

## Rights of defendants in criminal proceedings - Poland



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These factsheets explain what happens when a person is suspected of or accused of a crime which is dealt with by a trial in court. For information on minor offences like road traffic offences, which are usually dealt with by a fixed penalty like a fine, go to [Factsheet 5](#).

If you are the victim of a crime, you can find full information about your rights [here](#).

### Summary of the criminal process

The following is a summary of the regular stages in the criminal process

The criminal process in Poland is almost entirely governed by a single Act, namely the [Code of Criminal Procedure](#), 1997.

### Principles of the criminal process

**The principle of truth** – all findings/ decisions of the law enforcement authorities and courts must be based on verified facts.

**Directness, oral examination and openness to the public** – trials and hearings are oral and public, in principle, the court listens to and considers the evidence directly.

**Professionalism** – cases are decided by professional judges; lay judges also sit with the judge in some cases.

**Presumption of innocence** – a defendant is deemed innocent until proven guilty by the court in a final and valid judgement.

**Proof beyond reasonable doubt** – any doubts about the law or the facts which cannot be eliminated must be decided in favour of the accused.

**Right to a defence** – the accused has the right to a defence and to be assisted by a professional lawyer throughout the criminal process.

**Discretionary evaluation of evidence** – authorities conducting the proceedings deliver every decision on the basis of all evidential material collected and in reliance upon their lifetime professional experience, knowledge and rules of reasoning.

**Impartiality and independence** – courts are independent from the executive and judges are impartial (they are subjected only to the Constitution and Laws).

**Respect for the law** – any conduct which amounts to a prohibited act is subject to prosecution.

### Stages of the process

#### Pre-trial proceedings (investigation or inquiry)

This stage is supervised by a Prosecutor's Office, under the control of the Prosecutor General, who is independent. At this stage, basic information about the suspect and the offence which has allegedly been committed is collected. This stage ends either by stopping the proceedings or presentation of the indictment before the court.

#### Court proceedings

This stage is conducted by the independent court consisting of impartial judges on the basis of an indictment. The court hears evidence; delivers decisions and judgements; the court proceedings are conducted at two levels (instances).

#### Enforcement proceedings

Enforcement proceedings are conducted on the basis of the [Criminal Enforcement Code 1997](#).

Details about all of these stages in the process and about your rights can be found in the factsheets. This information is not a substitute for legal advice and is intended to be for guidance only.

## Role of the European Commission

Please note that the European Commission has no role in criminal proceedings in Member States and cannot assist you if you have a complaint. Information is provided in these factsheets about how to complain and to whom.

### Click on the links below to find the information that you need

[1 – Getting legal advice](#)

[2 – My rights during the investigation of a crime](#)

- Analysis of the case
- Presentation of charges
- Preventative measures
- Gathering evidence
- Closing the pre-trial proceedings

[3 – My rights during the trial](#)

[4 – My rights after the trial](#)

[5 – Road traffic offences](#)

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## 1 - Getting legal advice



Please note that the original language version of this page [pl](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

Getting independent legal advice is very important when you are involved in some way with the criminal process. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. They also tell you what a lawyer will do for you. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay.

## Finding a lawyer

If you are a suspect or have been accused formally of a crime, you have the right to be represented by a professional defence counsel (in Poland an advocate) from the moment of the charges are made until the conclusion of the proceedings.

### Conditional release

If you are not under temporary arrest, and you are the suspect or the accused, you may receive legal assistance in the following way: choose a lawyer yourself and appoint them to defend you throughout the proceedings. Your defence lawyer may access the files relating to the pre-trial proceedings.

In this case, generally a contract will be drawn up between you and the lawyer. The lawyer's fees will be agreed between you and must be paid by you.

You may have maximum of 3 lawyers acting at the same time during the proceedings.

If you cannot afford to pay the costs of the lawyer without that affecting your ability to support yourself and your family, you can apply to the President of the court for a lawyer to be appointed for you.

You have to prove your financial circumstances in the motion by attaching relevant documents (e.g. certificate of earnings, certificate about your family and financial status, certificate from an Employment Office or Social Care Centre, tax return for previous years or a certificate of non-taxable income).

