



Interviewing cooperating witnesses in organised crime cases in Poland: Lessons to learn from the principles on effective interviewing for investigations and information gathering

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Abstract

Interviewing cooperating witnesses in organised crime cases presents unique challenges and opportunities for law enforcement. The paper examines, within this context, the application of the principles on effective interviewing for investigations and information gathering (the Méndez principles), adopted under the auspices of the United Nations, to enhance the efficacy and integrity of information gathering during criminal investigations. The Méndez principles, which emphasise non-coercive, ethical and scientifically grounded interviewing techniques, provide a framework for improving the accuracy and reliability of cooperating witnesses' testimonies, mitigating biases and reducing associated risks. The author outlines the significance of integrating the Méndez principles into the national criminal justice system to foster trustworthy investigative outcomes with these in mind. This approach addresses the complexities of organised crime cases, ensuring that cooperating witnesses provide valuable and reliable information to support the pursuit of justice.

Keywords: Méndez principles, effective interviewing, organised crime, witness testimonies, non-coercive interviewing techniques, ethical interviewing, Poland.

Introduction

The fight against organised crime presents unique challenges for law enforcement agencies worldwide, requiring sophisticated investigative techniques and strategies to ensure the collection of accurate and reliable evidence.

One such challenge is interviewing cooperating witnesses, whose testimonies often serve as a cornerstone for building strong cases against organised criminal enterprises. Cooperating witnesses, by virtue of their proximity to criminal networks, can provide crucial insights into the structure, operations and key actors involved in illicit activities. Nonetheless, eliciting truthful, comprehensive and verifiable information from these individuals is a nuanced process that demands effective methodologies.

The Méndez principles, officially known as the ‘principles on effective interviewing for investigations and information gathering’⁽¹⁷⁾, represent a progressive framework designed to enhance the integrity and efficacy of information gathering in criminal investigations. Rooted in the valuing of non-coercion, ethical conduct and scientific rigour, the principles prioritise building trust and rapport with interviewees while minimising the risk of false and misleading statements. Overall, by providing a transparent, rights-focused framework, these international guidelines seek to:

1. enhance the fairness and integrity of judicial processes;
2. improve the reliability of information gathered during interviews;
3. protect vulnerable individuals from mistreatment and abuse;
4. promote international standards of justice, transparency and institutional accountability.

Their application within the context of organised crime investigations is particularly significant, given the high stakes and well-known complexities associated with these cases. Techniques from investigative interviewing, including developing trust and understanding the motivations of witnesses, are critical in managing cooperating witnesses, who often have vested interests (Fisher, 2010; Vallano et al., 2011).

The paper explores the possible application of the Méndez principles in interviewing cooperating witnesses in the example of the Polish criminal justice system. The author aims to identify key best practices promoted by the Méndez principles that can enhance the credibility and effectiveness of interviewing and investigation processes in general. The findings emphasise the importance of adopting non-coercive and ethical interviewing techniques to foster trust, ensure accurate testimony and support the overarching goals of criminal justice. This approach not only enhances the reliability of cooperating witness testimonies but also strengthens the overall legitimacy and fairness of the justice system. The author seeks to underline the critical role that ethical and scientifically grounded interviewing techniques play in achieving these outcomes, offering some insights for practitioners and policymakers.

Relevant scientific studies and selected case-law were examined using a narrative review approach to provide an overview of existing practices and challenges. Sources were drawn from legal databases with preference given to recent publications on investigative interviewing. The purpose of this review was to identify patterns and shortcomings in the Polish handling of cooperating witness interviews and to place them in the wider context of international recommendations (Tartaro, 2021).

⁽¹⁷⁾ ‘Principles on effective interviewing for investigations and information gathering’ (2021), interviewingprinciples.com website, <https://interviewingprinciples.com/>.

