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Implementation of the UN's principles on effective interviewing and interrogation – perspectives for Poland and Lithuania (COST Action CA22128: IMPEMENDEZ)

Introduction

Juan E. Méndez, a former UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, once noticed that “there are varied reasons for pervasiveness of torture. In many countries, an important factor lies in the weakness of institutions set up to protect the human person from abuse. The lack of accountability of members of armed and security forces also contributes. Poor education of law enforcement agents no doubt plays a role”¹. It is a recognised legal obligation of every UN member to develop legal principles and introduce binding guidelines on interviewing and interrogation conducted by the police and other law enforcement agencies to prevent torture and other forms of ill-treatment². The use of such methods is not only illegal considering the international law but is also ineffective in terms of reliable information gathering.

¹ J.E. Méndez, Foreword, [in:] W.F. Schulz (ed.), *The phenomenon of torture: readings and commentary*, Pennsylvania 2007, p. XIII.

² The obligation arises from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 10 December 1984 by General Assembly resolution 39/46, <https://www.ohchr.org/sites/default/files/cat.pdf> (accessed: 20.12.2023).

In Poland, testimonial evidence obtained through interviews and interrogations constitutes 90% of the case materials³. This means that the education of future criminal lawyers, policemen and other law enforcement professionals should include specialized courses on effective and ethical interviewing and interrogation techniques. Students need to be taught in legal and ethical basics of information-gathering considering human sources and be able to deal with specific situations such as vulnerable victims, deception detection and the verification of criminal confessions. Unfortunately, the current tendency, in Poland, is to reduce academic hours dedicated to broadly understood criminalistics and police art. Within the existing educational programs for lawyers, only a couple of hours can be dedicated to interviewing and interrogation techniques. Practice shows, that without proper knowledge and guidance law students tend to use other sources of information, such as the Internet, TV programs, documentaries and even Hollywood movies. For obvious reasons, these sources of information are not reliable and unable to give students comprehensive knowledge on such complicated issues⁴. Without proper reflection and correction, some of these ideas might influence decision-making in real life and professional situations. This does not mean, however, that other, more reliable sources of information are not available. Numerous books and academic articles address the issue of effective interviewing and interrogation techniques. Some of them are available in full or in parts on the Internet⁵.

Interviewing and interrogation tactics are considered an important part of criminal investigations in Poland and Lithuania. Nonetheless, in many textbooks on criminalistics, the accent is placed on forensic techniques and different types of forensic expertise with only a few pages dedicated to interviews and interrogations. The recommendations are sometimes too general to provide valuable insights and serve as practical guidance. Often the authors provide rather judicial commentary on the current legal framework, which renders little assistance on how to conduct actual interviews. With a few exceptions⁶, the recommendations are the repetition of the ideas that originated

³ Rządowy projekt ustawy o ochronie i pomocy dla pokrzywdzonego i świadka, druk nr 2653, s. 2, <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2653> (accessed: 20.12.2023)

⁴ More on the topic of the so-called self-education in forensic sciences by using the information provided by modern media: D. Solodov, *Wiedza sprawców przestępstw o potencjale wykryczym kryminalistyki jako czynnik sprzyjający kontrykryuczości*, [w:] P. Chlebowicz, P. Łabuz, T. Safjański (eds.), *Działania kontrykryucze zorganizowanych grup przestępczych i organizacji terrorystycznych*, Warsaw 2021, pp. 61–88.

⁵ S. Pikulski, *Podstawowe zagadnienia taktyki kryminalistycznej*, Białystok 1997; T. Hanaušek, *Zarys taktyki kryminalistycznej*, Warsaw 1994; D. Jagiełło, *Taktyka kryminalistycznych czynności dowodowych*, Warsaw 2019.

⁶ E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka, czyli o współczesnych metodach dowodzenia przestępstw. Zagadnienia prawne*, Warsaw 2020; M. Kulicki, V. Kwiatkowska-Wójcikiewicz, L. Stęпка, *Kryminalistyka. Wybrane zagadnienia teorii i praktyki śledczo-sądowej*, Toruń 2009.

in previous epochs and do not completely reflect current psychological knowledge and the newest studies considering the most effective methods of conducting interviews and interrogations. Trying to improve the quality of testimony from minors in Lithuania has received significant attention from the country's practitioners and policymakers⁷. Legislation is constantly developing to ensure that the best interests of children are considered in legal proceedings. However, when it comes to interviewing of adults, it is not fully instructed by science, law and ethics⁸.

