



Augmentative and Alternative Communication (AAC) in a Child's Relationship with the Justice System

Paweł SOBCZYK

PhD, University Professor, University of Opole, Faculty of Law (Poland)

E-mail: prsobczyk@uni.opole.pl

ORCID: 0000-0003-1754-6096

Abstract. This article explores the incorporation of Augmentative and Alternative Communication (AAC) into the Polish justice system, focusing on its relevance for children, including those with disabilities. In 2023, Article 185e(4) of the Code of Criminal Procedure was amended to mandate the use of AAC methods during the interrogation of witnesses who face verbal communication challenges. These provisions align with international frameworks such as the Convention on the Rights of Persons with Disabilities (CRPD) and the European Parliament Directive 2012/29/EU, ensuring access to justice for vulnerable populations. The article examines the legal basis for AAC implementation, highlighting the principle of single-time questioning to protect witnesses and ensure substantive truth. It examines the unique needs of witnesses requiring AAC, including those with developmental disorders, sensory impairments, and intellectual disabilities, emphasising the role of experts in facilitating communication. Central to the analysis are three groundbreaking materials developed by the Institute of Justice and the Ministry of Justice: the 'Vademecum AAC', 'Boards Supporting Conversation', and 'Materials for Children and People with Speech Comprehension Problems'. These resources use systems such as Picture Communication Symbols (PCS) to bridge communication gaps and prepare children for interactions with the judiciary. The study underscores AAC's transformative potential in the justice system, enhancing child protection, ensuring equitable communication, and promoting rights awareness. It concludes that AAC is a crucial tool for preventing crime, empowering witnesses, and fostering inclusivity in judicial processes.

Keywords: augmentative and alternative communication (AAC), child witnesses, justice system accessibility, communication disabilities, Polish legal reforms

1. Introduction

A special procedure of questioning for witnesses – who have mental and developmental disorders, disturbances in the ability to perceive or reproduce perceptions, and where there is a justified fear that questioning under normal conditions could have a negative impact on their mental state or would be significantly difficult – was introduced in Poland based on Article 185e(4) of the Act of the Code of Criminal Procedure.¹ This article was added to the Code of Criminal Procedure pursuant to the Act of 13 January 2023 amending the Code of Civil Procedure and certain other acts.² Prepared by the Ministry of Justice, the amendment to the regulations aimed to:

strengthen the protection of persons experiencing domestic violence through comprehensive regulation of not only civil law, but also criminal law, which is to supplement the solutions introduced by the Act of 30 April 2020 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws, Item 956).³

1 The Act of 6 June 1997, the Code of Criminal Procedure, that is, *Journal of Laws* of 2024, Item 37, as amended. Owing to the *novelty of the analysed* provision in the Polish legal system and the international nature of the publication, it is worth recalling at this point the content of the entire Article 185e of the Code of Criminal Procedure: ‘Par. 1. If a witness has mental or developmental disorders, disturbances in his ability to perceive or reproduce perceptions, and there is a justified fear that questioning in conditions other than those indicated in this provision could adversely affect his mental state or would be significantly difficult, the witness is questioned only if his testimony may be of significant importance for the resolution of the case, and only once, unless important circumstances come to light, the explanation of which requires a new hearing, or if the motion for evidence of the defendant who did not have a lawyer at the time of the first hearing of the witness is granted.

Par. 2. The hearing is conducted by the court at a session with the participation of an expert psychologist, no later than within 14 days from the date of receipt of the application. The prosecutor, the defence counsel and the attorney have the right to take part in the hearing. A person referred to in Article 51 paragraphs 1 or 3 or an adult indicated by a witness has the right to be present at the hearing, if this does not limit the freedom of speech of the person being examined. At the main hearing, the video and audio recording of the hearing is played and the report of the hearing is read.

Par. 3. The expert psychologist participating in the hearing should be of the gender indicated by the witness, unless this will hinder the proceedings.

Par. 4. If the witness has problems with verbal communication, the questioning is carried out using the augmentative and alternative communication used by the witness. The hearing is attended by an expert with appropriate knowledge in the field of augmentative and alternative communication.

Par. 5. With regard to the witnesses referred to in paragraph 1, the provisions of Articles 185a to 185c shall not apply.’

2 *Journal of Laws* of 2023, Item 289.