Cooperating witnesses in Poland

There are four types of protected witnesses in Polish criminal proceedings. The first is the police informant, who provides information on criminal activity but is not themselves under investigation. Such interviews are conducted during police intelligence-gathering activities (Sprengel, 2019; Horosiewicz, 2015; Taracha, 2006). The police officers who dealt with the informants are legally obliged to protect the identity of confidential informants (Article 22 of the Law on Police of 6 April 1990). Organisational aspects of the interview are defined by internal regulations. Later, such an informant could be a witness in criminal proceedings and receive a protected status. The second, the anonymous witness, is the one whose identity is kept secret by the decision of the court or prosecutor if there is a justified fear of danger to their life, health, freedom or property. Only the court, the prosecutor and, if necessary, a police officer handling the case have access to the witness's personal information. The defence party may access testimony in a way that does not reveal the identity of the witness. The testimony of an anonymous witness may be taken remotely using dedicated technical means (Article 184 of the Polish Code of Criminal Procedure). Secrecy applies to the information about the anonymous witnesses' identity, not the content of their testimony (Wiliński, 2019). The third type is the quasi-crown witness, or 'small crown witness' (Articles 60 and 61 of the Polish Penal Code), a cooperating suspect who provides law enforcement with significant information on the circumstances of the crime committed together with others. The law does not require the disclosure of all information related to the crime, but only the information that enables law enforcement to establish all the circumstances necessary to successfully conclude the proceedings. This condition is also satisfied when the authorities already possessed certain information, unbeknownst to the suspect, who nevertheless disclosed it to them to the best of their knowledge (Mistygać, 2020). As a reward for the quasi-crown witness, there is obligatory mitigation of the criminal penalty. The court may also suspend the execution of the penalty, apply probation, waive related sanctions (e.g. fines, compensations, forfeitures) or even abstain from imposing a penalty if the cooperating suspect played a minor role in the crime and provided information that helped to prevent another crime. The institution of quasi-crown witnesses in Poland is used not only in organised crime cases but in other types of criminal cases as well.

The fourth type is the crown witness *sui generis*, whose status is regulated by dedicated legal provisions of the Polish Act on Crown Witnesses of 25 June 1997. A crown witness is a legal institution allowing individuals suspected of committing a crime to provide testimony in exchange for reduced penalties or immunity from punishment. The primary goal of this institution is to uncover crimes committed by organised criminal groups, providing evidence necessary for effective prosecution. Not every suspect could be a crown witness and not in every type of criminal case. The status of a crown witness applies solely to individuals involved in organised crime who have cooperated with others in the commission of certain types of criminal offences listed in the law (Potulski, 2024). The provisions of the Act on Crown Witnesses do not apply to a suspect who committed, attempted to commit or cooperated in the commission of murder; persuaded another person to commit such a crime to initiate criminal proceedings against them; or led an organised criminal gang aimed at committing a crime or fiscal criminal offence (Article 4). However, the mere fact of committing a murder, if unrelated to the ongoing case, does not prevent the suspect from becoming a crown witness. According to the Supreme Court of Poland ruling of 2004, the Act on Crown Witnesses only excludes individuals who cooperated in the commission of murder from obtaining crown witness status in that specific case, not in all crimes they may have committed (Supreme Court of Poland, 2004).

There is a two-stage procedure in which the decision to grant crown witness status is made by the court after an appropriate motion is filed by the prosecutor (procurator). It starts with the candidate for crown witness status

providing statements to the prosecutor, the content of which should fulfil the conditions set by the Act on Crown Witnesses. Based on the prosecutor's request, the court interrogates the candidate before issuing its decision on granting the protected status. Following the court's decision to grant such a status, the prosecutor separates the materials related to the crown witness and discontinues the proceedings. It is important that statements made by a candidate seeking to become a crown witness to the prosecutor cannot be used as testimonial evidence later if the court rejects the prosecutor's motion. Their content is also classified until the court's decision on granting protected status comes into force (Article 23 of the Act on Crown Witnesses).

Only the third type (the quasi-crown witness) and the fourth type (the crown witness *sui generis*) fit the general concept of a cooperating witness as one who collaborates with justice (Council of Europe, 2022). The first and second types, police informants and anonymous witnesses, do not meet the criteria for cooperation in the same way as they are, by definition, not directly involved in the crimes about which they provide information.