It is worth mentioning that the issue of torture and the use of coercive interrogation techniques has been addressed in various articles and academic works in both countries⁹. The National Committee of the Prevention of Torture affiliated under the auspices of the Polish Ombudsman regularly publishes reports on its activity, and hosts conferences, meetings, and webinars. In the last two years alone, the Polish Commissioner for Human Rights (RPO) has directed several appeals to the state authorities concerning the issues highlighted by the National Committee of the Prevention of Torture, such as the unjustified use of handcuffs on detained individuals by police officers, the implementation of anti-torture guarantees for detained individuals, ensuring that detained individuals have access to legal counsel from the moment of detention, the incorporation of a definition of torture and other cruel, inhuman, or degrading treatment or punishment into Polish legal regulations, as well as the necessity of developing guidelines for interrogations and police questioning based on the so-called Méndez Rules¹⁰.

It is worth noting that in Poland, recent studies show that deception and manipulation are among the most used interviewing and interrogation methods¹¹. Their compatibility with the Méndez Principles, however, is rather questionable, as these methods are deemed ethically and morally unacceptable according to the Méndez Principles, which emphasize the importance of conducting interviews and interrogations with respect for human rights, integrity, and truthfulness. In Lithuania, although torture, violence and threats are legally forbidden, regulations about the prohibition of other potentially harm-

⁷ I. Laurinaitytė, N. Grigutytė, *Teismo psichologo gerosios praktikos vadovas* [Best practice guidelines for court psychologists], Nacionalinė teismų administracija, 2021.

⁸ A. Izotovas, I. Laurinaityte, K. Vanagaite, N. Grigutyte, *The investigative interviewing and interrogation of adults in Lithuania*, [in:] D. Walsh, R. Bull, I. Areh (eds.), *The international handbook of investigative interviewing and interrogation*, London 2024 [forthcoming].

⁹ O. Mazur, *Przesłuchanie podejrzanego. Studium prawne i kryminalistyczne*, Toruń 2023; K. Hebda, *Przyznanie się do winy w procesie karnym – studium prawno-kryminalistyczne*, PhD theses, Olsztyn 2019; D. Solodov, *O taktyce przesłuchania osoby przyznającej się do popełnienia umyślnego przestępstwa*, „Studia Prawnoustrojowe” 2018, No. 41, pp. 181–192.

¹⁰ Rzecznik Praw Obywatelskich, *Przestępstwo tortur w Polsce*, Publikacja KMPT o wyrokach sądów w takich sprawach, 2022, <https://bip.brpo.gov.pl/pl/content/przestepstwo-tortur-w-polsce-publikacja-kmpt> (accessed: 20.12.2023).

¹¹ O. Mazur. op. cit., p. 382.

ful interviewing techniques (minimization, bluffs, presenting false evidence, etc.) are missing¹².

In the article, the authors analyse the principles of effective interviewing and interrogation techniques adopted in 2021 under the auspices of the United Nations known as the Méndez Principles. The main objective is to identify potential advantages of implementing these principles in criminal proceedings given the existing legal framework and forensic recommendations. The authors also highlight practical challenges that might arise during the implementation of the Principles. The article is written as a part of the authors' engagement within COST Action CA22128 - Establishing Networks to Implement the Principles on Effective Interviewing for Investigations (IMPLEMENTEZ), which started on 5 October 2023.

The adoption of the Méndez principles

In 2016, Juan E. Méndez, an Argentine lawyer, and then the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted a report to the General Assembly calling for the development of a universal set of standards for non-coercive interviewing and associated legal safeguards. The aim of the initiative was the prevention of torture, ill-treatment, or coercion of suspects, witnesses, victims, and other persons being interviewed. Published in six official UN languages, the report states that “the right to be free from torture and ill-treatment is a rule of customary international law and a peremptory *jus cogens* norm of international law applying to all States (...). The obligation to prevent torture and ill-treatment applies at all times, including during the investigation of serious crimes and in situations of armed conflict, and is complemented by a range of attendant standards and procedural safeguards”¹³. It notes that “the sophisticated normative frameworks in place often do not translate into a reduction in practices of torture, ill-treatment or coercion during questioning, which are frequently used by State agents worldwide during law enforcement investigations of common and serious criminal offences, during military and intelligence operations and during armed conflict”¹⁴. Several factors were listed in the report as the common reasons for mistreatment and human rights violations in criminal proceedings:

¹² A. Izotovas, I. Laurinaityte, K. Vanagaite, N. Grigutyte, op. cit.

