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THE KNOWLEDGE OF POLISH JUDGES AND PROSECUTORS CONCERNING THE PSYCHOLOGY OF EYEWITNESS TESTIMONY*

I. INTRODUCTION

The Code of Criminal Procedure of 1997 normalises the principle of unhampered appraisal of evidence in Article 7: 'The agencies responsible for the proceedings shall make a decision on the basis of their own conviction, which shall be founded upon evidence taken and appraised at their own discretion, with due consideration to the principles of sound reasoning and personal experience'.[1] This is one of the most important procedural rules, and should be applied at every stage of criminal proceedings: from initiation to the issuing of a legally binding verdict or other case decision. This principle takes on particular significance at the moment of adjudication, since the court has to take it into account in pronouncing a verdict that is in keeping with the factual state and is just. However, Tomasz Grzegorczyk and Janusz Tylman indicate that this principle does not mean total arbitrariness in the assessment of evidence, since 'a rationalistic mental approach to the subject-matter of a ruling and the evidence is demanded of the judicial body'.[2]

The principle of unhampered appraisal of evidence clearly indicates the necessity for the penal proceedings body to balance out the three elements it comprises: the principles of proper reasoning, current knowledge and life experience. One has to bear in mind, however, that no means of evidence, even such adopting the form of so-called scientific proof,[3] does not have preferential standing, since it is still subject to the unhampered appraisal of evidence by the judicial body. Nevertheless, judges and prosecutors, when taking case decisions, very often put greater emphasis on their own life experience than on current scientific knowledge. They believe that their many years of practice in the legal professions allows them to take an accurate decision without using the help of experts in a particular field, and also without the necessary training.

A lack of basic psychological knowledge regarding such issues as the credibility of the testimony of an eyewitness to a crime or the incorrect

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[1] Act of 14 September 2018, the Code of Criminal Procedure, consolidated text: Journal of Laws of the Republic of Poland [JL] 2018, item 1987.

[2] Grzegorczyk, Tylman (2014): 88.

[3] For more on the topic of so-called scientific evidence: Kwiatkowska-Wójcikiewicz, Wójcikiewicz (2009): 43–57.

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conducting of an identity parade during which the victim identifies an innocent person as their attacker can lead to court errors with tragic consequences. An example of such an error could be the case of George Franklin, convicted in 1990 for the murder of Susan Nason, which he was found to have committed twenty years beforehand. The testimony of his daughter, who had been friends with the victim, constituted the grounds for Franklin's conviction. The convict's daughter 'recalled' the entire matter during a 'hypnotic trance', which she was put into during one of her psychotherapeutic sessions. In 1996 the prosecutor's office withdrew all charges, since none of the evidence indicated the convict's guilt, and Franklin himself was released from prison.[4] The said conviction would most probably never have been reached had the members of the jury, and above all the judge, known the findings of research that indicated the low accuracy of hypnosis and the danger resulting from hypnotised subjects' susceptibility to suggestion.[5] What is more, research on archives conducted by the American psychologist Elizabeth Loftus, appearing as an expert in, among other things, the cases of those convicted unjustly, revealed that in the 300 cases she analysed, in which those who were convicted proved to be innocent, the conviction had been made in as many as 75% of them purely on the basis of evidence from eyewitness accounts. In addition, Arye Rattner,[6] Barry Scheck and others[7] as well as Michael Saks and Jonathan Koehler[8] showed in their research that in cases ending with the conviction of an innocent person, the guilty verdict in about 50% of cases was the result of error in eyewitness testimonies that went unnoticed by an incompetent judge.[9]

Psychology, including the psychology of eyewitness testimony, is a complicated scientific discipline, mainly due to its rapid development and the new theories emerging regarding psychological effects and phenomena meant to an every greater degree to explain human behaviour, the functioning of the mind, and ways in which a person takes decisions.[10] Faced with the dynamic growth of science, the following problem emerges: which of these theories can be acknowledged as confirmed and universally accepted by the scientific community such that a judge or public prosecutor may rely on them when taking decisions in trials? American psychologists decided to determine a list of those effects and phenomena connected to the psychology of eyewitness testimony which – in keeping with the Frye test[11] – should be recognised as

[4] Lilienfeld et al. (2011): 124.

[5] For more on the topic: Lilienfeld et al. (2011): 171–172; Lynn, Green (2011): 277–293.

[6] Rattnera (1988).

