Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

ANALYSIS OF NATIONAL LAW

National norms as regard to access of detained persons to the law and to court

Report on POLAND

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INTRODUCTORY PART: CONTEXTUALIZATION

1. General information

Poland is a country with a territory of 322.575 km^2 and a population of approx. 38.4 million people of whom 19.8 million are women.[1] As of 31 December 2017, there were 73.822 prisoners of whom 7.239 remained in pre-trail detention and 372 of these pre-trial detainees were women.[2] In Poland, the main legal act that regulates the use of pre-trial detention as well as other preventive measures, but also police detention, is the Act of 6 June 1997 the Code of Criminal Procedure (hereinafter: CCP). The penalty of deprivation of liberty (hereinafter also as: imprisonment) is regulated by the Act of 6 June 1997 the Penal Code (hereinafter: PC).

2. Pre-trail detention and other preventive measures - procedural aspects

In Poland preventive measures can be used to secure the proper conduct of the criminal proceeding and exceptionally also to prevent the accused from committing a new serious crime. They can only be used if the evidence gathered during the pre-trail part of the criminal procedure indicates a high probability that the accused has committed a crime (Article 249 § 1 of CCP). There are two bodies competent to apply preventive measures: the prosecutor and the court. The prosecutor has the power to apply non-custodial preventive measures. The non-custodial preventive measures are: money bail (Articles 266-270 of CCP), surety of a social entity (Article 271 of CCP), surety of a trustworthy person (Article 272 of CCP), police supervision (Article 275 of CCP), prohibition of leaving the country (Article 277 of CCP), order to leave the premises occupied with the victim (Article 275a of CCP) and criminal injunction – suspension of a person's right to perform official duties or practice a trade or profession or the order to refrain from performing a certain activity or operating a certain type of vehicles (Article 276 of CCP). Pre-trail detention is the most severe preventive measure due to the fact that it deprives a person of their liberty and it should not be applied if another preventive measure is sufficient (Article 257 § 1 of CCP). It can be applied only by the court at a prosecutor's motion until the punishment of imprisonment can be executed (Article 249 § 4 of CCP) and can be applied both at the pre-trial stage of proceeding and during the court proceeding. Before applying this measure, the court is obliged to hear the accused (Article 249 § 3 CCP). However, the prosecutor can dismiss the pre-trial detention motion during the pre-trial proceeding without court's approval. According to the Prosecutor General's data, in 2017 there were 18.750 prosecutors' motions to apply pre-trial detention from which 91% were effective and resulted in exactly 17.140 courts' pre-trial detention orders.[3]

3. Police detention - procedural aspect

Every person detained [by the Police] shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. The detained person shall be set free unless a pre-trial detention order issued by a court, along with specification of the charges laid, has been served on him within 24 hours of the time of being given over to the court's disposal (Article 41 (3) of the Constitution of the Republic of Poland of 2 April 1997, Article 248 § 1 and 2 CCP). Police detention can be applied in a number of situations and these situations are related to a suspicion (or supposition) that a person has

[1] The annual report of the Central Statistical Office, 2017, available at: https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/maly-rocznik-statystyczny-polski-2017,1,18.html

[2] The annual statistical report of the Central Board of Prison Service, 2017, available at: http://www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf

[3] The annual report of the Prosecutor General on the prosecution service, 2017, available at: https://pk.gov.pl/wp-content/uploads/2018/04/sprawozdanie-PK-P1CA.pdf

committed a crime. Police detention can be applied facultatively and obligatorily.[4] Thus, according to Article 244 § 1 and § 1a of CCP, the Police has the right to apprehend a suspected person if there is a justified supposition that he has committed a crime. This is the necessary evidentiary basis for facultative detention. This supposition should be accompanied by one of the following grounds:[5]

a) There is a risk of the suspected person absconding, going into hiding, or tampering with evidence of the crime, or when the suspected person's identity cannot be established, or
b) There are grounds for conducting proceedings against the suspected person according to the accelerated procedure, or
c) A crime with the use of violence has been committed against a co-habiting person, and there is a risk that the suspected person will re-offend using violence towards the co-habiting person, in particular if the suspected person has made such threats.

Obligatory detention is regulated in Article 244 § 1b of CCP. According to this provision, the Police detains the suspected person if the crime indicated in Article 244 § 1a of CCP has been committed in the circumstances there described, but with the use of a firearm, a knife or another dangerous object.

Even though Article 244 of CCP specifically names the Police as the detaining body, under Article 312 of CCP, which extends the competences of the Police onto other bodies, detention can also be carried out by the Border Guard, Internal Security Agency, Customs Service, Central Anti-corruption Bureau, Army Gendarmerie within their remit. It should also be emphasised that Article 244 of CCP setting for grounds for police detention concerns suspected persons and not suspects. Of course, a suspected person may become a suspect in the course of criminal proceedings. It happens upon presentation of charges, either in the form of a decision or at the initiation of the hearing in the capacity of a suspect (Article 71 § 1 of CCP). However, given its literal wording, Article 244 of CCP does not cover detention of a suspect. The latter will fall under Article 247 of CCP which talks about prosecutorial detention of a suspected person or a suspect.[6]

Apart from the CCP, regulations with respect to police detention (arrest) are also provided in the Law on the Police of 6 April 1990 (hereinafter: LoP). Thus, according to Article 15 (1) (2a) of LoP, police officers while performing their tasks can also perform an arrest of a person deprived of liberty who upon permission has left the facility, but failed to return on time or, according to Article 15 (1) (3) of LoP, an arrest of a person who, in an obvious manner, creates a direct danger to the life or health of a person, as well as property. According to Article 15 (2) of LoP, the person arrested on the basis of Article 15 (1) (3) of LoP has the same rights as that arrested on the basis of CCP. Additionally, according to Article 15 (3) of LoP, arrest of a person is possible only when all other measures have failed. According to Article 15a of LoP, a police officer can arrest perpetrators of domestic violence who pose a direct danger to the life or health of a person in a procedure foreseen in Article 15 of LoP.

The Police can also carry out an arrest on the basis of the Act of 24 August 2001 the Code of Petty Offences (hereinafter: CPO). According to its Article 20 § 3, the provisions of the CCP apply to persons charged with petty offences. This includes Article 75 of CCP which provides in § 3 that in the case of an unjustified absence, an accused (but also a suspect) can be arrested and forcibly brought before the organ.

[4] See, K.Z. Eichstaedt, Art. 244 [in:] *Kodeks postępowania karnego. Komentarz. Tom I*, wyd. II. Wolters Kluwer, 2015

[5] See, K.Z. Eichstaedt, Art. 244 [in:] *Kodeks postępowania karnego. Komentarz. Tom I*, wyd. II. Wolters Kluwer, 2015

[6] See, K.Z. Eichstaedt, Art. 244 [in:] *Kodeks postępowania karnego. Komentarz. Tom I*, wyd. II. Wolters Kluwer, 2015

Although it is beyond the subject of this study, it is worth adding that an arest can also be carried out on the basis of the Law on proceedings in cases of juvenile delinquents[7] and finally an arrest can be carried out on the basis of the Law on foreigners[8] and Law on granting foreigners protection.[9]

4. Structure of the penitentiary system

The penitentiary system in Poland is supervised by the Minister of Justice. The most important legal act that regulates the functioning of the Polish penitentiary system in matters of rights and duties of persons deprived of liberty - both pre-trial detainees and prisoners - is the Act of 6 June 1997 the Criminal Executive Code (hereinafter: CEC). Provisions of CEC are complemented in the Regulation of the Minister of Justice of 21 December 2016 on the organizational and procedural rules of the execution of imprisonment and in the Regulation of the Minister of Justice of 22 December 2016 on the organizational and procedural rules of the execution of the pre–trial detention. More detailed rules on internal conditions of these penitentiary facilities are laid out in the lower legal acts – internal provisions issued by the directors of penitentiary units (pre-trial detention facilities or prisons). Moreover, the duties and structure of penitentiary authorities are regulated by the Act of 9 April 2010 on Prison Service (hereinafter: APS).

Prison Service is a Polish uniformed and armed formation carrying out tasks in the field of execution of imprisonment and pre-trial detention. Prison Service has his own organizational structure and is governed by the General Director of Prison Service who also leads the Central Board of Prison Service. The General Director of Prison Service is nominated by the Prime Minister based on the Minister of Justice's request and he also reports to the Minister of Justice. The General Director of Prison Service is responsible for 15 District Inspectorates of Prisons Service which are run by their directors nominated by the Minister of Justice based on the General Director of Prison Service's request. The Directors of the District Inspectorates of Prison Service named the District Directors of Prison Service are in charge of penitentiary units in their regional jurisdiction (in one of 15 regions). Penitentiary units are run by directors nominated by the Director of Prison Service on request of the proper District Director of Prison Service.

The following elements are intended to clarify what the mechanisms of access to the law and the judge relate to.

I. BRIEF DESCRIPTION OF THE DETENTION REGIME APPLICABLE TO PRE-TRIAL DETAINEES

In Poland, there are 195 penitentiary units from which 86 are regular prisons for convicts, 67 are remand centers for pre-trial detainees, 38 are external branches of these facilities and 4 are branches for the purpose of temporary accommodation of convicts. There are in total 86.868 places within all of these facilities. As of 31 December 2017, 73.822 places within these facilities were occupied[10]. The largest penitentiary unit is located in Warsaw area and it is a pre-trail detention facility with 1.539 places (Areszt Śledczy Warszawa – Białołęka).[11] The smallest one is in the city of Działdowo within the Warmian-Masurian Voivodeship and it is as well a pre-trail detention facility with 102 available places.[12]

[7] Law on proceedings in cases of juvenile delinquents of 26 October 1982
[8] Law on foreigners of 12 December 2013
[9] Law on granting foreigners protection of 13 June 2003
[10] Annual statistical report of the Central Board of Prison Service within the Ministry of Justice, 2017, available at: http://www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf
[11] The Prison Service, Statistical report of the Prison Service, 18 May 2018, available at : *www.sw.gov.pl/assets/19/15/51/60cc101793d092f1331df517092e0791de1bf9a8.pdf*
[12] Statistical report of the Prison Service, 18 May 2018, available at : *www.sw.gov.pl/assets/19/15/51/60cc101793d092f1331df517092e0791de1bf9a8.pdf*

1. The regime and conditions

In Poland we distinguish three basic types of prisons: closed, semi-open and open. The basic criterion for their division is the degree of protection and isolation of convicts. Moreover, within the penitentiary units there are closed prisons for convicts who pose a serious threat and remand centers for the pre-trial detainees.

The minimum conditions of a prison cell are established in Article 110 of CEC. It is important to notice that according to Article 242 § 3a of CEC if the term "prison" (zakład karny) is used in this legal act, it means also a prison branch in a remand center for pre-trail detainees and vice versa - the term "remand center for pre-trail detainees" (areszt śledzczy) also means a remand center branch in a prison. Moreover, if the term "convicted" is used, the relevant provisions of CEC shall also apply to pre-trial detainees (Article 242 § 1 of CEC). Furthermore, according Article 209 of CEC the provisions relating to the execution of a custodial sentence, as amended by the provisions of this chapter [of CEC], shall apply accordingly to the performance of pre-trial detention. It means that the most significant legal provisions regarding the functioning of Polish penitentiary system apply both to pre-trial detainees and prisoners. Due to that, for the purposes of this report, such wording was used as well. If some provisions apply only to pre-trial detainees it is indicated in this report. According to Article 110 of CEC, a sentenced person shall be placed in an individual cell or a cell shared with other inmates and the area of the cell shall be no less than 3 square meters per detainee. However, in certain circumstances, the CEC provisions allows placing a person in a cell where the area is not smaller than 2 square meters per detainee - a person might be kept in such a cell no longer than 14 days. This period might be, after the acceptance of the penitentiary judge, extended up to 28 days. Moreover, under exceptional circumstances such as state of emergency, state of epidemics or other serious threat to life or health of persons deprived of liberty, the Director of penitentiary facility may decide on the extension of such a placement up to 90 days (Article 110 (2a) (2b) (2c) of CEC). Besides when the number of persons deprived of liberty in prisons and remand centers for pre-trial detainees is higher than the country-wide capacity level, the courts are able to postpone the execution of a sentence. However, this provision does not apply to sexual offenders, recidivists and those prisoners who committed violent crimes (Article 101 (5) and 151 of CEC). Therefore, the Directors of penitentiary facilities have an obligation to inform the District Director of Prison Service when their facilities are overcrowded, not later than in a 7 day time (§ 4 of the Regulation of the Minister of Justice of 25 November 2009 on the rules to be followed by the relevant authorities when the number of persons detained in prisons and remand centers exceeded on a nationwide scale the overall capacity of such establishments).