¹³ *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, English version, 2016, p. 3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/250/31/PDF/N1625031.pdf?OpenElement> (accessed: 20.12.2023).

¹⁴ *Ibidem*, p. 4.

- pressure from politicians, supervisors, judges and prosecutors to solve high volumes of cases,
- inadequate measures of police performance, including systems of appraisal focusing only on the number of crimes “solved” or convictions,
- a lack of forensic methodology, training in modern criminal investigation techniques and equipment creating the perception that torture, ill-treatment and coercion as the easiest and swiftest ways to elicit confessions or other information,
- the ability to convict suspects solely based on confessions without further corroborating evidence, which encourages the use of physical or psychological mistreatment or coercion,
- absence or denial of fundamental procedural safeguards designed to prevent torture and other ill-treatment during questioning¹⁵.

The author proposed the adoption (under the auspices of the United Nations) of a special protocol containing universal (regarding the existing different legal models) interviewing and interrogation principles. According to the proposal, the member states should ensure that supervisors, judicial officers, prosecutors and medical personnel are trained on these standards and the duties to report, effectively document and investigate allegations of torture and ill-treatment.

The work on the set of principles started in early 2018 and involved an institutional partnership between the Anti-Torture Initiative at American University Washington College of Law, the Geneva-based Association for the Prevention of Torture and the Norwegian Center for Human Rights. The development of the principles was overseen by a Steering Committee comprised of recognized authorities in policing, law enforcement, counterterrorism, intelligence gathering, psychology, law, and human rights protection. Under its guidance, a drafting group, which included approximately 80 experts from different countries, composed the initial proposal. The final version of the Principles (the official title of the document is “Principles on Effective Interviewing for Investigations and Information Gathering”¹⁶) was published on 17 May 2021 on the official webpage of the UN’s Association for the Prevention of Torture¹⁷. The Principles were officially launched on 9 June 2021. As of today, they have been translated into 11 languages, unfortunately, though, except for Polish and Lithuanian.

¹⁵ Ibidem.

¹⁶ *Principles on effective interviewing for investigations and information gathering*, May 2021, https://bip.brpo.gov.pl/sites/default/files/Zasady_Mendeza_%20%28jez.angielski%29.pdf (accessed: 20.12.2023).

¹⁷ J.E. Méndez, V. Drummond, *The Méndez principles: a new standard for effective interviewing by police and others, while respecting human rights*, June 1, 2021, <https://www.justsecurity.org/76711/the-mendez-principles-a-new-standard-for-effective-interviewing-by-police-and-others-while-respecting-human-rights/> (accessed: 20.12.2023).

The document has the status of soft law, a type of guidance for the authorities on the non-coercive interviewing process, combined with the relevant legal safeguards that need to be introduced and strictly implemented. There are two central pillars:

1. building and maintaining rapport with interviewees to reduce their anxiety and stress,
2. strict adherence to the three fundamental procedural safeguards against torture and coercive techniques at every step of the process – the rights to access counsel, to remain silent, and to receive medical care.

The document provides six core principles, which are further described in a short but comprehensive form. These principles include:

- Principle One outlines the scientific research, established legal norms, and professional ethics upon which effective interviewing is founded,
- Principle Two puts forward the comprehensive process for obtaining accurate and reliable information while respecting human rights during interviews and interrogations,
- Principle Three holds that authorities should be mindful of addressing the needs of people in situations of heightened vulnerability based on risk factors such as age, gender identity or expression, nationality, disability, and religion,
- Principle Four emphasizes that effective interviewing requires specific training that should be continually updated and refined,
- Principle Five accents the importance of transparency and accountability, through accurate record-keeping of the interviews, external oversight, independent monitoring, and complaints mechanisms,
- Principle Six guides the implementation of the abovementioned guiding principles, including the review of domestic legal frameworks, and the protection of the independence of the judiciary and other key participants.

It is worth mentioning that all six principles are interconnected and are supposed to work as an effective system. The goal of the document is to guide law enforcement officials through the first contact and the first hours of communication with the detainee.