3 See. Government of Poland, 2022.

Regarding the hearing in the manner specified, inter alia, in Article 185e(1), the legislator decided that it is to be conducted in appropriately adapted rooms at the court's seat or outside its seat and 'in another place, if justified by the individual needs of the witness and there is a possibility of recording the act with the use of an image and sound recording device'.⁴

Moreover, pursuant to Article 186f(2), a person questioned in accordance with the procedure specified in Article 185e 'shall receive information about the course, manner and conditions of the interrogation. The information shall contain a descriptive or graphic representation of the course, manner and conditions of the interrogation.'⁵

The amended provisions of the Code of Criminal Procedure also include a delegation to issue regulations by the Minister of Justice, in which, first, he will determine the template of information on the course, manner, and conditions of interrogation of persons referred to in Article 185f(2) of the Code of Criminal Procedure, considering the need for the persons questioned to understand this information.⁶ Second, he will determine the manner in which such hearings are prepared and conducted and the conditions to be fulfilled by the rooms intended for the hearings, including their technical equipment, having regard to the need to ensure freedom of expression and a sense of security of the persons being interrogated, considering the individual needs of those persons.⁷

Thus, the Polish legislator considered the obligations under, inter alia, the Convention on the Rights of Persons with Disabilities (CRPD) signed in New York on 13 December 2006.⁸ With respect to guaranteeing access to justice for persons with disabilities, a special mode of questioning them and, if necessary, the use of assistive or alternative communication was introduced into criminal procedure. Moreover, the adopted amendment considered Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.⁹ The changes introduced in the Polish law were significant in its adaptation to the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence, completed in Istanbul on 11 May 2011.¹⁰

4 Article 185f, paragraph 1. K.p.k.

5 Moreover, as follows from the further part of this provision, 'At least 3 days should elapse between the service of the information and the date of the hearing, unless the interests of the proceedings prevent it. The provision of Article 171, paragraph 8 shall not apply'.

6 Article 186f(3) of the Code of Criminal Procedure.

7 Article 186f(4) of the Code of Criminal Procedure.

8 *Journal of Laws* of 2012, Item 1169 and of 2018, Item 1217.

9 *Journal of Laws* of the Republic of Poland. EU L 315, 14.11.2012, p. 57.

10 *Journal of Laws* of 2015, Item 961 and of 2021, Item 844.

Further, the solutions proposed in the Act referred to at the beginning seek to strengthen the position and increase the standard of securing the interests of minors who are victims and witnesses of crimes, as well as adults who are victims of crimes against sexual freedom and decency.

The aforementioned legislative changes in the Polish legal system justify the use of 'augmentative and alternative communication' (AAC).

This study aims to disseminate and internationalise the changes introduced into the Polish legal system, introducing new standards and a new quality in communication between the justice system and children, including children with disabilities. Therefore, the subject of the study is the analysis of the legal basis enabling the use of augmentative and alternative communication in the Polish justice system and the presentation of materials for augmentative and alternative communication prepared by the Institute of Justice in Warsaw and the Polish Ministry of Justice,¹¹ which are significantly novel in the field of protection of children's rights on an international scale.

2. Legal Basis

According to the explanatory memorandum to the Bill of 13 January 2023 amending the Code of Civil Procedure and certain other acts, the new solutions are for the hearing of witnesses who have mental and developmental disorders, disturbances in the ability to perceive or reconstruct observations, and there is a justified concern that questioning under normal conditions could adversely affect their mental state or would be significantly difficult.

They are to make criminal procedure more accessible to people who take part in it. In particular, they aim to ensure that minors and persons with disabilities feel safe, and that the regulations concerning information about rights and obligations and instructing them are friendly and understandable and adapted to their needs resulting from their age, personal characteristics, as well as the nature of the crime committed against them. On the other hand, they also do not omit, in terms of the right to information, suspects up to 18 years of age, who should be obliged to receive all instructions in such a way that they understand them. Awareness of rights is inextricably linked with the right to defense.¹²

The legislator rightly assumed that the creation of friendly conditions for interrogation, adapted to the needs and methods of communication with

¹¹ Pilch and Duda, 2024a.

¹² Government of Poland, 2022.

the environment, of people with disabilities who have problems with verbal communication, will increase the detection of crimes committed to the detriment of these people, and thus eliminate the impunity of perpetrators who take advantage of, for example, the reduced means of informing law enforcement¹³ authorities by these aggrieved parties. Considering the above, the Polish legislator, based on Article 185e § 4 of the Code of Criminal Procedure, imposed on the court the obligation to conduct the interrogation using the assistive and alternative communication used by the person being interrogated, if he or she communicates with the environment in this manner.¹⁴

An important issue that has not been resolved at the statutory level (because it did not have to) is the definition of the subjective scope of ‘witness with special communication needs’. This term can be understood as people with severe developmental dysfunctions, with complex, multi-range disabilities, but also suffering from impaired hearing, deaf, deaf-blind, autistic, suffering from cerebral palsy, impaired motor functions, intellectual disabilities, strokes or head injuries. Although some people with special communication needs do not need the participation of a third party to be understood, in a group of people who are dependent in terms of communication, it is necessary to have a specialist in the communication process who can, for example, prepare the witness’s statement and convey it verbally (e.g. formulate a sentence from graphic signs indicated by the patient) or, for example, translate content from the language (e.g. sign language) used by the witness.