Regulations regarding the living space and standards of the cells are still one of the most common subjects of prisoners' complaints. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: CPT) in 2017 underlined once again that, despite its repeated previous recommendations, the official minimum standard of 3 square meters of living space per prisoner in Poland remains unchanged.[13] As noticed in the National Preventive Mechanism Report, there are important differences between old and new penitentiary facilities. In new or refurbished prisons, the conditions are much better than in older ones. The National Preventive Mechanism also noted that the problem of overcrowding cells still exists, but there are also problems with privacy in the sanitary part or the accommodation of cells for prisoners with disabilities.[14] According to the action report of the Government in the case of Szafranski v. Poland from January 2017,[15] modernization of sanitary facilities in the Polish penitentiary institutions has been ongoing since 2011. These works are supposed

[13] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, report on Poland, Strasbourg, 25 July 2018, available at: https://rm.coe.int/16808c7a91

[14] The Ombudsman, Report from the activities of the National Preventive Mechanism, 2015, available at: https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf

[15] Szafranski vs. Poland (application no. 17249/12)

to be completed within the next 4-5 years. Moreover, the action report stated that the judgment Szafranski v. Poland was translated and disseminated.[16]

The standards of accommodation vary depending upon a penitentiary unit. Buildings of the penitentiary units come from various time periods. Most of them were built in XIX and XX centuries. However, some of them were built in the Middle Ages (prison in Nowogard, prison in Barczewo) and between XVII and XVIII century (prison in Nowy Wiśnicz). Most of penitentiary facilities which were built in XIX were designed for prison purposes. The oldest penitentiary units were mostly transformed from religious facilities like monasteries. However, the penitentiary units built in XIX century were planned to be outside of the cities nowadays they are often in their centers (prison in Siedlce). The newest penitentiary unit was set up in 2009 (prison in Opole Lubelskie).[17] Older facilities often feature about a dozen large cells with small windows, high humidity, fungus on the walls and plastic curtains on the windows reduce the amount of sunlight. Moreover, there is a lack of adequate space for recreation.[18] Common overcrowding aggravates the situation, which has been recognized by the European Court of Human Rights in the judgment Orchowski and Sikorski v. Poland[19] as a systemic problem. The standard of living in modern or renovated prisons should be considered the proper standard.[20]

2. Location and transfers

The CEC (its Article 100) indicates the necessity to execute a penalty of deprivation of liberty in a facility appropriate for the type, penalty system and security. Thus, the legislator gives priority to the principle of individualisation of the execution of a penalty of deprivation of liberty and not properly taking into account that the imprisoned person should stay in the facility closest to his place of residence. It is worth mentioning that until 1 January 2012, the Article 100 § 1 of CEC stated also that "the convicted person serves a sentence in a proper prison situated as close as possible to his place of residence. Transfer of the convicted person to another establishment may take place only for justified reasons." However, from 1 January 2012, the Article 100 § 1 of CEC states only that the convicted person serves a sentence in a proper manner, by type, type, system of execution or security of a prison. Therefore, currently it is possible to execute a prison sentence in any facility appropriate with regard to these criteria, even distant from the place of residence of the convicted person and the place of residence of his relatives. The exception is only applicable to the convicts who have permanent custody over a child under 15 years of age (based on Article 87a § 1 of CEC).

Furthermore, as regards to the pre-trial detainees, there is no obligation to place them in the closest detention center to the place where they have been arrested. The provision does not specify which of the penitentiary institutions of a certain type is locally competent for the detention. Although pre-trial detainees are usually allocated to facility close to the area of the ongoing investigation. Moreover, they should be placed in a remand center in a manner preventing their mutual demoralization. In particular, detainees should be separated from the previously imprisoned, and adolescents from adults, unless special educational reasons militate in favor of placing an adult with adolescents or juveniles (Article 212 § 1 of CEC).

The following circumstances shall be taken into account during in the placement of persons in a pre-trial detention facilities and cells:

a) the necessity of separating pre-trial detainees from convicted persons,

[16] The Polish Ministry of Justice Annual information about the motions and complains, 2015, available at : https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3339,0.html
[17] The Prison Service Information about the prison facility in Opole Lubelskie, 2017, available at : https://www.sw.gov.pl/strona/opis-zaklad-karny-w-opolu-lubelskim
[18] P. Kładoczny, M. Wolny, Prison conditions in Poland, 2013.
[19] Orchowski and Sikorski v. Poland (application no. 17885/04)
[20] P. Kładoczny, M. Wolny, Prison conditions in Poland, 2013.

b) the necessity of separating pre-trial detainees from detained officers of organs appointed to protect public safety, or officers and employees of the Prison Service, employees of law enforcement bodies and prosecution,
c) the need to ensure order and security in the remand center,
d) medical, psychological and rehabilitation recommendations,
e) the need to shape the right atmosphere among the detainees,
f) the need to prevent self-harm and commit crimes during pre-trial detention (Article 212 § 1 of CEC).

The administration of the remand center takes also into consideration the indications of the authority at whose disposal pre-trial detainees are (prosecutor or court), in order to secure the proper course of the criminal proceedings and ensure security in custody (Article 212 § 2 of CEC).
Convicted persons (based on the § 10 of the Regulation of the Minister of Justice on the organizational and procedural rules of the execution of imprisonment of 21 December 2016) as well as pre-trial detainees (based on the § 10 of the Regulation of the Minister of Justice of 22 December 2016 on the organizational and procedural rules of the execution of the pre–trial detention) are placed in cells, taking into account in particular: sex, age, previous imprisonment or military arrest. If necessary they may be transferred at any time from one cell to another (§ 11 (2) of the mentioned Regulations). Moreover, persons deprived of liberty are not consulted about their transfer from one facility to another. As a rule, activities related to the placement in a penitentiary facilities do not require decisions, in the meaning of Article 7 of CEC, these are only factual acts and cannot be entitled to a complaint.

3. Visiting arrangements

1) Convicted persons

The scope and manner of contacts of the convicted person with the outside world, in particular the supervision of visits, censorship of correspondence, monitoring of telephone conversations and conversations during visits, depends on the type and type of prison in which the convicted person is serving a punishment. As it was mentioned before in Poland we distinguish three basic types of prisons: closed, semi-open and open (Article 70 § 1 of CEC). The basic criterion for their division is the degree of protection and isolation of convicts. Moreover, there are closed prisons for convicts who pose a serious social threat or a serious threat to the security of the prison facility (Article 88b of CEC).

A) Closed prisons

According to Article 90 of CEC in a closed prison:
a) prisoners may use two visits a month, and after the prison director approval they can be combined,
b) visits with prisoners are subject to the supervision of the penitentiary administration, conversations of convicts during visits are controlled by the prison administration,
c) correspondence of these prisoners is subject to censorship of the prison administration with the exceptions mentioned before (INTRODUCTORY PART: CONTEXTUALIZATION, II, 1. The right to complaint).
d) telephone conversations of convicted persons are subject to control of the penitentiary administration.

B) Semi-open prisons

Contacts with the outside world are regulated differently in semi-open prisons. According to Article 91 of CEC in n this type of prison:

a) prisoners may be granted passes from prison, no more frequently than once every two months, for a total period not exceeding 14 days a year,
b) prisoners may use three visits a month, and after the prison director approval they can be combined,
c) visits with prisoners may be subject to the supervision of the penitentiary administration,
d) correspondence of these prisoners may be subject to censorship of the penitentiary administration,
e) telephone conversations of these prisoners may be subject to control by the penitentiary administration.

C) Open prisons

The most freedom in contacts with the outside world have those prisoners who are serving a punishment in an open prisons. According to Article 92 of CEC these prisoners:

a) may be granted passes from prison, no more frequently than once a month, for a total period not exceeding 28 days a year,
b) may use an unlimited number of visits,
c) visits with prisoners may be subject to the penitentiary administration, but interviews of these prisoners during visits are not subject to control by the penitentiary administration,
d) are allowed for preparing additional meals on their own,
e) correspondence of these prisoners is not subject to censorship of the penitentiary administration,
f) telephone conversations of these prisoners are not subject to control by the penitentiary administration.

Notwithstanding the restrictions described above in contacts with the outside world, the CEC in Article 105 states that prisoners should be allowed to maintain ties with family and other relatives through visits, correspondence, telephone calls, parcels, money transfers, and in justified cases, also by other sources of communication. The visit lasts 60 minutes. In justified cases, the director may individually authorize the extension of the time of visit or allowed to more than one visit on the same day. Up to two adults can participate in the visit but the number of minors is not limited, however, persons under 15 years of age can participate in these visits only under the supervision of adults who have permission (Article 105a of CEC).

Moreover, the convicted foreigner may correspond with the appropriate consular office, and in the absence of such office – with the appropriate diplomatic representation and use visits to a consular officer or performing consular functions an employee of the diplomatic representation.

2) Pre-trial detainees

A person who intends to visit a pre-trial detainee has to obtain permission from the relevant authority at whose disposal the pre-trail detainee remains, unless the body orders otherwise. Depending on the stage of the criminal proceedings, it may be prosecutor or court. However, when a pre-trial detainee remains at the disposal of several authorities, permission is required for each of them to be seen, unless otherwise ordered by the authorities (Article 217 (1) (1a) of CEC). The judge's order to refuse the visit requires justification, because the detainee is entitled to a complaint (Article 217 (1c) of CEC). A pre-trial detainee has a right to at least one visit a month of a close family member (Article 217 (1a of CEC). Visits with a pre-trial detainee are carried out under the supervision of an officer of the Prison Service in a manner that prevents direct contact of the detainee with the visitor (Article 217 (2) of CEC). The CEC provides for an exceptions from this principle - the authority at whose disposal he is detained may issue a visit permit enabling him direct contact with the visitor (Article 217 (3) of CEC). The prisoner can then consume food and beverages purchased by visitors in the detention center (Article 217 (4) of CEC).

The defender (attorney or legal advisor) has more freedom in visiting and contacting with a pre-trial detainee. The lawyer must obtain each time permission from the authority at whose disposal he is detained (§107 of the Regulation of the Minister of Justice of 23 June 2015 on administrative activities related to the performance of pre-trial detention and on penalties and coercive measures resulting in deprivation of liberty and documentation of these activities). However, this authority, as a rule, cannot refuse such a permission. The possibility of restricting the freedom of contact of a pre-trial detainee with his lawyer is introduced in Article 73 of CCP. Pursuant to it, in the preparatory proceedings, the prosecutor may, in a particularly justified case in the first 14 days of the proceeding stipulate that he will be present during it. During this time, the prosecutor may also restrict the correspondence between the suspect and his attorney. A pre-trail detainee can use a telephone and other means of wired and wireless communication only after obtaining the permission from the authority at whose disposal he is detained (Article 217c of CEC).

Moreover, based on Article 73 § 2 of CEC, the Director of a penal institution, determine the internal order. In the internal order, in particular, are regulated: the days, hours, place and order of visits. Then, the detailed conditions and rules of visits, based on the internal order, are announced in the form of a written announcement in the visible place located within the facility.

4. Labour

The employment of persons deprived of liberty is regulated in CEC and the Act of 18 August 1997 on the employment of persons deprived of liberty. The CEC introduces several basic rules for the employment of persons deprived of liberty as follows:

a) a person deprived of liberty is provided with work whenever possible (Article 121 (1) of CEC), - as a rule, the work is paid, with the exception of the unpaid work provided regulated in Article 123a of CEC. (Article 123 of CEC),
b) as a principle a paid work is obligatory (if there is a possibility of such employment), however, the imprisoned person may be released on health grounds, education or other important reasons (Article 121 § 6 and § 7 of CEC),
c) work is primarily provided to persons deprived of liberty who are obliged to pay maintenance, and who have particularly difficult financial, personal or family situation (Article 122 (2) of CEC),
d) a person sentenced to life imprisonment and serving a sentence in a closed prison can only work on the premises of a prison (Article 121 § 10 of CEC).

An additional general rule is introduced by the provision of Article 1 of the Act of 18 August 1997 on the employment of persons deprived of liberty, which stipulates that the employment of prisoners should primarily aim at a positive impact on their attitudes, while achieving profit should be subordinated to rehabilitation. In 2015 the government-sponsored program of prisoners' employment was introduced.[21] The program comprises three pillars: the development of 40 manufacturing plants near to correctional facilities, creation of new unpaid employment opportunities for prisoners at local authorities and introduction of tax credits for businesses that employ prisoners.[22] The program was implemented through an amendment to the CEC which changed the rules of convicted persons' employment.[23] The most extensive modifications applied to the rules of unpaid employment. A general rule of the previous law was that inmates could legally work without pay in two situations: obligatorily for a correctional facility or voluntarily or a local government authority. The amendment to the CEC expanded the availability of unpaid employment as described below.[24]

[21] The Prison Service website, Work for prisoners program, available at : https://www.sw.gov.pl/strona/ministerialny-program-pracy-wiezniow

[22] Ibidem.

[23] The Act amending the Criminal Enforcement Code and certain other acts of 10 September 2015 J.L. 2015, item 1573.

[24] Please find more information in HFHR's recommendations no. 4/2016, 2016, available at: http://www.hfhr.pl/wp-content/uploads/2016/08/HFPC-analizy-i-rekomendacje-4-2016-1.pdf,

A) Paid employment

Entities employing persons deprived of liberty with salary are:

a) Prison Service,
b) prison workplaces (currently state-owned enterprises and institutions of the budgetary economy),
c) external contractors.

The provision of Article 123 § 2 of CEC provides that the person deprived of liberty, regardless of the form of employment (referral, contract), is entitled to a monthly salary of at least the minimum remuneration for work. This provision is a result of the judgment of the Constitutional Tribunal from 2011. In its judgment,[25] the Constitutional Tribunal cited, among others, standards of international law, including the European Prison Rules. However the employer is entitled to deductions from the remuneration due to the convict for two funds:

a) 10% for the purposes of the Assistance Fund for Victims and Post-penitentiary Assistance,
b) 25% for the purposes of the Vocational Activation Fund for Convicts and the Development of Prison Workplaces (Article 125 of CEC).