The motion should include:

- your name, surname and address;
- Designation of the president of the court where the motion is filed;
- Designation of the case in question (e.g. case file number, against whom, merits);
- Motion for the court to appoint lawyer or representative;
- A justification of your financial situation and that you would not be able to pay the costs of legal assistance without affecting your ability to support yourself and your family;
- Date and your signature.

The motion must be filed directly with the court deciding the case or sent to the court's address by registered mail. If the case is still pending before the prosecutor, the motion should be filed via the appropriate prosecutor's office.

### **Temporary arrest**

If you are under temporary arrest, you can choose a lawyer in the same way as set out above.

However, you have the right to communicate with your defence counsel in private or by mail. In exceptional cases, within 14 days from the date of temporary arrest, the prosecutor may reserve the right to their presence or order that correspondence be reviewed.

During the proceedings, the defence counsel has the duty to take all the steps necessary for the proceedings, except where the activity has to be performed by you personally (e.g. making explanatory statements). Your lawyer must act only in your interests.

If you are under temporary arrest, your lawyer may have access to the files relating to the preparatory proceedings.

### **Paying for a lawyer**

If you are acquitted, the costs of the defence lawyer appointed by the court are covered by the State but the costs of a lawyer chosen by you must be paid by you. If you are convicted, the court may order that you pay the costs of the proceedings.

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## **2 - My rights during investigation of a crime and before the case goes to court**



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**What is the aim of preparatory proceedings in a criminal case?**

The preparatory proceedings are conducted in order to:

- Decide whether a crime has been committed;
- Establish who committed the crime and take the steps necessary to prevent the person from going into hiding or interfering with the proceedings;
- Collect information about the suspect and their environment;
- Explain precisely the circumstances of the case, including identifying the victims and the extent of the damage and injury;
- Collect, secure and preserve any evidence so that the court can give its judgment as soon as possible (preferably at the first hearing);
- Explain what circumstances have contributed to the commission of the offence.

### **What are the various types of preparatory proceedings?**

The preparatory proceedings may be conducted either as inquiry or investigation.

**An inquiry** – in the case of less serious offences – is conducted by the Police and supervised by the prosecutor. It should be concluded within two months. The prosecutor may extend it to three months and in specific cases for a specified additional period. However each time the length of the extension must be stated. The inquiry is a less formal form of preparatory proceedings.

**An investigation** – in the case of serious offences – is conducted by the prosecutor but it may also be entrusted in whole or in part to the Police. It has to be finished within three months but may be extended for one year and in more complex cases for even longer. Again, the length of each extension must be clearly stated.

### **What are the stages of preparatory criminal proceedings?**

#### **Who conducts the preparatory proceedings?**

Preparatory proceedings are generally conducted by the [Prosecutor's Office](#), supervised by the independent Prosecutor General. They can also be conducted by the Police and other uniformed services such as the military police.

#### **Detailed stages of the pre-trial proceedings**

For more information about your rights during the various stages of the proceedings, click on the links below:

- [Analysis of the case \(1\)](#)
- [Presentation of charges \(2\)](#)
- [Preventative measures \(3\)](#)
- [Gathering evidence \(4\)](#)
- [Closing the pre-trial proceedings \(5\)](#)

#### **Analysis of the case - examination of whether a crime has been committed (1)**

The first stage is a decision to begin the investigation or inquiry. It is issued when the authorities have good reason to suspect that an offence has been committed.

If the authorities are not yet convinced that an offence has in fact been committed, they have to verify the facts. They have 30 days to do this. After that they have to issue a decision to institute or to refuse to institute preparatory proceedings.

In urgent cases they may start to collect evidence even before the decision to begin the proceedings is made, in order to save the evidence from destruction or disappearance. They may also interrogate a suspected person. In that case a decision to present charges to the suspect or to refuse to institute the proceedings must be made within 5 days.

#### **Will I be asked for fingerprints, samples of my DNA (e.g. hair, saliva), or other bodily fluids?**

You are obliged to undergo examinations which do not harm your life or health. In particular, you may be fingerprinted, photographed, etc.

Samples of blood or other body fluids may be taken only if the process of taking them is not dangerous to your life or health. The samples must be taken by a certified healthcare professional.

If you refuse to undergo these procedures voluntarily, force may be used to take the samples.

### **Can there be a body search?**

A body search is allowed if there is a suspicion that you are in possession of objects which could be used as evidence in the case. However, the search should be conducted by a person of the same sex as you.