[7] Scheck, Neufeld, Dwyer (2000).

[8] Saks, Koehler (2005).

[9] Magnussen et al. (2008): 177–188.

[10] For more on the topic: Wieczorkowska-Wierzbińska (2011): 21–161; Tyszka (2000); Gruza (2012): 64–84.

[11] The Frye Test was designed and first used in 1923 in the case of *Frye vs. United States* (293 F. 1013 D.C. Cir 1923). Mr Frye was accused on second-degree murder, which carried a prison sentence of many years. As evidence in favour of his client, the counsel for the defence wanted to present lie detector findings. However, expert evidence of that kind had not yet been described well in professional literature, and the court declared that it could not recognise the evidence, because 'the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it

sufficiently universal and accepted by the scientific community. In research conducted by Saul Kassin and his colleagues in 1989 and 2001, they succeeded in compiling such a list, which was supposed to facilitate the work of practitioners of law in general, and those taking court decisions in particular.[12]

The question had to be asked, however, as to whether lawyers were indeed using the list drawn up by the psychologists, and what knowledge they had at all in the field of psychology of eyewitness testimony. This question provided the motive for an entire series of studies, conducted initially in the USA, and subsequently in numerous other countries under *common law* jurisdictions.

Richard A. Wise and Martin A. Safer were the first to conduct research in which they tackled the issue of legal practitioners' knowledge, in this case that of American judges regarding the psychology of testimony. Their findings demonstrated that judges had a relatively low level of knowledge in the psychology of eyewitness accounts, since the average number of correct answers was only around 55%. The results for some judges revealed their very low level of knowledge regarding the correct conducting of identity parades or on the processes of forgetting.[13]

Benton's team investigated the knowledge of jurors, judges, and law enforcement functionaries. This study yet again revealed deficiencies in the knowledge of theory and effects in regard to the psychology of eyewitness testimony, but on this occasion indicated a particularly poor state of knowledge among jurors, and so among those who – in the American system of justice – determine a person's guilt or innocence with their verdict.[14]

Further research showed that the problem of relatively poor psychological knowledge among judges applied not only to those representing the American system of justice. Svein Magnussen investigated the psychological knowledge of Norwegian judges, and revealed it also to be relatively low.[15] Similar findings were also obtained by Wise and his colleagues when checking the knowledge of Chinese judges.[16] In this series of studies, Canadian laypersons who could sit on juries revealed the highest level of knowledge. However, the researchers ascribed the result to their research adopting a slightly differently structure, and therefore to purely methodological aspects and not the subjects' actual knowledge of court psychology.[17]

Further research showed that public prosecutors and functionaries with the American police also had relatively poor knowledge in regard to the psychology of eyewitness accounts.[18] What may be interesting here is the fact that while the overall result was poor, only 28% of the public prosecutors claimed that

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belongs". The standard of admissibility of scientific evidence included in the verdict's justification came to be called the Frye Test, and it continues to be in force in 8 states of the USA. For more on the topic: Kassin, Ellsworth, Smith (1989): 1089–1098; Kwiatkowska-Wójcikiewicz, Wójcikiewicz (2009): 43–57.

[12] Kassin et al. (1989): 1089–1098; (2001): 405–416.

[13] Wise, Safer (2004): 429–440.

[14] Benton et al. (2006): 115–129.

[15] Magnussen et al. (2008): 177–188.

[16] Wise et al. (2010): 695–713.

[17] Read, Desmarais (2009): 301–326.

[18] Wise et al. (2009): 1266–1281; Wise, Safer, Maro (2011): 488–500.

those representing their legal profession had limited knowledge in the area of the psychology of eyewitness accounts.

Wise and Safer also demonstrated that judges' level of knowledge in regard to the psychology of eyewitness accounts was practically no different to that of students of first-degree studies. They also drew particular attention to a comment by one of the professors, who claimed that at the law school where he lectured the students received practically no training in the area of the psychology of testimonies, and that also – in his opinion – classes on the subject were not given at any such place of learning in the USA.[19]