B) Unpaid employment

Forms and terms and conditions of unpaid employment of persons deprived of liberty have been specified in the provision of Article 123a of CEC. According to it three basic forms of unpaid employment can be distinguished:

a) Employment up to 90 hours a month, for which the prisoner's consent is not required for:
- cleaning and auxiliary work for the Prison Service,
- work for social purposes for: local self-government; entities established and supervised by a municipal, district or province authority; organizational units of the central or local government; commercial companies wholly owned by the State Treasury or a municipality; district or province.

b) Employment with the written consent of the detainee or at his request at:
- work mentioned above (a));
- work for social purposes,
- work for public benefit organizations,

c) Employment for the purpose of training, with the written consent of the prisoner, for a period not longer than 3 months - in prison workplaces.

C) Employment of pre-trial detainees

As a rule, the above-mentioned employment provisions apply to pre-trial detainees. A pre-trial detainee has the obligation to carry out cleaning works within the remand center and to other works he can be hired only with his consent. Employment outside the remand center also requires the issuance of a permission by the authority at whose disposal the pre-trial detainee remains – a prosecutor or a court (Article 218 of CEC). These restrictions regarding the employment opportunities for the pre-trial detainees, take into account the essence and objectives of the pre-trial preventive measure specified in Article 249 § 1 of CCP and Article 207 of CEC, in particular, securing the proper course of criminal proceedings. Provisions on the execution of pre-trial detention do not contain other separate regulations regarding the rules for unpaid employment or paid employment, especially those determining the amount of remuneration for the pre-trial detainees.

5. Restrictive measures

[25] The Constitutional Tribunal judgement, 23 February 2010, no. P 20/09, available at : https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=P%2020/09.

1) Convicted persons

The basis for disciplinary liability of convicted persons deprived of liberty is set out in Article 142 and Article 143 § 1 of CEC. According to it a convicted person is subject to disciplinary liability for a culpable violation of orders or prohibitions resulting from the act, regulations or other legal acts issued or regulations established in a prison or workplace. According to Article 143 § 1 of CEC, disciplinary penalties are:

a) reprimand,
b) deprivation of using all or some of the prizes the convicted person was granted, or suspending their performance for a period of up to 3 months,
c) deprivation of the right to participate in certain cultural and educational activities or in the field of physical culture and sport, except for the use of books and press, for a period of up to one month,
d) deprivation of receiving food parcels for up to 3 months,
e) deprivation of the right to purchases of food and tobacco products and other items admitted to sale in the remand center for up to 1 month,
f) allowing visits only in a way that prevents direct contact with the visitor for a period of up to 3 months,
g) lowering his payment for work, not more than by 25%, for a period of up to 3 months,
h) placement in an isolation cell for up to 28 days.

2) Pre-trial detainees

The basis for disciplinary liability of pre-trial detainees is set out in Article 222 § 1 and § 2 of CEC. According to it a pre-trial detainee is liable to disciplinary action for a culpable violation of orders or prohibitions, regulations or other provisions issued on its basis of CEC.
The CEC contains a closed list of disciplinary sanctions applicable to the pre-trial detainees:

a) reprimand,
b) deprivation of using personally arranged foods for a period of up to 14 days,
c) deprivation of receiving food parcels for the 3 months,
d) deprivation of granted allowance,
e) placing in an isolation cell for a period of up to 14 days,
f) deprivation of the right to participate in certain cultural and educational activities or in the field of physical culture and sport, except for the use of books and press, for a period of up to 1 month,
g) deprivation of the right to purchases of food and tobacco products and other items admitted to sale in the remand center for up to 1 month.

Decisions on disciplinary punishment of a pre-trial detainee are issued in writing by the Director of the facility. It can be done *ex officio* or at the request of a Prison Service officer who is responsible of a detainee. The decision by which a detainee is subjected to disciplinary liability must contain a precise statement of the offense committed. Immediately after its preparation, it shall be communicated to the person concerned (Article 222a of CEC). The decision on disciplinary punishment of a pre-trial detainee may be remitted to the penitentiary court in a manner specified in Article 7 of CEC (in connection with Article 242 § 1 of CEC). Such a decision is also subjected to the supervision of a penitentiary judge (Article 34 of CEC).

What is also important there are no provisions which obliges Prison Service to apply disciplinary measures as a mechanism of last resort.

II BODIES ENTITLED TO RECEIVE FORMAL COMPLAINTS AND THEIR EFFECTIVENESS WITH REGARD TO ARTICLE 13 ECHR

1. The right to complaint

A person deprived of liberty has the right to submit motions, complaints and requests to the competent authorities to examine them and present them, particularly to: prison administration, heads of the Prison Service organizational units, penitentiary judge, prosecutor and the Ombudsman. It is important that a person deprived of liberty can make a use of these rights without the presence of other persons (Article 102 (10) of CEC). A person deprived of liberty also has the right to conduct correspondence with law enforcement authorities, the judiciary authorities, other state and local authorities, the Ombudsman, the Children's Ombudsman and other bodies established on the basis of international agreements ratified by the Poland regarding the protection of human rights (Article 102 (11) of CEC). This correspondence (called “official correspondence”) of both prisoners and pre-trial detainees is not censored; neither is the correspondence with a defender (only attorney or legal advisor) (Article 8a and 217b of CEC).

1) Correspondence control

The situation described above is an exception from the general rule stating that the incoming and outgoing correspondence of a pre-trial detainee is subject to control by the relevant authority at whose disposal pre-trail detainee remains, unless the body orders otherwise (prosecutor in a pre-trail procedure or later court). Such correspondence can be subjected to confiscation, censorship or supervision (Article 217a of CEC). Moreover, according to Article 217a § 2 of CEC the director of the remand center for pre-trial detainees may also decide to confiscate, censor or supervise the correspondence, but only if none of the organs at whose disposal the detainee remains has ordered the control of this correspondence. The director of the remand center for pre-trial detainees may take a decision on this subject if it is required by the security of detention or public order (Article 105 § 4 of CEC). The director of a regular prison can make a similar decision in closed and semi-open penal institutions (also based on Article 105 § 4 of CEC). This decision is subjected to the control of a penitentiary judge - for their regularity and legality. A pre-trail detainee may appeal against it to the penitentiary court (Article 7 § of CEC). It is worth adding that the correspondence with NGO’s is not treated as “official correspondence” and due to that can be censored while is being sent by or to pre-trail detainees.

2) The time of sending complaints

Pursuant to the provisions of § 17 and § 18 of the Regulation of the Minister of Justice of 22 December 2016 on the organizational and procedural rules of the execution of the pre–trial detention, the official correspondence of pre-trial detainee is accepted on a daily basis and forwarded to the competent authority not later than on the second working day after the day when it was submitted. An analogous regulation regarding the official correspondence of prisoners can be found in the Regulation of the Minister of Justice of 21 December 2016 on the organizational and procedural rules of the execution of imprisonment(its § 16 and § 17).

2. Complaints within the internal system

The way of proceeding with the internal complaints submitted by the persons deprived of liberty is regulated in the Regulation of the Minister of Justice of 13 August 2003 on the ways of handling applications, complaints and requests of persons deprived of liberty in in prisons and pre-trial detention centers (hereinafter: MoJC).

1) Recipients of complaints

According to its § 3, complaints about the functioning of prisons and pre-trial detention centers as well as actions of officers and employees of the Prison Service are dealt with by:

a) the head of the organizational unit, and therefore usually the director of penitentiary unit - if the complaint is addressed to him, and is not related to his direct activity or direct activity of his deputy and decisions made by both of them, unless it is considered as justified,

b) the District Director of Prison Service - if the complaint relates to the activity of the organizational unit supervised by him and has not been settled in the manner specified above or transferred to the head of the organizational unit by the Director of the Regional Prison Service,
c) the General Director of Prison Service or a person appointed by him - if the complaint concerns the activities of the District Inspectorate of the Prison Service and has not been settled in the manner specified in point a),
d) the Minister of Justice or a person appointed by him - if the complaint concerns the activities of the Central Board of Prison Service and has not been settled in the manner specified in point a).

2) Subject of complaints

Internal complaint proceedings may concern various aspects of deprivation of liberty. As a result of internal complaint proceeding, the decision that the person deprived of liberty disagrees may be repealed or amended or a new one may be issued. In other situations, the complaint proceedings may lead to a formal decision on a given issue. Moreover, a person deprived of liberty has a right to appeal to the court against the decision of the executive proceedings body (Article 7 of CEC) (*please check 3. 1) Complaints within the external system, Complaints submitted to the penitentiary court - penitentiary supervision*).

3) Bodies entitled to submit complaints

Besides the person deprived of liberty, an authorized "trustworthy person" appointed by him is authorized to submit complaints on his behalf. Especially as a "trustworthy persons" are considered members of: NGOs, organizations, institutions, churches and religious associations that provide assistance to persons deprived of their liberty appointed by him are authorized to submit complaints on his behalf (Article 42 and 38 of CEC). According to the Regulation of the Minister of Justice of 28 December 2016 on the cooperation of entities in the implementation of penalties, penal measures, compensatory measures, safeguards, preventive measures and forfeiture of things, as well as social control over their implementation (§ 3 (5)) a "trustworthy person" is a person who is at least 24 years old, and in exceptional cases 21 years old, if he has a qualification or life experience that indicates the usefulness in conducting educational and resocialization activities.

4) Form and date of recognition of complaints

Applications, complaints and requests may be submitted in writing, including by fax and email, and verbally for the record to the protocol (§ 7 of MoJC). Applications, complaints and requests that do not require the collection of evidence, information or the conduct of investigation and examination of the files should be taken without undue delay, but no later than within 14 days (§ 8 (1) of MoJC). If the recognition of an application, complaint or request requires the collection of evidence, information or an investigation and examination of files, the time limit for completing it may be extended by the time necessary to perform these activities. The applicant must be informed about extending the deadline (§ 8 (2) of MoJC). If the complaint is not precise, a 7 days deadline is given to complete it (§ 7 (5) of MoJC). In a situation when the complaint was submitted to the wrong authority, it is forwarded to the competent authority within 7 days (§ 5 of MoJC).

Furthermore, the complaint has to be written in refined language, without prison dialect or swear words and cannot be based on the facts that have already been presented in previous complaints of the same person (Article 6 (3) of CEC and § 10 of MoJC). In 2015 the Ombudsman lodged a motion to the Constitutional Tribunal concerning the compliance of this procedure with the Constitution of the Republic of Poland of 2 April 1997[26] The Ombudsman claimed that such requirements limit prisoners' right to

[26] The Ombudsman motion to the Constitutional Tribunal, 14 October 2015; available at: https://www.rpo.gov.pl/sites/default/files/Wniosek_do_TK_ws_ograniczenia_skazanym_prawa_do_skargi.pdf

complaint because not every applicant would be able to use required language or formulate a satisfactory justification. In the judgement from July 2016, the Constitutional Tribunal did not agree with the motion and claimed that the procedure is lawful.

3. Complaints within the external system

1) Complaints submitted to the penitentiary court - penitentiary supervision

Penitentiary supervision is a form of legal supervision carried out by a penitentiary judge. It involves visiting penitentiary institutions, detention centers and other places where persons deprived of their liberty are present. The penitentiary judge has the right to enter into penitentiary facilities at any time, without restrictions, review documents and request explanations from the administration authorities responsible for these units. The penitentiary judge has also the right to conduct, without the presence of other people, conversations with persons deprived of liberty and to examine their motions, complaints and requests (Article 33 of CEC). The penitentiary judge has also the right to revoke the unlawful decision of the directors of penitentiary units (pre-trial detention facilities or prisons), the District Directors of Prison Service and the General Director of Prison Service which concerns the person deprived of liberty (Article 34 § 1 of CEC). Such a decision of the penitentiary judge may be later subjected to the penitentiary court (Article 34 of § 2 CEC).

A) The subject of complaints to the penitentiary court

A complaint to the penitentiary court may refer to any unlawful decisions of the enforcement authorities related to various aspects of deprivation of liberty such as: prisoner's treatment in a facility, the application of penalties, granting of passes. These enforcement bodies are:

a) the president of the court or an authorized judge,
b) the penitentiary judge,
c) the director of a penitentiary unit, the District Director and the General Director of Prison Service or another person responsible for a penitentiary facility indicated in the CEC as well as penitentiary commission and professional court's curator,
d) another body authorized by the law to enforce judgments.

B) Bodies entitled to submit complaints

Entitled to file a complaint to the penitentiary court are:

a) a person deprived of liberty (Article 7 of CEC),
b) a defender (only attorney or legal advisor) granted in the criminal execution procedure (Article 8 of CEC),
c) a legal representative when a person deprived of liberty is incapacitated or is a minor or (Article 76 § 2 of CCP).

C) The form and date of recognition of complaints

The complaint may be submitted in writing or verbally for the record to the protocol. A written complaint should be made in accordance with the formal requirements of the pleading (Article 119 of CCP). Such a complaint must contain:

a) the indication of the authority to which it is addressed and the matter concerned,
b) the designation and address of the complainant,
c) the content of the complaint or statement, if necessary with justification,
d) the date and signature of the person submitting the letter.

The complaint should be submitted within 7 days from the date of the announcement or delivery of the decision on which the complaint is based. The complaint should be submitted to the body that issued

the decision. If the complaint is not taken into consideration, it is immediately forwarded to the court (Article 7 § 3 of CEC). As a result of the court's hearing, the contested decision may be upheld, revoked or amended. It is not possible to lodge a complaint against the court's decision (Article 7 § 5 of CEC).

