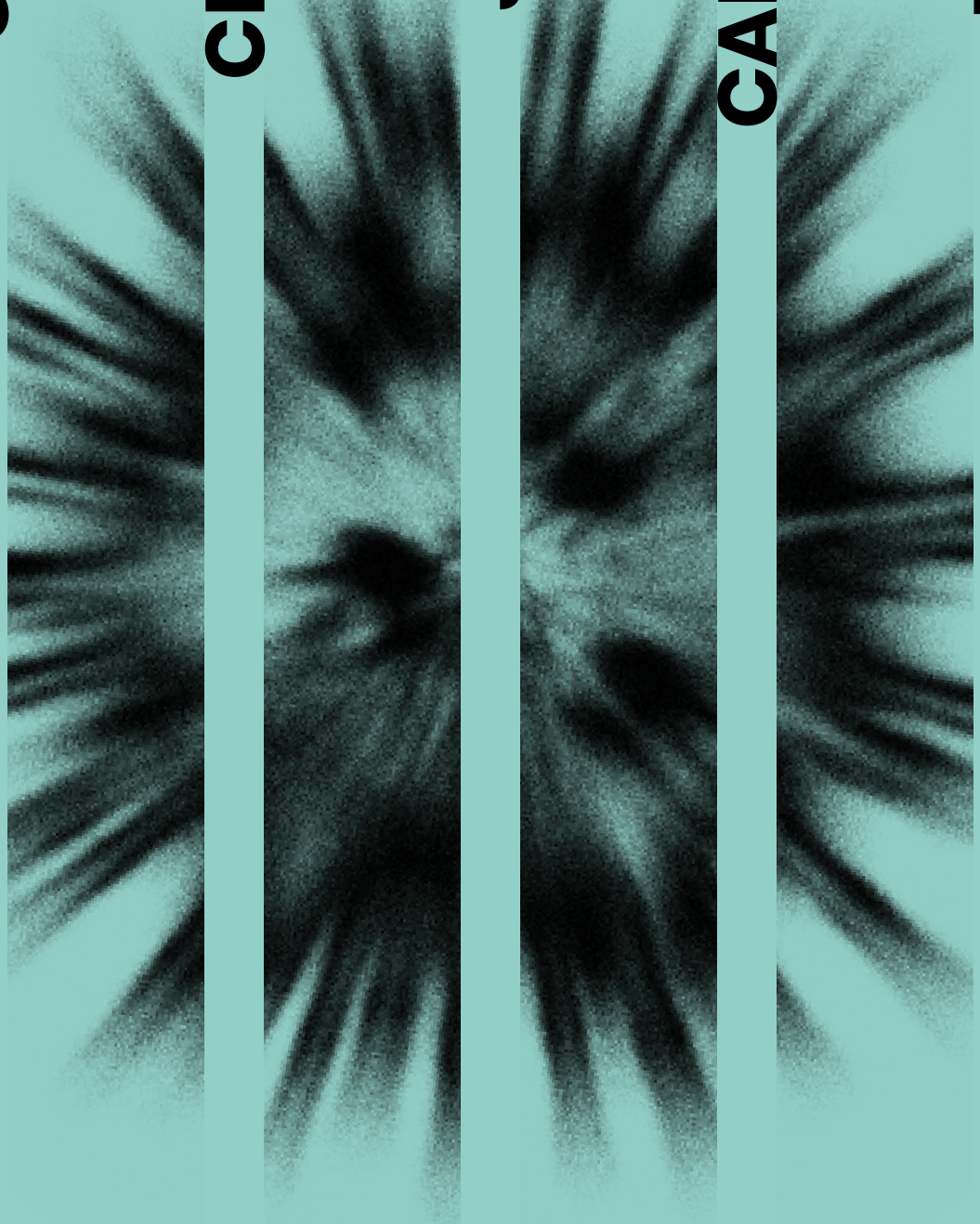
COVID 19 CRIMINAL JUSTICE CAMPAIGN POLAND