### **Can my home, business premises, car etc be searched?**

Yes, your home, business premises and other places may be searched if there are grounds to believe that there are objects there which might be used as evidence; or that suspects may be found there. The search is conducted by the prosecutor or by the Police. The person conducting the search should present you with the decision authorising it, unless it is an extremely urgent situation.

In exceptional situations, a search of premises may be conducted at night (between 10 p.m. and 6 a.m.).

Before the search begins, you should be asked to hand over the objects which the police are looking for.

You have the right to be present during the search.

Where the search is conducted without a decision authorising it from the court or the prosecutor, you may ask that the search decision should be confirmed by the relevant authorities. Such confirmation should be made within 7 days and you must be notified of the decision. Otherwise, all objects which have been seized must be returned to you.

### **Presentation of charges (2)**

The second stage begins with the presentation of the charges to a suspected person. It takes place when the authorities have good reason to suspect that a particular person has committed the crime under investigation. From that moment the suspect has specific rights and obligations.

The authorities draw up a decision to present the charges and must announce them to you without delay. After this, they proceed with the interrogation (unless the suspect is hiding or has left the country).

If an inquiry rather than an investigation is underway, there is no obligation to draw up a decision to present the charges unless you are under temporary arrest. You may be informed of the charges against you orally and be interrogated immediately. You become a suspect from the moment the interrogation begins.

### **Will an interpreter be provided if I don't speak the language?**

If you don't speak Polish, you have the right to the services of an interpreter free of charge. You will also receive translations of the decisions to present, supplement or change the charges, the indictment and any decision which can be appealed or which concludes the proceedings.

If you do not wish to appeal against the final decision and it has been explained to you by the interpreter, you may agree that no written translation is necessary. The interpreter will be present during the interrogation and also while evidence is being taken.

### **At what stage will I be able to speak to a lawyer?**

You have the right to contact a lawyer from the moment the charges are presented to you.

If you are conditionally released, you may have unrestricted contact with your lawyer.

If you are under temporary arrest, you have the right to communicate with your lawyer in private, or by mail.

In exceptional circumstances, and only within 14 days from the date of temporary arrest, the prosecutor may reserve the right to be present or order that correspondence be reviewed.

### **Must I have a lawyer? Can I choose my lawyer?**

You are not required to have a lawyer.

If you are a minor, deaf, mute, blind or there are reasonable doubts as to your sanity, the court may decide that you must have a lawyer. The accused must have a counsel also when the court deems it -necessary owing to circumstances hampering the defence

If you don't choose a lawyer, one will be appointed for you. You may ask that a lawyer be appointed for you if you can show that you cannot afford to pay the costs of the defence without affecting your ability to support yourself and your family.

### **Will I be asked for information? Should I provide information?**

You will probably be asked to reveal your personal details, and afterwards you will be asked questions concerning the details of the case.

You may however refuse to answer any question or even refuse to make any explanatory statements without giving any reasons. You must be advised of these rights.

### **What happens if I say something which is bad for my case?**

No-one is allowed to force you to provide evidence against yourself. However if you choose to reveal facts which might be bad for your case, they will be taken into consideration by the court, just like any other evidence.

### **Decision on imposing preventive measures (3)**

The prosecutor may make a decision to impose certain preventive measures, aimed at ensuring that the proceedings can be conducted effectively.

In Polish criminal procedure they are:

- **Financial guarantee** – this consists of depositing a certain amount of money or securities or establishing a mortgage. If you interfere with the investigation you may forfeit the financial guarantee that you have given;
- **Social guarantee** - your employer or the management of a school, university, or social organization that you are connected with may guarantee that you will appear whenever summoned and will not interfere with the course of the proceedings;
- **Police supervision** – you may be required to report to the Police at a particular time or to inform the Police of any changes in your whereabouts;
- **Suspension of business activities, ban on pursuing a particular occupation, ban on driving etc.;**
- **Prohibition against leaving the country** – in connection with this, your passport or any other document allowing you to go abroad may be seized;
- **Temporary arrest.**

### **Will I be held in custody or released?**

The prosecutor may ask the court to put you under temporary arrest. This might happen if it is highly likely that you have committed an offence and that you might flee or go into hiding, or where there is a risk that you might try to persuade other people, (e.g. the victim) to make a false statement.