2) Complaints submitted to the Ombudsman

According to the Act of 15 July 1987 on the Ombudsman (Article 1 (2), hereinafter: ACCR), the Commissioner (later also as: the Ombudsman) supervises the freedoms and human and civil rights specified in the Constitution of the Republic of Poland of 2 April 1997 and other normative acts. According to this provision a person deprived of liberty whose rights are violated may submit a complaint to the Ombudsman.

A) The form and date of recognition of complaints

A complaint to the Ombudsman may be submitted orally (the protocol of the application is prepared), in electronic form (forms available online at the Ombudsman's website[27]) or in writing. A written complaint must contain: first and last name, address to which correspondence should be sent, precise indication of what the case is about and providing arguments indicating a violation of freedom or law, necessary documents (Article 10 of ACCR).

B) the Ombudsman's competences

When conducting the proceedings, the Ombudsman has the right to:

a) examine, even without prior notice, any matter on the spot,
b) request explanations, files of each proceeding conducted by the supreme and central state administration bodies, government administration bodies and many others,
c) request submission of information on the case carried out by the courts, prosecutors and other law enforcement agencies,
d) request for review in the office of the Ombudsman: files of courts' and prosecutions' cases as well as other law enforcement authorities, after the proceedings have been closed and order expert opinions on them (Article 13 of ACCR).

As a result of the complaint, the Ombudsman may:

a) explain to the applicant that he did not find violation of freedoms and human and civil rights,
b) address the statement to the authority, organization or institution bodies in which the activities violating freedom of human and civil rights have been found, such a statement cannot violate the independence of the judge,
c) request the superior body over the entity referred to in point b) to apply for the mechanisms provided for by law,
d) demand the initiation of civil proceedings as well as take part in any ongoing proceedings - with the same rights as the prosecutor,
e) require the authorized prosecutor to initiate preparatory proceeding in cases concerning crimes prosecuted *ex officio*,
f) demand the initiation of administrative proceedings, submit complaints to the administrative court, and participate in these proceedings - on the rights of the prosecutor,
g) make a request for punishment, and also to rescind a final decision in the proceedings on misdemeanors, based on terms specified in separate regulations,
h) lodge a cassation against a final judgment, based on terms specified in the separate regulations.

4. Civil remedies

[27] https://www.rpo.gov.pl/wefini

Moreover, a detainee can benefit from civil law compensation instruments. According to Article 23 of the Act of 13 April 1964 the Civil Code (hereinafter: CC) the personal rights of an individual such as, in particular, health, liberty, honor, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, inventions and improvements, shall be protected by the civil law regardless of the protection laid down in other legal provisions. This provision contains a non-exhaustive list of the so-called personal rights. Moreover, Article 24 (1) of CC states that a person whose personal rights are at risk by a third party may seek an injunction, unless the activity is not unlawful. In the event of infringement the person may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement and in compliance with the principles of CC may also seek compensation. Based on Article 445 § 1 of CC the court may award to the injured person an adequate sum in pecuniary compensation for the damage suffered. Moreover, based on Article 448 of CC, the court may grant an adequate sum as pecuniary compensation for non-material damage suffered to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of seeking any other relief that may be necessary for removing the consequences of the infringement sustained, may ask the court to award an adequate sum of money for the benefit of a specific public interest. In the cases of compensation for the penitentiary related damages the State Treasury is responsible based on Article 417 § 1 of CC which states that the State Treasury, or a self-government entity or other legal person responsible for exercising public authority, is responsible for any damage caused by an unlawful act or omission committed in connection with the exercise of public authority.

5. Administrative remedies

As a rule the complaints of persons deprived of liberty related to the penitentiary issues are not recognized by the administrative courts or administrative bodies – other than competent penitentiary bodies responsible based on the CEC. However, upon the Article 35 § 1 of CEC, a penitentiary judge, if there is a need to issue a decision that does not belong to his jurisdiction, in particular decisions of an administrative nature, he is obligated to forward its observations together with his recommendations to the competent authority. Moreover, persons deprived of liberty can, among others, complain to the administrative courts on the refusal of access to public information also when the refusal was made by the Prison Service authority which carry out the tasks regulated in the Act on Access to Public Information of 6 September 2001.

The effectiveness of the complains (with regard to Article 13 ECHR)

ECtHR's jurisprudence in Polish cases concerned the treatment upon arrest, the treatment of detainees by the police and conditions of detention. Important cases were brought against Poland under Article 3 in its procedural aspect. With respect to treatment upon arrest and subsequent investigation of abuse Dzwonkowski group is of particular relevance.[28] In these cases, the charges against Poland concerned superficial investigation of police brutality, incomplete rationales for discontinuation of proceedings or unacceptable rationales, delays in conducting proceedings.[29]

[28] Dzwonkowski v. Poland (application no. 46702/99), Lewandowski and Lewandowska v Poland (application no. 15562/02), Pieniak v. Poland (application no. 19616/04), Mrozowski v. Poland (application no. 9258/04), Polanowski v. Poland (application no.16381/05), Wasilewska and Kałucka v. Poland (application no. 28975/04), Karbowniczek v. Poland (application no. 22339/08), Przemyk v. Poland (application no. 22426/11)

[29] The Prosecutor General, Jurisprudence in cases of abuse of power by the Police and failure to carry out effective criminal proceedings (violation of Article 3 of the Convention), 2015, available at: https://pk.gov.pl/dzialalnosc/europejski-trybunal-praw-czlowieka/standardy-etpcz/opracowania-wlasne/orzecznictwo-w-sprawach-naduzycia-sily-przez-policje-oraz-nieprzeprowadzenia-skutecznego-postepowania-karnego-naruszenie-art-3-konwencji/

However, in the Orchowski case, the ECtHR encouraged Poland to develop an efficient system of complaints to the authorities supervising detention facilities. This ECHR judgement is the most significant from the perspective of the effectiveness of the domestic remedies available for the persons deprived of liberty in Poland. The Government argued in this case that there were several effective remedies available to the applicant under the CEC, including an appeal against any unlawful decision of a penitentiary authority and a complaint to a penitentiary judge about detention conditions, even in the absence of any formal decision on that matter. In addition, the Government argued that the applicant could have, but had not, made use of the remedies of a compensatory nature governed by the provisions of Articles 23 and 24 of the Civil Code, in conjunction with Article 445 or Article 448 of the Civil Code, in order to bring an action for compensation for alleged damage to health sustained as a result of the inadequate conditions of his detention. Nonetheless, in this judgement ECHR explained what he meant by "an efficient system of complaints to the authorities supervising detention facilities", The Court indicated "in particular a penitentiary judge and the administration of these facilities which would be able to react more speedily than courts and to order, when necessary, a detainee's long-term transfer to Convention compatible conditions".[30]

1. LEGAL SUPPORT

1.1 Obligations as regard to legal support

Which texts define an obligation to provide a legal information in police custody/penitentiary facilities (related to penitentiary issues)? Are these a matter of general law or are they specific to prison issues? In what terms is the content / scope of the legal information obligation defined (in particular, is reference made to aspects of everyday life in detention)? Specify the conditions under which this obligation to provide legal information has emerged and been legally enshrined. As regards police custody, specify what information related to their rights (health, access to a lawyer, free legal aid) is provided to suspects or accused persons.

1. Police custody

1) Information on procedural rights

According to Article 244 § 2 of CCP: "The arrested person shall be informed immediately about the reasons for his arrest and his rights (…)". Furthermore, according to Article 16 § 1 of CCP: "If the agency conducting the proceedings is under obligation to advise the parties to the proceedings of their rights and duties, and fails to do so or misinstructs them, this shall not result in any adverse consequences during the course of the trial to the participant of the proceedings or other persons concerned". A written instruction on the rights and obligations of a person detained by the Police is submitted to the Regulation of the Minister of Justice of 3 June 2015 on determining the model instruction on rights and obligations of a person detained in the criminal proceeding based on Article 244 § 5 of CCP. This instruction, contains the information that a person detained in the criminal procedure has the following rights:

a) The right to information about the reasons for detention and to be listened to (Article 244 § 2 of CCP),
b) The right to make or refuse to make statement in his case (Article 244 § 3 of CCP),
c) The right to immediately contact an attorney or legal counsel and talk directly to him/her (Article 245 § 1 of CCP),
d) If detained person's command of Polish is insufficient – the right to use assistance of translator, free of charge (Article 72 § 1 of CCP),
e) The right to receive a copy of a detention report (Article 244 § 3 of CCP),

[30] Orchowski v. Poland (application no. 17885/04*)*

f) The right to inform about detention the closest person or other specified person, as well as an employer, school, university, commander and any person managing detained person's enterprise, or an enterprise for which he is responsible (Article 245 § 2, Article 261 § 1, § 2 and § 3 of CCP). Police notifies about detention an authority which conducts proceeding against detained person in any other case, if they are aware of such case (Article 261 § 2a of CCP).
g) If arrested person is not a Polish citizen – the right to contact consular office or diplomatic mission of the state of which he is a citizen. If he is not a citizen of any state – the right to contact with representative of the state of detained person's habitual residence (Article 612 § 2 of CCP). If a consular agreement between Poland and the state of which temporarily arrested person is a citizen includes provisions to such effect, competent consular office or diplomatic mission should be informed about detention also without his request.
h) The right to file to court a complaint against detention within 7 days from detention date. Examination of relevance, legality and correctness of detention may be demanded in such a complaint (Article 246 § 1 of CCP).
i) The right to immediate release, if reasons for detention ceased to exist, or after expiry of 48 hours from detention, unless suspect is brought within this period to court with a motion for temporary arrest. If detained person is brought to court, he will be released if an order for temporary arrest is not delivered to him/her within 24 hours from bringing to court. (Article 248 § 1 and § 2 of CCP).
j) Access to any necessary medical aid.

Moreover according to Article 300 § 1 of the Code of Criminal Procedure suspect or accused should be informed in writing about his rights before the first interrogation. Copies of the instructions are attached to the criminal case file. The instruction model is presented in the Regulation of the Minister of Justice of 13 April 2016 On determining the model instruction on rights and obligations of the suspect in criminal proceedings based on Article 300 § 4 of the Code of Criminal Procedure.

2. Pre-trial detention

1) Information on procedural rights

A written instruction on the rights and obligations of a pre-trial detainee is submitted to the Regulation of the Minister of Justice of 25 June 2015 on determining the model instruction on rights and obligations of a person temporary arrested in the criminal proceeding based on Article 263 § 8 of CCP. This instruction, contains the information that a pre-trial detainee has the following rights:

a) The right to provide explanations, refuse to provide explanations or refuse to answer particular questions, it is not necessary to specify reasons for refusal (Article 175 § 1 of CCP).
b) The right to legal aid of a defense counsel selected by him/her. If a temporarily arrested person proves that he cannot afford a defense counsel, the court may appoint a public defender (Article 78 § 1 of CCP). Upon request of a pre-trial detainee who does not have a defense counsel, and regardless his financial situation, the court appoints a public defender to participate in court hearings concerning the extension of temporary arrest and considering a complaint against application or extension of application of such remedy (Article 294 § 5 of CCP). In the event of conviction or conditional discontinuation of the criminal procedure, expenses on public defence may be charged upon temporarily arrested person (Article 627, Article 629 of CCP).
c) If a pre-trial detainee's command of Polish language is insufficient – the right to the assistance of an interpreter, free of charge (Article 72 § 1 of CCP).
d) The right to inform about the arrest the closest person or other specified person, as well as an employer, school, university, commander and any person managing arrested person's enterprise, or an enterprise for which he is responsible (Article 261 § 1, § 2 and § 3 of CCP). The

court notifies about the pre-trial arrest an authority which conducts proceeding against the arrested person in any other case, if it is aware of such a case (Article 261 § 2a of CCP).

e) If the temporarily arrested person is not a Polish citizen – the right to contact the consular office or diplomatic mission of the state of which he is a citizen (Article 612 § 1 of CCP). If a consular agreement between Poland and the state of which temporarily arrested person is a citizen includes provisions to such effect, the competent consular office or diplomatic mission should be informed about arrest also without his request.
f) The right to information about the content of allegations, supplementing or changing allegations and legal classification of alleged offence (Article 313 § 1, Article 314, Article 325a § 2 and Article 325g § 2 of CCP).
g) The right to examine the case file in the part including evidence specified in a motion for application or extension of temporary arrest (Article 156 § 5a of CCP).
h) The right to file to court complaint against temporary arrest within 7 days from the day in which he received a copy of an order for application or extension of temporary arrest (Article 252 of CCP).
i) The right to file a motion for cancellation or change of temporary arrest to other remedy, not consisting in deprivation of liberty. Such remedy may include Police supervision or supervision of his superior in a military service, collateral bail bond or personal guarantee, order forbidding to leave the country, obligation to leave residential premises occupied together with an aggrieved party, suspension in professional duties or practicing profession, abstaining from certain activity or driving vehicles. Motion will be decided within 3 days by prosecutor or court. Temporarily arrested person may file a complaint against prosecutor's or court's decision only when application was filed after expiration of at least 3 months from issuing a previous decision concerning temporary arrest (Article 254 § 1 and § 2 of CCP).
j) The right to be provided necessary medical aid.

