

Rights and Obligations of the Suspect

Unless stated otherwise, these are provisions of the Code of Criminal Procedure [*Kodeks Postępowania Karnego*] (Act of 6 June 1997 – Code of Criminal Procedure, Journal of Laws of 2024, items 37 and 1222).

Your rights and obligations in criminal proceedings. It is better to ask an attorney for the legal assistance.

As a suspect:

1. **You have the right to decide whether and what explanations you will provide**

You may provide an explanation, refuse to provide an explanation, or refuse to answer individual questions. You do not have to explain why you refuse to answer questions or refuse to provide explanations (Article 175 § 1).

In the course of the questioning, you may request to provide your explanations in writing. However, the investigator may not agree to this if there are compelling reasons (Article 176 § 1 and 2).

If you are participating in procedural acts, you may provide explanations concerning the evidence to which they relate (Article 175 § 2).

2. You have the right to legal assistance

As a suspect, you do not have to go through the criminal proceedings alone.

You may seek the support of a lawyer – a defence counsel.

A defence counsel may represent you throughout the proceedings or during any specific procedural act.

If you are under pre-trial detention:

1) you may speak face-to-face with your defence counsel in custody – without others present;

2) you may communicate with your defence counsel by correspondence.

A public prosecutor or a person authorized by them may attend your meetings with your defence counsel and inspect your correspondence, but no later than 14 days from the date of your pre-trial detention (Article 73).

During the investigation, you may request that your defence counsel is present at your questioning. However, if your defence counsel does not attend your questioning, the investigator can still conduct the questioning (Article 301).

Defence counsel of your choice

You can appoint a defence counsel yourself. In such a case, you pay for their services yourself. You may appoint up to three defence counsels to represent you during criminal proceedings (Article 77).

Court-appointed defence counsel

If you prove that you cannot afford to pay for a defence counsel (you are unable to bear the costs of the services of a defence counsel without jeopardising your and your family's indispensable maintenance), the court may appoint a defence counsel for the entire proceedings or for a specific procedural act (Article 78 § 1 and 1a).

Remember: when applying for a court-appointed defense counsel, always include evidence to prove that you are unable to pay for a defence counsel yourself.

In the course of pre-trial proceedings, you may make such a request to the prosecuting authority, which will forward it to the court, or directly to the court. Always indicate the case in question.

In the course of court proceedings, you may make such a request within 7 days of receiving a copy of the bill of indictment. If you fail to meet this deadline or do not attach evidence, your application may be considered only after the hearing or the court session date (Article 338b § 1 and 2).

If you decide after the first hearing or the first court session that you need a court-appointed defence counsel, request it in time for the court to consider your application before the next hearing or court session (Article 338b § 3).

If you are convicted or the proceedings are conditionally discontinued, you may be charged with the costs of defence by the court-appointed defence counsel (Articles 627 and 629).

3. You have the right to be assisted by an interpreter or a translator

If you do not speak Polish well enough, you can be assisted by an interpreter or a translator.

You or your defence counsel may request the assistance of an interpreter or a translator free of charge. An interpreter will assist you in communicating with your defence counsel during all stages of the proceedings in which you participate (Article 72 § 1 and 2).

You will receive translations of documents and decisions throughout the proceedings, such as:

- 1) the decision to present, supplement, or change charges;
- 2) the bill of indictment;

- 3) rulings that are subject to appeal;
- 4) rulings concluding the proceedings.

The person conducting the proceedings may only read (announce) a translated ruling concluding the proceedings to you if you agree to this and if it is not subject to appeal (Article 72 § 3).

4. You have the right to be informed about the content of the charges

During the pre-trial proceedings, you have the right to know what you are suspected of:

- 1) what the charges are and whether they are supplemented or amended during the course of the proceedings;
- 2) what penalty you are facing and on the basis of which legislation (Article 313 § 1, Article 314, Article 325g § 2 and Article 308).

Until you have been notified about the date for reviewing the materials of the proceedings, you have the right to request that the presiding authority provide you with an oral account of the grounds for the charges, as well as a written statement of reasons within 14 days (Article 313 § 3).

5. You have the right to submit motions for evidence and to take part in procedural acts

You may request that the person conducting the proceedings carry out a procedural act that will give rise to evidence in the case e.g. interview a witness, obtain a document, or admit an expert's opinion (Article 315 § 1) – this is a **motion for evidence**.