The study conducted by Communication Matters in the UK reveals that adults who have not spoken since birth or became disabled during the age of majority predominate among people requiring ACC support, with this group including people who cannot communicate temporarily, for example, owing to medical treatment.¹⁵

Before a witness (including a minor) is questioned using the methods of augmentative and alternative communication indicated in Article 185e(4), certain conditions must be fulfilled. In Article 185e(1) of the Code of Criminal Procedure, the Polish legislator established the principle of necessity and single-time questioning, from which it follows that a witness with disabilities is questioned only if his or her testimony may be significant for the resolution of the case, and only once, unless significant circumstances come to light, the explanation of which requires a new hearing, or if the defendant’s evidentiary motion is granted, who did not have a lawyer at the time of the first hearing of the witness. The

13 Government of Poland, 2022

14 For more on this topic, see: Wielec and Bojanowski, 2024, pp. 147–163.

15 Most often, ACC support is required by people with Alzheimer’s/dementia 23.2%, Parkinson’s 22.1%, and autism spectrum 18.9%. Communication Matters, 2013.

adoption of such assumptions by the legislator indicates that the regulation in question aims to protect the witness and the principle of substantive truth.¹⁶

As C. Kulesza notes, in relation to the previously applicable provisions of articles 185a–185c of the Code of Criminal Procedure, ‘the commented provision is enriched with a regulation providing that if a witness has problems with verbal communication, the interrogation is carried out with the use of supportive and alternative communication used by the witness’.¹⁷

The Polish legislator, as part of persons with disabilities, has provided for the participation in the hearing of such persons by an expert with appropriate knowledge in the field of assistive or alternative communication.

3. Augmentative and Alternative Communication in the Polish Justice System

The concept of ‘augmentative and alternative communication’ (AAC) has not been defined in the Polish legal system. As Aleksandra Buchholz highlights, this term refers to all forms of supportive and alternative communication that allow non-verbal communication. Alternative communication aims to enable people to communicate in ways other than speech, whereas supportive communication is complementary to minimally present verbal speech.¹⁸

Augmentative and alternative communication includes various communication channels, comprising the use or co-application of different systems. Jerzy Skorupka suggests examples of the following systems: manual (e.g. sign language, dactylography, phonogestures), graphic (e.g. pictograms), tactile (e.g. Braille, point alphabet for the hand, Tadam’s method, dactylography for the hand), and their various combined forms. During the interrogation, the witness may, for example, use aids in the form of pictures, paper and a pen, or communicate, such as through facial expressions or gestures.

Legal literature, under the term augmentative and alternative communication understands ‘the functional use of tools and ways of communication (for understanding and broadcasting spoken and written messages) that supports, complements or replaces speech’.¹⁹ In Poland, three basic systems of augmentative and alternative communication are used: graphic, gesture-based (i.e. manual), and spatial-tactile.²⁰

16 Świecki, 2023.

17 Kulesza, 2023.

18 Buchholz, 2015.

19 Pilch and Duda, 2024a, p. 2.

20 See: *Alternatywne i wspomagające metody komunikacji*, Błęszyński, 2006.

The most popular systems used in assistive and alternative communication are systems based on graphic signs, which can be indicated using a finger, hand, pointer, or even sight. Ready-made sets of graphic symbols are Picture Communication Symbols (PCS), Pictograms, Makaton, MÓWik, WSL by Widgit, ARASAAC symbols, and extremely abstract Bliss symbols.²¹ By way of example, Picture Communication Symbols is a database of over twenty thousand black and white (black outlines on a white background) and colour pictures organised into categories such as people, verbs, descriptive symbols, food, leisure time, and nouns. MÓWik is a database of over 12,000 symbols developed in Poland: black and white and their coloured equivalents, which can be found in the communication software of the same name.²² It should be considered that communication with younger children and people with reduced intellectual potential can also be facilitated by photographs depicting people, objects, places, or activities of everyday use.