Impact of the Coronavirus Pandemic on the Criminal Justice System

4. Access to a Lawyer in Criminal Proceedings in Times of the Pandemic

HELSINKI FOUNDATION FOR HUMAN RIGHTS

The law	**The law currently in force**	In Poland, access to a lawyer is primarily governed by the Law of 6 June 1997 – the Code of Criminal Procedure[1] ("CCP", "Code of Criminal Procedure"). In accordance with Article 82 CCP, an advocate (*adwokat*) or attorney-at-law (*radca prawny*) may act as a defence lawyer (*obrońca*)[2]. The understanding and interpretation of the provisions of the Code are also influenced by international standards. In this context, the EU legislative arrangements are of particular importance. By 27 November 2016, the Member States of the European Union, including Poland, were obliged to implement the provisions of Directive of the European Parliament and of the Council 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty[3] ("Access to a Lawyer Directive"). The Ministry of Justice maintains that Polish law complies with the provisions of the Directive. Accordingly, the Ministry does not plan to amend the laws currently in force. The Ministry also emphasizes that neither the European Commission nor the Ministry of Foreign Affairs, which evaluates the state of implementation of EU laws in the national legal system, has found any irregularities in this respect.[4] According to the HFHR, Polish authorities have not fully implemented the Access to a Lawyer Directive. Three aspects should be particularly highlighted: 1) The absence of access to a lawyer immediately after detention and before the first police interview. 2) Failures to ensure the absolute confidentiality of lawyer-client contacts. 3) No judicial review or legal remedies in the event of a failure to ensure the right of access to a lawyer.

[1] The most recent consolidated text of the Code is published in the Journal of Laws of 2020, item 30, as amended.

[2] For brevity, whenever the Polish text refers to an adwokat or a radca prawny as a legal representative of a person in criminal proceedings, the two terms will be translated jointly as "lawyer"

[3] EU OJ L 2013, 294, p. 1.

[4] HFHR, *HFPC pyta o wdrożenie dyrektywy o dostępie do adwokata. Ministerstwo Sprawiedliwości: polskie prawo jest zgodne z przepisami dyrektywy*, accessed on: 3.02.2020, https://www.hfhr.pl/hfpc-pyta-o-wdrozenie-dyrektywy-o-dostepie-do-adwokata-ministerstwo-sprawiedliwosci-polskie-prawo-jest-zgodne-z-przepisami-dyrektywy/.

		At the outset, let us refer to the wording of Article 245 § 1 CCP: "If an arrestee so requests, they should promptly be enabled to contact a lawyer in a way that is feasible at a given time, and to directly consult a lawyer…". However, Polish law does not specify in the form of this contact. Furthermore, the law does not provide for any legislative measures that could be applied where the arrestee wishes to contact a lawyer but does not have his contact details or has not retained a lawyer to handle their case. To date, no duty lawyer rota has been compiled in Poland, which would enable an arrestee to select a lawyer they would like to contact. Practical doubts also arise from the fact that the Code of Criminal Procedure does not specify the time frames for granting access to a lawyer. The CCP refers only to the notion of "prompt-ness", which seems to be too general and vague in the context of the discussed problem. Polish law provides for the possibility of reserving the presence of law enforcement officers during a client-lawyer conference based on imprecise grounds, as well as authorises the monitoring of correspondence. Under Article 245 § 1 CCP, representatives of law enforcement authorities may be present, in particularly justified cases, during the contact of an arrested person with a lawyer. Moreover, pursuant to Article 73 § 4 CCP, the prosecutor may stipulate, upon showing the grounds referred to in §§ 2 and 3 of Article 73, to be allowed to monitor a suspect's correspondence with the defence lawyer and be present (or have their authorised representative present) during the suspect's conferences with their defence lawyer for 14 days from the date of pre-trial detention. At the same time, one should refer to Article 217b § 1a of the Act of 6 June 1997 – Code of Execution of Criminal Sentences ("CECS") . The said provision, in a fashion similar to Article 73 § 3 CCP, authorises the monitoring of correspondence between a person put in pre-trial detention ("detained on remand") and their defence lawyer. Article 217b § 1a CECS authorises the authority in whose custody a person detained on remand remains ("detaining authority") to monitor that person's correspondence even after the expiry of the period specified in Article 73 § 4 CCP. A prosecutor's order issued under Article 217b §1a CECS cannot be challenged by means of an interlocutory appeal lodged to a court. Moreover, Article 217c §§ 1-3 CECS, which governs the use of the tele-phone by