2) Information on rights in a remand center for a pre-trail detainees

According to Article 210 of CEC, during the admission procedure of a detainee into a remand center for a pre-trail detainees, he should be informed of his rights and obligations without delay. In particular, he should be allowed to get acquainted with the provisions of CEC and the organizational and procedural rules of the execution of the pre–trial detention. In practice, the persons deprived of liberty are informed about their right and duties in writing upon admission to the center. A written instruction called 'compendium for foreign nationals on remand, convicted or punished' prepared by the Prison Service is a 14-page long document. It is one document for all of the persons deprived of liberty, regular convicted prisoners as well as pre-trial detainees. The main information provided in this instruction concerns: admission to a facility, information important for inmates immediately after reception, safety, the main duties of inmates, living conditions, internal order, medical care, communication with family and with the external world, behavior of inmates and the conditions under which sentences are served, means of direct coercion, freedom of religion, free time, education and vocational training, post-release assistance, access to public information, obtaining detailed information depending on the needs, the right to submit complaints, appeals, requests and petitions, international legal means of protecting the rights of incarcerated persons, conditional early release (parole) and prison furlough (break in execution of the punishment), transfer of prison sentences to be enforced abroad, application for refugee status (information from the official instruction translated into English by Prison Service).

3. Legal support

The right to legal support derives from Article 42 (2) of the Constitution of the Republic of Poland of 2 April 1997, according to which: "Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself - in accordance with principles specified by statute - of counsel appointed by the court".

Moreover, the Directive 2013/48/EU requires Member States to ensure that suspects and accused persons "have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively" (Article 3 (1) of the Directive 2013/48/EU). At the stage of negotiating the shape of the Directive, the Government of the Republic of Poland pointed out that the standard resulting from the ECHR judgment of Salduz vs. Turkey is in general consistent with the Polish legal order.[31] In 2014, the Criminal Law Codification Commission (hereinafter: Codification Commission), operating at the Ministry of Justice, presented an opinion on the implementation of the Directive 2013/48/EU.[32] This opinion indicated the interpretation of the legal provisions, which would correspond to the standard expressed in the Directive. In addition, the Codification Commission indicated which of the applicable provisions of law should be amended. The Codification Commission in 2014, as well as the First President of the Supreme Court in 2017,[33] indicated that under Polish law access to a lawyer should be ensured from the earliest moment to the following persons:

a) an accused (Article 71 § 2 of CCP),
b) a suspect in connection with a hearing (Article 71 § 1, Article 301 and Article 313 of CCP), the act of his presentation (Article 74 § 2 point 1 of CCP) and participation in visual inspection and trial experiment (Article 316 § 1 and 2 of CCP, art. 317 of CCP),
c) a suspect who has been deprived of liberty in connection with a criminal charge, e.g. detained, remanded in custody (Article 245 § 1 of CCP, Article 249 § 5 of CCP),
d) a suspected person who has been detained (Article 244 of CCP, Article 247 of CCP),
e) a suspected person in connection with the act of his presentation (Article 74 § 3 in conjunction with § 2 point 1 of CCP) or his participation in activities of a visual inspection or a trial experiment.

Despite this, the Ministry of Justice is currently of the opinion that the Polish law fully reflects the postulates of Directive 2013/48/EU and, therefore, there is no need for adaptation.[34] However, in the opinion of the First President of the Supreme Court, the lack of implementation of the Directive 2013/48/EU results from the failure to guarantee access to a defender i.e. a witness who, at the time of testifying, begins to provide self-acclaim information ("suspected person"). The lack of regulation of access to a lawyer of a suspected person in connection with the act of his presentation (Article 74 § 3 in conjunction with § 2 point 1 of the CCP) and the lack of a provision that would allow the consultation of a suspect with a lawyer before proceeding with the first hearing before the first hearing in the context of presenting charges were also pointed out by the First President of the Supreme Court. Moreover, in June 2017, the Ombudsman filed an application to the Minister of Justice in which he analyzed the discrepancies between Polish law and the requirements arising from the Directive 2013/48/EU: inappropriate protection of suspects (including those resulting from Article 2 (3) of the Directive) regulating the presence of the lawyer of a suspected person during activities involving him (Article 74 § 3 of the CPC), no guarantee of contact a suspect with a lawyer before the first hearing (Article 313 § 1 of the CPC), lack of judicial review of the decision to limit the right to contact the defender (Article 73 § 2 and Article 245 § 1 of the CPC).[35]

[31] The negotiation position of the Republic of Poland, 27 June 2011.
[32] The Criminal Law Codification Commission within the Ministry of Justice, Opinion on the Implementation of the Directive 2013/48/EU, 2014, available at: https://bip.ms.gov.pl/pl/dzialalnosc/komisje-kodyfikacyjne/komisja-kodyfikacyjna-prawa-karnego/opinie-komisji-kodyfikacyjnej-prawa-karnego/download,2663,0.html
[33] The First President of the Supreme Court, Remarks about identified irregularities and gaps in the law, 2017, available at: http://www.sn.pl/osadzienajwyzszym/Uwagi_PPSN_luki_w_prawie/luki-w-prawie-2017.pdf
[34] Helsinki Foundation for Human Rights, The right of access to a lawyer in the light of European law, 2018, available at : http://www.hfhr.pl/wp-content/uploads/2018/05/Prawo-dost%C4%99pu-do-obroncy-w-swietle-prawa-UE-FIN.pdf
[35] The Ombudsman, Letter to the Minister of Justice on the implementation of Directive 2013/48/EU, 2017, available at: http://www.sprawy-generalne.brpo.gov.pl/pdf/2017/6/II.5150.9.2014/1066002.pdf

1.2 Legal support to non-native speakers

What does the law provide for in terms of legal support to non-native speakers? (support to apply for legal aid? Support once granted legal aid)

The accused or a suspect has the right to free assistance of an interpreter if he does not have a command of the Polish language (Article 72 § 1 of CCP). Also the order on the presentation of charges, the indictment or a decision subject to review, or a decision concluding the proceedings shall be delivered to the accused with a translation. If the accused consents, the decision concluding the proceedings may only be announced to him, providing it is not subject to review (Article 72 § 3 of CCP).

Moreover, a written guidance on the rights and obligations of: a suspect in the criminal procedure, a person detained under European Arrest Warrant, a person detained in the criminal procedure and a person temporarily arrested in the criminal procedure were translated to 26 language by the Ministry of Justice and are available online.[36]

During the admission procedure of a detainee into a remand center for a pre-trail detainees, he should be informed without delay of his rights and obligations. A written instruction named Compendium for foreign nationals on remand, convicted or punished prepared by the Prison Service is available in 8 languages: Polish, English, Arabic, Russian, German, French, Bulgarian, Romanian.[37]

1.3 Actors providing legal information

Who are the actors responsible for providing legal information in detention? What is their status and what budgets are they dependent on? Do they have an ethical framework guaranteeing their independence and the secrecy of consultations?

1. Police and Prison Service

The actors providing legal information were indicated in the previous point (Police or Prison Service). These actors are public uniformed services operating under LoP and APS.

2. Lawyers

The professional lawyers (attorneys and legal advisors) have the right to provide legal services and advice. Attorneys and legal advisors are separate, independent legal professions. Legal advisers, unlike attorneys, may be employed based on a work contract. However, those who are employed through such a contract may not represent clients as defenders in a criminal proceedings. Attorneys are associated within the Bar of attorneys, consisting of the National Council of the Bar and 24 local councils. Legal advisers are associated within the Bar of legal advisors, consisting of the National Council of Legal Advisers and 19 local councils. Both of these professions are regulated in the law (the Act of 26 May 1982 on the attorneys' profession and the Act of 6 July 1982 on legal advisors). Both of these professions make decisions on admitting new members (who are as a rule selected through an entrance examination, complete the three year apprenticeship training, and pass final exams), adopt rules of professional ethics (internal acts of these self-governed professions), consider complaints against them and conduct disciplinary procedures. Lawyers also provide legal advice and information for pre-trial detainees as well as convicts. However these are not organized actions, but individual examples only.

[36] The Ministry of Justice, a written guidance on the rights and obligations with their translations, available at: https://www.ms.gov.pl/pl/dzialalnosc/wzory-pouczen/

[37] The Prison Service Compendium for foreign nationals on remand, convicted or punished, 2017, available at : the https://www.sw.gov.pl/strona/informator-dla-cudzoziemcow-tymczasowo-aresztowanych-skazanych-oraz-ukaranych

1.4 Practical arrangements

What are the practical arrangements for carrying out the task to provide legal information in custody, as specified by the law (regularity, type of premises, etc.)?

Pursuant to Article 18 of APS and to the Regulation of the Minister of Justice of 4 August 2010 on the detailed mode of operation of officers of the Prison Service while performing official duties, every person applying for entry into the penitentiary unit (prison or pre-trial detention center) has to show an identity document. Moreover visiting person is subjected to a superficial check with the use of technical equipment or trained dogs for the detection of drugs. If there is a suspicion that such a person did not disclose the possessed dangerous objects and prohibited objects, he is subjected to a control consisting in checking clothes and footwear made by at least two officers. In exceptional and justified cases, a person's body and personal underwear is subjected to inspection. Personal control of person applying for admission to the premises of a prison or a remand center may be carried out only on the condition that those persons consent to it. However, in case of the refusal to submit to the control, the person applying for entry will not be allowed to enter the penitentiary unit.

1.5 Legal information tools

Under the law, are legal information tools (legal guides, Internet portals for legal information, translations of legal standards, etc.) to be made available for detainees? What is detainees' access to online legal information portals?

The provisions of CEC do not provide the direct right of a person deprived of liberty to access to the computer or to the internet within the penitentiary facilities, including the remedies centers for the pre-trial detainees. However in practice – as a rule - the Prison Service carries out the tasks regulated in in the Act on Access to Public Information of 6 September 2001 by providing persons deprived of liberty with access to the internet through computer. "The right to access public information" is regulated in this act and according to its Article 2 (1), "everyone" can benefit from it and thus in theory also a person deprived of liberty. As a "public information" should be considered an information created by public authorities and persons performing public functions as well as other entities that perform public functions or manage public property, as well as information referring to these authorities, persons and other entities, regardless of who they were created by. According to the Prison Service, all of the penitentiary units provided the access it to the internet pages of the Public Information Bulletin, the Information Bulletin of the Ombudsman and the Government Legislative Center. Furthermore some of the penitentiary units have expanded the scope of the shared sites also to the Public Information Bulletin of the Prison Service, Ministry of Justice, e-court[38]. Moreover, some of the penitentiary facilities are allowing video-calls. However, the Ombudsman reported about the cases when the access to "the right to access public information" was refused to pre-trial detainees[39].The Ombudsman also noted that the refusal to grant access to web pages containing legal information constitutes not only a violation of "the right to access public information" but also the right on access to the internet and referred to the ECHR's

[38] The Ombudsman, Statement regarding the access to the internet in the penitentiary facilities, 2016, available at : https://www.rpo.gov.pl/pl/content/dostep-osadzonych-do-internetu-wyrok-trybunalu-w-strasburgu

[39] The Ombudsman statement regarding the access to the public information in the penitentiary facilities, 2016, available at : https://www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Dyrektora%20Generalnego%20Sluzby%20Wieziennej%20ws%20udostepniania%20informacji%20publicznej%20osobom%20pozbawionym%20wolnosci%2017.05.2016.pdf

judgement Kalda v. Estonia[40] in which the Court stated violation of Article 10 of the European Convention of Human Rights on freedom of expression[41]. Despite the above ,the right to have a computer in a cell –not in a special area - is very limited in Poland and problems with benefiting form it were reported. The refusal to grant consent are often justified by the Prison Service by the fact that the facilities are the closed ones or are the remedies centers for pre-trial detainees and therefore, any computer hardware would need to be subject to special control similar to the control of radio and TV equipment.[42] Still in some of the facilities pre-trail detainees are allowed to use computers in their cells[43].

There are no available information regarding the access to legal tools for the persons deprived of liberty.

1.6 Reporting on legal information

Are bodies in charge of legal information in custody subject to an obligation to report regularly and publicly on their actions?

Please mention the major developments and trends in the national legislation regarding these issues to reflect the orientation of the relevant public policies.

Each year, the Ombudsman informs about his activities in an annual report. Information is based on Article 212 of the Constitution of the Republic of Poland of 2 April 1997 of 2 April 1997 which provides that the Ombudsman informs the Parliament and the Senate annually about his activities and about the observance of freedoms, human and citizen's rights as well as Article 19 (2) of the Act on the Ombudsman of 15 July 1987 establishing the obligation to disclose the Ombudsman's information to the public[44].

The Prison Service authorities report within their organizational structure governed by the General Director of Prison Service and supervised by the Minister of Justice. Detailed statistical data regarding their tasks in the field of execution of imprisonment and pre-trial detention are available publicly online[45]. However the available data does not contain the information on the complaints submitted by the persons deprived on liberty as well as the information how they were recognized.

2. LEGAL AID

2.1 Fees and mandatory (or not) character of legal representation

Is the representation by a lawyer mandatory during litigation concerning the conditions of detention and, more generally, the internal status (exercise of the fundamental rights inside the prison) and external status (access to an early release measure for medical reasons)? Is access to courts subject to the payment of a fee?

