



COVID 19

CRIMINAL

JUSTICE

CAMPAIGN

POLAND

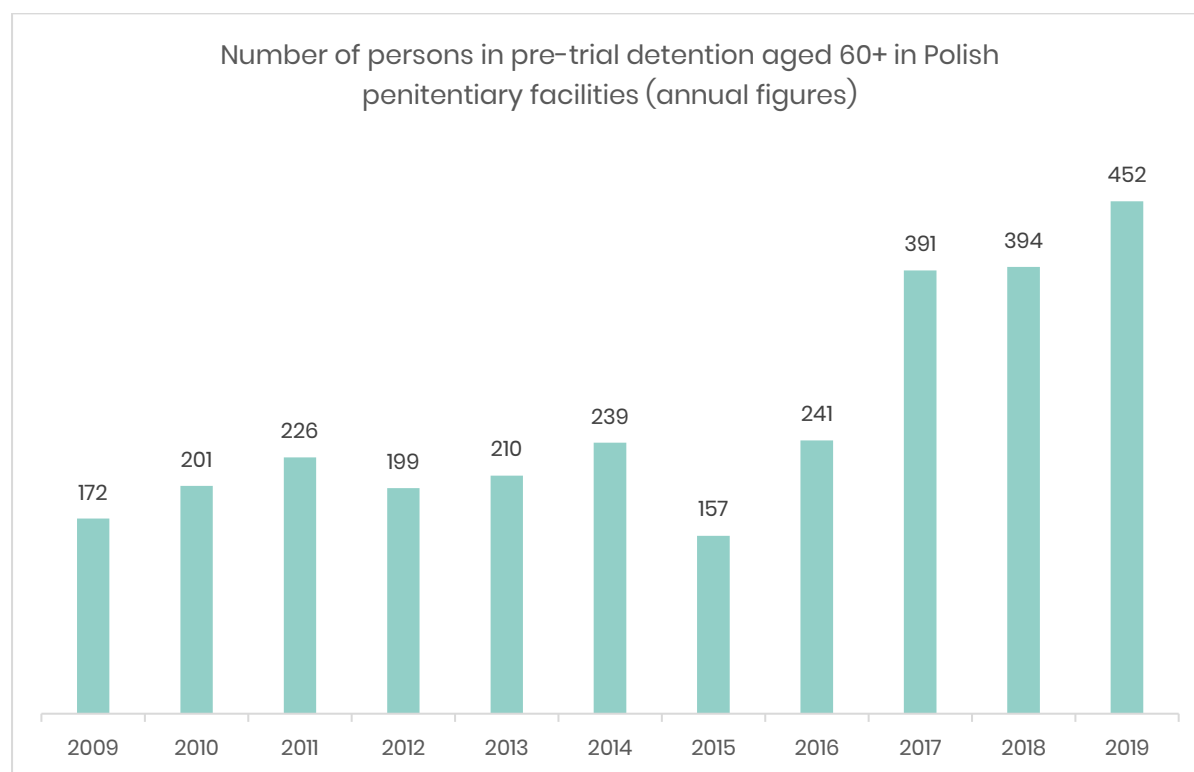
**Impact of the coronavirus pandemic
on the criminal justice system**

2. Situation of persons in pre-trial detention
in Polish penitentiary facilities during the pandemic

Number of persons in pre-trial detention aged over 60 years in Polish penitentiary facilities

The coronavirus mostly affects persons over the age of 60. Statistical data show that in recent years there are increasingly more persons from this age group among the persons in pre-trial detention. On the eve of the pandemic, there were nearly 500 of them in Poland, which accounted for 5% of the persons detained on remand.

Number of persons in pre-trial detention aged 60+ in Polish penitentiary facilities (annual figures)¹



¹ The chart is based on statistical data published by the Prison Service at: <https://www.sw.gov.pl/dzial/statystyka>.