Polish research has also provided interesting results regarding the interaction between law and psychology. Violetta Kwiatkowska-Wójcikiewicz and Józef Wójcikiewicz conducted research into judges' opinions regarding scientific evidence, their preparedness for assessing such evidence, and the difficulties they have to deal with when assessing it. The authors indicated that: 'In Poland there are no standards in the assessment of scientific evidence, and to date no comprehensive research has been conducted regarding judges' perception of scientific evidence in connection with preparation for discharging justice, including the possibility of assessing scientific evidence presented by expects, or the causes of difficulties, etc.'[20] Analysis of their results allowed the authors to reach the following conclusions: '1. Judges believe that they are not well prepared for assessing scientific evidence (53% of respondents); 2. They draw their knowledge mainly through self-education (professional literature, the Internet, judicial practice, etc.)'; 3. As many as 70% of the respondents claimed to rarely have a problem in assessing an opinion.[21]

The issue of so-called psychological awareness was tackled by Marzanna Piekarska-Drążek, who checked what criteria were followed by practitioners of law in their assessment of the credibility of testimonies, in the context of witnesses changing their testimonies in criminal proceedings. She conducted this research on a sample of 158 persons, of whom 107 were public prosecutors and 51 were judges, adjudicating in the criminal divisions of district and regional courts in central and north-eastern Poland. The research findings revealed that her respondents declared most often to be guided by personal experience in life (26.6% of judges, and 30.2% of prosecutors) and professional experience (18% of judges and 28.8% of prosecutors). Another crucial criterion in the assessment of credibility of testimonies indicated by the respondents proved to be intuition (18% of judges and 14% of prosecutors). Only 3.1% of the respondents indicated knowledge of psychology.[22]

The topic of Polish lawyers' psychological knowledge was also investigated by Joanna Kabzińska. In an article in 2015 thoroughly describing and summarising the international research I have cited above, she asserted that there was a deficiency of systematic research in Poland concerning this issue.[23]

[19] Wise, Safer (2010): 1400–1422.
[20] Kwiatkowska-Wójcikiewicz, Wójcikiewicz (2009): 44–46.
[21] Kwiatkowska-Wójcikiewicz, Wójcikiewicz (2009): 56.
[22] Piekarska-Drążek (2004): 168–169.
[23] Kabzińska (2015): 82.

In a study in 2016 she attempted to find at least a partial answer to the question as to what level of knowledge regarding the psychology of eyewitness accounts Polish lawyers possessed. Over 70 trainee prosecutors and over 70 students reading law took part in the study, and their psychological knowledge was checked using a questionnaire containing test questions based on the classic research of Wise and Safer. Her research showed that the trainees, in other words those soon to be professional participants in criminal proceedings, possessed a lower level of psychological knowledge than the law students. However, Kabzińska indicated that it was impossible on the grounds of her research findings to draw conclusions regarding the psychological knowledge of those in law already actually practising their profession, and in particular those taking decisions in court cases.[24]

II. EMPIRICAL RESEARCH

1. Procedure

The research was conducted using the questionnaire method (PAPI technique) from January to April 2018, on a sample of 87 judges and 193 prosecutors. The research took place with the consent of the Board of Directors of Poland's National School of Judiciary and Public Prosecution in Kraków during lifelong learning organised by this school's Centre of Continuous Training and International Cooperation at the school's Training Centre in Dębe near Warsaw. The respondents were tasked with indicating to what degree they agreed with specific statements, rating them on a 5-point Likert-type scale, from 1 for *'I totally disagree'* to 5 for *'I absolutely agree'*. They were also able to indicate a lack of knowledge on a particular topic by marking answer 3 – for *'I don't know'*. For the answers *'I totally disagree', 'I disagree'* and *'I don't know / have no opinion'* in the case of a statement in keeping with the truth and with the current state of scientific knowledge, the respondents received 0 points. For the answers *'I agree'* or *'I absolutely agree'* in the case of such a correct statement, the respondents received 1 point.

2. Research tool

The 'Questionnaire on knowledge in the area of court psychology' (hereinafter referred to as the 'Questionnaire'), drawn up for the requirements of the study, comprised 28 test questions (29 in the case of the questionnaire for the judges) constituting statements concerning court psychology as broadly understood, the psychology of eyewitness testimony, and frequently occurring psychological myths related to court psychology. In its main section, checking psychological knowledge, the tool was made up of three groups of test questions drawn from three studies described in professional literature. Ten questions were drawn from the questionnaire used in the original research of Wise and

[24] Kabzińska (2016): 394–407.

Safer in 2010,[25] while another 8 came from the questionnaire used in the classic research of Kassin and others.[26] As for the final 7 questions, they were selected from a questionnaire used in a study by Joachim Kowalski and others.[27] The last three concerned the respondents' assessment of the scope of knowledge possessed by judges, public prosecutors and police officers in regard to the psychology of testimony. The questions drawn from the American studies were translated by the author.

