3. INSTRUCTION CONCERNING THE RIGHTS OF A SUSPECT IN PENAL PROCEEDINGS

*Source: Regulation of the Minister of Justice of 14 September 2020 (item 1618)*

As a suspect in penal proceedings, you have the following rights:

1. Explanations

* During the questioning, you may provide explanations or refuse to provide explanations, or you may refuse to answer individual questions without having to state the reasons for the refusal (Art. 175 § 1)[[1]](#footnote-1).
* During the questioning, at your request or at the request of your lawyer, you may also provide explanations in writing, but you may not contact other people at this time. ­ For important reasons, the person questioning you may refuse to grant consent for the submission of explanations in this form (Art. 176 § 1 and 2).
* If you are present during the procedure of admission of evidence, you may provide explanations as to each piece of evidence (Art. 175 § 2).
  1. Legal aid
* You have a right to be assisted by a defence counsel appointed by you. You may not have more than three defence counsels of your choice at a time (Art. 77).
* If you are under pre-trial detention, you may communicate with the defence counsel in the absence of other people or by correspondence. In particularly justified cases, if this is required by the interest of the preliminary proceedings, the prosecutor may decide that he or a person authorized by him are present during such communication. For the same reasons, the prosecutor may also decide to control your correspondence with the defence counsel. Such control may not continue or be imposed after 14 days from the date of pre-trial detention (Art. 73).
* If you prove that you may not afford a defence counsel (you are not able to bear the costs of a defence counsel of your choice without prejudice to your or your family’s necessary support and maintenance), the court may, at your request, appoint a public defence counsel, also in order to perform a specific procedural act (Art. 78).
* Your request for the appointment of a public defence counsel in court proceedings may be submitted within 7 days of the date of serving you a copy of the bill of indictment. ­ If you submit your request after this date or if you do not attach to it the relevant evidence to prove that you are unable to bear the costs of defence, this may result in the application being considered after the scheduled date of the hearing or court session (Art. 338b § 1 and 2)­.
* A request for appointment of a public defence counsel after the first date of the hearing or court session should be submitted by you at a time to ensure that the consideration thereof does not result in a postponement of the next date of the hearing or court session (Art. 338b § 3).­
* You may demand that the appointed defence counsel participates in your questioning. However, the failure of the defence counsel to appear shall not obstruct the questioning (Art. 301).
* In the event of a conviction or conditional discontinuation of penal proceedings, you may be charged with the costs of defence by a public defence counsel (Art. 627 and Art. 629).

1. Justifying absences

In case you have been summoned to appear in person, justification of your absence

due to sickness is possible only after presentation of a certificate issued by a court doctor.

Another certificate or sick leave shall not be sufficient (Art. 117 § 2a).

1. Using the services of an interpreter

* If you do not have a sufficient knowledge of the Polish language, you have the right to free services of an interpreter. At your request or at the request of your defence counsel, the interpreter will be asked to contact the defence counsel in connection with the procedure you are entitled to participate in (Art. 72 § 1 and 2).
* If you do not have the sufficient knowledge of the Polish language, you will receive a decision on presentation, supplementation and amendment to the charges, a bill of indictment and decisions which are subject to appeal or decisions terminating the proceedings, together with their translations. If you give your consent, the person conducting the proceedings may only announce the translated decision ending the proceedings, if such decision is not subject to appeal (Art. 72 § 3).

1. Information about the content of charges

* You have the right to be informed about the acts you are suspected of: about the content of charges, their supplements and amendments thereto, and about the legal qualification of the offence you are accused of (Art. 313 § 1, Art. 314, Art. 325g § 2 and Art. 308).
* You have the right to demand, until the receipt of a notice on a date set for reviewing the materials of the proceedings, to be provided with oral announcement of the grounds for the charges, as well as preparation of a written justification thereof within 14 days of the date of their announcement (Art. 313 § 3).