This measure may also be imposed if you are charged with committing an offence which is subject to a severe penalty.

However the court will not put you under temporary arrest if you are charged with an offence subject to a penalty of less than one year in prison unless you have been caught red-handed.

The temporary arrest will be revoked if the reason for its imposition ceases to exist. This also applies to any other preventative measures.

In principle temporary arrest lasts 3 months, but may be prolonged in exceptional circumstances for the duration of the entire preparatory proceedings (no longer than 2 years up to the day the trial is concluded in the court of first instance).

An appeal court can agree to extend the arrest further, if there are significant obstacles to concluding the proceedings (e.g. evidence has to be taken abroad).

### **What rights/obligations apply?**

If you are under temporary arrest you have the right to file an appeal.

While you are in custody, you may also file motions asking to be released from the arrest, if the reasons for imposing it are no longer valid.

A person close to you must be informed about the fact that you have been arrested.

If you have sole responsibility for the care of a child or a disabled person, the court must inform the relevant social service about the need to provide care for those people in your absence.

The court will also take action to protect your property while you are in custody, e.g. by making sure your home is secure. While you are in custody, you continue to have the right to contact your lawyer.

### **Can I contact a family member or friend?**

If you are conditionally released the contact may be unlimited.

If you are under temporary arrest, you need the consent of the prosecutor to have such contact.

### **Can I see a doctor if I need one?**

While you are under temporary arrest you may have access to medical services.

Initially, medical care will be provided in the medical centre of the place where you are being held in custody.

If your health condition is serious and complicated, the prosecutor may decide that you should be examined at a public hospital.

### **Can I contact my Embassy if I am from another country?**

Yes, you have the right to do so.

## **Gathering evidence (4)**

During this stage of the proceedings information about the alleged offence is gathered.

The Code provides for various ways that evidence can be gathered. These include: witness statements, statements made by the accused, expert witnesses, confrontation, visual inspection of the crime scene or objects or people, post-mortem examination, experiment or reconstruction, interviewing members of the local community, examination of the detainee, seizure of objects, search of premises, interception of calls.

### **I am from another country. Do I have to be present during the investigation?**

You have to appear whenever summoned by the authority which is conducting the pre-trial proceedings.

Unfortunately, the [Code of Criminal Procedure](#) does not provide for participation in the proceedings by video link.

However you may file a motion for interrogation by means of a process known as 'legal assistance'. In this case, the responsibility for gathering certain evidence (examination, inspection, interrogation etc.) can be transferred to the local Police or Prosecutor's Office in your home Member State.

### **What kind of evidence can I produce on my own behalf?**

You may file motions asking that certain evidence should be obtained, and request the performance of certain activities by the authority conducting the proceedings.

### **Under what conditions can I introduce such evidence?**

You have to file a motion in writing or orally which will be included in the record of the interrogation (e.g. motion to obtain a statement from a witness to prove that you were abroad at the time the offence was committed).

### **Can I be sent back to my home country?**

This can only happen if your home country requests it.

### **May I remain silent during the interrogation?**

You may refuse to provide any statements and just remain silent. No one may force you to incriminate yourself. However, you have the right to make statements about every aspect of the case, e.g. evidence taken in your presence.

### **What are the consequences if I don't tell the truth during the trial?**

There are no negative consequences if you do not tell the truth. As a defendant, you are not obliged to tell the truth. You may not however incriminate other people without good reason.

### **May I leave the county during the proceedings?**

You may leave the country if you are not subject to Police surveillance and are not prohibited from doing so.

You are however obliged to inform the authority conducting the proceedings about any change in your place of residence lasting longer than 7 days. If you break the prohibition or fail to fulfil your obligations, the prosecutor may request the regional court to issue a [European Arrest Warrant](#) or apply other measures, e.g. request your interrogation under international legal assistance.

### **Can I plead guilty to some or all of the charges before the trial?**

Yes, you may plead guilty to some or all of the charges against you.

Formally you may do so at any point from the moment the charges are presented during your interrogation as a suspect until the trial is concluded.

### **What will happen then?**

Pleading guilty does not automatically bring the proceedings to an end because the authority conducting the pre-trial proceedings or the court if the indictment has already been filed, may consider whether the guilty plea might lead to a circumvention of the law, e.g. protect another person or conceal someone else's crime.