		persons detained on remand, provides no remedy whatsoever against a failure to provide a detainee with an opportunity to communicate with a defence lawyer on the phone. By way of a side note, a defence lawyer must obtain the consent of the detaining authority for contacting the detained person on the phone. Under Article 217c § 4 CECS, the prosecutor's order denying access to a phone for a person detained on remand during pre-trial proceedings may be challenged by an interlocutory appeal lodged to a higher-ranking prosecutor. If such an order has already been issued after the filing of the indictment, the interlocutory appeal is considered by the court which has ordered the pre-trial detention of the person concerned. According to the HFHR, the above provisions contradict the standards stemming from Recital 33 and Article 4 of the Access to a Lawyer Directive. At the same time, attention should be drawn to the rules on the presence of a lawyer in criminal proceedings. The Code of Criminal Procedure provides that a defence lawyer must only be appointed in the situations described in Article 79 CCP (if the suspect is a minor, a person who is mute, deaf, blind, or where there are doubts as to the sanity of the perpetrator or where the perpetrator is mentally disabled) and Article 80 CCP (if the suspect is accused of a felony and the case is to be heard before a regional court). In other cases, the Code does not lay down an obligation to have a defence lawyer present during steps carried out during pre-trial or court proceedings. An example of such a situation is a hearing conducted under Article 301 CCP, which will not be suspended if a defence lawyer fails to appear. Furthermore, pursuant to Article 378a § 1 CCP which entered into force on 5 October 2019, the court may conduct evidentiary proceedings in the absence of a defence lawyer if the de-fence lawyer has been properly notified of the date of the trial, also in the situation where the lawyer has justified the absence. In such an event, the defence lawyer is notified of a new trial date (Article 378a § 2 CCP) and has the right to submit, no later than on the next trial date, a request to supplement the evidence that was taken in their absence (Article 378a § 3 CCP). A failure to timely submit an appropriate request results in the expiry of that right (Article 378a § 4 CCP). In the request to supplement the evidence, the defence lawyer must

		demonstrate that the manner in which that evidence was taken in the defence lawyer's absence infringed procedural guarantees, in particular the right to a defence (Article 378a § 5 CCP). If the court grants the request, additional evidence will be taken only to the extent of the demonstrated infringements of procedural guarantees, in particular the right to a de-fence, have been indicated (art. 378a § 6 CCP). The above rule should be considered incompatible with Articles 8 (1) and 8 (2) of the Access to a Lawyer Directive. It is also worth noting that Polish law does not provide for any means of judicial review of failures to ensure the right of access to a lawyer. Also, the national law does not establish an "effective remedy" within the meaning of Article 12 (1) of the Access to a Lawyer Directive. The above-described law, applicable on the eve of the pandemic, had an impact on the assessment of the changes introduced during the pandemic and the challenges faced by lawyers and parties to criminal proceedings.
	Changes introduced in response to the COVID-19 pandemic	Article 39 of the Act of 4 June 2020 on the interest relief available for business operators that have obtained bank credit to ensure their financial liquidity in the wake of the Covid-19 pandemic[5] ("Relief Act"), effective from 24 June 2020, amended the Code of Criminal Procedure. The Interest Relief Act introduced the possibility of organizing pre-trial detention hearings and criminal trials over a video link. One of the amendments involved adding the following § 3e to Article 250 CCP: *"If a defence lawyer attends a hearing being present elsewhere than in the place where the accused is present, the court may order, at the request of the accused or the accused's defence lawyer, a recess of a pre-defined duration and allow telephone contact between the defence lawyer and the accused, unless granting the request may disrupt the proper conduct of the hearing or may lead to a situation in which the pre-trial detention request cannot be considered before the expiry of the permissible period of the accused's initial detention*." In addition, § 7 was added to Article 374 CCP, reading as follows: *"If a defence lawyer attends*

[5] The Journal of Laws of 2020, item 1086.