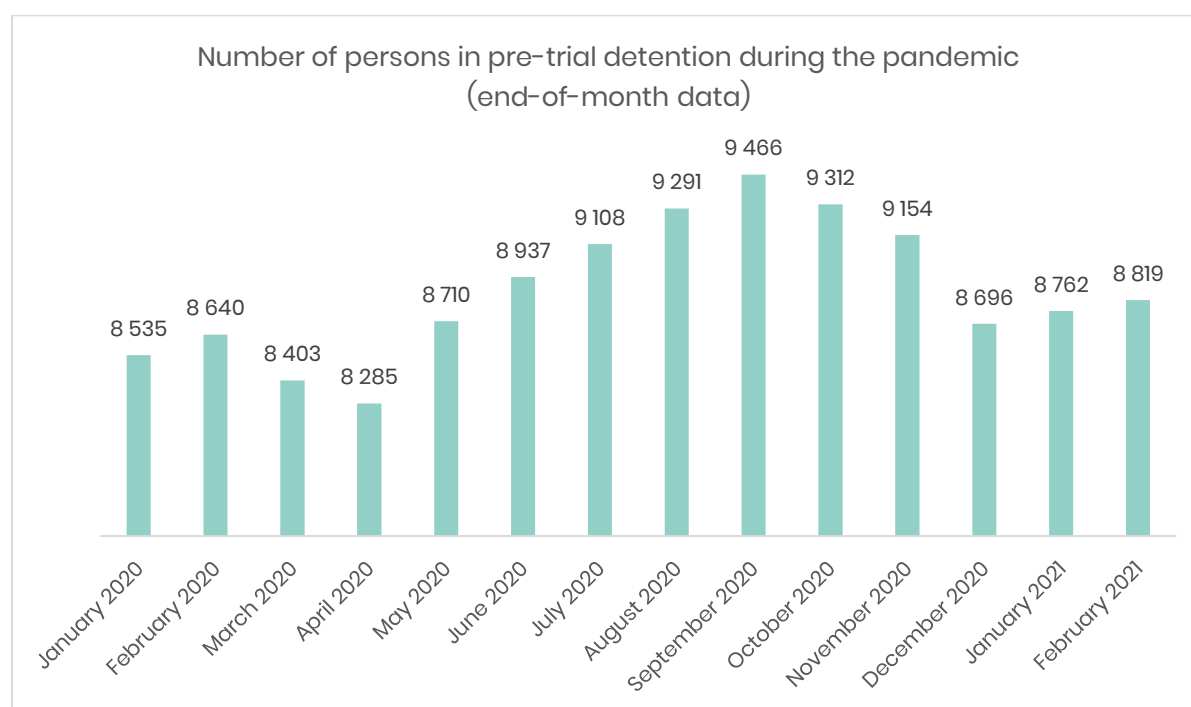
Number of persons in pre-trial detention in 2010–2020

| Year² | Number of persons in pre-trial detention as of 31 December | Population of prisons and remand centres as of 31 December | Percentage of persons in pre-trial detention in the total population of prisons and remand centres |
|-------------------------|---|---|---|
| 2010 | 8,389 | 80,728 | 10.8% |
| 2011 | 8,159 | 81,382 | 10% |
| 2012 | 7,009 | 84,156 | 8.3% |
| 2013 | 6,589 | 78,994 | 8.3% |
| 2014 | 6,238 | 77,371 | 8.1% |
| 2015 | 4,162 | 70,836 | 5.9% |
| 2016 | 5,396 | 71,528 | 7.5% |
| 2017 | 7,239 | 73,822 | 9.8% |
| 2018 | 7,360 | 72,204 | 10.2% |
| 2019 | 8,520 | 74,130 | 11.5% |
| 2020 | 8,692 | 67,894 | 12.8% |

Between 2010 and 2015, the percentage of persons in pre-trial detention in the general population of prisons and remand centres was consistently decreasing, from 10.8% to 5.9%. However, since 2016, this trend has reversed and led to an increase in the remand centres' population by almost 50%. At the end of 2020, the percentage was 12.8%, which over the years 2015–2020 translated to an increase of almost 7%.