The test questions used in the Questionnaire formed three large thematic blocks, at the same time constituting the areas of psychological knowledge that was verified during the study. The first area, concerning perception and factors that might influence it, embraced such statements as *'It is much more difficult for a witness to identify an attacker who wore a cap while committing the offence than an attacker who did not have a cap on'* or *'A state of insobriety can weaken the eyewitness's later ability to recall people or events'*. The area connected to memory and factors affecting memorisation and recall embraced such as the following: *'The testimony of an eyewitness to an event frequently reflects not only what the witness really did see, but also information later received from other witnesses, the police, or the media, and so on'* or *'The loss in the amount of material remembered is at its greatest immediately subsequent to an event, while later on the decline gets smaller and smaller'*. The final area of knowledge verified in this research was connected to the course of police procedures and the rules behind conducting forensic case-related actions from the point of view of psychology. Statements in this thematic area included such as: *'A police functionary who knows which of the persons in an identity parade is the suspect should not conduct such a parade'* or *'The testimony of an eyewitness regarding an event may be distorted by the wording of the questions posed to this person'*. Two statements (*'Most mentally ill people are aggressive'* and *'A hypnotised person will do everything as ordered to by the hypnotist, and could even commit an offence'*) did not suit any of the areas identified.

3. Research sample

A total of 545 people took part in the study, forming four study groups: judges, public prosecutors, fifth-year law students, and a group also comprising students but representing courses of study totally disconnected with law or psychology.

3.1. Judges

The study covered 87 judges, of whom 51 were women and 35 men, while one judge did not reveal their sex (average age – M_{age} = 43.07). The average number of years working as a judge was 13.16, the shortest tenure being a few months in the case of one judge, and the longest – 34 years. The majority (90%)

[25] Wise, Safer (2010): 1400–1422.
[26] Kassin et al. (2001): 405–416.
[27] Kowalski et al. (2016): 100–112.

adjudicated in district courts, 7% in regional courts, and 3% in courts of appeal; 96% were in criminal divisions.

3.2. Public prosecutors

The study embraced 193 prosecutors, of whom 138 were women and 54 men, one did not disclose this information (average age – M_{age} = 43.98). Among the prosecutors, average tenure was 16.23 years, the shortest (for one public prosecutor) at less than a year, the longest – 43 years. The majority (63%) were employed in district prosecutors' offices, 30% in regional, and 7% in provincial public prosecutors' offices.

3.3. Fifth-year law students

148 students in their fifth year of study took part in the survey. 93 were women, and 55 men (average age – M_{age} = 23.86). The students attended two higher places of learning: the Nicolaus Copernicus University in Torun (39%), and the Jagiellonian University in Kraków (61%). Most of the respondents (69%) indicated that they had not had classes in court / criminal psychology during their studies.

3.4. Group of students on courses other than law

The survey covered 117 students, 89 of them women and 27 men, one did not give their sex (average age – M_{age} = 19.99). Respondents comprising this control group were deliberately selected from courses whereby they were not connected to any degree with law or psychology, and also so that they could represent entirely general knowledge regarding aspects of court psychology. Within this control group, 48 of the students were in the first year of their first degree in biotechnology, 28 were first-year students of first-degree geography, and 41 were first-year students in first-degree finance and accounting.

III. FINDINGS

1. Knowledge in the area of psychology of testimony among judges, public prosecutors and students

Analysis of the findings revealed that all groups possessed a relatively mediocre, or even low, level of knowledge regarding the basic aspects of the psychology of testimony given by eyewitnesses. The overall average result for the study was 12.29 points, which is less than 50% correct answers. The averages achieved by the different respondent groups were, respectively: judges – 12.52 points; prosecutors – 12.11 points; fifth-year law students – 13.03 points; and students not reading law – 11.49 points.

Analysis conducted using the Kruskal-Wallis non-parametric H test revealed statistically significant differences between the different groups (H = 20.27; $p < 0.001$). Further analysis of the different groups' results was conducted using the Mann-Whitney non-parametric U test. The best results in

the test were obtained by law students, and their average result differed by a statistically significant degree from the average result for the public prosecutors (U = 11,899.50; p = 0.008) and that for students on courses other than law (U = 5,991.50; p < 0.001). The second-highest average result was obtained by the judges, a result differing by a statistically significant degree from the average achieved by the non-law students (U = 3,906.00; p = 0.004). The prosecutors' average result was significantly statistically better only when compared to the average result of the group of students not studying law (U = 9,716.50; p = 0.039). All the Mann-Whitney U Test results, together with their statistical significance, are presented in table 1 below.