For the aim of this article, it is necessary to refer to the legal nature of the crown witness testimony and its evidentiary value in Polish criminal proceedings. The testimony of quasi-crown witnesses constitutes a legitimate source of evidence, just like any other kind of evidence, as there are no special legal provisions requiring that such statements be treated differently from other testimonial evidence. As a legitimate piece of evidence, the crown witness testimony is subject to free evaluation, just like any other evidence during criminal proceedings, regardless of whether it is the only direct evidence in the case or circumstantial evidence that logically completes a chain of circumstantial evidence in a way that clearly points to the main fact (Supreme Court of Poland, 2001).

A quasi-crown witness, being a criminal suspect, provides testimony during an interrogation. The subject of the testimony is the circumstances of criminal activities conducted by the suspect and other participants. The situation is more complicated in the case of a crown witness *sui generis*, who should first be interrogated as a suspect and then, after obtaining a protected status, interviewed as a crown witness, thus combining two different procedural roles and legal statuses.

Practical challenges

There are known practical challenges regarding the use of the crown witness testimony for investigative and evidentiary purposes. First, regardless of the type, a crown witness is not an impartial person since such a witness is highly motivated to testify. There is a risk that the crown witness is driven by the desire to avoid criminal responsibility and present testimony that is as favourable as possible to the authorities (Kowalewska-Borys, 2004). According to the Court of Justice of the European Union, the use of such testimonies might question the fairness of the proceedings and raise some issues, as such testimonies are not prone to manipulation and 'may be made purely to obtain the advantages offered in exchange, or for personal revenge' (*Arnold G. Cornelis v the Netherlands*, 2004). 'The sometimes ambiguous nature of such statements and the risk that a person might be accused and tried on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated' (*Erdem v Germany*, 1999; *Lorsé v the Netherlands*, 2004; *Verhoek v the Netherlands*, 2004). As an additional guarantee against unreliable, untruthful testimonies, in the case of crown witness *sui generis*, Polish law allows, under predefined conditions, criminal proceedings against the witness to be resumed within five years of the case being discontinued. These conditions include the commission of a new crime, failure to fulfil legal obligations (of a crown witness) or the emergence of new facts that affect the legal basis of the decision to grant a protected legal status. When applied,

these provisions effectively reverse all privileges associated with this status, thus providing a strong incentive for crown witnesses to provide reliable information.

Second, by definition, the crown witness testimony is intended to be the main incriminating evidence in the case (Lach, 2019). This interpretation derives from legal provisions and prevailing judicial practices. It happens that the crown witness is the only source of detailed information about the criminal event and the actions of its participants (Court of Appeals in Warsaw, 2018; Court of Appeals in Warsaw, 2016; Supreme Court of Poland, 2013). Insufficient corroborating evidence may increase the risk of wrongful conviction. In practice, the reliability of the crown witness testimony as the main source of incriminating evidence is sometimes assessed during a procedural experiment (Article 211 of the Polish Code of Criminal Procedure). The experiment takes the form of recreating the course of the event, constituting the subject of the court examination and verifying the witness's ability to recognise and navigate the location of the event.

Third, there are limited possibilities for the defence party to participate in the crown witness interviews. In principle, the active participation of the defence in the examination of the testimonial evidence helps to ensure that the information is properly scrutinised and that potential biases or inconsistencies in the testimony are identified. According to the UN's 2024 Manual on Investigative Interviewing for Criminal Investigation, 'professional interviewers welcome the presence of defence lawyers as a legal resource, an eyewitness to the fairness of the interview, and a safeguard against misunderstandings' (United Nations, 2024). In practice, quasi-crown witnesses who provided accusatory testimonies during the preliminary proceedings tend to exercise their right to remain silent later at the trial stage, which essentially prevents the defence from verifying the statements and confronting them (Mrowicki, 2020). In the case of a crown witness *sui generis*, the situation might be different since such a witness is legally required to deliver testimony before the court.

