion for punishment as an auxiliary prosecutor if, within one month from notifying the police of the petty offence, they are not notified of the motion for punishment being filed or they are notified that the discovery stage has failed to provide grounds for the police to file a motion for punishment (Article 27 § 2 of the KPW).
2. A request for prosecution filed as regards just some of the persons co-committing the act remains in force also as regards the persons not indicated in the request, unless they are the aggrieved party's close relatives/partners (Article 6 § 2 of the KPW).
3. In case that the aggrieved party files a request for prosecution of a person who has committed an offence prosecuted upon a request, the request may be withdrawn. The withdrawal of the request only as regards some of the person co-committing the act is not permissible, unless they are the aggrieved party's close relatives/partners. The withdrawal may be effected until the commencement of the court case at the first hearing. In the event of the request being withdrawn, its subsequent filing is not permissible (Article 6 § 3 of the KPW).
4. An aggrieved party being the auxiliary prosecutor has the right to request permission to make a transcript of the report documenting the activities they took part in or were supposed to take part in, as well as any document produced by them or drawn up with their involvement (Article 38 § 1 of the KPW in relation to Article 157 § 3 of the KPK). An aggrieved party being the auxiliary prosecutor has the right to view the court case files in the petty offence case and make transcripts thereof (Article 38 § 1 of the KPW in relation to Article 156 § 1 of the KPK).
5. An aggrieved party that has filed a notification of the commitment of a petty offence has the right to submit a request for the issuance of a confirmation of the notification being filed, featuring: the date and the place of its acceptance, indication of the accepting authority along with its contact details, case number, data indicating the identity of the aggrieved party, time and place of the act being committed, as well as a brief description of the act and the damage caused (Article 25 § 5 of the KPW in relation to Article 304b of the KPK).
6. An aggrieved party participating in the questioning has the right to file a request for the data specifying their residence address and the address of their workplace not to be included in the report (Article 37 § 13 of the KPW).
7. During the discovery stage the aggrieved party has the right to file a request with the authority conducting the discovery for the case to be directed to an institution or a person authorised to conduct mediation proceedings, provided that the person against whom there are reasonable grounds for the issuance of a motion for punishment, agrees to it. The aggrieved

party's participation in mediation is voluntary and the consent for it to be conducted may be withdrawn until the conclusion of the mediation proceedings (Article 54 § 9 of the KPW in relation to Article 23a of the KPK).

8. An aggrieved party summoned as a witness is under an obligation to appear and testify (Article 41 § 1 of the KPW in relation to Article 177 § 1 of the KPK).
9. If there are any doubts as regards the circumstances of the act, during the discovery stage the aggrieved party may file motions for evidence (Article 54 § 4 of the KPW).
10. An aggrieved party participating in any activities may, at the signing of the report documenting such activities, raise objections as regards its content, and these objections must be included in the report (Article 37 § 11 of the KPW in relation to Article 150 § 2 of the KPK).
11. If the punishability of an act depends on the aggrieved party's health condition, the aggrieved party may not object to an examination or to procedures not involving a surgery, or an observation at a healthcare institution. In case of doubts as to the mental state of the aggrieved party acting as a witness, the state of their mental development, perception ability or an ability to reproduce observations, the court or the prosecutor may decide for the aggrieved party to be questioned in the presence of an expert doctor or an expert psychologist, to which the aggrieved party may not object. For evidentiary purposes, the aggrieved party acting as a witness may also be subjected, upon their consent, to a physical examination and medical or psychological tests (Article 41 § 1 of the KPW in relation to Article 192 of the KPK).
12. The aggrieved party may be supported by one attorney. The attorney may be an advocate, a legal adviser, and, if the aggrieved party is a state, a local government or a social institution, also an employee of that institution or its superior body (Article 30 § 1 of the KPW). The aggrieved party may grant the power of attorney in writing or by making a statement included in the report executed by the authority conducting the proceedings in the petty offence case (Article 30 § 2 of the KPW in relation to Article 83 § 2 of the KPK). The aggrieved party may also, if they do not have a chosen attorney, file a request for the appointment of a public attorney. The request should duly indicate that the aggrieved party is unable to bear the costs of appointing an attorney without their ability to support themselves and their family being seriously affected (Article 30 § 2 of the KPW in relation to Article 22 of the KPW).
13. The aggrieved party has the right to participate in the court case and stay in the court room, even if they are to testify as a witness (Article 81 of the KPW in relation to Article 384 § 2 of the KPK).
14. The aggrieved party being an auxiliary prosecutor may, unless otherwise provided by the statute, file requests and other statements in writing, as well as orally, to be included in the report (Article 38 § 1 of the KPW in relation to Article 116 of the KPK).
15. The aggrieved party being an auxiliary prosecutor has the right to file motions for evidence (Article 39 § 1 of the KPW).
16. If the aggrieved party was not present at a court hearing and there is no proof of service of the summons or a notification in the case files, and the court, considering it desirable, conducted the taking of evidence, the aggrieved party may request at the next hearing that – if they had not been duly notified of the time of the previous hearing – the evidence be taken again (Article 71 § 2 of the KPW).
17. In the event that the public prosecutor submits a motion for the defendant to be sentenced without a court hearing, the aggrieved party that had made a statement indicating their decision to join the proceedings as an auxiliary prosecutor, may raise an objection against that motion within a time limit set by the court. If the objection is filed, the motion may not be accepted (Article 63 § 3 of the KPW).
18. The aggrieved party being the auxiliary prosecutor may raise an objection to the defendant's motion to be sentenced in a specific way without a court hearing. If the objection is raised, the motion may not be accepted (Article 64 § 2 of the KPW).
19. The aggrieved party being the auxiliary prosecutor may withdraw the accusation (Article 28 of the KPW).
20. The aggrieved party being an auxiliary prosecutor has the right to submit appeal measures if the statute so provides (Article 103 § 2 and 3 of the KPW).
21. If the discovery stage fails to provide grounds for the filing of a motion of punishment, a notification shall be made to the known aggrieved parties stating the reason for the motion for punishment not being filed. The aggrieved party has the right to familiarise themselves with the evidence obtained during the discovery stage and make transcripts and copies thereof. Upon the request of the aggrieved party or their attorney, copies and certified transcripts of these materials shall be issued for a fee; the payment for the issuance of the copies and certified transcripts are governed accordingly by the legal provisions enacted pursuant to Article 156 § 6 of the KPK (Article 54 § 2 of the KPW).

**I have received a copy of this guidance**

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*(date and signature of the aggrieved party)*