National Report for Poland

Author(s):
Dorota Czerwińska
Date:
31.07.2025

Co-funded by the European Union

FULL PROOF

Dissemination level		
PU	Public	X
SEN	Sensitive	

Disclaimer

This report was prepared as an account of work co-funded by the European Commission. The contents of this document are provided "AS IS", and no guarantee or warranty is provided that the information is fit for particular purposes.

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the European Commission can be held responsible for them.

Contents

Co-funded by the European Union

Abbreviations and acronyms

CA	Consortium Agreement
D	Deliverable
DoA	Description of Action
EC	European Commission
EU	European Union
GA	Grant Agreement
G.A	General Assembly
GDPR	General Data Protection Regulation
IPRs	Intellectual Property Rights
KO	Kick-off
LEAs	Law Enforcement Agencies
M	Month
PC	Project Coordinator
PO	Project Officer
R&D	Research and Development
RFI	Request For Information
RP	Reporting Period
T	Task
TOC	Table of Content
TRL	Technology Readiness Levels
WP	Work Package
WPL	Work Package Leader

Consortium

IPS_Innovative Prison Systems	Portugal
Polish Platform for Homeland Security	Poland
Alma Mater Studiorum - Universita Di Bologna	Italy
Bulgarian Helsinki Committee Association	Bulgaria
Academia De Politie Alexandru Ioan Cuza	Romania
Peace Institute	Slovenia
Academy of the Police Force in Bratislava	Slovakia

FULL-PROOF Scope

FULL-PROOF "Ensuring the due course of criminal proceedings via strengthened respect for the procedural rights of the suspect and the accused" (Grant Agreement nº 101160524), is a 2-year (October 2024 – September 2026) project co-funded by the European Union, via the Justice Programme (JUST-2023-JACC-EJUSTICE) call for proposals for action grants to promote judicial cooperation in civil and criminal matters. FULL-PROOF's main objective is to raise awareness and knowledge on Directives 2012/13/EU, 2013/48/EU, and 2016/1919/EU to better approach and work with suspects and accused. The partnership will analyse the most prominent and common breaches in the practical implementation of these Directives, building upon identified best practices and develop a framework for their replicability, streamline the use of new and existing tools and materials to assist professionals in their daily work and promote international communication.

1. Introduction

1.1. Constitutional and criminal justice system

The Constitution of the Republic of Poland[1] is the supreme law in Polish legal system. The Constitutional provisions have a multidimensional effect on the criminal proceedings as provided in the Code of Criminal Procedure of 1997[2]. The Constitution sets the framework in which the CCP provisions function and provides the guidelines for their further interpretation. On the other hand, the CCP may contain only provisions that do not remain in conflict with the constitutional rules which implies that the analysis of the law on criminal procedure is impossible without understanding the constitutional context[3].

The scope of constitutional provisions that make an impact on the framework of criminal process is vast. Besides the procedural rights remaining in the scope of this research, the Polish Constitution established the *nullum crimen sine lege* principle[4] or provides the prohibition of torture and inhuman or degrading treatment and punishment[5] which are both relevant to criminal process. Furthermore, certain provisions directly refer to rights and freedoms of participant to the proceedings (both defendant and victim) such as the protection of liberty (Article 31 of the Polish Constitution), the right to privacy in the context of personal inviolability (Article 41 (1) of the Polish Constitution), private life and family life (Article 47 of the Polish Constitution), freedom of communication (Article 49 of the Polish Constitution) and inviolability of home (Article 50 of the Polish Constitution).

[1] *Konstytucja Rzeczypospolitej Polskiej* (Constitution of the Republic of Poland) of 2 April 1997, Dziennik Ustaw 1997, Nr 78, poz. 483.
[2] *Kodeks postępowania karnego* (Code of Criminal Procedure, hereinafter; CCP) of 6 June 1997, Dziennik Ustaw 1997, nr 89, poz. 555 with amendments.
[3] Paweł Wiliński, 'Konstytucjonalizacja współczesnego procesu karnego' in Piotr Hofmański (ed), *System Prawa Karnego Procesowego. Tom I – Zagadnienia ogólne. Cześć 1* (LexisNexis 2013) 690.
[4] Article 42 (1) Polish Constitution states that "Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible".
[5] Article 40 Polish Constitution states that "No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited".

Co-funded by the European Union

Some of the fundamental rights that are enshrined in the six EU Directives are directly expressed in the Polish Constitution and further clarified in the provisions of CCP. Among such rights can be found the presumption of innocence[6] and the right of defence understood as the right to defend oneself and the right to access to a lawyer[7]. This also relates to the right to a fair and public hearing of a case, without undue delay, before a competent, impartial and independent court[8]. This is interpreted as including two rights: the right to a judicial system of justice and the right to judicial review of acts prejudicial to the constitutionally guaranteed rights and freedoms of individual[9]. Moreover, the Constitution provides for the right of parties to contest judgments and decisions issued at first instance (Article 78 of the Polish Constitution). This however does not require that all judgments and decisions be subjected to judicial scrutiny and in the context of criminal justice system the CCP specifies which decisions may be appealed in the light of principle of proportionality[10].

Besides Polish Constitution and CCP the main sources that play a major role in the Polish criminal justice system encompasses five other Codes that relates in turn to the substantive criminal law (Criminal Code[11]), execution of penalties (Criminal Enforcement Code[12]), the law of petty offences (Petty Offences Code[13] and Petty Offences Procedure Code[14]) and the fiscal law (Fiscal Code[15]). Additionally, some of the provisions of Act on Support and Resocialisation of Juveniles[16] relate to the criminal

[6] Article 42 (3) Polish Constitution states that "Everyone shall be presumed innocent until his or her guilt is determined by the final judgment of a court". This is reflected in Article 5 § 1 CCP providing that "Accused is presumed innocent until her or his guilt is proven and determined by the final judgment of a court".
[7] Article 42 (2) Polish Constitution states that "Everyone against whom criminal proceedings are conducted shall have the right to defence in all stages of the proceedings. In particular, she or he may choose a defence counsel or, under the terms of the law, use a defence counsel ex officio". The right is repeated in Article 6 CCP providing that "The accused is entitled to the right of defence, including the right to be assisted by a defence counsel, of which he must be informed".
[8] Article 45 (1) Polish Constitution.
[9] Judgment of the Constitutional Court of 12 May 2003, SK 38/02, OTK-A 2003 Nr 5 poz. 38.
[10] See more by Maciej Fingas, Sławomir Steinborn and Krzysztof Woźniewski, 'Poland' in Silvia Allegrezza and Valentina Covolo (eds), *Effective Defence Rights in Criminal Proceedings. A European and Comparative Study on Judicial Remedies* (Wolters Kluwer Italia 2018) 382.
[11] *Kodeks karny* (Criminal Code, hereinafter; CC) of 6 June 1997, Dziennik Ustaw 1997, nr 89, poz. 553.
[12] *Kodeks karny wykonawczy* (Criminal Enforcement Code, hereinafter: CEC) of 6 June 1997, Dziennik Ustaw 1997, Nr 90, poz. 557.
[13] *Kodeks wykroczeń* (Petty Offences Code) of 20 May 1971, Dziennik Ustaw 1971, Nr 12, poz. 114.
[14] *Kodeks postępowania w sprawach o wykroczenia* (Petty Offences Procedure Code) of 24 August 2001, Dziennik Ustaw 2001, Nr 106, poz. 1148.
[15] *Kodeks Karny Skarbowy* (Fiscal Code) of 10 September 1999, Dziennik Ustaw 1999, Nr 83, poz. 930.
[16] *Ustawa z dnia 9 czerwca 2022 r. o wspieraniu i resocjalizacji nieletnich* (hereinafter: Juvenile Act),

proceedings conducted against juvenile offenders prosecuted in criminal courts. In the criminal context of substantive importance are acts issued by the Minister of Justice. Even though they are not equal to the parliamentary acts and serve only an auxiliary role they are considered as binding sources of law as rules of clarifying character[17].

1.2. Institutional framework

Polish law operates under the Continental law system and follows an inquisitorial model of investigation and trial[18]. As a classic inquisitorial system, Polish criminal proceedings can be divided into long and formal criminal investigation and court proceedings during which the evidence gathered at the first stage of proceedings is reproduced with the court playing a leading role during the trial. The criminal investigation is conducted pursuant to the principle of legality[19]. The collection of evidence is performed under formal rules and recorded carefully in the dossier (case file) so the court will be able to rely on these findings during trial. The parties to the criminal investigation, that is suspect and the victim, are generally allowed to actively participate in criminal investigation by taking part in witness' interrogations and permitted to demand additional investigative measures to be undertaken by the police[20].