Fourth, there is a question regarding the effectiveness of some interviewing techniques, given the relatively greater awareness of knowledgeable interviewees in this area. Criminals with prior experience in criminal matters or, for example, special training in counteracting commonly used (known) interviewing techniques might be more adept at manipulating interview dynamics. In this situation, it may be more challenging for the interviewers to obtain reliable and comprehensive information (Kwasiński, 2019). It can be assumed that in the case of crown witnesses, their prior knowledge of the matters under investigation, combined with the awareness that the investigators' success depends on their testimonies, creates an incentive to manipulate the disclosure of relevant information to increase this dependency. Some crown witnesses hold high-ranking positions within criminal organisations, which can influence their behaviour during interviews. Studies show that high-status suspects may attempt to assert control and manipulate the process of interviewing due to their previous authoritative roles (Hoekstra, 2024). Thus, the interviewing techniques used in other types of cases may not be effective in eliciting full and reliable testimonies. Polish investigators often prioritise obtaining confessions or confirmations, whereas investigative interviewing emphasises free recall to elicit unprompted, detailed narratives. Applying this model could help overcome the manipulation risks identified above.

Having outlined the Polish legal framework governing cooperating witnesses, the next section considers how the Méndez principles may be applied within that framework. The intention is to show where these international standards could strengthen the fairness and evidentiary reliability of current investigative practices.

Application of the Méndez principles

The Méndez principles were developed to replace coercive and abusive interviewing practices (Principles on effective interviewing for investigations and information gathering, 2021; United Nations, 2022a; Gudjonsson, 2023). They focus on promoting methods that are non-coercive, humane and effective, emphasising the importance of respecting the dignity and rights of individuals while improving the quality and reliability of information obtained during interviews. Interviewers are encouraged to use psychological research and proven techniques to build rapport, foster cooperation and elicit accurate information. Empirical research from several jurisdictions demonstrates that rapport-based models produce more accurate statements and fewer false admissions than traditional interviewing techniques (Powell et al., 2005; Walsh et al., 2010; Bull, 2018; Gudjonsson et al., 2011).

In Polish investigations, interviews often rely on structured, closed questions designed to confirm facts that are already known to investigators. Investigative interviewing, as promoted by the Méndez principles, instead favours open-ended questions, such as ‘Can you describe what happened?’ (instead of ‘Did you see X commit the act?’) or ‘Were you instructed by Y?’ (Lach, 2019), that allow witnesses to give fuller and more spontaneous accounts. This change of focus can increase the amount and quality of information obtained. In addition, interviews are usually summarised in written protocols, with the interviewer paraphrasing statements rather than recording them verbatim, which can lead to the loss of contextual detail and affect the evidentiary reliability of the testimony (Mrowicki, 2020).

In the case of cooperating witnesses, the investigative interviewing model, which is widely advertised by the Méndez principles, can be more effective for several reasons.

1. **Building rapport and trust.** Investigative interviewing techniques, such as the PEACE model (planning and preparation, engage and explain, account, closure, evaluation), emphasise building rapport and trust with the interviewee. Crown witnesses, who often come from high-ranking positions within organised criminal networks, may be more willing to cooperate if they feel respected and understood.
2. **Ethical and scientifically based approach.** Investigative interviewing avoids coercive and manipulative tactics, which, as numerous studies show (Halley et al., 2023; Gudjonsson, 2023; Walsh et al., 2010), can lead to false confessions or unreliable information. This ethical approach is crucial when dealing with crown witnesses, as their testimony may significantly impact the outcome of a case.
3. **Comprehensive information gathering.** Investigative interviewing focuses on obtaining complete, accurate and reliable information. This model ensures that all relevant details are revealed and thoroughly examined, which is essential when interviewing crown witnesses with extensive knowledge of illicit activities.
4. **Reducing biases and risk of memory contamination.** Investigative interviewing techniques are designed to minimise an interviewer’s psychological biases and prevent contamination of the witness’s memory. This is particularly relevant to the situation of the crown witnesses, as their statements need to be credible and exempt from damaging external influences.

5. **Adaptability.** Investigative interviewing can be tailored to the specific needs and characteristics of the interviewee. This flexibility allows interviewers to correctly address psychological and tactical issues that arise during the interview. It also refers to the understanding of the crown witness's motivation for cooperation, such as leniency or a desire for redemption, that may influence the content of their testimonies.
6. **Validation and clarification.** The investigative interviewing emphasises the importance of proper validation of the interviewee's account by probing for details that align with known evidence or can be verified later during further inquiry.