		a trial being present elsewhere than in the place where the accused is present, the court may order, at the request of the accused or the accused's defence lawyer, a recess of a pre-defined duration so that the trial may continue on the same day to allow telephone contact between the defence lawyer and the accused, unless the submission of the request clearly does not serve the purpose of exercising the right to a defence, and in particular is aimed at disrupting or unreasonably prolonging the trial." First of all, it should be pointed out that Article 250 § 3e CCP and Article 374 § 7 CCP provide no guarantee whatsoever that suspects or accused persons deprived of their liberty are able to have direct contact with their lawyer in situations where a pre-trial detention hearing or trial is conducted by means of technical devices allowing remote participation in the hearing or trial with simultaneous direct transmission of video and audio (a "remote hearing") and the suspect or accused person deprived of their liberty and their defence lawyer are present at different physical locations. Such contact may be provided at the request of the suspect or accused or the defence lawyer, but only over the phone. The court may deny the relevant request in a situation in which granting the request: a) may disrupt the proper conduct of the hearing or may lead to a situation in which the pre-trial detention request cannot be considered before the expiry of the permissible period of the accused's initial detention (Article 250 § 3e CCP); b) clearly does not serve the purpose of exercising the right to a defence, and, in particular, is aimed at disrupting or unreasonably prolonging the trial (Article 374 § 7 CCP). Notably, the above-mentioned grounds are too general and leave extensive discretion to the court, especially in the context of an assessment of whether the grant of the request serves the purpose of exercising the right to a defence. At the same time, according to the HFHR, the court's decision to allow contact is discretionary. It is also worth noting that, in accordance with Article 250 § 3d CCP, the court may require a defence lawyer to attend a hearing in the court building due to the necessity to avoid the risk of untimely examination of the application for pre-trial detention before the expiry of the

		permissible period of the accused's initial detention. This means that the court is authorised to make a discretionary decision as to where a defence lawyer will be present, as well as a discretionary decision to restrict the access of a person detained on remand to a lawyer. Consequently, the court is not obliged to take into account the accused person's opinion. Thus, if the defence lawyer is not present at the location where the suspect (or accused person) is present, the latter is unable to make direct contact with the lawyer at any chosen time, in particular before the questioning starts, which is contrary to Article 3 (2) (a) of the Access to a Lawyer Directive. Subsequent amendments do not in any way guarantee the confidentiality of communication between the suspect or the accused person and their defence lawyer. If a pre-trial detention hearing is held remotely and the suspect remains in prison or detention centre, under Article 250 § 3c CCP, a court registrar *(referendarz sądowy)* or a judicial clerk *(asystent sędziego)* or a Prison Service officer attends the hearing at the suspect's location. Pursuant to Article 374 § 5 CCP, a court registrar or a judicial clerk participates in the trial at the accused's location. The above means that in a situation referred to in art. 250 §3e CCP or art. 374 § 7 CCP which involves a telephone call from a suspect or an accused person deprived of liberty to their defence lawyer, there are no guarantees of confidentiality of such communication as the other persons present (a court registrar, judicial clerk or Prison Service officers) are under no obligation to leave the room for the call's duration. At the same time, the above provisions fail to establish any safeguards that the telephone conversation is secure. Consequently, the national legislation in question contravenes Article 4 of the Access to a Lawyer Directive. It should further be noted that Article 8 (2) of the Access to a Lawyer Directive provides that temporary derogations from its application may be authorised only by a decision taken on a case-by-case basis, either by a judicial authority or by another competent authority provided that the decision can be submitted to judicial review. Restrictions on suspects' or accused persons' access to a defence lawyer imposed under Article 250 § 3e CCP and Article 374 § 7 CCP are contrary to Article 8 of the Access to a Lawyer Directive because the

		court's decision refusing such access is subject to no judicial review. Moreover, the amendments introduced by the Relief Act to the Code of Criminal Procedure do not provide for any remedy within the meaning of Article 12 of the Access to a Lawyer Directive against a restriction of access to a defence lawyer. Notably, although the amendment to the Code of Criminal Procedure was introduced by a law related to the state of pandemic, the changes are not temporary – they have been made permanent. No provision of the Relief Act limits the temporal scope of application of the said sections of the CCP or provides that they would expire as soon as the state of pandemic emergency or the state of pandemic is lifted in Poland. At the same time, the introduction of such changes under the pretence of combating the effects of the SARS-CoV-2 coronavirus outbreak in Poland seems a rather questionable move. The pandemic threat has created many challenges for the judiciary but in no case does it justify depriving subjects of criminal proceedings of their rights.
Practice	**Media accounts**	Several spontaneous assemblies have been organised in Poland during the pandemic. The arrests made during those assemblies and the conduct of police officers towards participants in the assemblies once again showed how deficient Polish laws on access to a lawyer are. **The assembly of 7 August 2020** A notable example of these deficiencies was the events surrounding the arrest of the activist Margot on 7 August 2020. On that day, spontaneous assemblies were convened in several locations, including the Krakowskie Przedmieście Street in Warsaw. The police decided to detain some of the assembly participants, however, according to information provided by the National Mechanism for the Prevention of Torture ("NMPT") established at the Commissioner for Human Rights, some of the bystanders walking along the above street were also arrested. In total, the police arrested 48 persons.[6] According to the NMPT report of 7 September 2020, the