Characteristics of the Principles

The first Principle – On Foundations – refers to the scientific foundations of interviewing and offers insights into the most effective methods and techniques. One of the first observations relates to the well-known study by G.H. Gudjonsson entitled “The Psychology of False Confessions: Forty Years of Science and Practice”. The book is considered a classical academic publica-

tion giving insights into the issue of police coercion, false criminal confessions, the reasons behind them and their prevention¹⁸. It is emphasized that there is a strong connection between coerced false confessions and wrongful criminal convictions. The Principles point to the fact that the use of coercive interviewing techniques leads to unreliable, untruthful testimonies which might hinder further investigation. A few unreliable interviewing methods are listed, such as the following:

- manipulating the interviewees' perception of culpability (e.g., by presenting false evidence),
- manipulating their perceptions of the consequences associated with a criminal confession (e.g., downplaying or exaggerating the consequences associated with conviction of the alleged crime, implying leniency, or offering moral justifications),
- threat or enactment of physical harm,
- asking leading or suggestive questions¹⁹.

In short, these coercive and manipulative methods might produce fully or partially false statements. Unfortunately, as studies showed, interviewers are generally unable to accurately detect deception and tend to over-rely on the interviewees' body language or emotional response. So, the best way to do the interviews is to build a personal rapport with the interviewee. The Principles state that rapport-based, non-coercive interviewing stimulates communication between the interviewer and the interviewee, facilitates memory retrieval, increases the accuracy and reliability of the information provided, enables exploration of the veracity of the information provided, increases the likelihood of information-rich and genuine admissions, reduces the risk of eliciting false information or false confessions²⁰.

The Principles emphasize the role of internationally recognised legal guarantees: freedom from torture and other ill-treatment (the right to humane treatment), freedom from arbitrary arrest and detention (the right to liberty and security), the right to the presumption of innocence, the right to remain silent and the right against compelled self-incrimination, the right to a fair trial, the right to be free from discrimination. According to the Principles, "any decision to arrest and detain a person must be based on an assessment of the individual's particular circumstances and any justifiable and substantiated reasons to believe that the person is at risk of absconding, destroying evidence, influencing witnesses, or committing new crimes". It is worth noting that the first principle corresponds to the views on the exceptional character

¹⁸ G.H. Gudjonsson, *The psychology of false confessions: forty years of science and practice*, New York 2018.

¹⁹ *Principles on effective...*, pp. 6–7.

²⁰ *Ibidem*, p. 8

of preventive arrest that can be found in Polish legal doctrine²¹. They lack, though, deeper reflections on the psychological states of the arrestee which might to some extent influence the interviewing and interrogation process, as well as the ethics of the interviewer, as provided by the Principles.

The second core Principle – On Practice – states that an effective interview process should involve several elements, such as:

- thorough preparation and planning,
- application of relevant (legal) safeguards,
- keeping an open mind and avoiding any prejudice,
- creating a non-coercive environment,
- establishing and maintaining rapport,
- using lawful and scientifically supported questioning techniques,
- active listening and enabling the interviewee to speak freely and completely,
- assessment and analysis of the information gathered and the interview process.

The key part of this Principle's description is the list of legal safeguards that should be provided by the authorities. These include, among others:

- right to information about the detainee's rights,
- right to remain silent,
- right to information about the reasons for arrest and any charges at the time of the arrest,
- right of access to a lawyer, including through legal aid,
- full recording of the interview,
- right to review and sign the interview record.

It is worth mentioning that in Poland, within the current legal framework, every interviewee has the right to information about his rights and the reasons for detention. In addition, no one can be forced to testify against himself, relatives, or other close persons. In Polish criminal proceedings, every interviewee has a right to a lawyer either as a legal representative (Article 87 of the Polish Code of Criminal Procedure or CCP for short) or a defence attorney (Article 83 CCP and others). There are, however, several conditions to be met for these rights to be used. For instance, the representative must be hired and paid by the interviewee or other person, which to a certain extent limits the access to legal assistance for the interviewees with a low income. The right to demand the appointment of an attorney *ex officio* is only available to a person who has the status of a party to the proceedings, e.g., crime victims or suspects. According to Article 87 § 2 CCP, the interviewee can effectively appoint

²¹ N. Szymczyk-Urwentowicz, *Koncepcja nadużycia prawa procesowego a proces karny*, „Probacja” 2022, No. 4, p. 32; A. Klepczyński, P. Kładoczny, K. Wiśniewska, *Tymczasowe aresztowanie – (nie)tymczasowy problem. Analiza aktualnej praktyki stosowania tymczasowego aresztowania*, Warsaw 2019, https://archiwum.hfhr.pl/wp-content/uploads/2019/07/HFPC-Tymczasowe-aresztowanie-nietymczasowy-problem-web_01.pdf (accessed: 20.12.2023).

a representative by demonstrating that his interest in the ongoing proceedings requires it. The terminology used in this case by the legislator is, however, imprecise, which may lead to interpretational difficulties. The assessment of the existence of the interest should be made in the preparatory proceedings by the prosecutor and in the jurisdictional proceedings by the court. It is in their power to refuse to allow the representative to participate if they are convinced that the interviewee's interests do not require the representation.