In theory, the prosecutors, whose operations are governed by the Prosecution Service Act of 2016[21], conduct or supervise every criminal investigation[22]. But in practice the

Dziennik Ustaw 2022, poz. 1700.

[17] Wojciech Jasiński and Karolina Kremens, *Criminal Law in Poland* (Wolters Kluwer 2019) 55-56.

[18] Note that between July 1, 2015 and March 16, 2016 Poland experimented with an idea of enhanced adversariality in the criminal proceedings. See Wojciech Jasiński and Karolina Kremens, *Criminal Law in Poland* (Wolters Kluwer 2019) 48-49, Wojciech Jasiński, 'Polish criminal procedure after the reform' (2015) https://www.hfhr.pl/wp-content/uploads/2015/07/hfhfr_polish_criminal_process_after_the_reform.pdf (access 31 July 2025) and Karolina Kremens, 'The new wave of penal populism from a Polish perspective' in Elisa Hoven and Michael Kubiciel (eds), *Zukunftperspektiven des Strafrechts: Symposium zum 70. Geburstag von Thomas Weigend* (Nomos Verlagsgesellschaft 2020) 126-129.

[19] Article 10 CCP. See broadly Celina Nowak and Sławomir Steinborn, 'Poland' in Katalin Ligeti (ed) *Toward a Prosecutor of the European Union, Volume 1: A Comparative Analysis* (Hart Publishing 2013) 500-501.

[20] Article 167 CCP and Article 315 CCP.

[21] *Ustawa Prawo o prokuraturze* [Prosecution Service Act] of January 28, 2016, (Dziennik Ustaw 2016, poz. 177).

[22] Article 298 § 1 CCP and Article 326 § 1 CCP.

Co-funded by the European Union

powers of the prosecutor in that regard seems to be limited by the criminal justice agencies which is especially visible in cases concerning less serious crimes[23]. The conduct of the investigation is therefore primarily vested with police (*Policja*)[24]. Prosecutors are expected to play a dual role in criminal process: while during criminal investigation the prosecutor encompasses the role of the active criminal justice authority, at the moment when indictment has been filed with the court she becomes a party to the proceedings, assuming all functions of a public prosecution authority. This also means that the prosecutor is ultimately a major prosecuting authority in Poland.

The proceedings before the court are initiated after investigation is closed by filing with a court a formal charging instrument that is indictment supplemented with the full dossier of the pretrial findings. The prosecutor often chooses to file a different charging document that is motion to resolve a case out of trial which is the result of plea bargain alike proceedings (Article 335 § 1 and 2 CCP). The latter by allowing to proceed during an informal hearing and not the trial substantially speeds up proceedings which makes it a popular way of disposing criminal cases. If the case reaches the trial stage proceedings are conducted publicly and by rule in adversarial way although the power of the court to call and examine evidence are substantially guaranteed as the obligation to establish the truth is incumbent upon the court. The judgment in all cases is delivered by the court and both parties to the proceedings (prosecutor and defendant) are granted broad power to appeal it.

During the criminal investigation the independent judicial oversight of measures interfering with rights and freedoms of individual is secured. The Polish law does not provide for a judge for preliminary investigation as is known from German or Italian

---

[23] Investigations can be conducted in two separate forms: inspection (*śledztwo*) and inquiry (*dochodzenie*). Inspection is usually conducted in more complicated cases, i.e. in case of all felonies and some misdemeanours, e.g. those in which the suspect is a judge or prosecutor. See Doris De Vocht, 'Poland' in Ed Cape, Zaza Namoradze, Robert Smith, Taru Spronken (eds) *Effective Criminal Defence in Europe* (Intersentia 2010) 429.

[24] Police operates under the Police Act (Ustawa o Policji) of 6 April 1990, Dziennik Ustaw 2020, poz. 360. Some other agencies possess additional investigative powers e.g. as well as other agencies such as the Border Guard (*Straż Graniczna*), Central Anticorruption Bureau (*Centralne Biuro Antykorupcyjne*) or even the Hunting Guard (*Straż Łowiecka*) - see broadly Wojciech Jasiński and Karolina Kremens, *Criminal Law in Poland* (Wolters Kluwer 2019) 29-36.

Co-funded by the European Union

systems. However, the use of the most severe coercive measures during criminal investigation such as pretrial detention and secret surveillance may be imposed only by the court (Article 250 § 1 and Article 237 § 1 CCP). Although the law does not provide for a prior judicial scrutiny of every investigative action that may interfere with rights of individual, which means that search, seizure and arrest warrants are issued by the prosecutor (Article 220 § 1 CCP and Article 247 § 1 CCP), the independent judicial oversight is secured by the right to judicial review of each undertaken measure (Article 236 CCP and Article 246 CCP). It should be however noted that recently the judicial independence is considered as substantially breached[25] which potentially may also have an impact on the impartiality of the court when deciding on the use of coercive measures during criminal investigation.

1.3. Towards implementation of EU Directives in Poland

A more detailed analysis on the compliance of specific rules provided in the EU Directives with Polish national rules will be presented below. At this point, however, it is important to point out the main problem which allows to generally evaluate the implementation for the most part as unsuccessful. This results from the adopted understanding of who can be called the suspect in Polish criminal procedure. This may be considered as translation problem, although not involuntary, that affects in disturbing way the desired application of all rights to the suspect at the very early stage of criminal proceedings.

Generally, the Polish law provides for a formal procedure by which the person is preliminarily charged with a crime (Article 313 CCP). This was incorporated in the course of investigation, with a primary aim to guarantee such person the information

[25] See details in the Report of the Stefan Batory Foundation Legal Expert Group on the impact of the judiciary reform in Poland 2015-2018. See also Anna Śledzińska-Simon, 'The Rise and Fall of Judicial Self-Government in Europe' (2018) 7 German Law Journal, https://ssrn.com/abstract=3216482 (access 31 July 2025); Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland, A/HRC/38/38/Add1, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/084/27/PDF/G1808427.pdf?OpenElement (access 31 July 2025) and Adam Bodnar – Commissioner for Human Rights, "Plowing up the courts", 19 July 2017, https://www.rpo.gov.pl/en/content/%E2%80%9Cplowing-courts-adam-bodnar-onetpl-changes-judicial-system (access 31 July 2025).

Co-funded by the European Union

about the content of the charges as adopted by the investigating authority[26]. It resulted in setting a formal point in time when the rights that the person is provided with actually do attach to her. Therefore, only a person presented with preliminary charges during criminal investigation is granted the status of *podejrzany* and provided with rights associated with that status including such as the right to access a defence counsel, the right to remain silent, the right to legal aid.

As a result, the Polish law makes a very strict distinction between the status of *osoba podejrzana* and *podejrzany*[27]. The latter term has been normatively defined as a person, with regard to whom a decision initially charging a person with a crime has been issued, or who, without the issuance of such a decision, has been informed about charges in connection with the initiation of the person's interrogation in such capacity (Article 71 § 1 CCP). The former term has no legal definition although *osoba podejrzana* can be nevertheless defined as a person on whom the attention of criminal justice authorities focuses due to suspicion that she has committed a crime, but who has not yet been initially charged with an offense[28]. Most importantly, *osoba podejrzana*, because of the lack of formal preliminary charging procedure launched against her, remains unprotected by the rights that are normally attached to *podejrzany*[29]. And only when *osoba podejrzana* becomes arrested some rights, although not all that belongs to those initially charged with a crime, will be granted to her. At the same time when searched or interrogated *osoba podejrzana* is deprived even of limited rights.

The lack of adequate protection of the individual before the preliminary charging takes place, has been criticized in the literature[30]. Moreover, it should be also made

[26] Janusz Tylman and Tomasz Grzegorczyk, *Postępowanie karne* (Lexis Nexis 2014) 669.
[27] See more broadly on the preliminary charging process and the status of *podejrzany* and *osoba podejrzana* in: Doris De Vocht, 'Poland' in Ed Cape, Zaza Namoradze, Robert Smith, Taru Spronken (eds) *Effective Criminal Defence in Europe* (Intersentia 2010) 435; Wojciech Jasiński and Karolina Kremens, *Criminal Law in Poland* (Wolters Kluwer 2019) 221-222.
[28] Wojciech Jasiński and Karolina Kremens, *Criminal Law in Poland* (Wolters Kluwer 2019) 202.
[29] Karolina Kremens, *Powers of the Prosecutor in Criminal Investigation. A Comparative Approach* (Routledge 2021) 223.
[30] See e.g. Feliks Prusak, 'Faktycznie podejrzany w procesie karnym' (1971) 3 Palestra 32; Andrzej Murzynowski 'Faktyczny podejrzany w postępowaniu przygotowawczym' (1971) 10 Palestra 36; Sławomir Steinborn, 'Status osoby podejrzanej w procesie karnym z perspektywy Konstytucji RP (uwagi de lege lata i de lege ferenda)' in Piotr Kardas, Tomasz Sroka, Włodzimierz Wróbel (eds), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla* (Wolters Kluwer 2012) 1781; Ryszard A. Stefański, 'Prawo do

clear that the Polish Constitution confer the right to defend oneself to anyone against whom the criminal proceedings are conducted (Article 42 (2) Polish Constitution) which also includes a person before her formal designation as *podejrzany*. Therefore, the formalistic approach as adopted in the CCP does not even comply with the constitutional standard[31]. And in the context of the standard provided by the EU Directives this issue becomes particularly problematic.