[6] *Nie tylko poniżające traktowanie… Końcowy raport KMPT o zatrzymaniach 7 sierpnia w Warszawie. Są konkretne zalecenia dla MSWiA i policji*, a press release published at the website of the Commissioner for Human Rights on 9 September 2020, https://www.rpo.gov.pl/pl/content/koncowy-raport-kmpt-o-zatrzymaniach-8-sierpnia-w-warszawie.

		arrestees faced major problems concerning their access to a lawyer at the initial stages of detention, which testified to the shortcomings of the national laws governing access to a lawyer.[7] The following findings were made in the report: *"Persons interviewed by the NMPT admitted that only the arrestees who asked for a lawyer, giving the police the lawyer's name and phone number, were allowed to confer with the lawyer in person. Some of the reviewed detention reports contained an annotation that a lawyer was present during procedural steps; these arrestees concerned confirmed this in their interviews with NMPT monitors. However, such instances were rare.* A *significant number of the NMPT interviewees have never been arrested before; many of them had never dealt with lawyers before*."[8] Consequently, according to the NMPT, "*...had it not been for the dedication of lawyers who came to police stations on their own initiative and assisted all arrestees, the vast majority of these people would not have been able to benefit from legal aid*."[9] The report also noted that several arrestees had learnt about the possibility of receiving legal aid from lawyers gathered near the police stations after they signed detention reports and had been interviewed by the police: in consequence, the detention reports of these persons include information that they have not asked for a lawyer.[10] The NMPT report also reveals that a man, detained at 10:10 pm on 7 August 2020, was unable to contact a lawyer until the afternoon of the following day (i.e. more than 10 hours later).[11] Moreover, several NMPT interviewees pointed out that: *"... by the time they were approached by* NMPT *monitors, and despite having been detained on the previous day at approximately 9-11 pm) they had been unable to contact a lawyer and had not known how to obtain legal aid (they did not know the contact details of any lawyer when the arrest report was drawn up). Their arrest reports stated that they had not requested a lawyer."*[12] The report also revealed that „*... some of the arrestees had a phone number written on their*

[7] National Mechanism for the Prevention of Torture, *Report of the National Mechanism for the Prevention of Torture from ad hoc visits to detention and sobering up facilities located at police units subordinate to the Warsaw Police Department*, ref. KMP.570.5.2020.MK, 7 September 2020, https://www.rpo.gov.pl/sites/default/files/Raport%20%20KMPT%20z%20wizytacji%20jednostek%20policiyjnych%20po%20zatrzymań%20w%20Warszawie%207.08.2020%2C%20%207.09.2020.pdf, p. 5.

[8] *Ibid*., p. 6.

[9] *Ibid*., p. 6.

[10] *Ibid*., p. 6.

[11] *Ibid*, p. 6.

[12] *Ibid*, pp. 6-7.

skin, which was to be used to obtain legal aid. This number (but without the owner's personal data) was reportedly passed around during the protest. The reviewed arrest reports show that police officers called the number but the call was not answered or returned. On the other hand, one arrestee asked for a lawyer, giving the lawyer's name and surname without the telephone number. Although that person's arrest report makes no mention as to whether they were provided with access to the lawyer, the arrestee confirmed that ultimately he had been allowed to confer with the lawyer in person."[13] The NMPT report also shows that arrestees' communication with their lawyers was not confidential as it occurred within sight and hearing of police officers. The arrestees conferred with their lawyers in corridors or staff rooms. A defence lawyer who talked with their client at a body search room with open doors reportedly objected to that treatment and asked for having the objection recorded in the arrest report. However, no such objection appeared in the arrest report, as the client and his lawyer conferred after the former signed the arrest report.[14] At the same time, the NMPT report shows that NMPT monitors learned directly from the lawyers that they faced many difficulties in obtaining access to clients: for example, the lawyers needed to spend a significant amount of time waiting for the possibility to confer with arrestees who already have been transferred to police holding cells.[15]