The person conducting the proceedings may disregard your motion for evidence if:

- 1) the evidence is inadmissible;
- 2) the circumstance to be proven is irrelevant to the outcome of the case or has already been proven as claimed by the applicant;
- 3) the evidence is unsuitable for establishing the circumstance in question;
- 4) the evidence cannot be taken;
- 5) the motion for evidence is clearly intended to prolong the proceedings;
- 6) the motion for evidence was filed after the deadline set by the procedural authority, of which the requesting party had been notified (Article 170 § 1).

The person conducting the proceedings may not refuse to allow you and your defence counsel to participate in a procedural act if you have filed a motion for the performance of this act (Article 315 § 2).

If you request to participate in other procedural acts during the investigation, the prosecutor may refuse. This may happen in a particularly justified case due to the important interests of the proceedings. If you are detained, the prosecutor may refuse to allow you to participate in a procedural act when escorting you there would cause serious difficulties (Article 317).

If a procedural act cannot be repeated at the hearing, you and your defence counsel may take part in it, unless its delay would result in the loss or distortion of evidence (Article 316 § 1).

If there is a concern that a witness cannot testify during the hearing, you may request that the witness be questioned by the court, or request the public prosecutor to cause the witness to be questioned in this manner (Article 316 § 3).

If expert evidence has been admitted in the proceedings, you and your defence counsel may read the expert's written opinion and take part in the expert's questioning (Article 318).

6. You have the right of access to the case file

You can request access to the case file at any time during an investigation, even after it has been closed. You may also request copies or certified copies of the file to be made, or you may make copies yourself (e.g. photocopies). The investigator in charge of the investigation may deny you access to the case file on the grounds of an important state interest or the interest of the proceedings. The file may be made available to you in electronic form.

If, before the case is brought before the court, the person conducting the pre-trial proceedings has filed a motion for your pre-trial detention or for an extension of your pre-trial detention, you and your defence counsel shall be given access to the part of the case file that contains the evidence attached to the motion. If there is a justified concern that the life, health, or freedom of a witness or a person close to them may be at risk, the statement of such a witness shall not be made available to you (Article 156 § 5 and § 5a).

Once the case has been referred to court, you and your defence counsel shall have full access to the case file and shall be able to obtain copies and certified copies of the requested documents or make them yourself (e.g. photocopies). If technically possible, information on the case file may also be made available by means of an ICT system (Article 156 § 1).

7. You have the right to request a final review of the materials of the proceedings

Before the pre-trial proceedings are closed, you may request a final review of the materials of the proceedings. Your defence counsel may participate in this process (Article 321 § 1 and 3).

Within 3 days from the date of review of the pre-trial material, you may submit a request to supplement the proceedings (Article 321 § 5).

Before the final review of the pre-trial material, you have the right to inspect the file, which may also be made available in electronic form (Article 321 § 1).

8. You have the right to request mediation

At any stage, you may request the case to be referred to mediation proceedings. Its purpose is, among other things, to try to reach an agreement between the aggrieved parties (victims) and the defendant on a method of redressing the damage. Participation in mediation proceedings is voluntary (Article 23a § 1).

The mediation proceedings are conducted by an appointed mediator, who is obligated to keep the course of the mediation proceedings confidential (Article 178a).

Remember that mediation proceedings do not conclude criminal proceedings. However, if you reconcile with the aggrieved party, the court will take this into account when determining the sentence (Article 53 § 3 of the Act of 6 June 1997 – Criminal Code, Journal of Laws of 2024, items 17 and 1228).

9. You have the right to negotiate the sentence

In the course of pre-trial proceedings where the lower limit of imprisonment for the offence you are charged with is less than 3 years, you may negotiate and agree with the public prosecutor, prior to the indictment, on the length (amount) of the penalty, e.g. the duration of imprisonment or other measures

(e.g. the duration of a driving ban). In such a case, you are entitled to review the case file. No further action is then taken and the public prosecutor, instead of filing a bill of indictment, presents the court with a motion for the issue of a sentence (Article 335 § 1 and 3). The prosecutor may also attach such a motion to the bill of indictment (Article 335 § 2). The request may be granted by the court unless the aggrieved party objects thereto (Article 343 § 2).

In the course of court proceedings, before you are served with a notice regarding the hearing date, where the offence you are charged with is punishable by a penalty not exceeding 15 years of imprisonment, you may file a motion for a conviction and issue of the sentence without an evidentiary hearing (Article 338a). The court can only grant your request if the public prosecutor and the aggrieved party do not object thereto (Article 343a § 2).