Gesture-based systems are a natural method of communication for children that accompany language development. Children shake their heads, which means a ‘no’, or they nod, which means a ‘yes’. Similarly, adult gestures increase the quality and clarity of the message. One of the methods supporting communication of people with speech and language disorders is Makaton based on Polish Sign Language.²³

The third system of communication by means of augmentative and alternative communication is the system of spatial-tactile signs, which aims to help in the transition from the pre-symbolic communication stage to communication by means of symbols that are as abstract as possible and in the acquisition of a formal language system. As A. Pilch and I. Duda highlight,

[t]he actual objects can be both real objects and their fragments or miniatures. These can be artificially created symbols, or signs that have, for example, one or two features in common with the referent. They can be used in creating a system of communication with people with vision problems and in some cases with people with intellectual deficits.²⁴

As part of the project of the Institute of Justice conducted in cooperation with the Ministry of Justice, the following materials for supportive and alternative communication in the justice system have been prepared: ‘Vademecum AAC – Communication with people with complex communication needs’, ‘Boards supporting conversation during the hearing of a witness using AAC’, and

21 Pilch and Duda, 2024a, p. 5 et seq.

22 Id., p. 7.

23 Kaczmarek, 2014.

24 Pilch and Duda, 2024a, p. 9.

‘Materials for children and people with speech comprehension problems with AAC symbols preparing for meeting with the judiciary’. The authors of these three studies are Agnieszka Plich and Iwona Duda, whereas the consultants of ‘Materials’ and ‘Boards’ are sexologists Dr Izabela Fornalik, Joanna Płuska, and Justice Agnieszka Matysek. The draft by the Institute of Justice in Warsaw and the Polish Ministry of Justice are part of the activities aimed at implementing the provisions of two acts: the Act of 13 January 2023 amending the Code of Civil Procedure and certain other acts²⁵ and the Act of 28 July 2023 Amending the Family and Guardianship Code and Certain Other Acts.²⁶

It is pertinent to enquire regarding a need for a system to support children’s communication with the wider justice system – apart from the evident statutory indication cited in this academic article. Preschool and school-age children who have various speech problems should be provided with aids to communicate with others. Such aids could be communication books or high-tech devices with specialized software supporting communication. However, owing to the specific nature of activities conducted before the judiciary, books and devices of this type may lack the symbols required during a conversation with representatives of the judiciary, which will contribute to significant limitations in communication. ‘Boards’ and ‘Materials’ are to complement the communication aids that people appearing before the judiciary have so far used.

As the authors emphasize,

each Individual Communication System of a person with complex needs in communication is unique and tailored to their needs. There are no two identical systems, so the aids we have prepared are not complete and sufficient. If necessary, they should be modified, supplemented, changed or expanded by the vocabulary they contain.²⁷

In the ‘Boards’, prepared by the Institute of Justice in cooperation with the Ministry of Justice, the communication system was based on the Picture Communication Symbols (PCS) system. The symbols are black and white to not hinder reliable information. However, a page in colours is also available as a separate table.²⁸ This set of aids comprises 34 tables covering, among others, such issues as family, people, professions, activities, the body of a woman and a man, places, days of the week, sexual activities, the alphabet, and numbers. In addition, 32 tables prepared in the PCS system have been supplemented with two tables in the Mówik system, which concern the court and special issues.

25 *Journal of Laws* of 2023, Item 289.

26 *Journal of Laws* of 2023, Item 1606.

27 Plich and Duda, 2024b, p. 3.

28 *Ibid.*

In turn, ‘Materials’ is intended to bring the complex justice system closer to children with complex communication needs. In these, the authors used the colourful PCS symbols used in communication aids to explain the intricate world of interrogation or hearing procedures in an attractive and simple manner.²⁹ These materials comprise 11 boards, covering issues such as interrogation, judge, witness, psychologist, hearing, as well as the rights of the child and the rights of the abused child.

4. Conclusions

The presented materials on the use of augmentative and alternative communication in relation to children are not only part of the implementation of the provisions of the Code of Criminal Procedure amended in 2023 but also an important element of respect for children’s rights.

Despite the lack of a legal definition of the term ‘augmentative and alternative communication’, at the initial stage of application of the provisions concerning this form of questioning a witness (i.e. about a year after their entry into force) who has difficulties with verbal communication, it appears that such a definition is unnecessary. The long-standing use of this type of communication with children and people with disabilities confirms the effectiveness of the methods and the necessity of their use for an ever better and more complete protection of, among others, children who experience or witness violence.

The need and use of augmentative and alternative communication should not raise any doubts. Moreover, the view expressed by A. Pilch and I. Duda that the boards they have prepared are only an introduction to the database of aids related to the prevention of crime and that this database will constantly grow.³⁰

The materials prepared by the Institute of Justice in Warsaw and the Polish Ministry of Justice were provided to all courts in Poland as support for children in contact with the justice system.

29 Pilch and Duda (Ibid.) write about *Materiałach dla dzieci i osób...*: ‘In addition, we have developed boards that synthetically talk about the rights of all children, especially abused children. We also wanted to show in an accessible and understandable form the dangers that children may face and how they can seek help.’

30 Pilch and Duda, 2024b, p. 4.

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