Table 1

Results of non-parametric Mann-Whitney U-tests
comparing the average results achieved by the different research groups

Research groups	Judges	Prosecutors	Law students	Non-law students
Judges	–			
Prosecutors	7,694.00	–		
Law students	5,848.50	11,899.50**	–	
Non-Law Students	3,906.00**	9,716.50*	5,991.50***	–

*p < 0.05; **p < 0.01; ***p < 0.001

Source: own material.

2. Intra-group comparisons

In the case of the judges, the number of respondents employed in courts of different levels made it impossible to conduct an accurate analysis that could provide an answer to the question as to whether those employed in higher-level courts have greater knowledge in the psychology of testimony. Such an analysis was successful in the case of the prosecutors, that is, between prosecutors employed in district prosecutors' offices and those in regional prosecutors' offices. The analysis, conducted using the Mann-Whitney non-parametric U test, revealed a significant difference between the average results in these two prosecutor groups (U = 2,698.00; p = 0.019) – with prosecutors employed in regional offices possessing less knowledge than prosecutors in district prosecutors' offices.

3. Relation between years of professional practice and average result achieved in the Questionnaire by judges and prosecutors

In the case of the judges, the analysis of the findings conducted using the *r*-Pearson test revealed no significant dependence between years of work and the result (r = –0.04; p = 0.700). As for the prosecutors, analysis of the data using the non-parametric *rho*-Spearman test revealed a significant dependence between years of work and the result (rho = –0.16; p = 0.023) – with a weak

reverse correlation between these variables, meaning that the longer the respondents had been working as prosecutors, the weaker their results.

4. Respondents' assessment of the state of knowledge on the psychology of testimony among judges, public prosecutors, and police officers

Analysis of the respondents' answers regarding their assessment of the level of knowledge among judges, prosecutors and police officers revealed a distinct tendency to over-estimate their own group. In the question about judges' knowledge, respondents representing this profession rated themselves very highly – with almost 50% of judge respondents agreeing with the statement. The public prosecutors also rated their own group highly – about 60% of them agreeing with the statement that members of their profession possess a good level of knowledge on the basic mechanisms of the psychology of testimony. Checking whether there was a connection between assessment of one's own professional group and the result obtained by a particular respondent was also interesting. In the case of the judges there was no connection between these variables, whereas among the prosecutors one could observe a weak reverse correlation ($rho = -0.18$; $p = 0.014$) – meaning the better the prosecutors rated their professional group's knowledge in the psychology of testimony, the worse their own results on the scale of psychological knowledge.

5. Conviction and evidence from an eyewitness's testimony

The final question in the questionnaire for the judges concerned the degree to which they would be inclined to convict a defendant if the only evidence implicating their guilt were to be the testimony of an eyewitness. Almost 66% of the judge respondents gave an affirmative answer to the question thus posed.

IV. THE FINDINGS – A DISCUSSION

Analysis of the findings to the study described above, on the knowledge possessed by judges, public prosecutors, fifth-year law students and laypersons regarding the psychology of testimony, revealed the level of knowledge of court psychology to be relatively low in all groups.

Worth emphasising here is the fact that the best results in the study were achieved by fifth-year law students representing the Jagiellonian University in Kraków and Nicolaus Copernicus University in Torun. Their average result differed significantly from the results among the prosecutors and students not studying law. This good, though – one should bear in mind – still rather mediocre result among the fifth-year law students may be a result of the fact that during their studies they could have had elements of court psychology during various classes, for example during lectures on criminal proceedings, civil proceedings, or forensic science.

1. Judges and public prosecutors

The findings in the research presented above seem to refute the conviction held by numerous legal practitioners that professional and life experience in itself, acquired over many years of practice, guarantees the possession of up-to-date knowledge in the psychology of eyewitness testimony. Among others, Józef Gurgul addressed this conviction when he wrote that 'such certainty is the enemy of the truth that [every decision-taker in a trial – M.G.] should adamantly strive for'.[28] The practitioner respondents have relatively mediocre psychological knowledge, yet they themselves rate the knowledge within their professional group as very high. Closer analysis of their answers to specific questions provides the grounds for stating that judges and public prosecutors have major deficiencies in knowledge they could need during almost any procedural and forensic activities involving personal sources of evidence.[29]

Analysis of the number of correct answers given by the judges and public prosecutors to the entries comprising the Questionnaire's three thematic blocks enabled indication of which areas of psychological knowledge the legal practitioners had the biggest deficiencies in. The respondents gave the most correct answers to those test questions connected to perception and factors that could affect this (judges: 80.75%; and prosecutors: 81.25%).