² The table is based on statistical data published by the Prison Service at: <https://www.sw.gov.pl/dzial/statystyka>.

Number of persons in pre-trial detention during the pandemic (end-of-month data)³



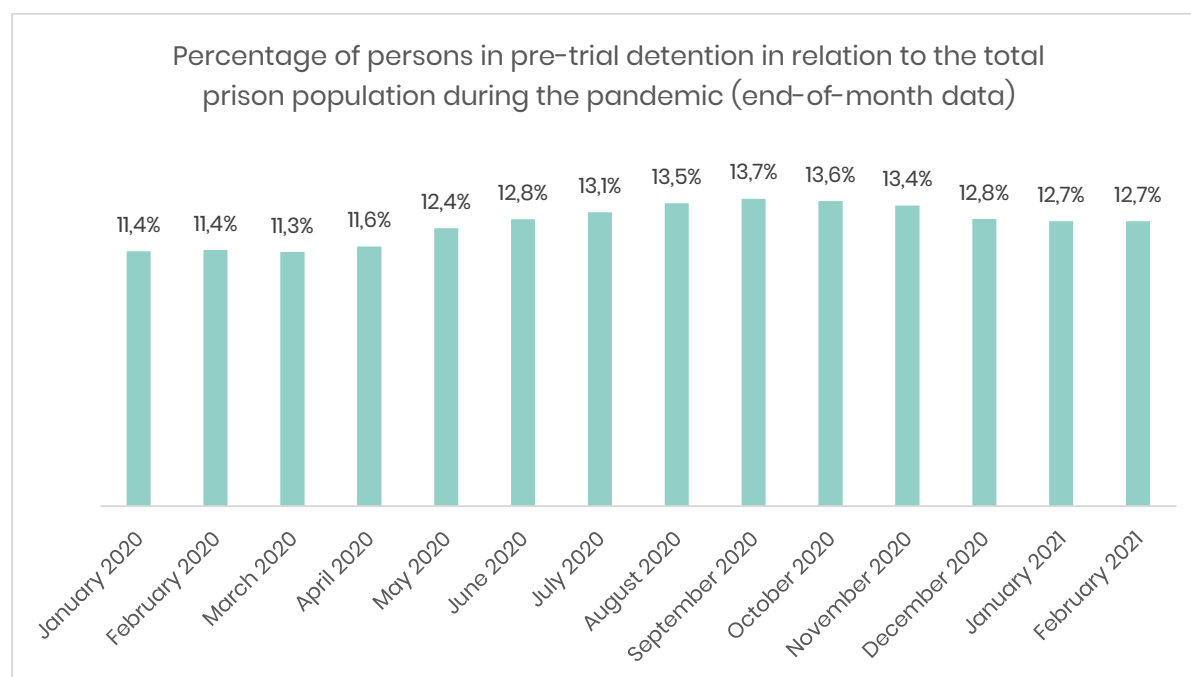
The fluctuations in the size of the remand centres' population were different from those of the prisons' population. Statistical data show no indication that the pandemic has directly influenced the decisions of the courts regarding the application of pre-trial detention. Admittedly, at the outset of the pandemic, between February and April 2020, the number of persons put in pre-trial detention decreased, from 8,640 to 8,285. However, already in May 2020, this figure increased by more than 400, as compared to April. This upward trend had not stopped until September 2020, when 9,466 persons in pre-trial detention were recorded. By December 2020, the figure decreased to 8,692, i.e. by almost 800.⁴ At the same time,

³ The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>. The figures for January 2021, given as of 29 January 2021, were published in a report entitled *Informacja o zaludnieniu jednostek penitencjarnych* (Population of the penitentiary facilities), letter ref. BIS.0335.5.2021.SG. The figures for February 2021, given as of 12 February 2021, were published in a report entitled *Informacja o zaludnieniu jednostek penitencjarnych* (Population of the penitentiary facilities), letter ref. BIS.0335.7.2021.SG.