In the course of court proceedings where the offence you are charged with is punishable by a penalty not exceeding 15 years of imprisonment, you may also file a motion for conviction and sentencing during the hearing, but only before the first questioning of all defendants is completed. The court can only grant it if the public prosecutor agrees and the aggrieved party does not object. If you need a defence counsel and do not have a defence counsel of your choice, the court may assign a court-appointed defence counsel at your request (Article 387).

Remember, if you have negotiated and agreed on the sentence and other measures, and the court has announced the sentence you applied for, you cannot later appeal on the grounds of allegations of an error by the court in the factual findings or gross disproportion of the penalty, the penal measure, the vindictive damages, or the wrongful application or non-application of a precautionary measure, forfeiture, or other measure related to the content of the concluded agreement (Article 447 § 5).

10. Participation in accelerated proceedings

The charges against you can be heard by the court in accelerated proceedings. This is a special procedure provided for in the law, which allows you in some cases to attend/participate in actions before the court by means of a video conference call. The police shall then serve you with a copy of the application for consideration of the case and provide you with copies of the documents of the evidence submitted to the court (Article 517b § 2a and Article 517e § 1a), and you will not be taken to court.

When you take part in the proceedings by videoconference:

- 1) at the place of your stay, your defence counsel, if appointed, and an interpreter will take part in the procedures. An interpreter will be present if you do not speak Polish or if you are deaf or mute, and communication by writing is not sufficient, as well as when it is necessary to translate a document drawn up in a foreign language to Polish or to translate a document drawn up in Polish to a foreign language, or to review the content of the admitted evidence (Article 517b § 2c and 2d).
- 2) You may only submit motions and statements and perform procedural acts orally for the record. You shall be informed by the court of the content of all pleadings that have been filed in the case since the application for consideration of the case was sent to the court. At your request, the court shall read out their content. Pleadings that could not be submitted to the court may be read out at the hearing (Article 517ea § 1 and 2).

In accelerated proceedings, you may submit an **application** for the preparation and service of a written **statement of reasons** for the **judgment** in writing **within 3 days** from the date of announcement of the judgment or its service (if the law provides for its service). You may also submit such application orally for the record of the hearing or session (Article 517h § 1).

You have 7 days from the date of service of the judgment with a statement of reasons to lodge an appeal, if you wish to do so (Article 517h § 3).

As a suspect, you are not obligated to prove your innocence or provide evidence against yourself (Article 74 § 1), but:

1. **You are obligated to submit to the following examinations:**

- 1) physical inspection and examinations that do not involve a violation of the integrity of the body; providing fingerprints, photographs and participating in an identification parade (Article 74 § 2(1));
- 2) psychological and psychiatric examinations, as well as examinations and tests involving the performance of procedures on your body, with the exception of surgical procedures, provided that this does not jeopardise your health, if these examinations are necessary (in particular, the collection of blood specimen, hair or bodily secretions, e.g. saliva); the examinations should be carried out by a healthcare professional authorised to do so (Article 74 § 2(2));
- 3) collection of a smear from the buccal (cheek) mucosa by a police officer or other authorised person, provided it is necessary and does not jeopardise your health (Article 74 § 2(3)).

If you fail to comply with these obligations, you may be detained and forcibly escorted to the examination, and physical force or technical means of incapacitation may be used against you, to the extent necessary (Article 74 § 3a).

2. **You are required to attend court when you receive a summons, to inform about your place of stay, and to indicate an address for service**

You are required to attend court following each summons from the person or authority conducting the proceedings and inform them of any change in your contact details (e.g. telephone number, email address). When you change your

place of stay for more than 7 days, including a change resulting from being detained or imprisoned in another case, you must inform the authority which is conducting your proceedings. If you fail to do so, you may be detained and forcibly escorted to appear (Article 75 § 1 and 2).

If you do not reside in Poland or in another Member State of the European Union, you must designate an addressee (a person or an institution) for service in Poland or in another Member State of the European Union (Article 138).

If you change your place of residence or stay, including a change resulting from being detained or imprisoned in another case, or if you change your post office box address, you must provide the new address (Article 139).

If you do not inform the person conducting the proceedings of an addressee for service, of a change in your address of residence or stay, or post office box, any letter sent to your current address will be deemed to have been served.