Considering the right to a defence attorney, in Polish criminal proceedings, every suspect before the first interrogation should be informed about the right to legal assistance, including the right to request a court-appointed defence attorney. Suspects who do not have the selected defence attorneys can demand the appointment of such *ex officio* if they can properly demonstrate that they are unable to bear the costs of defence without jeopardizing their necessary livelihood and that of their family (Article 78 CCP). There are situations, however, where the suspect should be provided with legal assistance *ex officio*:

- the suspect is under 18 years old,
- the suspect deaf, mute, or blind,
- there is reasonable doubt about whether the suspect's ability to understand the significance of his actions or to conduct himself was at the time of the crime impaired or significantly limited,
- there is reasonable doubt about whether the suspect's mental health allows him to participate in the proceedings or defend himself independently and reasonably,
- other circumstances hinder the suspect's ability to defend himself,
- the accused must have a defence attorney in proceedings before a district court if he is charged with a felony (Article 79 CCP).

It is worth mentioning that it is not explicitly stated that access to legal assistance should be granted before any questioning by the authorities with sufficient time in a confidential setting. There are also no effective legal restrictions regarding the so-called "informal talks" with the police or other law enforcement officials. The testimony of the police officers about their contacts with the suspect (or witnesses) and the information they might obtain as the result constitutes admissible evidence, which interferes with the content of the Principles.

Considering the recording of interviews and interrogation, in Polish criminal proceedings it depends on the decision of the procedural authority whether the interview or the interrogation would be recorded. There are a few situations in which such a recording is considered obligatory. These include the cases:

- there is a danger that the interviewing of the victim or witness will not be possible in further proceedings,

- the victim or the witness is interviewed remotely in the manner specified in Article 396 CCP,
- the first interview of the victim of the underaged witness in the cases regarding sexual assault which is conducted by the court following a special procedure specified in Articles 185a, 185b and 185c CCP,
- court proceedings in a first-tier tribunal on the condition that there are no technical obstacles to making the recording (Article 147 CCP).

This means that in Poland there is not a comprehensive legal requirement mandating the recording of all interrogations and interviews conducted during or in connection with criminal proceedings. Although the recording of interviews and interrogations has both pros and cons, it is an effective way to enhance transparency in the criminal justice system and protect the rights of the suspects, including the right to remain silent and the right against self-incrimination. The mere fact that the interview is being recorded discourages the use of controversial tactics.

The second Principle also emphasises the need to actively listen to the interviewee. “The interviewee should be invited to explain in their own words their involvement in, or knowledge or recollection of the matter under scrutiny, and should be allowed to respond fully”²². This recommendation corresponds to the legal requirement provided by Article 171 § 1 CCP, which states that the persons being questioned must be allowed to freely express themselves and only then can questions be asked to supplement, clarify, or verify their statements. It is worth noting that the Principles offer insights into the way this stage of the interview (interrogation) can be organised and executed, including such issues as how to formulate questions, use available evidence, overcome resistance, and document the information obtained from the interviewee. This part of the Principles is the most comprehensive, rich in details and valuable from the practical view.

The third core Principle – On Vulnerabilities – refers to the situations of the so-called heightened vulnerability of the interviewees. It states that all persons being interviewed in official proceedings should be considered vulnerable due to the inherently unequal balance of power characterising such interactions with authorities. This refers also to the “informal talks”, which are described as “carrying a significant risk of ill-treatment”.

According to the Principles, risk factors heightening the interviewees’ vulnerability are as follows:

- age, sex, gender, gender identity or expression, or sexual orientation,
- nationality or ethnicity,
- cultural or religious background,
- physical, intellectual, or psychological disability,

²² Ibidem.