The EU Directives use the term "suspect" which can be easily and directly translated into Polish as *podejrzany*. This causes a serious misinterpretation as to the rights that attach to individual that the Directive intended to name as suspect. As discussed above, *podejrzany* is indeed guaranteed of the rights provided for the suspect by Directives while *osoba podejrzana* (which can be translated as "suspected person") that also seems to remain within the scope of protection of EU Directives is not given the same status. Despite the criminal investigation being already directed against *osoba podejrzana* the lack of notification of charges against her in the formal procedure described above she is stripped of her rights that EU Directive attach to her.

However, taking the translation of the term "suspect" into Polish law completely literally, allowed the Polish government to claim that the implementation of EU Directives has been successful or even unnecessary since the Polish law provided a sufficient standard of protection for *podejrzany* before the EU Directives were even adopted[32]. Although this belief has been undermined by the Polish Ombudsman who addressed the government on numerous occasions indicating the improper implementation of Directives[33] in the past the Ministry of Justice refused to admit that

---

obrony osoby podejrzanej' in Tomasz Grzegorczyk, Jacek Izydorczyk, Ryszard Olszewski (eds), *Z problematyki funkcji procesu karnego* (Wolters Kluwer 2013) 305; Andrzej Sakowicz, 'Prawo do milczenia w polskim procesie karnym' (Temida2 2019) 236.

[31] Karolina Kremens, *Powers of the Prosecutor in Criminal Investigation. A Comparative Approach* (Routledge 2021) 224.

[32] See for example the answer of the Minister of Justice of 14 August 2019 in response to the Intervention No. 32684 filed by the Member of the Polish Parliament concerning the lack of transposition to Polish law the Directive 2016/1919 https://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=BF7HE5 (access 30 July 2025).

[33] See e.g. the Statement of the Polish Ombudsman to the Prime Minister of Justice of 4 July 2018 https://www.rpo.gov.pl/sites/default/files/Wystąpienie%20RPO%20do%20Prezesa%20Rady%20Ministrów%20ws.%20wprowadzenia%20dyrektywy%20gwarantującej%20m.in_.%20prawo%20zatrzymanego%20do%20adwokata.pdf (access 30 July 2025). See also other works publicly presenting similar arguments, for example by the Chief Justice of the Polish Supreme Court – Pierwszy Prezes Sądu Najwyższego, *Uwagi o stwierdzonych nieprawidłowościach i lukach w prawie*, Warszawa 2017, p. 86-88

the Polish law demands corrections to embrace *osoba podejrzana* with the desired protection.

Therefore, at the moment Polish law generally does not remain in compliance with six EU Directives in question. In order to assume that the EU directives are properly and fully implemented in Poland the guarantees provided for the suspect should be extended also to those individuals who acquired the status of a suspected person through measures aimed at them such as arrest or taking samples, and are not yet preliminarily charged with a crime.

In July 2025 a new projected amendment was adopted by the government, aiming at correcting this issue[34]. Nevertheless, it still needs to pass through legislative procedure in two chambers of the Parliament and be approved by the Polish President.

2. Directive 2012/13/EU: Right to information in criminal proceedings

2.1. Introduction

The provisions of the Directive 2012/13/EU **of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings** (hereinafter: Directive 2012/13/EU) can be considered as generally implemented to Polish legal system. That process entailed introduction of respective provisions in the Code of Criminal Procedure as well as delegated legislation issued by the Minister of Justice[35].

---

http://www.sn.pl/osadzienajwyzszym/Uwagi_PPSN_luki_w_prawie/luki-w-prawie-2017.pdf (access 31 July 2025); Helsinki Foundation on Human Rights – *Wzmacnianie praw osób podejrzanych i oskarżonych. Rola krajowych instytucji ochrony praw człowieka*, Warszawa 2019 54 https://www.hfhr.pl/wp-content/uploads/2020/04/Wzmacnianie-praw-os%C3%B3b-podejrzanych-i-oskar%C5%BConych-NHRI-krajowy-web.pdf (access 31 July 2025); Barbara Grabowska-Moroz (ed), *Prawo dostępu do obrońcy w świetle prawa europejskiego*, Warszawa 2018 https://www.hfhr.pl/wp-content/uploads/2018/05/Prawo-dostepu-do-obroncy-w-swietle-prawa-UE-20180410.pdf (access 31 July 2025).

[34] Projected act on the amendment of CCP and other acts, version of 28 June 2025, https://legislacja.rcl.gov.pl/projekt/12390959/katalog/13091063#13091063 (access 30 July 2025) – hereinafter: Projected Amendment of 2025.

[35] For the full list of legal sources implementing the Directive see: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32012L0013

Some of the rights included in the Directive 2012/13/EU were already guaranteed by the Polish law, before the entry into force of that legal act. There has been, however, a few deficiencies in the transposition process that can be identified and will be described below in detail. The remarks in that regard will be divided into five parts referring to each of the rights covered by Directive as well as remedies provided by the national law in cases of their violation (Article 8 Directive 2012/13/EU).

In Polish courts' case law direct references to Directive 2012/13/EU appear in the context of improper implementation of its Article 7 (see 3.5 hereinbelow).

2.2. Right to information about procedural rights (Article 3)

Before the expiry of the deadline for transposition of the Directive 2012/13/EU (2.06.2014) Polish law was partly in compliance with Article 3(1) Directive 2012/13/EU. According to Article 300 CCP in each criminal case, before the person is officially charged during investigation, he or she has to be given information about basic procedural rights. From the entry into force of the CCP in 1998 the Letter of Rights included rights enlisted in Article 3(1)a, c and e Directive 2012/13/EU. To that extent Polish standard satisfies the minimum threshold established by the Directive 2012/13/EU. The information about rights provided in Article 3(1)b and d Directive 2012/13/EU was introduced to Polish law, by amendment of Article 300 § 1 CCP, on 2 June 2014[36].

Article 300 § 1 CCP even before the entry into force of the Directive 2012/13/EU guaranteed that the information must be provided in writing. Yet, for many years the transposition seemed improper as Polish Letter of Rights templates mostly restated the wording of relevant CCP's provisions, so it was doubtful whether they were simple and accessible. There was also no provision that would guarantee that vulnerable suspects or accused persons would understand the information given.

Polish legislator took an important step towards the implementation with two amendments of 2023, which entered into force partly on 15 August 2023 and mostly

[36] Act of 27 September 2013.

Co-funded by the European Union

on 15 February 2024[37]. The catalogue of the rights that the suspect is informed of were broadened with additional information guaranteed for minors (Article 300 § 1 CCP). It was also added that the information given to a suspected minor also has to be delivered to the holder of parental responsibility (Article 300 § 1 CCP).

Newly introduced Article 300 § 3a CCP finally states that persons who are vulnerable due to their age or health condition as well as persons who are less than 18 years old can get access to additional explanations related to the scope of their procedural rights and duties and to conditions of their interrogation. Exemplary explanations shall be introduced as a regulation of the Minister of Justice as well as published on their website. It is also reflected in the more general provision of Article 16 § 3 CCP according to which whenever there is a need of giving information on procedural rights to any participant of a process who is a minor or who is vulnerable, especially if the reason is their age or health, the information shall be provided in a way adjusted to their age, health and cognitive development.

What is more, newly introduced Article 300 § 3b states the information on and explanation of the rights can be given not only as a descriptive but also pictorial one. Amended Article 300 § 4 precises that the Letter of Rights templates have to be separate for minors and that the Minister of Justice – while preparing such templates – has to take into account that the information needs to be understood by persons who are not assisted by a lawyer or are vulnerable due to their age or health.

New Letter of Rights templates were issued in November 2024 as a regulation of the Minister of Justice[38]. Those templates are – for the first time – written in direct language and graphically attractive which makes them a lot more accessible. A separate regulation of the Minister of Justice contains templates of additional explanations that

[37] Act of 13 stycznia 2023 r. o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dziennik Ustaw 2023, poz. 289) and Act of 14 April 2023 o
Ustawa z dnia 14 kwietnia 2023 r. o zmianie ustawy - Kodeks postępowania karnego oraz niektórych innych ustaw (Dz. U. poz. 818 z późn. zm.); and Ustawa z dnia

[38] Regulation of 7 November 2024 establishing a letter of suspect's, victim's and witness's rights in criminal proceedings (Dziennik Ustaw 2024, poz. 1658).