Protests after the Constitutional Court's abortion ruling

Another wave of protests was sparked by the Constitutional Court's ruling of 22 October 2020 (case no. K 1/20) in which the Court struck down one of the grounds for legal abortion. The protests, organised by the National Women's Strike, have continued to this day. Also during these protests, which take place all over the country, arrests have been made. According to the Szpila Collective, in the period between 22 October 2020 and 29 January 2021, the Police made 150 arrests in the Warsaw metropolitan area. In consequence, eighty-one persons were placed in police holding cells, 62 individuals were transferred to police stations and charged, while seven, kept for several

[13] *Ibid.*, p. 7.
[14] *Ibid.*, p. 8.
[15] *Ibid.*, p. 9.

		hours in police cars (or brought to police stations), were not charged.[16] The National Mechanism for the Prevention of Torture has prepared another report, which discussed, among other things, the situation of persons arrested between 23 October 2020 and 13 December 2020.[17] According to the report shows, "*The persons interviewed by NMPT monitors above all noted that, in contrast to the situation in August 2020, in most cases, arrestees received access to a lawyer even if a detainee did not know the lawyer's name but had the number of the "anti-repression line", which the protesters passed around. Nevertheless, some of the arrestees pointed to problems in obtaining access to legal aid.*"[18] The report also indicates that an arrestee brought to a police station was informed by a police officer that access to a lawyer is only provided to persons who had previously granted a power of attorney to that lawyer. However, a lawyer ultimately became involved in the proceedings after a close relative of the arrestee learned about the location of the place of their detention.[19] In addition, the following situation was described by NMPT monitors in the report: *"... the right of access to legal aid was not respected. ... Later, she was reportedly informed that she had the right to contact only a lawyer whom she had previously authorised to conduct her defence. The arrestee demanded that a lawyer whom she personally knew was notified of her arrest, but the lawyer did not answer the phone. At that time, the officer reportedly commented that the arrestee 'has had her chance' and said that 'there will be no lawyer' unless the lawyer calls back." Eventually, the lawyer called back but was most likely unable to provide assistance because she lived in another region of Poland. Another lawyer, notified by third parties, tried to contact the arrestee. According to the arrestee's defence lawyer, he was denied contact with the client. The lawyer said that in the evening, at around 9 pm, he appeared at the police station asking to be allowed to speak with the arrestee and submitting a written*

[16] Szpila Collective ,*Raport (Anty)Represyjny – 100 dni protestu*, 3 February 2021, https://www.facebook.com/kolektywszpila/posts/136721888271686.

[17] National Mechanism for the Prevention of Torture, *Report of the National Mechanism for the Prevention of Torture from ad hoc visits to police stations and detention and sobering up facilities located in units subordinate to the Warsaw Police Department and the Provincial Police Department of Radom*, ref. KMP.570.11.2020.MZ, 11 January 2021, https://www.rpo.gov.pl/sites/default/files/Raport%20KMPT%20z%20wizytacje%20pomieszcze%C5%84%20policiyjnych%20po%20demonstracji%20zwi%C4%85zanych%20z%20wyrokiem%20TK%20-%2011.01.2021.pdf.

[18] *Ibid.*, p. 16.

[19] *Ibid.*, p. 17.

		application for admission to all procedural steps involving the arrestee. He was told that this was not possible at the time and that all steps had already been completed. However, the arrest report reads that it was not compiled until 9:10 pm, while, as indicated by the arrestee, the steps continued long after the arrest report was drafted. According to the register of the police holding cell, the arrestee was placed there only at 01:55 am. In view of the above, the information provided to the lawyer by police officers must be regarded as untrue. When interviewed by NMPT monitors, the arrestee also said she had not been told that her lawyer was trying to contact her." [20] Another arrestee brought to a police station was reportedly told by a police officer: *"You want a lawyer? Do you think this is an American film?*" Ultimately, the lawyer took part in the procedural steps because he came to the police station but had not been notified by the officers of the client's arrest.[21] At the same time, the report refers to the situation of a person who: *"... claimed during an interview with NMPT monitors that despite having asked to talk to a lawyer, they were deprived of this right. According to this person's arrest report, they have not asked for a lawyer. However, the content of the arrest report is contradicted by CCTV recordings, which show the arrestee repeatedly asking for access to a legal representative.*" [22] The authors of the report argue that the around-the-clock provision of legal aid by lawyers is their own "grassroots initiative" and its organisational effectiveness results from the commitment of the lawyers involved. However, according to the authors, the exercise of a fundamental right of arrested persons cannot depend solely on grassroots initiatives and the goodwill of lawyers. Moreover, according to the NMPT, the use of the "anti-repression line" is the most striking example of the lack of systemic solutions to ensure arrestees' access to a lawyer.[23] The report itself also mentions that: *"... the paper and electronic versions of a duty lawyers rota are kept at duty officers desks in police stations. The following notice was displayed in the duty officer's room at a visited police holding cell: 'If you need to contact a lawyer, please be advised that links to the current lawyer rotas on official websites have been created in Mozilla Firefox and*