If you plead guilty, this may mean that you receive a less severe sentence.

### **Can the charges be changed before the trial?**

The charges may be changed if the description of the offence changes during the proceedings.

The modification may consist of changing the legal classification of the offence to one carrying a higher penalty.

### **Can new charges be added? In what circumstances**

Where new evidence is obtained you may be charged with new offences which were not covered by the initial charge document.

You have to be informed in writing about the modification of the charges, whether this is by changing the charges or by adding new ones.

For information about changing the charges during court proceedings, see [Factsheet 3](#).

### **Can I be charged with an offence which I have already been charged with in another Member State?**

The fact that a decision has been issued abroad is not a bar to instituting or conducting criminal proceedings concerning the same offence before the Polish court. However if a legally valid decision of another court or another foreign authority has been made in relation to the same offence, the case cannot be heard again.

### **Closing the preparatory proceedings (5)**

When the authorities are satisfied that they have clarified and explained all the circumstances in the case and gathered all necessary evidence they issue a decision to close the investigation (such a decision is not required in an inquiry) and:

- Submit an indictment to the court, or
- issue a decision to discontinue the pre-trial proceedings, or
- refer the case to the court with a motion that the proceedings should be discontinued and security measures should be imposed, if they recognize that the suspect committed the crime while suffering from mental incapacity.

### **Will I get information about the witnesses against me?**

Yes, in principle a list of witnesses is attached to the indictment and must be sent to you.

You have the right to call further witnesses.

Information which identifies the witnesses will not be given to you if that might put their lives or health in danger.

### **Will I get information about other evidence against me?**

Yes, you have the right to familiarise yourself with materials gathered during the pre-trial proceedings, before they come to an end.

### **Will information be requested about my criminal record?**

See [Factsheet 3](#).

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### 3 - Rights during the trial



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#### **Where will the trial be held?**

The trial will be held in the court which has jurisdiction over the district where the crime was committed.

#### **Which court will hear the case?**

In principle the district court tries the case in the first instance. Felonies and serious misdemeanours are tried in the regional court.

#### **Will the trial be in public?**

Generally the trial will be open to the public. The judgement is always given in public in open court.

#### **Who will decide the case?**

The case will be decided by a professional judge. In some cases in the first instance, the court may also consist of lay judges, who have the same rights as the judge. Polish law does not provide for trial by jury.

#### **Can the charges be changed during the trial?**

Yes, they can. If the legal classification of the charge needs to be changed, the court will inform the parties present at the trial. The description of the offence remains unchanged.

If this happens, you may apply to the court for the case to be adjourned to give you additional time to prepare a new line of defence.

The court may try any new charges at the same session only if you agree. Otherwise, the prosecutor has to file another indictment.

What happens if I plead guilty to some or all of the charges during the trial?

If the guilty plea is accepted by the court, it is possible to limit the evidence heard by the court.

#### **Do I have to be present at the trial? Can it be held without me?**

In principle you must be present at all the court sessions throughout the trial. However after you have made your explanatory statements, the court may decide whether your presence is still required.

#### **If I live in another Member State, can I participate by video link?**

Only witnesses and expert witnesses may give evidence by video link. It may not be used to hear suspects and the accused.

#### **Will I have interpretation if I don't understand what's happening?**

You have the right have the services of an interpreter free of charge and to receive translation of all records, decisions and judgments.

Must I have a lawyer? Will a lawyer be allocated to me? Can I change my lawyer?

It is not mandatory to have the assistance of a professional lawyer

However if you are a minor, deaf, mute, blind, there are reasonable doubts as to your sanity, the trial is being held before a regional court and you are charged with a felony or you are in custody – the participation of a lawyer is mandatory. You must also be assisted by a defence lawyer if the court deems it necessary because of circumstances hampering the defence.

If you don't choose a lawyer, one will be appointed for you. You may ask that a lawyer be appointed for you if you can show that you cannot afford to pay the costs of the defence without affecting your ability to support yourself and your family.

Some activities in the criminal proceedings require an appropriately qualified lawyer (advocate) e.g. filing an appeal against a regional court judgment or cassation (extraordinary appeal).

### **Can I speak at the trial? Must I speak at the trial?**

You have the right to make statements and express your opinion about every piece of evidence taken in your presence about every piece of evidence against you. However you may refuse to make any statement and remain silent. You may not be forced to incriminate yourself.