Co-funded by the European Union

are to be given to suspected minors or other suspects vulnerable due to their age or health which are partly pictorial and easily understandable.

On the other hand, the suspect's Letter of Rights contain information on lots of various rights, which do not necessarily pertain to the suspect's legal situation. Given information on various, sometimes irrelevant, rights (e.g. such that may only be enforced at trial or in accelerated judicial proceedings which is very rare in Poland) at an early stage of investigation to all suspects may be misleading. The catalogue of rights mentioned in the suspect's Letter of Rights has to be re-thought for the implementation of Directive 2012/13/EU Article 3 to become completely proper.

2.3. Right to information in case of arrest or detention (Articles 4 and 5)

In cases of arrest conducted for the purpose of criminal proceedings in Poland the right to obtain a Letter of Rights existed before the entry into force of the Directive 2012/13/EU. However, at that time Article 244 § 2 CCP provided that the arrested person should be immediately informed only about the reasons for the arrest and his or her rights, including the right to be assisted by the counsel. Apart from the latter right there was no statutory catalogue of them. Therefore, the CCP has been amended with an aim to fully transpose the Directive 2012/13/EU[39]. Additionally, the detailed catalogue of rights given to the arrestee were introduced and the Minister of Justice issued a Regulation specifying the form of the Letter of Rights for the arrested person[40]. The attempts to reach the state of full implementation cannot be considered as full and proper although the deficiencies can be considered as minor when compared with other EU Directives discussed in this volume. The shortcomings can be identified mostly in relation to the scope of right to information in case of arrest.

The Letter of Rights covers almost all rights enlisted in Article 3 and 6 Directive 2012/13/EU. It lacks the notification on a right to legal aid and the conditions for

[39] This took place on 2 June 2014 (by the Act of 27 September 2013) and subsequently on 1 July 2015 (by the Act of 20 February 2015 on the amendment of Criminal Code and other acts (Dziennik Ustaw 2015, poz. 396)

[40] Regulation of 27 May 2014 on the Letter of Rights for the arrested person in criminal proceedings (Dziennik Ustaw 2014, poz. 737), later replaced by Regulation of 3 June 2015 on the Letter of Rights for the arrested person in criminal proceedings (Dziennik Ustaw 2015, poz. 835).

Co-funded by the European Union

obtaining it and the right to access the case file. The first lacuna seems to be related to the fact, that the arrested person is not formally a suspect in Polish law[41] and therefore he or she does not have a right to be assisted by the defence counsel (*obrońca*). Nonetheless Polish CCP provides for the possibility of being assisted by a legal counsel (*pełnomocnik*), who can be appointed *ex officio* by the president of the district courts free of charge if an arrested person proves that he or she is unable to bear the costs of legal representation without prejudice to the necessary maintenance of himself or herself or his or her family (Article 78 § 1 CCP, read in connection with Articles 87 § 2 and 88 § 1 CCP). Yet, the Letter of Rights is silent on this possibility. The information about the access to case file is also absent in the Letter of Rights. The latter contains only an information about the right to obtain a copy of a detention report (Article 244 § 3 CPP).

On the other hand, the transposition of the Directive 2012/13/EU is full in relation to Letter of Rights given to a person arrested for the purpose of executing EAW. The relevant provisions of the CCP entered into force on 2 June 2014[42]. Article 607l § 4 CCP empowers Minister of Justice to issue a Regulation on the Letter of Rights for the arrested person. The Letter of Rights covers all the rights indicated in the Article 5(1) Directive 2012/13/EU[43].

The transposition is also full in relation to the persons detained on remand. The necessary amendments were introduced at the same date as these related to EAW. Article 263 § 8 CCP empowers the Minister of Justice to issue a regulation with the content of the Letter of Rights. The latter cover all rights enlisted in Article 3 and 6 Directive 2012/13/EU[44].

---

[41] See remarks on the definition of suspect under Polish law in Sec. 1.3 (Introduction).
[42] Amendment by Act of 27 September 2013.
[43] Regulation of 27 May 2014 on the Letter of Rights for the arrested person on the basis of European Arrest Warrant (Dziennik Ustaw 2014, poz. 740), later replaced by Regulation of 11 June 2015 on the Letter of Rights for the arrested person on the basis of European Arrest Warrant (Dziennik Ustaw 2015, poz. 874),
[44] Regulation of 27 May 2014 on the Letter of Rights for the person detained on remand (Dziennik Ustaw 2014, poz. 738), later replaced by Regulation of 11 June 2015 on the Letter of Rights for the person detained on remand (Dziennik Ustaw 2015, poz. 885) and replaced by Regulation of 13 April 2016 on the Letter of Rights for the person detained on remand (Dziennik Ustaw 2016, poz. 513).

Co-funded by the European Union

Polish law guarantees that the Letter of Rights is handled to the arrested or detained person promptly. In case of arrest the Letter of Rights is handled after the transfer to the Police station. In case of detention, according to Article 250 § 3 CCP, the Letter of Rights is given to the person by the prosecutor sending a motion for detention on remand to court during investigation or by the court before the decision on detention on remand during trial.

As for many years was the case of the Letter of Rights given to the suspect, the one given to the arrested or detained person restates the wording of relevant CCP's provisions. This has not changed in 2024 – in contrast to the introduction of new templates of the Letter of Rights for suspect and minor suspect. It might be disputed that the wording of arrestee's Letter of Rights can be considered as simple and accessible. The Helsinki Foundation for Human Rights also expressed ambiguous opinion on that topic, indicating that it is hard to assess the accessibility of the information provided in the Letter of Rights[45].

There are no provisions in the CCP providing that the suspect or accused person receives a translation of Letter of Rights. In the past, the Ministry of Justice and Polish Police published translations of Letter of Rights into 26 languages (21 EU languages)[46]. This has not yet been done with regard to new templates of Letters of Rights and their explanations for vulnerable suspects. If there is no possibility of giving a person a translated Letter of Rights, the interpreter called by the investigating authority or judge should inform the suspect or accused person orally about the rights and later prepare written translation. The latter is however a matter of practice and it is not expressly guaranteed by the law.

[45] *Jak informować w postępowaniu karnym. Polskie prawo i praktyka a standardy europejskie*, (Warsaw 2016) 57 and 69 - http://www.hfhr.pl/wp-content/uploads/2016/04/dyrektywa_ca%C5%82o%C5%9B%C4%871.pdf (access 31 July 2025).

[46] https://isp.policja.pl/isp/do-pobrania/8103,Wzory-pouczen-w-postepowaniu-karnym-w-26-jezykach.html, (access 31 July 2025).

Co-funded by the European Union

2.4. Right to information about the accusation (Article 6)

In case of person officially charged with committing a criminal offence Article 313 CCP since its entry into force in 1998 provides that he or she is informed orally by the interrogating authority (e.g. police, prosecutor) about the scope and nature of the charge. The content of a charge is documented either in a separate decision or in written records of the interrogation, which is accessible to the suspect. If the person to be charged cannot be reached, it is possible to issue a charging decision and a "wanted" warrant. In that case, after the person is seized, the prosecutor is obliged to officially charge a person during the interrogation after his or her presence has been secured[47]. Information about charges includes the detailed information regarding the committed prohibited act, including the nature of participation by the suspect, as well as the legal classification. To that extent Polish law provides for even more stringent standard than Article 6 (1) Directive 2012/13/EU, which allows greater flexibility in the scope of information given to the suspect.

Unfortunately, the implementation of Article 6 (1) – which could have been assessed as full and proper – took a step backwards with the entry into force of Article 313 § 1a CCP on 28 September 2023[48]. This provision allows to refrain from communicating the charging decision and interrogating a suspect who is unable to take part in these activities due to his health condition or intoxication, if there is a need to immediately impose a precautionary measure. In that case, the charge has to be announced and the suspect interrogated within 7 days from when it becomes possible. Thus it became admissible that a person who is made a suspect is unaware of his or her rights due to other conditions as evading justice (which was already mentioned). That has to be qualified as improper implementation of Article 6 (1) Directive 2012/13/EU, although it pertains to a relatively rare situation. The provision of Article 313 § 1a CCP is intended to be revoked by Projected Amendment of 2025 which would reinstate proper implementation in that matter.

[47] Ryszard A. Stefański 'Commentary to Article 279 in Ryszard A. Stefański, Stanisław Zabłocki, *Kodeks postępowania karnego. Tom II. Komentarz do art. 167-296* (Wolters Kluwer 2019) 1198.