[20] *Ibid.*, p. 17.
[21] *Ibid.*, p. 17.
[22] *Ibid.*, pp. 17-18.
[23] *Ibid.*, p. 18.

		Chrome web browsers, as recommended by the NMPT.' In turn, in another police holding cell, a 'Warsaw lawyers rota' was displayed on a corridor's wall. The list contained lawyers' names, telephone numbers and information about their practice areas and English skills."[24] However, according to the NMPT, the list will only be relevant if its existence is made known to the arrestees. For instance, as noted in the NMPT report, an arrestee knew the lawyer's name but did not receive legal aid because she did not remember the lawyer's phone number and was not informed that the lawyer rota existed.[25] Again, the same report drew attention to the problem of confidentiality of the lawyer-client relationship. According to the report, an arrestee conferred with a lawyer at a police station immediately after being brought there, outdoors and in the presence of two officers. *"Due to the difficulties, the lawyer explained to the arrestee in what procedural steps he would participate. Another client-lawyer conference took place after the drawing up of the arrest report and before the report was signed. Another arrested person conferred with a lawyer in police officers' room, in their presence.*" [26] Referring to the protests organised as part of the National Women's Strike, Karolina Gierdal, a lawyer working with the Szpila Collective, emphasises the issue of arrestees being transferred outside Warsaw. She made the following observations in an interview with the Commissioner for Human Rights: "*Our lawyers believe that their work makes a difference and that an arrested person should have a lawyer. They just drove there, worked for free, pro bono (for the public good).*" Ms Gierdal noted that *"people were first at a police station in Warsaw city centre, at Żytnia Street, but when the lawyers showed up, the arrestees were moved from Warsaw to Grodzisk* [Mazowiecki]. *But the lawyers went there, too. The police processed the arrestees in Grodzisk on the next day and the police officers from the Żytnia station needed to make a 40 kilometre drive there for the second time.*"[27]

[24] *Ibid.*, p. 19.
[25] *Ibid.*, pp. 19-20.
[26] *Ibid.*, p. 20.
[27] *RPO rozmawia z mec. Karoliną Gierdal #PorozmawiajMY*, 19 January 2021, https://www.rpo.gov.pl/pl/content/rpo-rozmawia-z-mec-karolin%C4%85-gierdal-porozmawiajmy?fbclid=IwAR2Hs8G7POgtvW8TFntkKAI_mfWZ3cIhnIDl8UhZZv8UbkejSTf0bMK9m54.

HFHR actions in the discussed area	**General actions**	1) In February 2020, the HFHR complained to the European Commission against Poland's failure to implement the Access to a Lawyer Directive in the national legal system. In its complaint, the Foundation alleged that Poland had failed to grant arrested persons with access to a lawyer without undue delay after such persons are deprived of liberty and before they are interviewed for the first time, as well as that Poland failed to ensure the absolute confidentiality of lawyer-client communication and an effective remedy in cases where access to a lawyer was denied. At the same time, in June 2020, the HFHR amended the above complaint, alleging that provisions of the Relief Act infringe the Access to a Lawyer Directive. The amendment indicates that the way in which remote pre-trial detention hearings and trials are organised directly contravenes the Access to a Lawyer Directive and restricts, *inter alia*, suspects' opportunity to access a lawyer before being questioned by the court. Furthermore, the HFHR argues that the most recent law fails to ensure the confidentiality of defence lawyers' communication with their clients.[28] However, the HFPC was informed by the European Commission that a procedure is underway to examine the "timely and correct transposition" of the Access to a Lawyer Directive, which is why the European Commission has decided to close the case arising from the HFHR's complaint.[29] 2) It should also be noted that the HFHR prepared an opinion on the proposal of the Relief Act (Senate Paper No. 142), pointing out, among other things, that the introduction of remote pre-trial detention hearings and trials may hinder, and sometimes even prevent contact with a lawyer (for example, due to a technical failure).[30]