### **What are the consequences if I don't tell the truth during the trial?**

There are no negative consequences if you give false statements.

You may not however incriminate others groundlessly.

### **Can I challenge the evidence which is produced against me?**

You have the right to present your own evidence and challenge the evidence against you.

### **What kind of evidence can I produce on my behalf?**

Information about the alleged offence may be collected within the framework of the evidentiary proceedings.

The Code provides for e.g. hearing witnesses, statements given by the accused, expert witnesses, confrontation of persons heard, visual inspection of the crime scene or people or objects, autopsy, crime scene reconstruction or other experiment, interviewing members of the local community examination of the accused, detainee, seizure of objects, search of premises, interception and recording of calls, etc.

### **Under what conditions can I introduce such evidence?**

You have to file a motion in writing or orally that the evidence should be allowed and this must be included in the record of the trial or session (e.g. a motion to obtain a statement from a witness concerning the fact that you were in another town at the moment the crime was committed).

### **Can I use a private detective to obtain evidence for me?**

Yes, but in principle any private documents produced solely for the sake of the criminal trial by a private detective may not be used as evidence in court.

### **Can I ask witnesses to speak for me?**

Yes, but if they conceal any information or do not tell the truth, the witness may be charged with an offence.

Can I or my lawyer ask questions of the other witnesses in the case? Can I or my lawyer challenge what they say?

Yes, witnesses may be questioned fully. You may challenge the evidence given by others by means of any admissible evidence and statements.

### **Will information about my criminal record be taken into account?**

Yes, previous sentences will be considered as well as the legal nature of any previous convictions, when deciding on a penalty. Information which is recorded in the [National Criminal Register](#) and which concerns a final and valid judgment will be considered.

Will previous convictions in another Member State be taken into account?

Yes, courts and prosecutors' offices may ask for excerpts from the criminal registers of other Member States. This information will also be used to ensure that you are not sentenced for the same offence twice.

## What happens at the end of the trial?

The parties deliver their final speeches. You and your lawyer will also be able to address the court. The accused speaks last.

After hearing those speeches the court retires to decide on its judgment.

## What are the possible outcomes of the trial?

The possible outcomes are:

- Acquittal;
- Discontinuance of the proceedings – when further proceedings are not allowed for a legal reason e.g. a time bar, death of the accused etc.;
- Conviction;
- Conditional discontinuance of the proceedings – if the crime is not serious, there are no doubts about who committed it and you have no relevant previous convictions, the court can suspend the case and put you on probation. If this happens to you, the case can be reopened if you do not observe the law and respect public order.

## Possible penalties

- Fine – from 10 to 540 daily units which can be from 10-2.000 zlotys depending on your personal and financial status;
- Restriction of liberty – from 1 to 12 months. During that period you must work in the community free of charge. You can be required to work between 20 and 40 hours per month;
- Deprivation of liberty – from 1 month to 15 years of imprisonment;
- The penalty of 25 years' imprisonment;
- Life sentence.

**In addition to the basic penalties, the court may impose other penal measures:**

- It can decide to deprive you of civic rights, ban you from occupying a specific post, practising a specific profession or pursuing specific types of business activity;
- Ban you from having contact with minors (e.g. upbringing, treatment, education, or taking care of them);
- Require you to refrain from being in specified places, from contacting specified persons, from leaving a specific place of residence without the court's permission;
- Ban you from attending a mass public event;
- Ban you from entering Casinos etc. and from gambling;
- Ban you from driving vehicles;
- Order forfeiture;
- Order you to make good the damage that you caused or to pay compensation to the victim;
- Order you to make a supplementary payment;
- Pecuniary performance;
- Order that your sentence be made public.

## What is the role of the victim during the trial?

In the Polish criminal proceedings the victim is called the injured person.

The victim may file a motion requesting damages from the accused and they may participate in the trial.

If the victim chooses to participate in the trial, s/he becomes a subsidiary prosecutor and acts alongside the prosecutor. S/he may, among other things, commence the proceedings by filing an indictment. S/he may also file an appeal.

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## 4 - My rights after the trial

### **Can I appeal against the decision at the trial? Against the sentence?**

Yes, you can file an appeal against the judgment of the first instance court if it infringes your rights and you were one of the parties to the proceedings.