[48] Act of 7 July 2023 on the Amendment of the Code of Civil Procedure, Organisation of Common Courts Act, Code of Criminal Procedure and other acts (Dziennik Ustaw 2023, poz. 1860).

Co-funded by the European Union

Apart from the right to information about charges Article 6 (3) Directive 2012/13/EU encompasses a right to obtain, at the latest on submission of the merits of the accusation to a court, detailed information on the accusation. The information includes the nature and legal classification of the criminal offence, as well as the role of the person in commitment of a crime. To that extent Polish is fully in compliance with the standard introduced by the Directive 2012/13/EU. That was the case even before the Directive 2012/13/EU was adopted. According to Article 338 § 1 CCP, if the indictment[49] has been lodged to the court and it meets all necessary formal requirements, the president of the court or the court referendary orders without undue delay that a copy be served upon the accused. The indictment contains full information on the nature of the prohibited act subject to adjudication and its legal classification. Moreover, the trial begins with a concise presentation of charges by the public prosecutor or in his absence by presiding judge (Article 385 § 1 and 1a CCP).

The assessment of compliance with the Directive 2012/13/EU requirement is more challenging in case of penal order proceedings[50]. A penal order is issued by a single judge on a sitting held in camera without prior notification given to accused. An attested copy of the penal order is served on the accused person and his defence counsel as well as the prosecutor, after it was issued together with the act of the indictment and information on how to appeal against penal order. The accused person and his or her defence counsel may lodge objection (*sprzeciw*) to the penal order within a time-limit of seven days of its service. Such objection automatically quashes the penal order and the case is reheard on regular basis. If confronted with the wording of Article 6(3) Directive 2012/13/EU, which provides that detailed information on the accusation should be given to the accused at the latest on submission of the merits of the accusation to a court, Polish regulation regarding penal order proceedings do not satisfy that standard. The right to defence, however, is fully guaranteed by a simplified way of challenging penal order. In case an accused person or defence counsel lodges an objection there is a new trial conducted on a

[49] Or any other motion initiating proceedings conducted before the court of law – see: Wojciech Jasiński, Karolina Kremens *Criminal Law in Poland* (Wolters Kluwer 2019) 241-249.
[50] For more on penal order proceedings see e.g. Wojciech Jasiński and Karolina Kremens *Criminal Law in Poland* (Wolters Kluwer 2019) 47-249.

regular basis and before it starts the accused person obtains a copy of the indictment, where the full information about accusation is included. Therefore, it can be asserted that the standard of protection set by the Directive 2012/13/EU is met.

Article 6 (4) Directive 2012/13/EU guarantees that the information about accusation is updated, where this is necessary to safeguard the fairness of the proceedings. To that extent Polish law was in compliance with that standard even before the entry into force of the Directive 2012/13/EU. According to Article 314 CCP if in course of the investigation it transpires that the suspect should be charged with an offence not included in the decision to bring charges already issued, with an offence in the significantly modified form or that the offence should be qualified under a more severe legal provision, new charges should be communicated to suspect immediately. Moreover, if during the trial it transpires that, without exceeding the limits of the indictment, the criminal act should be classified under a different provision of law, the court notifies the parties attending the trial thereof. On a motion of the accused, the trial may be adjourned in order to enable him to prepare the defence (Article 399 § 1-2 CCP).

Article 6 (2) Directive 2012/13/EU provides that Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed. Polish law was fully in compliance with that standard before the entry into force of Directive 2012/13/EU. Article 244 § 2 CCP guarantees that the arrested person is immediately informed of the reasons for the arrest. In case of detention on remand the information about the reasons for detention, including the alleged criminal offence committed are included in the court's decision (Article 251 § 1 CCP), which is read out in the presence of the detainee and immediately served to him or her in writing (Article 248 § 2 CCP).

2.5. Right of access to the materials of the case (Article 7)

Right of access to the materials of the case regulated in Article 7 Directive 2012/13/EU is only partially transposed to the Polish legal system. In respect of the documents which are essential to challenging effectively the lawfulness of the arrest or detention as prescribed in Article 7 (1) Directive 2012/13/EU the situation is complex. If a person is arrested but eventually not charged, he or she is entitled only to receive the report of arrest. In case of other documents in the case-file Article 156 § 5 CCP provides for a parties' right to apply for access to the file and demand copies[51]. Yet, an arrestee has a limited access to such file not having a status of a party to the proceedings. Only in exceptional cases he or she may be granted authorisation by the prosecutor to inspect the file and to make copies (Article 156 § 5 CCP). In light of the 7-day time-limit to file an interlocutory appeal for judicial review of the arrest's lawfulness, the effectiveness of the detainee's access to relevant documents is illusive. Therefore, the standard set by the Directive 2012/13/EU is not met[52]. The situation is hardly better if a person gains the status of a party during the investigation (he or she is formally charged). In that case the prosecutor or other authority conducting investigation can refuse to grant access to case-file if it is necessary to safeguard the interests of the investigation or important interest of the state (Article 156 § 5 CCP). The Projected Amendment of 2025 eliminates this fault by introducing Article 246 §1a CCP, providing an arrestee with the right of access to case file insofar as it pertains to the arrest's grounds.

The transposition status is slightly different in cases of access to the case file for the purpose of questioning **detention on remand in pre-trial proceedings.** In that respect the Directive 2012/13/EU was fully transposed until 14 April 2016. Until that date Article 249a CCP[53] provided that the evidence serving as a ground for detaining a person on remand have to be revealed to that person. Article 156 § 5a CCP[54] provided that during investigation, the suspect and his or her defence counsel is immediately granted access to case files in the part containing evidence indicated in the request for application or extension of detention on remand. These provisions were changed on 15 April 2016[55]. Article 250 § 2b was added to CCP and introduced a restriction on

[51] That provision was in force even before the Directive 2012/13/EU entered into force.
[52] See Marcin Mrowicki, *'Dostęp do akt zatrzymanego niebędącego stroną postępowania przygotowawczego; (2022) 2 Państwo i prawo* 136-139.
[53] *Introduced by* the Act of 27 September 2013. Article 249a CCP entered into force on 1 July 2015.
[54] Amended *by* the Act of 27 September 2013, entered into force on 1 July 2014.
[55] *Act of 11 March 2016* on the amendment of CCP and other acts (Dziennik Ustaw 2016, poz. 437).

access to relevant documents. In case of a justified concern of a danger to the life, health, freedom of a witness or his or her next of kin, their testimony cannot be revealed to the accused or his defence counsel. Since the Article 7(1) Directive 2012/13/EU does not provide any possibility of introducing limitations regarding access to documents that are relevant to questioning the detention lawfulness Polish law is currently not in compliance with it. This is underlined by Polish courts and legal scholars who argue that Article 250 §2b CCP cannot be applied as it violated the Article 7 (1) Directive 2012/13/EU and that the latter provision is thus directly effective in Polish legal system[56]. The Projected Amendment of 2025 eliminates this fault and restores the state of proper implementation of Article 7 (1) Directive 2012/13/EU with regard to detained suspects.

In cases of detention on remand during trial before court there was no need to transpose the standard set in Article 7 (1) Directive 2012/13/EU. To that regard the right has been fully transposed in indirect way. Article 156 § 1 CCP even before the entry into force of the Directive 2012/13/EU provided that accused and defence counsel have free access to case file at that stage of criminal proceedings.

Article 7 (2-4) Directive 2012/13/EU for the most part can be considered as transposed to Polish law. The relevant domestic provisions of CCP even before the entry into force of the Directive 2012/13/EU provided that the suspect has unlimited access to case file at the end of investigation (Article 321 CCP). This right is limited during the investigation since the access may be refused if it may prejudice ongoing investigation or impair important state interest[57] . However, the transposition is only partial since not in all cases the refusal to provide an access to the case file is subjected to judicial review. If it the decision was issued by the Police or other investigating authority it is verified only by the public prosecutor who supervises the investigation (Article 465 § 3 CCP).

[56] See Maciej Fingas, 'Bezpośrednie stosowanie dyrektywy 2012/13 w zakresie dostępu obrony do akt sprawy w procesie karnym – glosa do postanowienia Sądu Apelacyjnego w Gdańsku z 8.04.2020 r. (II AKz 207/20)' (2020) 12 Palestra 91-99; decision of the Court of Appeal in Gdańsk of 8 April 2020, II AKz 207/20,)(2020) 1-2 'Kwartalnik Sądowy Apelacji Gdańskiej'.

[57] Legal grounds for limitation introduced *by* the Act of 27 September 2013 and entered into force on 2 June 2014.

Co-funded by the European Union

Only if it is the prosecutor who refused the access to case file, the decision is reviewed by the court upon a party's interlocutory appeal.