The respondents revealed by far the greatest deficiencies in their psychological knowledge in questions comprising the block connected to memory and factors affecting memorisation and recollection (judges: 43.25% correct answers; prosecutors: 39.75%). When assessing the credibility of testimonies, the practitioner respondents are guided by the witness's ability to recall minor details concerning the crime. However, research findings show that recalling the small details of a specific event is not a good predictor of accuracy in identification, and can often even lead to false identification.[30] In addition, the vast majority of the respondents (93% of the judges and 98% of the prosecutors!) seem to believe that traumatic recollections can be repudiated and for many years suppressed, and then recalled. This phenomenon is defined in psychology with the term dissociative amnesia, while the sources of this concept should be sought in the works of Zygmunt Freud. However, reviews of empirical studies connected to the denial of traumatic memories, conducted by David Holmes in 1990 and Richard McNally in 2003, went to show that there is no convincing proof of the existence of dissociative amnesia.[31]

In the area connected to the course of police procedures and the rules for conducting procedural and forensic activities from the point of view of psychology, then the practitioner respondents also obtained relatively low results (judges – 43.45% of correct answers, and prosecutors – 43.1%). Almost half of the legal practitioners interviewed believe that police functionaries are better witnesses than the average citizen. In a situation of 'word against word', when the only evidence implicating the defendant would be a police officer's

[28] Gurgul (2004): 16.
[29] See Appendix 1.
[30] For more on the topic: Wells, Leippe (1981): 682–687; Bell, Loftus (1989): 669–679.
[31] Lilienfeld et al. (2011) 134–136.

testimony, then such a conviction could lead to the conviction of a possibly innocent person. One has to bear in mind that every day police functionaries carry out several interventions, and for purely physiological and cognitive reasons it would be difficult for them to remember exactly every person and every incident. It could also be such that certain portions of recollections overlap, leading to the emergence of a false picture of a particular incident, which every judge should bear in mind when interviewing witnesses frequently several years after the crime in question was committed. In addition, most respondents felt that the speed at which identification is carried out is a good predictor of its accuracy, while the findings of research in this respect clearly indicate that one cannot easily separate accurate identification from that which should be acknowledged as lacking credibility solely by taking the length of time taken into account.[32]

The practitioner respondents also believe in numerous psychological myths, but they are not alone here – since the research shows that fifth-year students of psychology also believe them. According to the definition given by Kowalski and others, a psychological myth is '(a) an established conviction regarding the psyche or behaviour, (b) which contradicts available scientific knowledge, (c) is used for understanding and explaining reality, and (d) refuting it is essential for acquiring authentic knowledge'. Legal practitioners seem to attach a great deal of attention to criminal profiling and graphology (drawing conclusions regarding personality traits based on the character of handwriting),[33] despite numerous studies indicating the limited reliability and accuracy of these techniques.[34] This may quite simply be caused by the rare application of these techniques in the realities of Polish criminal trials. One could likewise explain the relatively poor level of knowledge among judges and prosecutors regarding hypnosis and its usage in criminal proceedings. This is probably due to the fact that hypnosis is not applied very often in a trial, and that it continues to remain wrapped in an aura of secrecy for legal practitioners. However, in such a situation one should retain a far-reaching degree of scepticism and the principle of 'limited trust', and not yield to the collective fascination with hypnosis, which Józef Wójcikiewicz wrote about.[35] Eysenck asserted that there are few such topics in the history of mankind to have brought about so many misunderstandings and inanities as hypnosis.[36]

In regard to the judges, significant conclusions derive from analysis of their answers to the question regarding the degree to which they would be inclined to convict a defendant if the sole evidence implicating their guilt were to be the testimony of an eyewitness. The question itself contains little information about the testimony – as to whether it was credible, complete, thorough or confident, for example. The judges were able to mark the answer *'I don't know / I have no opinion'*, thereby expressing their scepticism and remembering about the

[32] Weber et al. (2004): 139–147.