1. Motions concerning evidence and participation in procedures

* You may submit a request for actions to be taken in the pending proceedings, e.g. for hearing a witness, obtaining a document, admitting an expert’s opinion (Art. 315 § 1).
* Your application shall not be admitted if (Art. 170 § 1):
* acceptance of evidence is inadmissible,
* the circumstances to be proven are irrelevant for the outcome of the case or is already proven according to your claim,
* the evidence is not useful to establish the given circumstances,
* the evidence may not be taken,
* the application for the performance of a certain procedure is obviously aimed at the extension of the proceedings or is files after the deadline set by the person conducting the proceedings, as notified to you.­
* The person conducting the proceedings may not refuse you and your defence counsel to participate in the procedure, if you have filed an application for the conduct thereof (Art. 315 § 2).­
* You may request admission to participate in other activities of the proceedings. The prosecutor may deny you the right to participate in such activities in particularly justified cases due to the important interest of the proceedings, and, in the case you are deprived of liberty, if escorting you to participate in such activities would cause serious difficulties (Art. 317).
* If a given activity of the proceeding may not be repeated, you and your defence counsel may take part therein, unless there is a risk of loss or distortion of evidence in the event of delay (Art. 316 § 1).­
* If there is a concern that a witness will not be able to be heard at the hearing, you may request the hearing of a witness by the court or you may apply to the prosecutor to have the witness heard as part of this procedure (Art. 316 § 3).
* If evidence from an expert’s opinion is admitted in the proceedings, you and your defence counsel may take part in the hearing of the expert and review his/her opinion if it is submitted in writing (Art. 318).

1. Access to the files of the case

* You may request access to the files of the case, as well as to request their extracts and copies to be made, also after the completion of the preliminary proceedings (investigation or inquiry).­ In the preliminary proceedings, you may be refused access to the files due to important interests of the state or the interest of the proceedings.­ The files may be made available to you in an electronic form (Art. 156).
* If, before the case is referred to the court, a motion is filed for the application or extension of your pre-trial detention, both you and your defence counsel shall be provided with the file of the case in the part that contains the evidence attached to the motion. If there is a justified concern that the life, health or freedom of a witness or his/her closest relative may be at risk, the testimony of such witness shall not be made available to you (Art. 156 § 5a).

1. Final review of the materials of the proceedings

* You may request a final review of the materials of the proceedings before the closure thereof. Your defence counsel may participate in this activity (Art. 321 § 1 and 3).
* Within 3 days of the date of review of the materials of the proceedings, you may submit a request to supplement the proceedings (Art. 321 § 5).
* Before the final review of the materials of the proceedings, you shall have the right to analyse the files which may also be made available to you in an electronic form (Art. 321 § 1).

1. Mediation proceedings

* You may request the case to be referred to mediation proceedings in order to reconcile with the aggrieved party and possibly agree with him/her the method of redressing the damage (Art. 23a § 1). Participation in the mediation proceedings is voluntary. The positive results of the conducted mediation shall be taken into account by the court in the process of imposing the sentence (Art. 53 § 3 of the Act of 6 June 1997 - the Penal Code (Journal of Laws of 2020, items 1444 and 1517)) shall not apply.
* Mediation proceedings are conducted by an appointed mediator who shall be obliged to keep the course of the mediation proceedings in confidentiality (Art. 178a).

1. Negotiations regarding the sentence

* If the lower limit of the sentence of imprisonment for the offence you are charged with is less than 3 years, before the bill of indictment is filed with the court, you may negotiate with the prosecutor the text of the motion for the issue of a sentence and imposition by the court of the agreed penalties or other measures without examining the evidence. In such case, you have the right to review the files of the case (Art. 335 § 1 and 3). The prosecutor may also attach such a motion to the bill of indictment (Art. 335 § 2). The motion may be granted by the court, unless the aggrieved party objects thereto (Art. 343 § 2).
* If you are charged with an offence punishable by a penalty not exceeding 15 years of imprisonment, you may also submit such motion yourself, before you are served with a notice of the date of the trial (Art. 338a). The court may grant such motion only if the prosecutor and the aggrieved party do not object thereto (Art. 343a § 2).
* If you are charged with an offence punishable by a penalty not exceeding 15 years of imprisonment, you may also submit such motion at the hearing, but only until the end of the first questioning of all defendants. If you do not have a defence counsel of your choice, the court may, upon your request, appoint an *ex officio* defence counsel for you (Art. 387 § 1). The court may grant such motion only if the prosecutor and the aggrieved party do not object thereto (Art. 387 § 2).
* If you submit such motions, then allegations of an error in factual findings and gross disproportion of the penalty, penal measure, vindictive damages or unjust application of or a failure to apply a precautionary measure, forfeiture or other measure related to the content of the concluded agreement may not form the basis for an appeal (Art. 447 § 5).