In addition, the Méndez principles recommend that all interviews be documented comprehensively, preferably through audio or video recording. In the case of crown witnesses, the later analysis of the recordings may help to reveal patterns of withholding or apparent inconsistencies that need further scrutiny. Proper documentation of the interview enhances the credibility of the witness's statements in legal proceedings. The defence team is more likely to challenge the reliability of testimony from crown witnesses, given their motivations for cooperation. A recorded and thoroughly documented interview process serves as an objective basis to counter such challenges. It allows for subsequent inquiries to verify that the witness was not coerced, misled or improperly influenced – important concerns given the unique, sensitive position of crown witnesses. It is worth noting that the mandatory recording of quasi-crown witness interviews is among the recommendations issued by the Polish Ombudsman in his recent appeal to the Minister of Justice to expedite appropriate legislative changes. The Ombudsman supports his position by highlighting the risks of such witnesses refusing to cooperate during court proceedings, as along with the challenges faced by the defence when unable to attend pretrial interviews. The recordings may also provide a reliable account of the conditions under which the testimony was given, addressing any concerns about potential coercion or unlawful influence by law enforcement. The Ombudsman underscores that reliance on written protocols alone is insufficient to meet the standards of a fair trial, particularly in cases where the prosecution's evidence depends heavily on such testimonies. This procedural reform is deemed essential to uphold the principles of adversarial proceedings, equality of arms and the right to a robust defence (Starzewski, 2025).

In the case of a crown witness *sui generis*, their testimonies during the first stage of the status-awarding procedure – namely, when being interrogated by the prosecutor and then by the court – are documented using written protocols. The law does not mandate audio or video recordings, which is often explained by security concerns. Nonetheless, this limitation raises questions about the transparency and reliability of the documentation process. The absence of audiovisual recording can lead to disputes over the accuracy of the testimony, as written protocols may fail to capture all the nuances of the interrogation. While security concerns are valid, these can be addressed by implementing robust data protection measures and restricting access to the recordings.

The following table provides a comparative overview of the main procedural and methodological distinctions between current Polish interviewing practices and those recommended by the Méndez principles.

Table 7.1. Comparison of Polish interviewing practices and the Méndez principles

Aspect	Current practices	Méndez/investigative interviewing
Question style	Predominantly closed, confirmatory, often confrontational	Open-ended, exploratory, rapport-based
Documentation	Written protocols	Audiovisual recording
Focus	Confirmation, confession	Rapport, recall, accuracy
Defence participation	Limited	Encouraged to ensure fairness
Oversight	Internal controls	Independent review, accountability

The comparison above demonstrates that adopting the Méndez principles could strengthen both the procedural transparency and the evidentiary credibility of cooperating witness interviews in the Polish criminal justice system.

Conclusions

1. The application of the Méndez principles offers significant potential for enhancing the reliability of crown witness testimonies by offering scientifically grounded tools to enhance the effectiveness of interviews. By adopting non-coercive and ethical interviewing techniques, law enforcement can improve the accuracy and reliability of information gathered from both crown and quasi-crown witnesses.
2. The Méndez principles prioritise the protection of witness rights, ensuring interviews are conducted ethically and following international human rights standards, which is essential for maintaining the overall legitimacy of the criminal justice system.
3. One key element of the Méndez principles is the emphasis on building rapport, which can be particularly useful when dealing with high-ranking interviewees who can be familiar with investigative processes and common interviewing techniques. By fostering trust, interviewers can ensure cooperation without resorting to pressure or intimidation, facilitating reliable and comprehensive testimonies. Implementing these recommendations can strengthen the evidentiary value of the crown witness's testimony by addressing potential legal challenges based on the assumption that the witness's statements are coerced and unreliable.
4. The comprehensive documentation of the interview, including audio and video recordings, serves as a safeguard, enhancing the credibility of the investigative processes and protecting against potential disputes over the reliability of the crown witness's statements.
5. Recommendations for implementation in Poland: introduce mandatory audiovisual recording of cooperating witness interviews; provide training in investigative interviewing for prosecutors and investigators; clarify defence participation rules to enhance transparency; establish independent oversight to ensure compliance with ethical and methodological standards.

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