[33] Kowalski et al. (2016): 100–112. See also Appendix 1.

[34] Lilienfeld et al. (2011)*:* 285–290, 340–343; Kocsis, Hayes, Irwin (2002): 811–823; Dean et al. (1992): 342–396.

[35] Wójcikiewicz (1989): 134–135.

[36] Eysenck (1965): 27.

limitations linked to the testimony of an eyewitness. Yet as many as 66% of the judges would, in such a situation, give a conviction.

2. Possible explanations

What could explain such a poor result among the legal practitioners and students? It could, above all, be a consequence of the absence of classes in court and forensic psychology during studies. Analysis of the curriculum for the studies for a Master's degree in law at the 12 best faculties of law and administration in Poland (according to the *Rzeczpospolita*, for the year 2017,[37] and including the UMK and UJ) reveals that in none of these faculties are there obligatory classes in court or forensic psychology. Classes connected to this subject-matter are always only optional or specialist classes, which not all students have to attend. Where there are classes in psychology at a particular faculty, the issues tackled in them concern mainly general psychology, the history of psychology and social psychology. Hence one should consider the sad and simultaneously worrying conclusion that the average graduate in law leaves their place of learning with no psychological preparation whatsoever for working in their dreamed-of profession.

During one's stint as a trainee, there are no classes in court psychology, or only selected issues are tackled – such as the psychological aspects of interviewing a child or the victim of an offence against sextual freedom, or a psychological professional evaluation. The next stage of education, meaning lifelong learning for judges and prosecutors, also does not provide legal practitioners with the guarantee that they will obtain the appropriate, up-to-date knowledge. Legal professionals themselves frequently believe that the psychological knowledge will accumulate by itself, through interviews and identity parades. Yet the findings of the research presented here show that tenure in the profession does not contribute positively to level of knowledge, and can cause its decline as in the case of the prosecutor respondents.

Knowledge from other fields of science outside of law itself is not taken into account in the process of appointing judges. The authors of the report concerning the process of selecting candidates for unoccupied judge positions indicate that the most important aspects taken into account by the National Council of the Judiciary of Poland are the adjudicative stability of the judge in question, and how the said judge organises their work. Diplomas and certificates testifying to the completion of additional training are of much less significance,[38] and likewise with the candidate's personal predispositions or social competences.[39]

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[37] Cf. <https://www.wpia.uni.lodz.pl/aktualnosci/komunikaty/ranking-wydzialow-prawa-2017-dziennika-rzeczpospolita.html> [accessed 29 April 2018].

[38] Pilitowski, Hoffman, Kociołowicz-Wiśniewska (2017): 51–53.

[39] Pilitowski, Hoffman, Kociołowicz-Wiśniewska (2017): 59–61.

V. CONCLUSION

The research conducted showed that persons in the Polish legal community – judges, public prosecutors, and fifth-year law students – have a relatively low level of knowledge related to the psychology of eyewitness testimonies. It also revealed that Polish professionals in law do not differ greatly in their level of psychological knowledge from their counterparts in other countries. However, one should bear in mind that American judges only decide on the punishment, while the verdict regarding the defendant's guilt is given by jurors. The Polish judge gives rulings for both of these elements, and as such should – at least theoretically – possess knowledge superior to that of the American judge. Despite the numerous differences between the legal systems themselves – *common* and *civil law* – the practitioners of law in both continents seem to have similar deficiencies in their knowledge of the psychology of testimony.

In the conclusion to her article, Kabzińska draws attention to the fact that 'it depends solely on those representing the system of justice whether they will want to and be able to use this [psychological – M.G.] knowledge.'[40] During the conducting of the research described in this article, the participants indicated that they were aware of deficiencies in their knowledge. The respondents also pointed out that they would very much like to be trained in the area of court psychology, since they could see its enormous role in the application of law. However, the current system of education in law – of higher education, the trainee period, and lifelong learning – does not allow future legal practitioners and those taking decisions in trials to obtain the up-to-date knowledge in the psychology of testimony that is essential for them to practise their profession. This gives rise to the potential danger of them taking erroneous decisions during trials. After all, one can hardly imagine a criminal trial not making use of personal sources of evidence, just as it is hard to overestimate a credible testimony from an eyewitness. The duty of appraising its credibility lies with the judge and the public prosecutor, and as such they should always be aware of the possibilities of such a testimony being distorted and the dangers that arise from that fact.