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[40] The Ombudsman, Statement regarding the access to the internet in the penitentiary facilities, 2016, available at : https://www.rpo.gov.pl/pl/content/dostep-osadzonych-do-internetu-wyrok-trybunalu-w-strasburgu

[41] Kalda v Estonia (application no.17429/10)

[42] Helsinki Foundation for Human Rights, Report on the human rights of persons deprived of liberty, 2017, available at: http://www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf

[43] Sobczak K, The Director of the pre-trial detention facility: A detainee can have a computer and a printer in his cell, Prawo.pl, 2015, available at: http://www.kancelaria.le.g.pl/czytaj/-/artykul/dyrektor-aresztu-wiezien-moze-miec-komputer-i-drukarke

[44] The Ombudsman, Information on the state of observance of the freedoms, human and civil rights as well as the activities of the Ombudsman, 2017, available at: https://www.rpo.gov.pl/sites/default/files/Informacja%20roczna%20RPO%20za%20rok%202017.pdf

[45] The Prison Service website, available at: https://www.sw.gov.pl/strona/statystyka-roczna

There are no specific regulations regarding the obligatory representation by a professional lawyer in the cases concerning the conditions of detention, fundamental rights inside the penitentiary facility or external status. The general rules regarding mandatory participation of a professional lawyer (attorney or legal advisor) apply.

1. Criminal procedure

In criminal proceedings, the obligatory representation by attorney or legal advisor occurs only in five situation:

a) when submitting a subsidiary indictment (Article 55 § 2 of CCP),,
b) when making a cassation appeal (Article 526 § 2 of CCP)
c) when submitting a complaint against the verdict of the court of appeal (Article 526 § 2 of CCP in conjunction with Article 539f of CCP),
d) when appealing against a regional court judgment (Article 446 § 1),
e) when applying for the reopening of the proceedings (Article 545 § 2).

2. Criminal executive procedure

In the proceedings based on CEC before the court, a legal representation ("defense") is obligatory if a person deprived of liberty (again both convicted prisoners and pre-trial detainees based on Article 242 § 1 of CEC) is:

a) deaf, mute or blind,
b) there is justified doubt as to his sanity,
c) a minor,
d) the court deems that necessary because of other circumstances impeding the defense. (Article 8 § 2 of CEC).

3. Civil procedure

The Act of 17 November 1964 the Code of Civil Procedure (hereinafter: CoCP) does not provide for obligatory representation in any kind of cases. The only legal action that must be performed by an attorney or legal adviser in civil cases is the filing of a cassation and legal representation in cases before the Supreme Court (Article 87^1 of CoCP).

4. Administrative procedure

In administrative proceedings, legal representation is obligatory only before the administrative courts, when the procedure is based on the Act of 30 August 2002 on Proceedings before Administrative Courts, in the following situations :

a) when filing a cassation appeal against the verdict of the Voivodship Administrative Court to the Supreme Administrative Court (Article 175 § 1 of the Act of 30 August 2002 on Proceedings before Administrative Courts),
b) when submitting to the Supreme Administrative Court a complaint against the decision of the Voivodship Administrative Court regarding the rejection of a cassation complaint (Article 194 § 4 of the Act of 30 August 2002 on Proceedings before Administrative Courts),
c) when submitting to the Supreme Administrative Court a complaint regarding the resumption of proceedings (Article 276),
d) when submitting to the Supreme Administrative Court a complaint regarding the unlawfulness of a final judgment (Article 285f § 3 of the Act of 30 August 2002 on Proceedings before Administrative Courts).

5. Proceedings before the Constitutional Tribunal

The lawyer's presence is also obligatory in the proceedings before the Constitutional Tribunal in cases resulting from a constitutional complaint. However, this provision does not apply to applicants who are themselves notary public, prosecutors, judges nor to persons with at least the postdoctoral degree in legal sciences.

2.2 Legal aid scheme

Which texts organize legal aid scheme? Briefly describe how these set out funding of the Legal aid system.

In Poland there is no specific and comprehensive legal aid system for detained suspects, pre-trial detainees or prisoners. The situation should be considered differently on the ground of criminal proceeding, civil proceeding and the system of out-of-court legal aid. In Poland there are several legal acts referring to different forms of legal aid.

1. The *ex officio* legal aid

Legal aid through the *ex officio* system is provided also by the attorneys and legal advisers but exclusively and mostly for the indigent. Through this system every attorney and legal advisor may be requested by the local court to represent a person granted legal aid. However the lager bars (Regional Bar Council or Regional Council of Legal Advisors) allow theirs members to indicate the preferred scope of cases in which they can provide legal aid.

In practice, legal aid in Poland includes only legal representation. There is no separate budget for legal aid provided *ex officio* and the costs of legal aid are covered by the State Treasury through the budgets of particular courts where legal aid was granted (and courts are financed from the budget of the Ministry of Justice). Neither the courts nor the Ministry of Justice systematically collect data on the costs or the amount spent on criminal legal aid, due to that it is not possible to estimate what percentage of the legal aid budget is spent on criminal cases. The same situation applies to the costs of the amount spend on legal aid in administrative and civil cases. As a rule, a lawyer *ex officio* is chosen from the court list of all attorneys and legal advisors delivered by the Bars. The appointments are made in numerical order.

2. The out of court legal aid

The system of out of court legal aid in Poland is regulated in the Act of 5 August 2015 on free of charge legal aid and legal education (hereinafter: AFLA). According to it, a free of charge legal include:

a) Informing the persons entitled about the current legal regulations as well as their legal obligations
b) Indicating to the persons entitled how to solve their legal problems,
c) Assistance in preparation of drafts of pleadings in the matters mentioned above, excluding procedural pleadings in ongoing preliminary or court proceedings as well as pleadings in ongoing proceedings before the administrative court,
d) Preparing a draft of requests: for exemption from court costs, for appointing an attorney, legal advisor, tax advisor or patent agent *ex officio* in proceedings before the administrative court.

Free legal assistance also does not include:

a) tax matters related to running a business,
b) cases in the field of customs, foreign exchange and commercial law,
c) matters related to conducting business activity, with the exception of preparation for starting this activity (Article 3 of AFLA).

Free legal aid within this system of legal aid is provided by attorneys and legal advisors and in particularly well-justified cases also by authorised attorney and legal advisor trainees. Moreover at the legal aid centers run by non-governmental organizations, legal aid is provided also by tax advisors, university law graduates with at least three-year experience. However, persons deprived of liberty including pre-trial detainees, cannot benefit from this system due to their factual situation.

2.3 Emergence of a right to legal aid in penal facilities

When and under which political circumstances and policy implementation were the defraying of prison disputes decided?

These provisions have been developing systematically and it cannot be specified when exactly defraying of prison disputes were decided.

2.4 Perimeter of the legal aid regarding prison litigation

What is the perimeter of the legal aid regarding prison litigation? Are certain aspects of prison life (that concern fundamental rights) excluded?
What is the scope of legal aid granted for criminal proceedings in terms of dealing with prisoners' rights issues? In other words, does the legal aid granted for a criminal case provide for additional fees if the lawyer handles a proceeding linked to the defendants' rights within the prison?

In Poland there is no specific legal aid regarding litigation for the purposes of deprivation of liberty. Due to that general rules regarding different purposes for legal aid apply (please check *2.5 Eligibility to legal aid*).

2.5 Scope of the compensation

What exactly does legal aid (that does not relate to criminal proceedings) take care of in terms of acts to be done by the lawyer ? Do the texts provide for the overall management of the case, or do they differentiate between the different acts performed by the legal professional (pleadings, visiting clients in detention, hearing before the court, etc.)?

The lawyer *ex officio* should be representing clients within the limits of the case, defend the interests of the clients and act in their favor. As a rule the legal advisor or an attorney are designated only to the particular case and are obliged to legal representation only within the particular case and later can granted salary only for it.

Both professions: attorneys and legal advisors have their own codes of professional ethics, determined by the National Council of the Bar and the National Council of Legal Advisers. They constitute the basis for a lawyer's behavior and the manner of conducting a case and are available at the corporations' websites. Violation of these rules results in lawyers' disciplinary liability.

2.6 Eligibility to legal aid

Under which conditions (specifically regarding the legality of residency and economic situation) are detainees eligible to legal aid? Is there a criterion relating to the merits of the applicants' complaint and, if so, to what degree of precision is the examination prescribed?

Persons deprived of liberty, including pre-trial detainees, are eligible to legal aid based on the general conditions applying to all persons.

1. Within the *ex officio* system

1) Criminal procedure

In the criminal procedure *ex officio* legal aid can be granted:

a) When a mandatory defense is applicable - if a person does not have a lawyer, the president of the court will assign one. According to Article 79 § 1 of CCP it is obligatory "in criminal proceeding: if accused:
- is a minor,
- is deaf, mute or blind,
- there is reasonable doubt whether his ability to recognize the significance of the act or to control his conduct was not disabled or greatly reduced at the time of committing the offense,
- there is a reasonable doubt whether the state of his mental health allows him to participate in the proceedings or conduct the defense in an independent and reasonable way.
- Moreover according to Article 80 of CCP a defense is mandatory if the proceeding is pending in the first instance before a regional court, and the defendant is charged with a felony (act punished with the penalty of at least three years' imprisonment).

b) On the request of the accused - when defendant who does not have a defense counsel of his own choice, he may demand to have an *ex officio* defense counsel appointed, if he adequately demonstrates that he cannot bear the costs of defense without detriment to support and maintenance for himself and his family (Article 78 §1 of CCP.

c) The accused must also have an *ex officio* defense counsel when the court deems that necessary because of other circumstances impeding the defense, according to Article 79 § 2 of CCP.

The court decides whether to appoint a lawyer ex office.

A) Pre-trial detention

Moreover on the demand of a pre-trial detainee who does not have a lawyer, regardless of his financial situation, the court appoints a lawyer *ex officio* to attend a court hearing regarding the extension of pre-trial detention and recognition of a complaint about the application or extension of this measure (Article 249 § 5 of CCP).

B) Preparatory proceeding

In practice, the effectiveness of access to *ex officio* lawyer during the preparatory proceedings is limited. A motion to appoint a defense councsel *ex officio* has to be submitted to the relevant body conducting the proceedings (e.g.to the Police), and is later forwarded to the prosecutor's office (e.g. with the application for a pre-trial detention), and finally to the court. Depending on the size of the court's area of jurisdiction, the appointment of a lawyer *ex officio* may last from a few hours to many days. Thus, in Poland there is no effective procedure which would guarantee that the public defender would be able to take part in the court's hearing regarding the use of pre-trial detention or during the first interrogation of a suspect.

C) Criminal executive procedure

In the proceedings based on CEC, a person deprived of liberty (again both convicted prisoners and pre-trial detainees based on Article 242 § 1 of CEC) may use the assistance of a lawyer established in this

proceeding (Article 8 § 1 of CEC). Moreover the in these proceedings before a court a legal representation ("defense") is obligatory if a person is:
- deaf, mute or blind,
- there is justified doubt as to his sanity,
- a minor,
- the court deems that necessary because of other circumstances impeding the defense. (Article 8 § 2 of CEC).

Furthermore according to Article 8 § 2a of CEC the provision of Article 78 of CCP apply accordingly which means that on the request of the defendant who does not have a defense counsel of his own choice, he may demand to have an *ex officio* defense counsel appointed. He need to adequately demonstrate that he cannot bear the costs of defense without detriment to support and maintenance for himself and his family.

2) Civil procedure

The Constitution of the Republic of Poland preserves the right to a hearing in court, but does not contain any provisions on legal aid in civil cases. According to Article 45 (1) of the Constitution of the Republic of Poland of 2 April 1997: "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court". However, in the civil procedure, the *ex officio* lawyer may be granted to individuals who have been exempted from court costs in whole or in part of civil procedure (Article 117 § 1 of CoCP). Other persons (not exempted from court) can apply for the *ex officio* lawyer only if they prove before the court that they have insufficient funds to cover the lawyer's fees themselves (Article 117 § 2 of CoCP). Such an application should be made in writing or declared in the court' hearing record in the court where the case is pending or will be instituted (Article 117 § 4 of CoCP). Still when these conditions are met, the court may grant the legal aid *ex officio* if he finds that participation of a professional lawyer is necessary in the case (Article 117 § 5 of CoCP). The issue of such an order has the value of granting the power of attorney in the proceeding (Article 118 of CoCP). However the current regulations do not clarify when the lawyer's participation and representation is "necessary" and due to that the decision about granting legal aid left to discretion of a court. According to the jurisprudence and doctrine, those criteria include legal and factual complexity of the case, helplessness or imprisonment of the participants and the principle of adversarial trial (when one participant is assisted by an attorney/legal advisor and others are not). The Supreme Court stated that a court may consider the difficulties of a participant in communication with the court as a motion for appointment of an *ex officio* attorney/legal advisor[46]. *Ex officio* legal aid in civil cases includes all stages of court proceedings, from the first to the last instance. A legal representation granted at the stage of court proceedings is also valid for enforcement proceedings.

3) Administrative procedure

There are no rules about the circumstances when legal aid is required in administrative procedure. Participants of the administrative proceedings before the administrative authorities according to Article 33 of the Act of 14 June 1960 the Code of Administrative Procedure may be represented by everyone who possess legal competency, not necessarily by attorneys or legal advisors.

The legal representation before the administrative courts may be performed by a professional lawyer but also by a members of family (Article 35 § 1 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The procedure before administrative courts provide for the possibility to obtain a legal aid *ex officio* called in this procedure as a "right to aid". The right to aid may be granted upon the participant motion (Article 243 § 1 of the Act of 30 August 2002 on Proceedings before Administrative

[46] The Supreme Court Judgment of 13 September 1964, no. : II PZ 46/64.