⁴ HFHR, *Prawa człowieka w dobie pandemii. 10 miesięcy, 10 praw, 10 ograniczeń, 10 rekomendacji na przyszłość...* (Human Rights in the times of a pandemic. 10 months, 10 rights, 10 restrictions, 10 recommendations for the future...), Warszawa 2021, p. 55, <https://www.hfhr.pl/wp-content/uploads/2021/01/Prawa-czlowieka-w-dobie-pandemii.pdf>.

from January 2021, a renewed increase in the number of pre-trial detainees is noticeable.

Percentage of persons in pre-trial detention in relation to the total prison population during the pandemic (end-of-month data)⁵



The above chart shows that during the initial period of the coronavirus pandemic, the percentage of persons in pre-trial detention in the total prison population increased from 11.3% in March 2020 to 13.7% in September 2020 (an increase of almost 2.5%). This situation resulted from a decrease in the number of prisoners held in penitentiary facilities. It is only since October 2020 that we have seen a decrease in the percentage of persons in pre-trial detention in the general population of Polish remand centres and prisons. However, this remains a very high percentage (of around 13%).

⁵ The figures for January 2021 are data as of 29 January 2021. The figures for February 2021 are data as of 12 February 2021.

Pre-trial detention of pandemic rules violators

Notably, the media reported that courts ordered pre-trial detention for violations of isolation rules by persons with confirmed SARS-CoV-2 infections.

Case study

Case 1

A 28-year-old footballer of a local league club played in a match even though he knew he was coronavirus-infected. Police discovered that the player was supposed to be in home isolation, but he had already played one match and was preparing for the next one, despite having obtained another positive coronavirus test on the previous day. The prosecutor's office decided to charge the footballer under Article 165 (1) (1) of the Criminal Code, i.e.: with an offence of posing a threat to the life and health of many people by causing an epidemiological threat, as well as directly exposing many people to a life-threatening disease. This offence is punishable by a prison term of between six months and eight years. After the player testified and pleaded guilty to the charges, the court decided to put him in pre-trial detention for three months.⁶

Case 2

In May 2020, a home quarantined resident of Toruń went shopping on two separate occasions. Shortly afterwards, it turned out that she had tested for the coronavirus, as a result of which 31 persons who she had been in contact with had to be placed

⁶ "Piłkarz usłyszał zarzuty i trafił do aresztu. 'Nie wiedzieliśmy o jego zakażeniu'", eurosport.tvn24.pl, 22 August 2020, accessed on: <https://eurosport.tvn24.pl/pilka-nozna/105/pilkarz-zakazony-koronawirusem-zagrał-w-meczu-usłyszał-zarzuty.1027314.html>.

in mandatory quarantine. The woman explained that she had left the house because she had been treated for depression for a long time and wanted to buy her prescription medicine. There was no one to help her because she lives alone with her elderly, sick husband. The prosecutor's office charged her under Article 165 (1) (1) of the Criminal Code. In May 2020, the court put her in pre-trial detention until September 2020.⁷

HFHR RECOMMENDATIONS

- The current pandemic should provide an opportunity for the Ministry of Justice to expand a list of non-custodial preventive measures. In particular, it is necessary to revisit to the idea of introducing house arrest or electronic monitoring as a substitute for pre-trial detention, which could be used wherever a risk of the suspect escaping is the only threat to the criminal proceedings. However, unlike in an original proposal of the Ministry, this measure, constituting deprivation of liberty, should be applied by a court and not authorities conducting pre-trial proceedings.
- When deciding on pre-trial detention, the courts should pay more attention to the case law of the European Court of Human Rights (including the interpretation of negative grounds for the application of pre-trial detention).

⁷"Kobieta od maja przebywająca w areszcie za złamanie kwarantanny, wychodzi na wolność", pilsatnews.pl, 24 September 2020, available at: <https://www.pilsatnews.pl/wiadomosc/2020-09-24/od-maja-siedziala-w-areszcie-bo-zlamala-kwarantanne-zostala-zwolniona/>.