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**PROCEDURAL SITUATION OF THE AGGRIEVED PARTY HARMED BY  
OFFENCES AGAINST SEXUAL FREEDOM  
(summary of doctoral dissertation)**

The problem of offences against sexual freedom has been the subject of academic and social debate for many years. It focuses on effective prosecution of perpetrators of this type of prohibited acts and on mental consequences caused to the victims. Rarely is the procedural situation of the aggrieved party of a significant concern, with the exception of the prosecution procedure of the offences in question. However, the problem is in fact much more complex and such complexity has become the subject of this doctoral dissertation.

The purpose of the dissertation in question is to assess legal regulations that refer to the procedural situation of the aggrieved party harmed by offences against sexual freedom and the procedural situation directly related therewith of the suspect or the accused of committing such prohibited acts. To this effect, the following research methods have been used: the analysis of scientific texts concerning non-legal disciplines (e.g. psychology, psychiatrics, sociology), formal-dogmatic method (both the applicable and repealed laws have been taken into account), the analysis of judicial decisions (of the Supreme Court, the European Tribunal of Human Rights and common courts), as well as the analysis of literature in the scope of legal science.

The dissertation in question consists of an introduction, seven chapters and conclusions. The first chapter contains a legal and criminological analysis of offences referred to in chapter XXV of the Criminal Code. Indication of offences in case of which sexual freedom is the value protected by the law is crucial for the scope of this paper.

The second chapter discusses mental situation of the aggrieved party, taking into account in particular mental state of the aggrieved party being a result of the committed act. It has been stated that it is crucial not only as regards the ability of the aggrieved party to take part in the criminal proceedings but also as regards the assessment of the level of social consequences of the offences under discussion and the assessment of motivation of the perpetrator.

The third chapter presents the problem of constitutional guarantees that are crucial for standards regulating the situation of participants of the criminal suit (guarantees under art. 30, art. 31 section 1, art. 40, art. 42 sections 2 and 3, art. 45 and art. 47 of the Constitution have been taken into account), including also the possibility of limiting them in accordance with art. 31 section 3 of the Constitution. The guarantees have been analysed in the following contexts: infringement of a legal value as a result of an offence against sexual freedom, impact of a constitutional guarantee on the procedural situation of the aggrieved party harmed by offences against sexual freedom and the suspected or accused parties of committing them, the procedure of prosecuting offences against sexual freedom, the obligation of active participation in the suit by the aggrieved party harmed by an offence against sexual freedom, special procedure of hearing the aggrieved parties harmed by offences against sexual freedom, and the extension of a hypothesis under art. 240 § 1 of the Criminal Code by some offences against sexual freedom.

The fourth chapter discusses procedural guarantees that result from the international law agreements by which the Republic of Poland is bound (provisions of MPPOiP, EKPCz and the so-called CAHVIO Convention have been taken into account).

The fifth chapter analyses the procedural situation of the aggrieved party harmed by offences against sexual freedom and of the suspect or the accused of having committed such offence. Taking into account roles held by the aggrieved party in the criminal proceedings (witness, a party to the preparation proceedings, participant of the jurisdiction proceedings not acting as a party, and an accessory and subsidiary auxiliary prosecutor in the jurisdiction proceedings), their procedural rights and obligations have been analysed (the problem of timely submission of statements of material procedural meaning, problems of procedural meaning, the obligation to testify, access to legal aid and closing the trial to the public have been taken into account). As far as the suspect or the accused are concerned, the attention has been paid to the problem of a special mode of hearing of the aggrieved party (especially in the context of insisting on such procedural action taking place only once, lack of the possibility for the suspect or the accused to take part in such action, lack of the guarantee that the defender will take part in such action, lack of the guarantee that such action will be repeated when the defender was not able to take part in it for objective reasons). Finally, the fifth chapter discusses various concepts of modification of applicable laws and *de lege ferenda* postulate have been presented.

The sixth chapter presents the problem of the prosecution procedure of offences against sexual freedom. It discusses the prosecution procedure requested as well as the regulations applicable before the new regulation has entered into force, as a result of which it has been

repealed. Arguments have been presented for maintaining the requested procedure of prosecuting some offences against sexual freedom and against the procedural institution under discussion. The proposal to maintain the requested procedure of prosecuting for rape in its basic type has been analysed. Finally, the consequences of repealing art. 205 of the Criminal Code have been presented, such change has been assessed and additional argumentation presented, supporting *de lege ferenda* postulates referred to in the previous chapter.

The seventh chapter analyses the problem of the obligation to denunciate some offences against sexual freedom in the context of recent modification of art. 240 § 1 of the Criminal Code. Verification has been carried out to check how changes influence the situation of the aggrieved party harmed by the offence against sexual freedom, and the proposals to modify currently applicable legal status which could improve it have been also discussed.

The dissertation ends with the presentation of conclusions that result from the analyses, including *de lege ferenda* postulates. It has been shown that the aggrieved party should be provided with the possibility of using a plenipotentiary at the stage of jurisdiction proceedings (whether or not he is a party to the proceedings), the right to submit a motion binding the court to close the trial to the public and the right of refusal to testify. Taking into account the situation of the suspect or the accused, the following postulates have been presented to grant him the right to submit a motion binding the court to re-examine the aggrieved party if neither him nor his defender took part in the first such action, and to introduce a rule according to which the first examination of the aggrieved party has taken place in line with art. 177 § 1a of the Code of Criminal Procedure. Referring to the problem of the prosecution procedure it has been stated that it is not repealing of art. 205 of the Criminal Code alone that is problematic but all regulations influencing the situation of the aggrieved party, including in particular the obligation of the aggrieved party to testify. Finally, the postulate has been raised to exclude criminal liability of the aggrieved party for intending another person to commit an offence under art. 240 § 1 of the Criminal Code and to exclude it also as regards the next of kin when the very victim is a source of reliable information about acts under art. 197 § 3 and 4 of the Criminal Code.