- difficulties with communication,
- difficulties in understanding (including language barriers),
- inability to read and/or write,
- age-related conditions such as dementia,
- belonging to a minority group or a marginalised socio-economic group,
- injury, illness, depression, anxiety, intoxication, post-traumatic stress disorder, or other weakened or altered state,
- prior traumatic experiences, including having been the subject of or witnessing abuses or human rights violations,
- being pregnant or breastfeeding, or being a primary caretaker and not having been allowed to make alternative caretaking arrangements,
- the nature of the offence under investigation such as paedophilia, political offences, or terrorist acts.

As a rule, interviewers should be aware that certain behaviours increase an individual's vulnerability. The goal is to ensure they do not affect the interviewee's responses²³. It is advised to receive specialist training or at least be assisted by an appropriate expert.

In this regard, it should be noted that in Polish criminal proceedings, there is a set of special guarantees protecting sexual assault victims and minors (Articles 185a, 185b, 185c CCP). In our opinion, in the case of Poland, this recommendation has been already endorsed.

Principle 5 – On Training – provides insights into the implementation of the Principles. "All personnel who conduct interviews, including police and other law enforcement officers, as well as intelligence and military personnel, should receive specific training in effective interviewing – in line with the principles outlined in [the document]". Other officials such as judges, prosecutors, custody officers, and defence lawyers should be briefed on the principles of effective interviewing.

Principle 6 – On Accountability – describes the mechanisms of complaint and investigation into the possible use of coercive interviewing techniques. There are several important safeguards listed in this part, including access to legal aid and state-supported defence before and during interviews, access to medical examination and the adequate criminalisation of torture and other ill-treatment. The principles require that "the legal framework should ensure that any confession or other statement extracted under torture or other form of coercion has no evidentiary value, except against suspected perpetrators of such abuse and for the fact that a statement was made"²⁴. Considering Polish criminal procedure, as a rule, the evidence cannot be deemed inadmissible solely because it was obtained in violation of procedural regulations or through a criminal act, unless the evidence was obtained in connection with the per-

²³ Ibidem.

²⁴ Ibidem.

formance of official duties by a public official, as a result of murder, intentional infliction of bodily harm, or deprivation of liberty (Article 168a CCP). Article 171 CCP establishes special rules on the admissibility of evidence obtained using torture or other forms of mistreatment. The testimonies obtained with such means cannot constitute evidence. It is, though, unclear whether such excluded evidence can be used to establish the facts in a case against the persons who used these illegal means to obtain testimonies. Another point that is worth noting relates to the issue of the evidence derived from the excluded testimony²⁵.

Discussion

The Méndez principles related to effective interviewing and interrogation techniques highlight the importance of ensuring the fairness and accuracy of legal proceedings. One of the main ideas provided by the principles is that the use of torture and other forms of ill-treatment is not only illegal considering international law but also ineffective in terms of the search for the truth which lies deep in the heart of criminal procedure. The same refers to the use of coercive interviewing techniques, such as manipulating perceptions, threats, or leading questions, which may lead to unreliable and false statements. Throughout the Principles, their authors emphasize the importance of rapport-based, non-coercive interviewing techniques promoting effective communication and reducing the risk of false confessions. More importantly from the practical perspective, the question of how interrogations should be conducted to uphold human rights and prevent wrongful convictions is addressed comprehensively and in detail.

In some respect, the Principles can be characterised as a commentary on internationally recognized human rights and legal guarantees in the interviewing and interrogation process. Among them are the right to remain silent and the right to legal representation, as well as other legal safeguards aimed at protecting individuals' rights during interviews and interrogations.

It is worth noting that the Principles address the limitations and potential challenges faced by individuals seeking legal assistance in practice, highlighting disparities in access to legal representation. They acknowledge the inherent power imbalance between authorities and interviewees, underscoring the need to consider interviewees as vulnerable in official proceedings. The Principles describe various factors that may heighten an individual's vulnerability, emphasizing the importance of recognizing and addressing

²⁵ P.M. Lech, *Owoce zatrutego drzewa w procesie karnym. Dowody zdobyte nielegalnie*, „Pa-lestra” 2012, No. 3–4, p. 44.

these issues during interviews. This aspect of the Principles highlights the ethical responsibility of interviewers and the potential impact on interview outcomes.

From the practical point of view, one of the most important postulates is the obligatory recording of all interviews and interrogations conducted during or in connection with criminal proceedings. It is seen to enhance transparency as well as protect the rights of suspects and other interviewees. In Poland, the current legal framework does not mandate the recording of the interviews and interrogations²⁶, potentially impacting the quality and fairness of the process. This raises the question about the need for legal changes to ensure consistent recording practices.