Courts). The right to aid consist of an exemption (total or partial) from court fees and the appointment of an attorney, legal advisor, patent agent or tax advisor (Article 244 § 1 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The total right to aid is understood as an exemption from court fees and appointment of legal representative and is granted when the participant is unable to bear any costs of the proceedings (Article 245 § 2 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The partly right to aid is understood as exemption from part of the court fees or appointment of a professional legal representative and it is granted to participants which have demonstrated that proceedings would influence their material situation (Article 245 § 3 of the Act of 30 August 2002 on Proceedings before Administrative Courts).

2. The of out of court legal aid in Poland

The system of out of court legal aid in Poland is regulated in the Act of 5 August 2015 on free of charge legal aid and legal education, a free legal aid is provided only to:

a) persons who during the last 12 months have been obtaining a social support allowance,
b) holders of a Large Family Card,
c) combatants and veterans,
d) individuals who have been exposed to a risk or suffered a loss as a result of a natural disaster or a technical failure,
e) young people under 26,
f) senior citizens over 65,
g) pregnant women in matters of pregnancy and childbirth, in particular those relating to parental and employment rights.

However, the persons deprived of liberty including pre-trial detainees cannot benefit from this system due to their factual situation.

2.7 Choice of the lawyer

Can the detainee choose his/her lawyer in case he/she is granted legal aid (not directly related to criminal proceedings)?

1. Criminal procedure and Criminal executive procedure

In the criminal procedure there are no rules on possibility to choose *ex officio* lawyer and attorneys and legal advisors are appointed by the president of the respective court from the alphabetical lists of attorneys and legal advisors allowed representation in criminal cases.

However there is a possibility of changing a designated defender *ex officio* on a reasoned request of the accused (Article 81 § 2 of CCP). The most frequent reason for such a change is the lack of contact between the accused and a designated attorney *ex officio* or a collision of procedural interests (e.g. a designated defender is at the same time a defender the other defendant in the same trial). The decision on changing the lawyer *ex officio* is taken by the President of the court competent to hear the case or a court clerk in the form of an order and it is not open to appeal (Article 81 § 2 of CCP).

In the proceedings based on CEC the same rules apply based on Article 8 § 2a of CEC.

2. Civil and administrative procedure before the court

In other procedures the courts send their decisions on granting legal aid to local Regional Bar Council or Regional Council of Legal Advisors. It is the obligation of those Councils to appoint then attorney or legal advisor to represent a person granted the *ex officio* legal aid in the proceedings. However in

practice the, person who applied for the *ex officio* representation can suggest the specific qualified lawyer from the Bar by name which often results in his designation to the case.

2.8 Application for legal aid

What are the formalities required by the texts when applying for legal aid (not directly related to criminal proceedings) / obtaining a lawyer for free?

1. Criminal procedure and Criminal executive procedure

In the criminal procedure *ex officio* lawyer legal can be granted based on the requirements listed above. However the form of the application is not specified due to that the application can be made orally in the interrogation report or in writing by the applicant. In both situation assignment of attorney or legal advisor is made by the court with a possibility to appeal against such a decision (e.g. on refusal) based on Article 81 § 1a of CCP.

2. Civil procedure

In the civil procedure, the statement proving that a person has insufficient funds to cover the lawyer's fees themselves can be declared in the court's hearing record in the court where the case is pending or will be instituted (Article 117 § 4 of CoCP). In other cases, it has to be done in writing based on the written form available online and in the courts (Article 117^1 § 1 of CoCP). The appeal against court's refusal on granting legal aid is possible based on Article 394^1 § 1 (2) of CoCP).

3. Administrative procedure

The right to legal aid before the administrative courts may be granted on the participant motion lodged on an official form (243 § 1 and Article 252 § 2 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The right to aid consist of an exemption (total or partial) from court fees and the appointment of an attorney, legal advisor, patent agent or tax advisor (Article 244 § 1 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The total right to aid is understood as an exemption from court fees and appointment of legal representative and is granted when the participant is unable to bear any costs of the proceedings (Article 245 § 2 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The partial right to aid is understood as an exemption from part of the court fees or appointment of a professional legal representative and it is granted to participants which have demonstrated that proceedings would influence their material situation (Article 245 § 3 of the Act of 30 August 2002 on Proceedings before Administrative Courts). The appeal against court's refusal on granting legal aid is possible based on Article 252 § 3 of the Act of 30 August 2002 on Proceedings before Administrative Courts.

2.9 Evaluation and granting of applications for legal aid

Which bodies are competent to decide whether or not legal aid (not directly related to criminal proceedings) will be granted to the applicant? What is their composition and deliberative rules? Are there opportunities to appeal against refusals? If so, to what procedural requirements are appeals subordinated?

Asa rule the court's decide on granting legal aid and appeal against refusal is possible. It was already elaborated in the points 2.5 (Eligibility to legal aid) and 2.6 (Application for legal aid).

2.10 Remuneration of legal aid lawyers

What are the remuneration levels of legal aid lawyers defined by the law in prison litigation (provide comparison with other matters and indications of the level of net remuneration that this implies)?

According to the § 19 of the Regulation the Regulation of the Minister of Justice on the costs incurred by the State Treasury for unpaid legal assistance provided by an *ex officio* attorney of 3 October 2016 and the § 19 of the Regulation of the Minister of Justice on the costs incurred by the State Treasury for unpaid legal assistance provided by an *ex officio* legal advisor of 3 October 2016, the fees are for defense before a court in penitentiary proceedings (based on CEC) are as followed:

a) in the case of postponement or break in the enforcement of the penalty - PLN 180,
b) in the case for the execution of a conditionally suspended fine - PLN 180,
c) in the case for conditional early release or dismissal of such an exemption - PLN 120,
d) for activities related to the execution of the penalty of restriction of liberty and the implementation of security measures - PLN 120,
e) for conducting a case for the dismissal of a conviction or punishment - PLN 120,
f) for conducting a pardon case - PLN 240,
g) for other activities in enforcement proceedings - 240 PLN.

The fee can be increased by a court up to 150% in the case of a large amount of lawyer's work (According to the § 4 of both of these Regulations).

In other proceedings: criminal, administrative and civil, rates are at a similar - low level - which has not been changed significantly for 14 years. Only in civil cases where the value of the dispute is high (compensation cases) these rates are higher and depend on the dispute amount (§ 4 of both of these Regulations):

a) up to PLN 500 - PLN 60,
a) over PLN 500 to PLN 1,500 - PLN 180,
b) over PLN 1,500 to PLN 5,000 - PLN 600,
c) over PLN 5,000 to PLN 10,000 - PLN 1,200,
d) over PLN 10,000 to PLN 50,000 - PLN 2,400,
e) over PLN 50,000 to PLN 200,000 - PLN 3,600,
f) over PLN 200,000 to PLN 2,000,000 - PLN 7,200,
g) over PLN 2,000,000 to PLN 5,000,000 - PLN 10,000,
h) over PLN 5,000,000 - PLN 16,600.

2.11 Support to non-native speakers

What support is provided under the law to detainees who do not speak or understand the language of the proceedings?

It was already elaborated when translation is obligatory and what documents are translated. There are no additional provisions regarding that issue.

2.12 Exemption of costs for the legal aid beneficiary

Is the legal aid beneficiary exempted from the payment of expert fees and other legal fees (interpreter, copy of file…)?

In the criminal and executive criminal procedure the court conducts evidence proceedings and the parties do not cover the costs resulting from the expert evidence requests taken into account by the court, as well as the costs of obligatory translation.

In the administrative proceedings, no evidence is taken before the court, the court only examines the legality of the decision, the costs of obligatory translation are covered by the court.

In the civil procedure, the obligation of covering the costs (experts opinions are included in that costs) is described below.

The court letters are delivered to the parties of the proceedings with without additional fees. The whole case files are available in the court and making photocopies of them is free of charge (with the parties own camera equipment). Additional costs are not refunded.

2.13 Financial consequences of the failure of the proceedings for the legal aid beneficiary

What are the possible financial consequences of the failure of the proceedings for the legal aid beneficiary[47] (reimbursement of court costs, etc.)?

In the criminal and executive criminal procedures, as a rule, there are no financial consequences of the failure. However, if the person was found guilty, at the end of the proceedings he may be charged with costs of *ex officio* counsel by the court, pursuant to Article 626 § 1 of CCP. However such a decision should be justified (according to the Supreme Court judgement from 18 February 2010, ref. no.: II KZ 6/10) and its justification may be the occurrence of new or disclosure of unknown circumstances, which make the initial decision on granting *ex officio* attorney due to lack of funds defective.

Within the civil procedure (compensation cases) and court's administrative cases (related to the administrative issues such as access to public information) as a rule whoever has lost the case is obligated to bear the costs of the trial but this obligation does not apply to persons exempt from costs. However, the exemption from costs in the civil process as stipulated in Article 108 of CoCP, does not exempt from the reimbursement of the opponent's costs and, as a result, even a person an entirely exempted from paying fees and court costs is obliged to reimburse the opponent. The court deciding on the costs of proceedings, in justified cases may refrain from charging the party with costs of proceedings under Article 102 of CoCP based on the principle of equity.

2.14 Opportunities in case the legal aid beneficiary is not satisfied with his counsel

What opportunities are granted to the legal aid beneficiary who is unsatisfied with his counsel (briefly)?

It was already described before.

Please mention the major developments and trends in the national legislation regarding these issues to reflect the orientation of the relevant public policies.

3. ORGANIZATION OF BARS AND LAWYERS' ACTION IN DETENTION

3.1 Regulations of bars' involvement in legal support to detainees

[47] legal aid not directly related to criminal proceedings

How is the involvements of the bars in legal support to detainees regulated (at the national level, at the level of local bars…)? In particular, is the organization of legal consultation in detention mandatory for the bars?

The general rules apply regarding legal information and legal aid. At the local level or self-governing level legal support to detainees is not regulated and there are no additional provisions regarding additional mandatory legal consultation.

3.2 Lawyers specialized in detention/penitentiary law

Are there special statutory qualifications for lawyers specialized in detention/penitentiary law? Is there mandatory continuous training in prison law for criminal lawyers (or others)?

There have been no recent comprehensive surveys on legal aid conducted in Poland. As a rule all of practising lawyers (attorneys and legal advisors) may be obliged to provide legal assistance *ex officio* in all types of cases because in Poland, formally, there are no formal specializations within this profession. However, for the purpose of an entry in the public registry, a professional lawyer can chose the area of law he or she is specialized in and in practice some of them are specialized in criminal law and penitentiary law. The criminal law and criminal procedure in general are part of the training provided to attorneys' and legal advisors' trainees. However the penitentiary law is not a separate subject of the training. Moreover, both attorneys and legal advisors are obliged to raise their qualifications as part of training conducted by the Bars. As part of this trainings, lectures on criminal law, criminal procedure (e.g. access to a lawyer) and penal law are also held. However, trainings mainly concerns procedural rights. Also, in practice, attorneys and legal advisors are experienced and interested only in some areas of law.

3.3. Practical arrangements for carrying out legal assistance missions

How are the practical arrangements for carrying out legal assistance missions in custody specified by the law (regularity, type of premises, etc.)? Do lawyers have access to accommodation facilities in case of proceedings related to material conditions of detention? Do they have access to the penitentiary file of their client?

Regulations concerning visiting arrangements were already described (INTRODUCTORY PART: CONTEXTUALIZATION, I, 2. Visiting arrangements). There are no other rules regarding that field and lawyers are not able to access themselves to accommodation facilities in case of proceedings related to material conditions of detention. However legal representatives can of course access the penitentiary file of their client based on the administrative law and CEC.

4. ROLE OF NGOS, LEGAL CLINICS AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

4.1 Ability for these organizations to intervene in prison and to provide legal advice

Are human rights NGOs, actors of legal clinics and National Monitoring Bodies (only if providing legal advice) entitled to visit prisons without need of prior authorization? Can they provide legal advice? Can they correspond/meet confidentially with prisoners?

1. NGOs

In Poland, there are only a few human rights non-governmental organizations dealing with cases of prison or pre-trial litigation which, at the same time, are well recognized both at the national level and by detained persons. These are above all: the Helsinki Foundation for Human Rights, the Association for Legal Intervention, Amnesty International, the "Sławek" Foundation. However, their engagement in providing legal advice for persons deprived of liberty depends on many factors, including economic ones.

2. University law clinics

One of the most important actors in the field of providing legal advice to detainees are legal clinics. Currently, there are about 25 university law clinics in Poland where law students provide advice to the clients. Almost 2.000 students, under the supervision of over 350 law professors provide assistance in around 12.000 cases each year. A clinic's work is divided into sections, e.g. sections of criminal law, administrative law, labor law, criminal law. In some universities there are sections dedicated to cases of persons deprived of liberty. Students as a rule receive letters from detainees and prisoners. A significant part of the letters is related to rights of persons deprived of liberty and conditions of the penitentiary facilities. Students' work includes: written opinions, statements, applications, appeals, claims, complaints and interventions. On the ground on individual agreements with administration of prisons students may attend regular duties in prison facilities[48].

3. The Ombudsman and the National Preventive Mechanism

The Ombudsman supervises the freedoms and human and civil rights specified in the Constitution of the Republic of Poland of 2 April 1997 and other normative acts. The Ombudsman acts independently of other state authorities, and reports only to the Sejm (the lower house of the Polish parliament). According to this provision, a person deprived of liberty whose rights are violated may submit a complaint to the Ombudsman. The Ombudsman has special Unit for the Execution of Penalties. However it does not provide legal assistance to the persons deprived of liberty as such.