You can file an appeal against the finding that you are guilty or only against the sentence, as well as an appeal against the statement of reasons for the judgment.

You can file an appeal against the entire judgment or only part of it, but an appeal against the finding of guilt is considered an appeal against the whole judgment.

### **How? Who to? What time limits apply?**

You must file a motion in writing, within 7 days of the judgement being made, asking for a statement of reasons to be drawn up.

If you are in custody, this period is calculated from the date of delivery of the judgment if you were not present when the judgement was delivered and you do not have a lawyer.

Where minor offences are concerned, you have only 3 days to file the motion.

The statement of reasons should be drafted within 14 days. After you receive the judgment with the statement of reasons you have a further 14 days to file an appeal to a court of appeal through the court that issued the judgment.

If the judgment was given in the first instance by a regional court, an appeal must be drawn up by a professional attorney (advocate).

### **What are the grounds of appeal?**

You can base your appeal on the fact that the law has been broken and/or that procedural rules have not been followed. You may also point out mistakes in the facts of the case as established by the court and appeal against the sentence on the basis that it is either excessively severe or excessively lenient. You may also appeal against other measures which have been imposed with no justification.

### **What happens if I appeal?**

If an appeal is filed, the judgment of the court of first instance cannot be enforced until the appeal court issues its judgment.

### **What happens if I am in prison when I appeal?**

You will not be released just because you have appealed. You can ask the appeal court to order that you should be brought to a hearing, unless the court decides that it is enough simply to have your lawyer present.

If you are not brought before the court and you do not have a private lawyer, a lawyer will be appointed for you by the court.

### **How long will it be before the appeal is heard?**

There is no legal period for an appeal to be heard. If the court agrees to hear the appeal, a hearing will be scheduled and you will be told when and where it will take place.

### **Can I produce new evidence for the appeal?**

In the appeal you can present new facts or evidence, but it is a general rule that the court cannot hear the original evidence again. An appeal court may however exceptionally allow additional evidence, e.g. hear a new witness or ask for new documents to be presented.

### **What happens at the appeal hearing?**

At the beginning of the hearing, the judge gives a report on the appeal. Afterwards the parties may give their statements, make their arguments and file motions. Finally the court retires for deliberations and announces its judgment.

### **What can the court decide?**

The appeal court may uphold the original judgment, modify it, or quash it and send it back to the original court for a new trial.

A more severe penalty can be imposed on you only if a public prosecutor, or exceptionally the victim has filed an appeal asking for a more severe penalty.

You cannot be sentenced by an appeal court if you have been acquitted by the court which first heard the case. In that event your case must be sent back to the original court for the trial to be held again.

It is a general rule that an appeal court can only review a lower court's judgment to the extent of the appeal which has been lodged. The scope of the review can only be extended in exceptional circumstances.

### **What happens if the appeal is successful/unsuccessful?**

If your appeal is successful, the appeal court will either modify the previous judgement or quash it and send the case back for a retrial to the court which originally heard the case. If your appeal is not successful, the appeal court will uphold the previous judgment, which will become final and valid.

### **Is there a right to appeal again to a higher/different court?**

You may not appeal against the decision of the appeal court.

### **If the first decision was wrong, will I get any compensation**

You will not get any compensation if the original judgment is found to be wrong.

### **If my appeal is successful, will a record be kept of the conviction?**

If you are found innocent or the proceedings are discontinued no record will be made.

### **Is a further appeal possible if the first appeal fails?**

In exceptional circumstances, when a glaring infringement of the rules of criminal procedure has occurred you may file a special kind of appeal called 'cassation' with the Supreme Court.

A cassation appeal has to be filed against the appeal court's judgment through that appeal court within 30-days of receipt by you of the judgment with the statement of reasons attached. Not all sentences can be subject to cassation.

Also in exceptional circumstances you can file for the proceedings to be re-opened if you have valid reasons for doing so.

### **When is the conviction final?**

It is final when the appeal court announces its decision, unless it orders a re-trial in the court which sentenced you.

### **I am from another Member State. Can I be sent back there after the trial?**

If you were temporarily transferred to Poland under a European Arrest Warrant, in order to take part in criminal proceedings and the country that you were sent from specified that any sentence must be undertaken there and not in Poland, you will be sent back to that country to serve the sentence.