The document also touches upon mechanisms for holding individuals accountable for the use of coercive techniques, underscoring the importance of accountability in preventing human rights abuses. The provided safeguards, such as access to legal assistance, medical examination and the inadmissibility of evidence obtained using torture and other forms of grave mistreatment are commonly seen as effective remedies to tackle controversial law enforcement practices.

Lastly, the Principles emphasise the necessity of training for personnel conducting interviews, including law enforcement officers, judges, prosecutors, and defence lawyers. Proper training is seen as a crucial component in implementing effective interviewing techniques in line with the outlined principles. It should involve an explanation of the principles' scientific, and psychological foundations. The final element of the training should be the participation in mock interviews and interrogations where the trainees can use their new knowledge and obtain valuable practical skills.

Conclusions

1. It is important to adhere to the Principles of effective interviewing and interrogation techniques in criminal proceedings. Besides ethical and human rights considerations associated with the interrogation process, the Principles provide guidelines for non-coercive, transparent, and fair practices. Implementing the Principles can contribute to more reliable evidence, protect the rights of suspects and interviewees, and ultimately enhance the fairness and accuracy of the criminal justice system.

2. There are, however, gaps in current legal frameworks and practices, suggesting the need for ongoing reforms and training to ensure that the Prin-

²⁶ In Poland, the exception is the interview of minor victims and witnesses in the cases considering sexually motivated crimes. In Lithuania, all interviews of minors are recorded.

ciples are properly implemented and consistently applied in practice. One of them is the lack of obligatory recording of the interviews and interrogations conducted within criminal proceedings. Another problem relates to the difficulties in obtaining legal assistance in criminal proceedings.

3. The implementation of the Principles requires workshops and seminars involving practitioners, where they can learn about the scientific foundations of the Principles and try out their skills in conducting mock interviews and interrogations.

References

- Gruza E., Goc M., Moszczyński J., *Kryminalistyka, czyli o współczesnych metodach dowodzenia przestępstw. Zagadnienia prawne*, Wolters Kluwer, Warsaw 2020.
- Gudjonsson G. H., *The psychology of false confessions: forty years of science and practice*, Hoboken, John Wiley & Sons, New York 2018.
- Hanausek T., *Zarys taktyki kryminalistycznej*, Dom Wydawniczy ABC, Warsaw 1994.
- Hebda K., *Przyznanie się do winy w procesie karnym – studium prawno-kryminalistyczne*, PhD theses, Olsztyn 2019.
- Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, English version, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/250/31/PDF/N1625031.pdf?OpenElement>.
- Izotovas A., Laurinaityte I., Vanagaite K., Grigutyte N., *The investigative interviewing and interrogation of adults in Lithuania*, [in:] D. Walsh, R. Bull, I. Areh (eds.), *The International Handbook of Investigative Interviewing and Interrogation*, Routledge, London 2024 [forthcoming].
- Jagiello D., *Taktyka kryminalistycznych czynności dowodowych*, C.H. Beck, Warsaw 2019.
- Klepczyński A., Kładoczny P., Wiśniewska K., *Tymczasowe aresztowanie – (nie)tymczasowy problem. Analiza aktualnej praktyki stosowania tymczasowego aresztowania*, Helsińska Fundacja Praw Człowieka, Warszawa 2019, https://archiwum.hfhr.pl/wp-content/uploads/2019/07/HFPC-Tymczasowe-aresztowanie-nietymczasowy-problem-web_01.pdf.
- Kulicki M., Kwiatkowska-Wójcikiewicz V., Stępka L., *Kryminalistyka. Wybrane zagadnienia teorii i praktyki śledczo-sądowej*, Wyd. Nauk. UMK, Toruń 2009.
- Laurinaitytė I., Grigutyte N., *Teismo psichologo gerosios praktikos vadovas* [Best practice guidelines for court psychologists], Nacionalinė teismų administracija, 2021.
- Lech P.M., *Owoce zatrutego drzewa w procesie karnym. Dowody zdobyte nielegalnie*, „Palestra” 20123, No. 4.
- Mazur O., *Przesłuchanie podejrzanego. Studium prawne i kryminalistyczne*, TNOiK, Toruń 2023.
- Méndez J.E., Drummond V., *The Méndez principles: a new standard for effective interviewing by police and others, while respecting human rights*, June 1, 2021, <https://www.justsecurity.org/76711/the-mendez-principles-a-new-standard-for-effective-interviewing-by-police-and-others-while-respecting-human-rights/>.
- Pikulski S., *Podstawowe zagadnienia taktyki kryminalistycznej*, Temida 2, Białystok 1997.