If a letter cannot be served to you in person, to an adult household member, or to your letterbox, the letter:

- 1) shall be left at the nearest post office of the relevant operator in the case of letters sent by regular mail service;
- 2) shall be left at the nearest police station or at the competent municipal office in the case of letters sent by other means.

A notice of leaving such a letter shall be placed by the delivery agent in your letterbox, on your door, or in another visible place. From this point on, you have 7 days to collect it. If you fail to do so, the delivery agent will notify you again. **If you fail to collect the letter, it will be deemed to have been served** (Article 133 § 2).

3. You are required to justify your absence at from any questioning

If you have been summoned to appear and cannot attend due to illness, you must provide an excuse for your absence. To do this, you must go to see a

court doctor, as only a court doctor can issue a certificate that is recognised as a medical excuse note. No other certificate or document will be recognised as a medical excuse note (Article 117 § 2a).

In other situations, the action may not be carried out in your absence if you provide a valid excuse for your non-appearance and request that the action not be carried out in your absence (Article 117 § 2).

If you are a Polish citizen and are abroad, and **provided you grant your consent**, you can be questioned by a consul (Article 26(1)(2) and (2) of the Act of 25 June 2015 – The Consular Law [*Prawo Konsularne*], Journal of Laws 2023, item 1329). In such cases, the provisions regarding the obligation to appear and the consequences thereof do not apply.

You need to know that:

Forensic psychiatric opinion

The prosecutor or the court may order an examination of your mental state.

The prosecutor or the court can request two psychiatrists to examine you and provide their opinions about your mental state. The doctors appointed by the prosecutor are experts. They can request the prosecutor to let other doctors provide their opinion on your mental state as well. The prosecutor may request a sexologist's opinion in addition to the psychiatrists if the assessment of your behaviour is related to any sexual problems (Article 202 § 1–3).

The prosecutor or the court may also request that you be examined by a psychologist. The prosecutor or the court may also ask medical doctors, such as a psychiatrist, to assess whether an examination of your mental state is necessary (Article 215).

Experts must not be married to one another or in any other relationship that could raise reasonable doubts as to their impartiality (Article 202 § 4).

The expert's opinion should contain statements regarding both your accountability at the time of the alleged act and your current state of mental health, in particular whether this state allows you to participate in the proceedings and to conduct your defence in an independent and reasonable manner, and, if necessary, statements as to the circumstances listed in Article 93b of the Criminal Code (Article 202 § 5).

Community interview

If necessary, and in particular when it is necessary to gather information on your personal characteristics and conditions and your previous way of life, the court, and in the pre-trial proceedings—the prosecutor, may request that a probation officer or other entity authorised under separate regulations, and in particularly justified cases—the Police, conduct a community interview focused on you.

Conducting a community interview is mandatory:

- 1) in cases concerning a crime;
- 2) if you were under the age of 18 at the time of the act;
- 3) if you were under the age 21 at the time of the act and you have been charged with an intentional offence against life.

If you do not have a permanent residence address in Poland, a community interview is not mandatory.

The outcome of the community interview should include, in particular:

- 1) the details of the interviewer;
- 2) your name;
- 3) a brief description of your life to date and accurate and detailed information about your background, including family, school or work environment, and, in addition, information about your assets and sources of income;

- 4) information about your health, as well as about your abuse of alcohol, drugs, substitute substances, or psychotropic substances;
- 5) the interviewer's own observations and conclusions, especially concerning your personal characteristics and conditions and your past way of life.

The person who is conducting the interview may disclose data about the persons who provided information as part of the community interview only at the request of the court or, in the pre-trial proceedings, of the public prosecutor.

Persons who have provided information as part of the community interview may be interviewed or testify as witnesses if necessary.

The Police are obligated to provide the interviewer with assistance in the performance of tasks related to conducting the community interview to ensure the interviewer's safety.

A person who has been appointed to carry out a community interview may be excluded from carrying out this activity. This shall be decided by the court and, in the pre-trial proceedings, by the public prosecutor; the provisions on the exclusion of a judge shall apply accordingly in this case (Article 214).

Preventive measures

In Polish criminal proceedings, various measures can be applied to prevent obstruction of the criminal trial (preventive measures).

We have one preventive measure of an isolating nature—pre-trial detention, which needs to be applied by the court.

Pre-trial detention shall not be used when other preventive measures are sufficient, e.g. police supervision, which is a preventive non-detention measure (Article 257 § 1). The court may change the pre-trial detention to a bail bond if it is paid within a specified time limit. The court may be requested to extend this time limit (Article 257 § 2).