1. Participation in accelerated proceedings

* If, as part of accelerated proceedings, you participate in procedural activities by means of a videoconference, the Police shall serve you with a copy of the application for the consideration of the case and shall provide you with copies of documents of the evidence material submitted to the court (Art. 517b § 2a and Art. 517e § 1a).
* If you take part in the proceedings by means of a videoconference, then your defence counsel, if appointed, and an interpreter, if you do not speak Polish or if you are deaf or dumb and it is not sufficient to communicate in writing, as well as if it is necessary to translate into Polish a letter drawn up in a foreign language or vice versa, or to read the content of the admitted evidence, may accompany you in the place of your stay (Art. 517b § 2c and 2d).
* If you take part in the procedure by means of a videoconference, you may submit motions and statements and perform procedural activities only orally for the record. You will be informed by the court about the content of all pleadings which have been added to the files of the case from the time of submission of the application for the consideration of the case to the court. At your request, the court shall read such pleadings to you. Pleadings which may not be submitted to the court may be read during the hearing (Art. 517ea § 1 and 2).
* In accelerated proceedings, you may submit a written application for the preparation and service of a written justification of the judgement within 3 days of the date of announcement of the judgement or the delivery thereof (if the act stipulates an option of its delivery). You may also submit such application orally for the record of a given hearing or session (Art. 517h § 1).
* You have 7 days from the date of delivery of the judgement with its justification to appeal against the same, if so required (Art. 517h § 3).

If you are a suspect in penal proceedings, you have the following obligations:

You are under no obligation to prove your innocence or to provide evidence against yourself (Art. 74 § 1). However, you are obliged to subject yourself to:

1. visual inspection of your body and examination which is not connected with the violation of the integrity of your body, taking your fingerprints, photographs and showing you to others (Art. 74 § 2 point 1);
2. psychological and psychiatric examination, as well as tests connected with the performance of procedures on your body, with the exception of surgical procedures, provided that this does not pose a risk to your health, if such tests or examination are required (especially blood, hair or body secretions, e.g. saliva); tests should be carried out by an authorized health care professional (Art. 74 § 2 point 2);
3. collection of a smear from the cheek mucosa by a police officer or another authorized person, if this is required and does not pose a risk to your health (Art. 74 § 2 point 3).

Your failure to fulfil these obligations may lead to your arrest and forced restitution, as well as result in the use of physical force or technical incapacitation measures against you to the required extent (Art. 74 § 3 a).

You shall also be obliged to:

* 1. report on every summons and notify the authority conducting the proceedings of any change of place of your domicile or stay if it lasts longer than 7 days, including also a change due to deprivation of liberty in another case (pre-trial detention, imprisonment for the purpose of serving the penalty), as well as report any change of your contact details (telephone number, e-mail address, fax); if you fail to report to summons, you may be detained and force may be used to escort you (Art. 75 § 1 and 2);
  2. indicate the addressee (i.e. the address of a person or institution) for the service of notice in Poland or in another Member State of the European Union if you do not reside in Poland or in another Member State of the European Union; otherwise, the letter sent to the last known address in Poland or in another Member State of the European Union shall be deemed as effectively served (Art. 138);
  3. provide a new address if you have changed your place of domicile or stay, including due to deprivation of liberty in another case (pre-trial detention, imprisonment in order to serve a sentence), or if you have changed or stopped using a P.O. box address; if you fail to do so, the notice sent to the current address (including the address of the indicated P.O. box) shall be deemed as effectively served (Art. 139).

If the notice may not be served to the addressee in person, to an adult member of the household or to the e-mail address indicated by the suspect, the letter sent via the postal operator shall be left at the nearest post office of this operator, or, if sent in another way, at the nearest Police station or at the relevant municipal office. Information about leaving the letter in this way shall be placed by the delivering person in the mailbox or on the door of the addressee’s apartment or in another visible place, indicating where and when the letter has been left and that it should be collected within 7 days; in the event of ineffective expiry of this period, the attempt of notification shall be repeated. Once such notification is provided twice, the letter shall be deemed as effectively delivered (Art. 133 § 2).

Questioning by the consul

If you reside abroad, you may be questioned by a consul. The interview/questioning may only take place if you give your consent thereto. In this case, the provisions governing the obligation to appear and the consequences related thereto shall not apply (Art. 26 (1) (2) of the Act of 25 June 2015 - the Consular Law (Journal of Laws of 2020, items 195 and 1086)) shall not apply.

Remember that if the presented instruction seems unclear or incomplete to you, you may request the person conducting the proceedings to provide you with additional, detailed information about your rights and obligations.

You shall be required to submit a statement confirming the receipt of this instruction to the files of the case.

1. Unless another legal basis has been indicated, the provisions specified in brackets mean the relevant Articles of the Act of 6 June 1997 - the Code of Penal Procedure (Journal of Laws of 2020, items 30, 413, 568, 1086 and 1458). [↑](#footnote-ref-1)