- Principles on effective interviewing for investigations and information gathering*, May 2021, https://bip.brpo.gov.pl/sites/default/files/Zasady_Mendez_%20%28jez.angielski%29.pdf.
- Rządowy projekt ustawy o ochronie i pomocy dla pokrzywdzonego i świadka, druk nr 2653, <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2653>.
- Rzecznik Praw Obywatelskich, *Przestępstwo tortur w Polsce*, Publikacja KMPT o wyrokach sądów w takich sprawach, 2022, <https://bip.brpo.gov.pl/pl/content/przestepstwo-tortur-w-polsce-publicacja-kmpt>.
- Schulz W.F. (ed.), *The phenomenon of torture: readings and commentary*, University of Pennsylvania Press, Pennsylvania 2007.
- Solodov D., *O taktyce przesłuchania osoby przyznającej się do popełnienia umyślnego przestępstwa*, „Studia Prawnoustrojowe” 2018, No. 41.
- Solodov D., *Wiedza sprawców przestępstw o potencjale wykrywczym kryminalistyki jako czynnik sprzyjający kontrykryuczości*, [w:] P. Chlebowicz, P. Łabuz, T. Safjański (eds.), *Działania kontrykrywce zorganizowanych grup przestępczych i organizacji terrorystycznych*, C.H. Beck, Warszawa 2021.
- Szymczyk-Urwentowicz N., *Koncepcja nadużycia prawa procesowego a proces karny*, „Probacja” 2022, No. 4.

Summary

Implementation of the UN's principles on effective interviewing and interrogation – perspectives for Poland and Lithuania (COST Action CA22128: IMPEMENDEZ)

Keywords: criminal proceedings, Méndez Principles, police interview, interrogation, torture.

Studies show that in criminal cases, most evidence is obtained through interviews and interrogations. Effective interviewing tactics, therefore, should be seen as an essential component of legal education, education and training of police officers and other law enforcement personnel. The Méndez Principles on effective interviewing and interrogation adopted in 2021 under the auspices of the United Nations offer an alternative to coercive, deceptive and confession-based interviewing and interrogation techniques. Grounded in extensive empirical and scientific research, the Principles promote rapport-based communication and the model of the investigative interview. In the article, the authors analyse these principles considering the existing legal framework and recommendations of European criminalistics. The primary objective is to identify the advantages of the implementation of the new model within the context of Polish and Lithuanian criminal proceedings. Potential challenges that might arise during the implementation process are also highlighted and analysed.

Streszczenie

Implementacja zasad ONZ dotyczących skutecznego przesłuchania i przesłuchiwanie – perspektywy dla Polski i Litwy (COST Action CA22128: IMPEMENDEZ)

Słowa kluczowe: postępowanie karne, zasady Méndeza, przesłuchanie poznawcze, przesłuchanie procesowe, niedozwolone metody przeprowadzenia przesłuchań.

Badania pokazują, że w sprawach karnych większość dowodów uzyskuje się poprzez czynność przesłuchania. W związku z tym skuteczne taktyki przeprowadzenia przesłuchań powinny być obecne w edukacji przyszłych prawników, policjantów, funkcjonariuszy organów ścigania. Zasady Méndeza, dotyczące skutecznych metod przeprowadzenia przesłuchiwań i przesłuchań, przyjęte w 2021 roku pod auspicjami Organizacji Narodów Zjednoczonych, oferują alternatywę dla metod przesłuchania opartych na przymusie, podstępnie i manipulacji. Zasady te promują komunikację, budowanie wzajemnych relacji i dążenie do uzyskania pełnych oraz wiarygodnych informacji. Autorzy analizują zasady Méndeza, uwzględniając obowiązujące regulacje prawne oraz zalecenia europejskiej kryminalistyki. Głównym celem jest zidentyfikowanie korzyści wynikających z implementacji wskazanych zasad do polskiego i litewskiego postępowania karnego. Ponadto autorzy zwracają uwagę na potencjalne wyzwania, które mogą pojawić się w procesie implementacji owych zasad.