[28] HFHR, *Dostęp do adwokata niezgodny ze standardami unijnymi – skarga HFPC do Komisji Europejskiej i jej aktualizacja w związku z Tarczą 4.0*, https://www.hfhr.pl/dostep-do-adwokata-niezgodny-ze-standardami-unijnymi-skarga-hfpc-do-komisji-europejskiej-i-jej-aktualizacja-w-zwiazku-z-tarcza-4-0/.

[29] Communication of the European Commission, 8 June 2020, Ref. Ares (2020)2943910.

[30] Opinion of the HFHR of 14 June 2020 on the Act of 4 June 2020 on the interest relief available for business operators that have obtained bank credit to ensure their financial liquidity in the wake of the Covid-19 pandemic (Senate Paper No. 142), ref.: 2020/MPL-17, http://www.hfhr.pl/wp-content/uploads/2020/06/druk-senacki-nr-142-uwagi-HFC.pdf.

	Actions taken in individual cases	1) On 17 August 2020, the HFHR sent an intervention letter to the Chief Commissioner of the Police regarding the events that took place on 7 August 2020 at Krakowskie Przedmieście Street in Warsaw related to the arrest of the activist Margot. In the letter, the HFHR noted, among other things, that arrestees should have the right to the effective participation of a lawyer during the interview, to see a lawyer in private and to communicate with a lawyer in confidence. As pointed out by the HFHR, all the above guarantees are based on the European Convention on Human Rights, the case-law of the European Court of Human Rights and the Access to a Lawyer Directive.[31]

[31] HFHR's letter of 17 August 2020 to the Chief Commissioner of the Warsaw Police, ref.: 844/2020/HFPC, https://www.hfhr.pl/wp-content/uploads/2020/08/3601_001.pdf.

Proposed changes (or objectives of our actions)	**Related to the law**	1) The Code of Criminal Procedure should explicitly specify the right of arrestees to see a lawyer in private. 2) A document informing about the right to a lawyer should be written in plain and comprehensible language, as is the case with the simplified notice of victims' and suspects' rights. Furthermore, police officers should always make sure that the notice of rights has been understood; otherwise, they should explain it verbally to the person who is subject to procedural steps. 3) A waiver of the right to a lawyer must be thoroughly recorded and be voluntary and explicit. The waiver should be recorded in a written report describing its circumstances. Police officers should use plain and comprehensible language to inform the person concerned about the consequences of the waiver and the possibility of retracting the waiver at any subsequent stage of the proceedings. 4) An interlocutory appeal against a denial of access to a lawyer – any situation in which a person subject to procedural steps is denied access to a lawyer should be recorded in a written report. A denial of access to a lawyer should be subject to judicial review. 5) The state must ensure that the participants in criminal proceedings have an effective remedy against violations of their right of access to a lawyer. Such a remedy may take the form of, e.g., a rule that evidence obtained in violation of the right to a lawyer is inadmissible.

	Related to practices of national authorities	1) The SARS-CoV-2 coronavirus pandemic cannot be used by national authorities to impede contact with a lawyer. 2) Lawyers' rotas available at each police station – everyone should be given the opportunity to contact a lawyer of their choice before the first police interview or immediately after the arrest. A rota of lawyers who may be instructed as "lawyers of choice" should be kept at police stations and made available to all interested persons. 3) Law enforcement authorities should immediately notify lawyers about the arrest of a person who wished to use their assistance in pending proceedings. 4) Under Article 245 § 1 CCP, law enforcement authorities should ensure that an arrested person may immediately contact a lawyer. 5) Law enforcement authorities, specifically police stations, should provide separate rooms to lawyers who wish to confer with arrestees. 6) A situation in which an arrestee does not request access to a lawyer should always be duly recorded; such a record should describe the circumstances in which the person concerned does not request a lawyer.