You will be transferred after the judgment becomes final and valid.

- If there is no European Arrest Warrant, you may be transferred to your home country to serve a prison sentence there if the transfer is requested by your home country and a Polish court accepts the request;

- or the Polish Ministry of Justice requests your home country to take you back and the Polish court accepts the transfer.

### **If I am convicted, can I be tried again for the same crime?**

If a judgement convicting you of a specific offence becomes final and valid, generally you cannot be tried again for the same crime. This also means that you cannot be tried again for the same crime in another EU Member State.

### **Information about the charges and the conviction**

Information about charges, convictions and the penalty of arrest imposed under the minor offences code is recorded in the [National Criminal Register](#), held at the Ministry of Justice. [Information Points](#) where you can file a request for access to information kept in the Register are located in District and Regional Courts.

You can only be provided with information which directly concerns you. Information can also be provided to Polish and foreign state authorities, specified public institutions and employers.

The conviction and your basic personal details will be entered into the Register after the judgment becomes final and valid. Your consent is not required in order to do this.

How long the information will be held for depends upon the penalty that you receive. After the appropriate time-period expires records are automatically removed from the Register. In certain cases you may file a motion for the criminal record to be removed before the end of the period.

#### **Related links**

[National Criminal Register \(Krajowy Rejestr Karny\)](#)


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Last update: 15/02/2012

## **5 – Road traffic offences**

 Please note that the original language version of this page [pl](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

Minor offences are the least serious breaches of Polish law and usually concern a violation of some kind of administrative rules of order.

Minor offences carry significantly less serious penalties than crimes and these penalties may be imposed either by court judgments, or administratively through penalty tickets.

A penalty ticket may be imposed on you if you are caught in the course of committing a minor offence or immediately afterwards, if an authorised public official has no doubts about who committed the offence. A fixed penalty ticket may be imposed within 14 days of the offence being committed or exceptionally within 30 days after the event happened.

You are not obliged to accept the penalty ticket. If you choose not to accept it or if the time period for its imposition has lapsed then a court will hear your case. You may appeal against the court's judgment, but once you have accepted the ticket it is practically almost impossible to appeal against the court's judgment.

The only possible penalty is a fine which may not exceed 500 zlotys, or in exceptional cases, 1000 zlotys, when you are fined for more than one minor offence.

A penalty ticket may be:

- paid in cash immediately (this applies to foreigners who do not have a permanent place of residence in Poland);
- deferred, to be paid within a 7-day period;
- issued in your absence. Such tickets must be paid within 7 days (do not pay it if you do not want to accept it).

### **How are minor road traffic offences dealt with?**

For speeding, parking etc. the normal rules for minor offences apply – i.e. you may accept a penalty ticket or choose to be heard before a court.

You have to remember that a penalty ticket may be imposed only for a breach of traffic rules. A parking ticket is not a penalty ticket.

### **Who deals with such offences?**

You may be given a penalty ticket related to a violation of traffic rules e.g. by a [Police officer](#) or [Municipal Guard](#). If you do not accept the ticket then the district court will hear your case.

### **What is the procedure?**

The same rules apply to foreigners as to Polish nationals and the procedure does not differ from the normal procedure for minor offences.

### **What penalties are possible?**

The penalty may vary depending on the type and nature of the minor offence. Mostly these will be various levels of fine. The court may impose any kind of penalty that is admissible in the situation in question, but when it comes to the penalty ticket procedure, then the fine cannot exceed 500 zlotys, exceptionally 1 000 zlotys.

### **Are such offences pursued against nationals of other Member States?**

All foreigners are pursued for traffic violations committed in Poland in the same way as Polish citizens.

The only significant difference is that a foreigner who has no permanent place of residence in Poland will receive a fine that must be paid in cash immediately.

### **Can I appeal?**

If you do not accept a penalty ticket, then you can ask for the case to be considered by the district court. You can appeal the judgement of the district court to a regional court.

If you accept the penalty ticket, then it is practically impossible to appeal to a court. The only possibility is to appeal within 7-days and prove that the type of conduct set out in the ticket does not constitute a minor offence.

### **Will these offences appear on my criminal record?**

When it comes to minor offences your personal information will be recorded in the [National Criminal Register](#) only if you have been arrested in connection with the minor offence. No other conviction for a minor offence is recorded.

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