The access to case file, as regulated in Articles 156 § 1 and § 2 CCP, is free of charge. To that regard the Polish law was in compliance with the Directive 2012/13/EU standard before its entry into force.

2.6. Verification and Remedies (Article 8)

Polish law is in compliance with the obligation to have a recording procedure mentioned in Article 8 Directive 2012/13/EU. In case of arrest the reception of the Letter of Rights by the arrestee is confirmed in the police report (Article 244 § 3 CCP). In case of detention on remand, the detained person in practice confirms with her signature the reception of the Letter of Rights. The same procedure is applicable in case of information provided to the suspect (Article 300 § 1 CCP). In relation to information given to the accused at trial, the proof of service of indictment is attached to the case file and any changes in relation to charges included in the indictment are indicated in a hearing record. All of the above provisions existed before the entry into force of the Directive 2012/13/EU, except for recording of information given to the person detained on remand. The latter provisions were introduced by the Act of 27 September 2013[58].

Similarly, as in case of recording procedure, Polish law provides for a remedy for failure to provide information in accordance with Directive 2012/13/EU. Article 16 CCP, which was binding before the Directive 2012/13/EU entered into force provides that the lack of information on rights or an incorrect information may not result in any adverse consequences *i.a.* to the suspect of accused person. That provision is uniformly understood[59] as implicating that in case of failure to provide complete information about procedural rights that may not lead to inability to exercise them, even if e.g. the relevant deadline expired. Moreover, if evidence was obtained in violation of the right

[58] Entered into force on 2 June 2014.
[59] Cf. e.g. Jakub Kosowski, *Zasada informacji prawnej w polskim procesie karnym w świetle art. 16 k.p.k.*, (Wolters Kluwer 2011) 275-298.

to information (e.g. suspect was not informed about the right to remain silent and testified) on the basis of Article 16 CCP that results in their exclusion.

3. Directive 2013/48/EU: Right of access to a lawyer and to have a third party informed

3.1. Introduction

The official position of the Polish government is that the Directive 2013/48/EU has been implemented in the Polish system indirectly[60]. Based on the information communicated by the government to the European Commission[61] the Directive 2013/48/EU is believed to be implemented by the Polish Constitution, Criminal Enforcement Code, Code of Criminal Procedure and Petty Offences Code and Regulation of the Minister of Justice of 11 June 2015 on the determination of the model of the information on the rights of a person arrested on the basis of a European Arrest Warrant[62] as well as two other acts that pertain only to children.

The position of the Polish government cannot be assessed as correct. **The analysis of the standard provided by Directive 2013/48/EU and Polish law leads to conclusion that for the most part the Directive has not been transposed at all or that the transposition was improper**. Such opinion is supported by the position expressed by the Helsinki Foundation for Human Rights[63], the Polish Ombudsman[64] and the Polish National Bar

[60] https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32013L0048 (access 31 July 2025).
[61] https://eur-lex.europa.eu/legal-content/PL/NIM/?uri=celex:32013L0048 (access 31 July 2025).
[62] Rozporządzenie Ministra Sprawiedliwości z dnia 11 czerwca 2015 r. w sprawie określenia wzoru pouczenia o uprawnieniach zatrzymanego na podstawie europejskiego nakazu aresztowania;
[63] See the Helsinki Foundation for Human Rights statement to the Ministry of Justice; https://www.hfhr.pl/wp-content/uploads/2020/01/1680_001.pdfu (access 31 July 2025). See also: Adam Klepczyński, Piotr Kładoczny, Katarzyna Wiśniewska, 'Raport na temat wdrożenia dyrektywy Parlamentu Europejskiego i Rady 2013/48/UE z dnia 22 października 2013 r. w sprawie prawa dostępu do adwokata w postępowaniu karnym i w postępowaniu dotyczącym europejskiego nakazu aresztowania oraz w sprawie prawa do poinformowania osoby trzeciej o pozbawieniu wolności i prawa do porozumiewania się z osobami trzecimi i organami konsularnymi w czasie pozbawienia wolności', (Warszawa 2017).
[64] The Ombudsman statement of the implementation of the directive; https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Ministra%20Sprawiedliwo%C5%9Bci%20w%20sprawie%20prawa%20osoby%20zatrzymanej%20do%20pomocy%20prawnej.pdf (access 31 July 2025).

Association[65] who acknowledged that Polish law fails to conform to the EU law requirements.

Three arguments can be formed to substantiate such belief. First, the right to access to a lawyer, although granted at a later stage of investigation after official charges, does not apply to the same extent to the person that has been arrested or informally approached by the police at an early stage of investigation[66]. Second, the right to contact a lawyer before the first interrogation is not sufficiently provided. Third, during the first fourteen days of detention a prosecutor may decide that the privileged lawyer-client communication will be limited by providing some form of supervision.

In July 2021 the European Commission sent a letter of formal notice to Poland and five other countries for failing to properly introduce Directive 2013/48/EU[67]. In November 2023 the case against Poland was referred to the CJEU[68]. It is argued by legal scholars that provisions of the Directive have to be directly applied by Polish courts and investigative authorities[69].

The government is aware of the deficiencies of the national legislation. An already mentioned **Projected Amendment of 2025**, adopted by the Polish government on 15 July 2025, aims at proper implementation of Directive 2013/48/EU. It contains a lot of important proposals such as **a new definition of suspect** as a person against with regard to whom there is a sufficient suspicion of having committed a crime in light of gathered evidence and against whom a procedural action aimed at prosecuting him or her (projected wording of Article 71 § 1 CCP). If the project becomes a binding law, it would solve a lot of issues discussed in this report as undermining the implementation of the Directives, especially 2013/48/EU, in Poland. However, the projected law has all legislative steps in the Parliament and before the President yet to pass which makes it uncertain if and when it will become binding law. Nevertheless, it is a clear

65 http://www.adwokatura.pl/z-zycia-nra/prezes-nra-interweniuje-ws-dostepu-zatrzymanego-do-adwokata/, (access 31 July 2025).
66 See Sec. 1.3 (Introduction).
67 https://ec.europa.eu/commission/presscorner/detail/en/inf_21_3440 (access: 31 July 2025).
68 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5369 (access: 31 July 2025).
69 Kacper Oleksy, 'Bezpośredni skutek „dyrektywy obrończej" w polskim procesie karnym' (2019) 3, 29 Problemy Prawa Karnego 23-48.

Co-funded by the European Union

acknowledgment of the Polish criminal law's failure to comply with Directive 2013/48/EU as well as in important step towards a proper implementation.

3.2. The right of access to a lawyer in criminal proceedings (Article 3)

A suspect or accused can appoint a defence lawyer, who has a strong and autonomous position in criminal proceedings. A defence lawyer can participate in interrogations, court hearings and may question witnesses (Articles 170 and 370 CCP), all any evidence (Article 167 CCP), has a right to access to the case files (Article 156 CCP) and she or he must be informed about the time when any procedural act will be taking place (Article 140 CCP). This also applies during investigation (Articles 315-318 CCP). However, at this early stage of criminal process the prosecutor may limit the right of a lawyer to participate in certain investigatory actions (Article 317 § 2 CCP)[70] and the right of access to the case file (Article 156 § 5 CCP) if there is the need to ensure the correct course of proceedings or protect an important state interest.

A person who has not been officially charged with a crime but who has been summoned for interrogation may request the presence of a lawyer. The prosecutor may however refuse such request if in the prosecutor's opinion it is not necessary for the protection of the interests of that person (Article 87 § 3 CCP). If during such interrogation the situation of a person being questioned changes and she becomes formally charged with a crime, there is no obligation to stop the interrogation and allow the suspect to contact with a lawyer. The same rules apply with other acts of criminal proceedings – other than arrest – in which a person who has not been officially charged with a crime is involved, such as search and seizure (Article 217 and 219 CCP), or an identity parade (Article 173 CCP).

A situation of an arrested person is different if she has not been officially charged with a crime. The arrestee must not be refused contact with a lawyer and should have a possibility to speak with him or her directly (Article 244 § 2 and 245 § 1 CCP). However, the research shows that police try to discourage arrested persons from using the

[70] But see Article 315 § 2 CCP. See broadly Wojciech Jasiński and Karolina Kremens, *Criminal Law in Poland* (Wolters Kluwer 2019) 219.

Co-funded by
the European Union

assistance of a lawyer and sometimes make it difficult to establish such contact[71]. Moreover, there is no provision that obliges police or prosecutors to stop questioning and wait for a lawyer's presence. The general rules of participation in procedural actions allow interrogation of an arrested person without the presence of a lawyer, despite the request made by the suspect[72]. If the prosecutor decides to question the arrested suspect person as a witness the presence of a lawyer may be considered unnecessary under Article 87 § 3 CCP. Moreover, even if during such interrogation prosecutor decides to formally charge a person with a crime, according to Article 301 CCP, the lawyer's failure to appear does not impede the course of the activity and the questioning may continue.