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THE KNOWLEDGE OF POLISH JUDGES AND PROSECUTORS CONCERNING THE PSYCHOLOGY OF EYEWITNESS TESTIMONY

S u m m a r y

Knowledge of psychology is vital in the application of law. However, classical studies by Richard A. Wise and Martin A. Safer (conducted on a sample of American judges, prosecutors and attorneys) showed that they know very little about psychological effects in eyewitness testimony. Further studies conducted in Norway, Canada and China arrived at similar conclusions. This article presents results of the author's own study, which was the first attempt to verify the knowledge of Polish judges and prosecutors concerning the psychology of eyewitness testimony. Research was conducted on a sample of 545 participants, including 87 judges and 193 prosecutors. The results showed that Polish lawyers also know rather little about the psychology of eyewitness testimony. The results suggest that the professional experience of judges and prosecutors does not in itself always guarantee they have actual knowledge about the psychology of eyewitness testimony.

Keywords: forensic psychology; psychology and law; lawyer's knowledge of psychology; psychology of eyewitness testimony

Appendix 1

Percentage of correct answers given by the respondents

No.	Statement	Judges	Prosecutors	Fifth-year students of law	Control group
1	It is much more difficult for a witness to identify an attacker who wore a cap while committing the offence than an attacker who did not have a cap on	74%	69%	68%	77%
2	A witness's ability to recall small details concerning a crime is a good indicator of the accuracy of their identification of the assailant	13%	19%	35%	10%
3	The attitude and expectations of an eyewitness to a crime may influence their perception and memory of an event	93%	92%	89%	81%
4	A police officer who knows which member in an identity parade is the suspect should not conduct such a parade	70%	59%	70%	43%
5	During a hearing, the confidence of a witness is a good predictor of their accuracy in identification of the accused as the attacker	36%	28%	39%	24%
6	An eyewitness's testimony regarding an event often reflects not only what they really witnessed, but also information received later from other witnesses, the police, and the media, etc.	81%	80%	86%	79%
7	Eyewitnesses sometimes identify as the perpetrator somebody they have seen in a different situation or context	59%	54%	66%	57%
8	Police officers are more accurate in their testimonies as eyewitnesses than other people	54%	48%	46%	38%
9	Traumatic experiences can be suppressed for many years and then recalled later on	7%	2%	3%	3%
10	The presence of arms may weaken a witness's ability to accurately identify the assailant's face	67%	69%	77%	68%

Appendix 1 (*cont.*)

No.	Statement	Judges	Prosecutors	Fifth-year students of law	Control group
11	The faster a witness carries out the identification during a parade, the more accurate the identification	40%	35%	27%	22%
12	Showing the witness police photos of a suspect increases the likelihood of the said witness indicating that person later during a parade	81%	80%	82%	84%
13	Psychological profiling is an effective tool, leading to the discovery of a crime's perpetrator	10%	11%	6%	2%
14	One can reach repudiated childhood memories with the aid of hypnosis	16%	7%	19%	25%
15	Witnesses make mistakes in identifying the perpetrator more often when a parade is simultaneous (all at once) than sequential (one at a time)	18%	22%	26%	29%
16	The drop in level of material remembered is biggest just after the event, after which the decline gets steadily smaller	43%	32%	53%	60%
17	Insobriety may weaken an eyewitness's later ability to recall persons or events	89%	95%	95%	93%
18	A lie detector is an effective tool for determining whether a witness is lying	51%	56%	47%	32%
19	Using hypnosis is useful in the case of a witness recalling details of a crime	32%	32%	35%	34%
20	Small children are more susceptible than adults to suggestions made by the interviewer, to peer group pressure, and to other types of social influence	95%	92%	82%	85%
21	The psychological analysis of handwriting allows one to determine a person's personality traits	12%	16%	20%	12%

Appendix 1 (*cont.*)

No.	Statement	Judges	Prosecutors	Fifth-year students of law	Control group
22	Hypnosis increases susceptibility to suggestion in suggestive and misleading questions	15%	26%	32%	25%
23	An eyewitness's testimony regarding an event may be distorted by how the questions are worded	91%	93%	90%	84%
24	Most mentally ill people are aggressive	85%	81%	72%	56%
25	A hypnotised subject will do whatever the hypnotist commands, and could even commit an offence	21%	25%	41%	29%

Source: the author's own material.