The court may not impose pre-trial detention when:

- 1) it would jeopardise your life or health;
- 2) it would have exceptionally severe consequences for you or your immediate family.

The court shall not impose pre-trial detention when:

- 1) you face a custodial sentence with probation or a lighter sentence;
- 2) the offence you are charged with is punishable by a maximum of one year's imprisonment.

In these cases, the court may nevertheless impose pre-trial detention if you are in hiding, persistently failing to attend summons, or otherwise unlawfully obstructing the proceedings, or when your identity cannot be established, or there is a high probability of a precautionary measure of confinement of the offender being imposed (Article 259):

Instead of pre-trial detention, the court or public prosecutor may use:

- 1) a bail bond, which means that you as the accused or another person must, for example, deposit money in a specific account, pledge property, or mortgage real property (Article 266);
- 2) the guarantee of the employer or the management of the school or college or other organisation, which means that these persons vouch that you, as the accused, will appear at every summons and will not obstruct the proceedings (Article 271);
- 3) a personal guarantee, which means that someone important and respected, such as an MP, senator, mayor or another trustworthy individual, will promise that you, as the accused, will appear at every summons and will not obstruct the proceedings (Article 272);
- 4) Police supervision, which means that you, as the accused, will have various obligations, e.g. you will have to report to the police station on a

specified date. You may also be forbidden to leave a specified place of residence, required to notify the prosecutor or the Police of your intended departure and the date of your return, forbidden to contact the aggrieved party or other persons, forbidden to approach certain persons at a specified distance, e.g. 100 metres, forbidden to stay in certain places, e.g. where the aggrieved party is staying, as well as other restrictions on your freedom necessary for the purposes of supervision (Article 275);

- 5) an order to leave the premises and a restraining order prohibiting you from approaching the aggrieved party at a specified distance if you are charged with a violent offence against the person you were living with (Article 275a);
- 6) suspending you from your official or professional activities, or an order that you refrain from a particular activity. This could, for example, be in relation to running a business (e.g. the production of hazardous materials) or practising as a lawyer. In some cases, you may be required to refrain from driving a certain type of vehicle, or you may be forbidden from applying for public procurement contracts (Article 276);
- 7) a prohibition on approaching the aggrieved party closer than a specified distance, a prohibition on contact or a prohibition on publishing content that harms the aggrieved party's legally protected interests, including via IT systems or communication networks, when you are charged with an offence committed against a member of the medical staff who performed medical care activities or against a person assisting the medical staff in connection with the performance of these activities, which means that the court or the public prosecutor can apply this measure if, for example, you battered a paramedic when they were trying to provide you with assistance. The same measure can be applied if you have been charged

with persistent harassment, i.e. stalking, related to the aggrieved party's profession (Article 276a);

- 8) a prohibition on leaving Poland combined with a prohibition on issuing a passport or other document authorising border crossing, or with a prohibition on the release of such a document (Article 277).

Hearings

Hearings in criminal cases are public, which means that the public (strangers or acquaintances who will observe the hearing) may be present (Article 355).

The court may exclude the public from a hearing and conduct it in camera if a public hearing would:

- 1) cause a disturbance of the public peace;
- 2) offend public morals;
- 3) disclose circumstances which, for reasons of vital state interest, should be kept secret;
- 4) infringe upon an important private interest.

The court may also exclude the public if even one of the defendants is under the age of 18, or for the duration of questioning of a witness who is under the age of 15, or at the request of the person who requested the prosecution.

If the prosecutor objects to the exclusion of public, the hearing shall be held in public (Article 360).

The court may exclude the public from the whole proceedings or from its part, meaning that there will be no public present at the hearing, but you may nominate two adults to observe it. The prosecutor and other trial participants will also be able to designate two persons each. If there are several prosecutors or defendants, each of them can request that one person be left in the courtroom.

A person designated by the victim may be present during the activities with the participation of the victim, which are carried out in camera during the trial.

In the event that there is a risk of disclosure of information classified as “secret” or “top secret”, participation of the above-listed persons will not be possible (Article 361 § 2).

If the public is excluded, the presiding judge may still allow specific individuals to be present at the hearing (Article 361).

As a defendant, you have the right to participate in hearings. The presiding judge or the court may declare your presence mandatory (Article 374 § 1).

If anything is unclear to you or you need more details, you can always ask the person conducting the proceedings in your case. The person conducting the proceedings must provide you with a full and clear explanation of your rights and obligations.