The right to access to a lawyer appears to be more secured after formal charges have been brought against a person. In such case a suspect is informed about the right to be assisted by a defence counsel and the right to have a court appointed defence counsel under the principles set out in Article 78 CCP[73]. However, the law does not specify the nature of a lawyer-client contact. It is again up to the discretion of the questioning authority to provide whether the suspect will be able to consult with a defence counsel. A suspect may declare that he or she will remain silent until his or her defence counsel appears. However, at the instigation of the interrogator or simply because the suspect is tired of waiting for his defence counsel to appear, he or she may start answering to the questions and giving statements of a potentially incriminating nature[74]. Moreover, even if the defence counsel appears for the interrogation and the prosecutor agrees that the suspects talk to the counsel before the interrogation, it may be ordered that such conversation is held in the presence of a police officer or other designated person[75].

[71] The Helsinki Foundation report, *Wzmocnienie praw procesowych w postępowaniu karnym - skuteczne wdrożenie prawa do obrońcy i pomocy prawnej na podstawie Programu Sztokholmskiego,* 12, https://www.hfhr.pl/wp-content/uploads/2018/03/HFPC-Wzmocnienie-praw-procesowych-w-postepowaniu-karnym-29-03.pdf (access 31 July 2025).
[72] Article 117 § 2 CCP. Interrogation of a detained person is not regulated separately in CCP. The only relevant rule provides that immediately after the arrest, the data concerning the arrestee should be gathered and the prosecutor should be notified (Article 244 § 4 CCP).
[73] Article 300 § 1 CCP.
[74] See also point 1.1.7. about the waiver od directive rights.
[75] See also point 1.1.3 about the confidentiality of lawyer-client contact.

Accordingly, in the light of the above analysis **the transposition of Article 3 must be considered as improper**. Only when the case reaches a trial stage the accused is guaranteed the right of access to a lawyer as provided by the Directive 2013/48/EU. In all earlier scenarios the right of access to a lawyer either depends upon the discretion of investigating authority and the privacy of contact with a lawyer may be limited. There are also no rules that force the investigating authority to interrupt the interrogation to allow the suspect to consult with a lawyer. Most importantly, the position of an arrested person who is not yet charged with a crime remains mostly unsecured.

Those faults are intended to be eliminated by the Projected Amendment of 2025. The new wording of Article 301 CCP would be divided into 10 paragraphs, ordering that a waiver of the right to counsel is explicitly mentioned in the interrogation minutes and that the prosecutor or other investigative authority has to delay the interrogation by at least three hours if the suspect wishes to appoint a counsel; attorney-at-laws will be obliged to remain on duty for the purpose of providing rights of defence. Once an attorney arrives, the suspect has to be given no less than an hour to consult with him or her. According to projected Article 301 § 8 CCP it will only be possible to continue the first interrogation without a lawyer if a special situation of necessity to protect national security, human life, health or freedom or for the sake of an "important interest of the investigation" which corresponds to the exceptions allowed by Article 3 (6) Directive 2013/48/EU.

3.3. Confidentiality (Article 4)

As a rule, a lawyer-client contact is confidential although this does not follow directly from any provision of the Polish CCP. Some reference to that principle can be derived from Article 178 (1) CCP providing that a defence counsel cannot testify as a witness with regard to facts while he or she learned while giving legal advice or conducting a case.

Certainly, the privilege also applies when the suspect or accused is deprived of liberty whether for the short time (arrest) or much longer (pre-trial detention). General rules provide that the detained person is granted the right to communicate with his or her lawyer in the absence of other persons (Article 215 CEC and Article 73 § 1 CCP). This extends to the exchange of mail between lawyer and detainee (Article 217b § 1a CEC) as well as by phone. However, the confidentiality of communication is not fully respected. According to Article 73 § 2 CCP[76], the prosecutor while allowing the meeting between the lawyer and detainee, "may, in a particularly justified case, make a restriction that he or she personally, or another person authorised by him, will be present at the time". This applies to mail communication accordingly (Article 73 § 3 CCP) and can last only up to 14 days from the time of imposing the pretrial detention (Article 73 § 4 CCP)[77]. Allowing an arrested person to have a conversation with a lawyer, the prosecutor may specify that another person designated by him or her will be present during the conversation. Thus, in reality, the arrested person's contact with his lawyer is not guaranteed to be confidential, as whether the conversation with the lawyer will be private is at the discretion of the prosecutor (Article 245 § 3 CCP). The limitations imposed on the confidentiality of communication between suspect or accused and her lawyer are not subjected to judicial review. The request for review is lodged only with the prosecutor (Article 302 § 2 CCP).

However, **it is difficult to unequivocally state that the national law is incompatible with the Directive 2013/48/EU**. Article 4 Directive 2013/48/EU does not introduce an absolute obligation to respect the privacy of contact with defence counsel. The Directive merely provides that the Member States "shall respect" the confidentiality of conversations and correspondence. It, therefore, appears that this formulation does not exclude - in particularly justified and exceptional circumstances - the possibility of interference with privacy[78]. However, the principle should be that lawyer-client

[76] Article 73 CCP was controlled twice by the Constitutional Court. In the first judgment from 2004, it was argued, that the possibility to limit the privacy of the lawyer-client contact does not prejudice the rights of the defence – Judgment of the Constitutional Court of 17 February 2004, SK 39/02, OTK-A 2004/2/7. In a second judgment from 2012 the Constitutional Court stated that article 73 § 3 CCP was incompatible with Constitution, because it did not specify the conditions under which the public prosecutor may order the control of correspondence. (Judgment of the Constitutional Court of 10 December 2012, K 25/11, OTK-A 2012/11/132). The law since than has been amended and the condition ("particularly justified cases") allowing for limiting the privilege was introduced.
[77] The rules on supervision of communication also applies to contact with a lawyer when a person who was not officially charged with a crime was arrested and he or she awaits the interrogation (article 245 CCP).
[78] Recital 34 Directive 2013/48/EU.

Co-funded by the European Union

contact should be confidential, particularly when a person is deprived of his or her liberty. Polish law enables a number of exceptions to the confidentiality of contact with a lawyer in "particularly justified cases", but this is a very vague concept. In fact, in investigation, it is the prosecutor who decides whether contact with an attorney will be confidential, and the decision to interfere with the privacy of contact with a defence counsel is not subject to judicial review.

The Projected Amendment of 2025 repeals provisions of Article 73 § 2-4 CCP, thus eliminating any possibility of interfering with the privacy of defence attorney-client contacts.

3.4. The right to have a third person informed of the deprivation of liberty (Article 5)

With regard to the right to have a third person informed of the deprivation of liberty as provided by **Article 5 Directive 2013/48/EU it has been fully although indirectly implemented**. The Polish law clearly provides that if an arrested person requests so, the third party (relative or another person) will be informed of the arrest (Article 245 § 3). The right applies also in case of pretrial detention (Article 261 CCP). Despite the fact that the Directive allows for a temporary limitation of the obligation to inform about the deprivation of liberty of the accused or a person who was not officially charged with a crime (Article 8 of the Directive 2013/48/EU), the national law does not provide for derogations to this obligation.

3.5. The right to communicate, while deprived of liberty, with third persons (Article 6)

An arrested person does not have a right to communicate with third persons. There is no provision neither in CCP nor in Regulations for arrested persons[79] which allows

[79] Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 czerwca 2012 r. w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb, Dziennik Ustaw 2012, poz. 638 (The Regulation of the Minister of Internal Affairs of

contact and a conversation with other person than a lawyer. Projected Amendment of 2025 aims at implementing Article 6 (1) with regard to arrestees by allowing them to have contact with one chosen person under conditions set by the arresting authority; in exceptional circumstances such contact can be refused (projected Article 245 § 4 CCP).

During pretrial detention, a suspect or accused can communicate with a third party. Various forms of contact are permissible; detainee may send and receive mail, make phone calls or conduct personal meetings in the detention facility.

Specific rules of contact of the detainee with another person depend on the internal regulation adopted for each detention facility, e.g. how long phone calls can last, at what hour the phone is allowed to be used. However, the Code of Enforcement Proceedings provides for general conditions concerning contact between an arrested person and the third party. A detainee may be allowed to see another person only upon the permission issued by the authority at whose disposal the person remains (Article 217 § 1 CEC). During investigation a decision is made by the prosecutor, and during the trial stage – by the court. A detainee has a right to be visited by a relative at least once a month (Article 217 § 1a CEC) and such meetings are supervised by the prison service or other authority upon the decision of the prosecutor or court. However, the relevant authority may refuse to permit a visit if there is a justified risk that the visit will be used: 1) for the purpose of unlawfully obstructing criminal proceedings; 2) to commit a crime, in particular, incitement to commit a crime (article 217 § 1b CEC). A refusal of a visit may be challenged by the detainee or a relative with whom a detainee has wanted to meet. Correspondence with relatives or other people is controlled and censored by the authority at whose disposal the detainee remains (prosecutor or court) unless the authority orders otherwise or by the director of the prison (Article 217a § 1 and 2 CEC).