Furthermore, the National Preventive Mechanism (hereinafter also as: NPM) in Poland, operating as a separate department in the Office of the Ombudsman[49], has the possibility to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. Moreover, NPM submits proposals and observations concerning the existing or draft legislation. NPM in Poland was established on 18 January 2008, when the Undersecretary of State in the Ministry of Justice entrusted the Ombudsman with the function of the National Preventive Mechanism, in the meaning of the Optional Protocol to UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter referred to as the OPCAT). The President of the Republic of Poland ratified the OPCAT on 2 September 2005 pursuant to the Act of 8 July 2005 on the ratification of the OPCAT. The Protocol came into force in Poland on 22 June 2006. Currently

[48] The Polish Legal Clinics Foundation, Fund-raising, available at: http://www.fupp.org.pl/en/legal-clinics/history

[49] The National Preventive Mechanism, national legal grounds, available at: https://www.rpo.gov.pl/en/content/legal-acts-npm

the NPM in Poland consists of 12 persons[50]. NPM as well do not provide legal assistance for the prisoners and detainees.

4.2 Dissemination of legal documents

Can they disseminate legal documents (legal guides, leaflets, brochures) in detention?

The bodies mentioned above are able to distribute guides, leaflets, brochures in the detention facilities. From the practical point of view it is up to the Prison Service and facility authorities weather and how such a materials are distributed. The Ombudsman simply send such a leaflets to the facilities but some of the university clinics have agreement with penitentiary facilities regarding their activities. There are no specific regulations regarding that issue.

4.3 Legal action in court

Do these actors have standing to bring legal action in court (which may compensate for the weakness of the litigation initiated by the detainees themselves)? Can they act on behalf of a prisoner, or represent him? Can they challenge general and impersonal norms?

The complaint mechanisms were described in the previous parts of the report as well as the possibilities of legal actions which may be undertaken by the persons deprived of liberty and others. However to bring legal action in court a detainee, as a rule, has to do it by himself or with the assistant provided by the attorney or legal advisor who can act on his behalf in court.

1. NGOs

Non-governmental organizations may appear in court proceedings in their own interest as parties or participants in proceedings, but they also have the right to participate in proceedings for and in the interests of citizens, which may constitute an important form of social control of common courts' rulings. NGOs in the scope of their statutory tasks are entitled to participate in proceedings if they deal with counteracting discrimination. Organizations in criminal, administrative and administrative courts have similar, although more limited, rights. The detailed rules of such participation of non-governmental organization are set out in the relevant procedures.

1) Criminal procedure

NGOs can only participate in ongoing criminal procedures. One of the principles defined in Article 182 of the Constitution the Constitution of the Republic of Poland of 2 April 1997 is the principle of participation of the social factor in the justice system. This institution is regulated in Article s 90-91 of CCP on granting the social organization the opportunity to delegate its representative to participate in proceedings to protect the public interest or important individual interest, in particular to protect human rights and freedoms. The use of this right allows NGOs not only to provide more effective assistance to those seeking support, but also to control the course of legal proceedings in a certain way. According to Article 90 § 1 of CCP, until the commencement of court proceedings, a representative of a social organization may request participation in the proceeding if there is a need to protect a public interest or an important individual interest covered by statutory tasks of that organization, in particular protection of human rights and freedoms.

[50] The National Preventive Mechanism, team, available at : https://www.rpo.gov.pl/en/content/national-preventive-mechanism-team

2) Civil procedure

When analyzing the NGOs rights under the CoCP, Article 7 of it is significant because it stipulates that non-governmental organizations whose statutory tasks do not consist in running a business activity may, for the protection of citizens' rights, initiate proceedings and take part in pending proceedings. Importantly, it is necessary to obtain the written consent of the interested party or individual. However Article 61of CoCP precisely defines the types of cases in which organization's participation is possible, indicating the matters of which are:

a) alimony,
b) environmental protection,
c) consumer protection,
d) protection of industrial property rights,
e) protection of equality and non-discrimination by unjustified direct or indirect diversification of citizens' rights and obligations.

Apart from the initiation of the proceedings and joining the pending proceedings, organization indicated in Article 61 of CoCP can submit , a relevant view expressed in a form of a resolution or a statement of their duly empowered bodies. This is the entitlement of the organization that does not participate in the case (amicus curiae, i.e. the opinion of a friend of the court). Presenting the view to the court, the organization has the opportunity to provide it with special information based on their knowledge and specific experience.

Thus, NGOs may join a case in civil proceedings of pre-trial detainees or other persons deprived of liberty only on matters specified in the above catalog; in practice this most often occurs in cases where there is anecessity of protection of equality and non-discrimination by unjustified direct or indirect diversification of citizens' rights and obligations.

NGOs have also the option of representing participants of the proceedings under Article 87 § 3 - 6 of CoCP, which stipulates that a representative of an organization may be a representative of a citizen in matters relating to:

a) determination and denial of the child's origin and maintenance claims,
b) related to running a farm,
c) related to the protection of consumer rights,
d) related to the protection of industrial property, plenipotentiary of the creator of the inventive project.

3) Administrative procedure and administrative procedure before the administrative court

The position of a social organization (this is how NGOs are named in the administrative procedure) in administrative proceedings is diverse and quite broad. A social organization can be a party to the administrative proceedings (based on Article s 28 and 29 of the Act of 14 June 1960 the Code of Administrative Procedure, hereinafter: CAP). Moreover Article 31 of CAP provides the right of a social organization to request participation in proceedings or initiate proceedings in cases of other persons. However, this must be justified by its statutory objectives and public interest. The public administration body, considering the request of a social organization as justified, decides to initiate proceedings *ex officio* or to allow the organization to participate in the proceedings. In the event of a negative decision, the social organization has the right to submit an appeal. The social organization participates in the proceedings on the rights of the party. The public administration body should notify the social organization about the proceedings in a case concerning another person, if it considers that it may be interested in participating in the proceedings due to its statutory objectives or public interest.

Pursuant to Article 50 § 1 of the Act of 30 August 2002 on Proceedings before Administrative Courts (hereinafter: LPAC) a social organization has the right to lodge a complaint to the Voivodship

Administrative Court. The Voivodship Administrative Court examining the procedural capacity of a social organization filing a complaint in a case concerning the legal interest of another person is obliged to examine whether admitting it to participate in the proceeding is justified by the public interest and his statutory objectives.

2. The Ombudsman

The Ombudsman may only request the prosecutor to initiate preparatory proceedings in cases of offenses prosecuted *ex officio* (Pursuant to Article 14 (5) of the Act of 15 July 1987 on the Ombudsman). The legislator did not decide whether the prosecutor is bound by the demand of the Ombudsman but in the doctrine dominates the view that such a request does not bind the prosecutor. However the Ombudsman is entitled to appeal against refusal to initiate an investigation (Article 406 § 1 of CCP). Moreover, the Ombudsman may demand the initiation of proceedings in civil cases, as well as take part in any pending proceedings - on the rights of the prosecutor (Article 14 (4) of the Act of 15 July 1987 on the Ombudsman). This also applies to the adhesive process. Based on Article 521 § 1 of CCP, the Ombudsman may also lodge a cassation appeal against any final court decision terminating the proceedings. It should be emphasized that the Ombudsman does not represent citizens in conducting their cases, and therefore does not provide typical attorney services. The Ombudsman takes intervention measures only when the applicant has used the means of action he is entitled to and still believes that his case was settled in violation of rights and freedoms. The Commissioner acts when the particular helplessness of the person requires to assert his rights, when there is a need to resolve a legal issue raising doubts from the point of view of protection of rights and freedoms, and when the matter is a precedent and its resolution will be essential to shape the situation of other citizens[51].

Literature:

- Eichstaedt, K.Z., Kodeks postępowania karnego. Komentarz. Tom I, wyd. II. Wolters Kluwer, 2015
- Helsinki Foundation for Human Rights, Report on the human rights of persons deprived of liberty, 2017
- Helsinki Foundation for Human Rights, The right of access to a lawyer in the light of European law, 2018
- Kładoczny P., Wolny M., Prison conditions in Poland, 2013
- The annual report of the Central Statistical Office, 2017
- The annual report of the Prosecutor General on the prosecution service, 2017
- The annual statistical report of the Central Board of Prison Service, 2017
- The Criminal Law Codification Commission within the Ministry of Justice, Opinion on the Implementation of the Directive 2013/48/EU, 2014
- Sobczak K., The Director of the pre-trial detention facility: A detainee can have a computer and a printer in his cell, Prawo.pl, 2015
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, report on Poland, Strasbourg, 2018
- The First President of the Supreme Court, Remarks about identified irregularities and gaps in the law, 2017
- The Ministry of Justice, a written guidance on the rights and obligations with their translations
- The National Preventive Mechanism, website
- The Ombudsman, Letter to the Minister of Justice on the implementation of Directive 2013/48/EU, 2017

[51] The Ombudsman, Statement regarding his activities in the field of legal proceedings, available at : https://www.rpo.gov.pl/pl/content/czy-rzecznik-praw-obywatelskich-mo%C5%BCe-podejmowa%C4%87-dzia%C5%82ania-w-celu-wznowienia-post%C4%99powania

- The Ombudsman, Report from the activities of the National Preventive Mechanism, 2015
- The Ombudsman, Statement regarding his activities in the field of legal proceedings
- The Ombudsman, Statement regarding the access to the internet in the penitentiary facilities, 2016
- The Ombudsman, Statement regarding the access to the public information in the penitentiary facilities, 2016
- The Ombudsman, Information on the state of observance of the freedoms, human and civil rights as well as the activities of the Ombudsman, 2017
- The Polish Ministry of Justice Annual information about the motions and complains, 2015
- The Prison Service Compendium for foreign nationals on remand, convicted or punished, 2017
- The Prison Service Information about the prison facility in Opole Lubelskie, 2017
- The Prison Service, Statistical report of the Prison Service, 18 May 2018, 2018
- The Prosecutor General, Jurisprudence in cases of abuse of power by the Police and failure to carry out effective criminal proceedings (violation of Article 3 of the Convention), 2015
- The negotiation position of the Republic of Poland, 27 June 2011
- The Ombudsman motion to the Constitutional Tribunal, 14 October 2015
- Helsinki Foundation for Human Rights, Recommendations no. 4/2016, 2016

Legal acts:

- the Act of 13 April 1964 the Civil Code
- the Act of 14 June 1960 the Code of Administrative Procedure
- the Act of 15 July 1987 on the Ombudsman
- the Act of 17 November 1964 the Code of Civil Procedure
- the Act of 18 August 1997 on the employment of persons deprived of liberty
- the Act of 24 August 2001 the Code of Petty Offences
- the Act of 26 May 1982 on the attorneys' profession
- the Act of 30 August 2002 on Proceedings before Administrative Courts
- the Act of 5 August 2015 on free of charge legal aid and legal education
- the Act of 6 July 1982 on legal advisors
- the Act of 6 June 1997 the Code of Criminal Procedure
- the Act of 6 June 1997 the Criminal Executive Code
- the Act of 6 June 1997 the Penal Code
- the Act of 9 April 2010 on Prison Service
- the Constitution of the Republic of Poland of 2 April 1997
- the Regulation of the Minister of Justice of 13 August 2003 on the ways of handling applications, complaints and requests of persons deprived of liberty in in prisons and pre-trial detention centers
- the Regulation of the Minister of Justice of 21 December 2016 on the organizational and procedural rules of the execution of imprisonment
- the Regulation of the Minister of Justice of 22 December 2016 on the organizational and procedural rules of the execution of the pre–trial detention
- the Regulation of the Minister of Justice of 23 June 2015 on administrative activities related to the performance of pre-trial detention and on penalties and coercive measures resulting in deprivation of liberty and documentation of these activities
- the Regulation of the Minister of Justice of 25 November 2009 on the rules to be followed by the relevant authorities when the number of persons detained in prisons and remand centers exceeded on a nationwide scale the overall capacity of such establishments

- the Regulation of the Minister of Justice of 28 December 2016 on the cooperation of entities in the implementation of penalties, penal measures, compensatory measures, safeguards, preventive measures and forfeiture of things, as well as social control over their implementation
- the Regulation of the Minister of Justice of 3 June 2015 on determining the model instruction on rights and obligations of a person detained in the criminal proceeding
- the Regulation of the Minister of Justice of 4 August 2010 on the detailed mode of operation of officers of the Prison Service while performing official duties

Jurisprudence:

The European Court of Human Rights:

- Dzwonkowski v. Poland (application no. 46702/99),
- Kalda v Estonia (application no.17429/10),
- Karbowniczek v. Poland (application no. 22339/08),
- Lewandowski and Lewandowska v Poland (application no. 15562/02),
- Mrozowski v. Poland (application no. 9258/04),
- Orchowski and Sikorski v. Poland (application no. 17885/04)
- Pieniak v. Poland (application no. 19616/04),
- Polanowski v. Poland (application no.16381/05),
- Przemyk v. Poland (application no. 22426/11),
- Szafranski vs. Poland (application no. 17249/12)
- Wasilewska and Kałucka v. Poland (application no. 28975/04),

The Constitutional Tribunal judgement, 23 February 2010, no. P 20/09
The Supreme Court Judgment of 13 September 1964, no. : II PZ 46/64