Therefore, at the moment **the implementation of Article 6 Directive 2013/48/EU can be considered only as partial** since the contact with a third person is allowed only in case

4 June 2012 on rooms intended for arrested persons or persons brought in for the purpose of sobriety, transitory rooms, temporary transitory rooms and police children's rooms, the rules of stay in these rooms, rooms and the manner of handling recordings from these rooms).

of detained persons and, besides lawyer-client communication, not for the arrestee. Projected Amendment of 2025 intends to eliminate this fault.

3.6. The right to communicate with consular authorities (Article 7)

The right of arrested person to communicate with consular authorities is guaranteed by provision that demands the competent consular authority (or diplomatic mission) to be notified immediately, at the request of its citizen, of the imposition of detention on remand on such a person (Article 612 CCP). The arrested person, at his or her request, is also allowed to contact a consular authority (or diplomatic mission). An arrested person as well as a person upon whom a pretrial detention has been imposed must be notified about these rights[80]. Additionally, a person who was deprived of liberty can communicate in private with consular authorities and such visits are not supervised and correspondence between them remains uncensored[81]. **Thus, the Directive 2013/48/EU has been implemented fully although indirectly**.

3.7. Temporary derogation (Article 8)

The Polish CCP does not provide for any rules according to which the right to access of a lawyer at the initial stage of the proceedings may be temporary derogated under Article 3 (5) or (6) or under Article 5 (3). The only existing restriction concerns the right to communicate privately with a lawyer which can be limited by the presence of designated person during meetings with a lawyer during first 14 days of detention (Article 73 § 3 and 4 CCP), but this is not the type of derogation that Article 8 Directive 2013/48/EU refers to.

This could suggest that Poland did not make a use of a power provided by the Directive to temporary limit the right to contact with a lawyer and by doing so remain

[80] Article 244 § 2 CCP and the regulation the Minister of Justice of 3 June 2015 on the determination of the model of the instruction on the rights of a detainee in criminal proceedings (Dziennik Ustaw 2015, poz. 835) – in case of arrest. Article 263 § 8 CCP and the regulation the Minister of Justice of 13 April 2016 on the determination of the model of the instruction on the rights of a pretrial detainee in criminal proceedings (Dziennik Ustaw 2016, poz. 513) – in case of pre-trial detention.
[81] Article 215 § 1a and 217b CEC.

Co-funded by the European Union

in compliance with the Directive. It is true for the accused and suspect as from the moment when he or she has been officially charged with a crime under Polish law. No temporary derogations are also provided in case of arrestee who is not yet officially charged with a crime since he or she has a broad right to meet and communicate with a lawyer (Article 244 § 2 and 245 § 1 CCP). However, the right of access to a lawyer also entails the right for the lawyer to be present and participate effectively when questioned (Article 3 (3) (b) Directive 2013/48/EU). And, as discussed above, the execution of this particular right is not secured for a person who has been arrested and not yet charged with a crime and depends upon the discretionary decision of the prosecutor[82]. Moreover, the prosecutor may refuse the lawyer to be present and participate during questioning of an arrestee (Article 87 § 3 CCP) as long as formal charging did not take place. Such decision is only subject to judicial review if an interlocutory appeal is filed against the decision to arrest a person and cannot be challenged independently as such. Therefore, **the standard provided by the Directive 2013/48/EU should be considered as not met**. As already mentioned, this deficiency is intended to be eliminated by Projected Amendment of 2025 which abandons the procedure of formal charging while referring to procedural activities taken against the suspected persons as triggering all the guarantees that suspects are provided with.

3.8. Waiver (Article 9)

The suspect shall be informed in writing of his rights, including the right to contact a lawyer and the right to court-appointed lawyer (Article 300 § 1 CCP). A prosecutor should explain to the suspect the consequences of not exercising the right of access to a lawyer (Article 16 § 2 CCP). In one case the Supreme Court revoked a verdict and referred the case for retrial because the regional and district courts had convicted the defendant based on statements given in the absence of a lawyer, while the defendant - due to his illness - was not able to read the Letter of Rights[83]. Yet, national case-law accepts that it is possible to implicitly waive the right to be assisted by a

[82] See Sect. 8.2. above.
[83] The Judgment of the Supreme Court of 27 May 2020, V KK 545/18, unpublished.

Co-funded by the European Union

lawyer simply by answering questions during interrogation[84]. Therefore, **Article 9 Directive 2013/48/EU should be considered as indirectly implemented**.

According to Projected Amendment 2025, proposing a new Article 301 § 2 CCP, the waiver of right to have a lawyer present during the first interrogation could only be made after having been informed of such right and would have to be explicitly recorded in the minutes of the interrogation.

3.9. The right of access to a lawyer in European arrest warrant proceedings (Article 10)

All provisions concerning the suspect's or accused person's right of access to a lawyer should apply accordingly to requested person who enjoys the same scope of rights during European arrest warrant proceedings[85].

3.10. Remedies (Article 12)

The Directive 2013/48/EU requires that there is an effective remedy in national law if the right of access to a lawyer is breached. In Poland there is a right to judicial review if suspect or accused was not able to contact a lawyer during his or her arrest or detention (Article 246 § 1 in connection with Article 245 § 1 CCP; Article 252 CCP). In so doing, he or she may challenge, for example, the restriction of confidentiality of contact with a lawyer, if such a decision was taken in accordance with article 73 § 2 or 3 CCP. However, it is necessary to prove that the limiting or depriving of contact with a lawyer had an impact on the content of the decision.

As a rule, CCP does not require the elimination of statements made by the suspect in the absence of a lawyer or before he or she had a chance to consult with a lawyer. Statements may not be used as the grounds for a conviction if during the proceedings the suspect will prove that he was subjected to compulsion, illicit threat, or statements were made in coerced circumstances (Article 171 § 5 and 7 CCP) or if it turns out that

[84] The Judgment of the Court of Appeal in Katowice of 6 April 2017 r., II AKa 15/17, LEX no 2343419.
[85] The Judgment of the Constitutional Tribunal of 5 October 2010, SK 26/08, OTK-A 2010/8/73.

Co-funded by the European Union

he or she was not able to understand the letter of rights (Article 300 § 1 CCP in connection with article 16 § 1 CCP).

Polish courts are reluctant to implement the European standard. On one occasion the Court of Appeals in Katowice stated that "it is not possible to conclude that ECtHR intended to introduce a general requirement to ensure the presence of defence counsel during the first interrogation of every suspect which could result in inadmissibility of the use of incriminating statements during trial. The ECtHR is only concerned with the necessary presence of the defence counsel in situations of the objectively existing vulnerability of the suspect, for example because of his or her age or his or her helplessness as a result of social factors or state of health (including drug or alcohol addiction)"[86]. However, it must be admitted that the Appeals Court did not take into consideration the rules of Directive 2013/48/EU and did not consider if the accused waived his rights willingly and intentionally.

According to the case law, self-incriminating statements of the suspect made in the absence of a lawyer should be excluded as inadmissible if the suspect was coerced to make the statement or the suspect was objectively vulnerable[87]. Notably, the case law recognizes specific needs of vulnerable persons. Although it can be admitted that the case law is gradually changing and evolving to take account of Strasbourg standards, it is too slow to guarantee a "European" level of protection of the rights of the accused.

The Projected Amendment of 2025 intends to introduce Article 171 § 7a CCP which would make statements given by the suspect interrogated with the violation of the right of access to a lawyer (projected Article 301 § 1-9 CCP) inadmissible unless the accused applies otherwise.

[86] The Judgment of the Court of Appeal in Katowice of 6 April 2017, II AKa 15/17, LEX no. 2343419.
[87] The Decision of the Supreme Court of 4 April 2013, III KK 327/12, OSNKW 2013, nr 7, poz. 60. See also: the Judgment of the Court of Appeal in Wrocław of 28 July 2018, II AKa 169/18, LEX no. 2532130; the Decision of the Supreme Court of 27 June 2017 r., II KK 82/17, LEX no. 2338030.

Co-funded by the European Union

FULL PROOF

4. Directive (EU) 2016/1919: Legal aid

4.1. Introduction

The official position of the Polish government is that the Directive 2016/1919/EU has been fully transposed. This conclusion is based on two premises. First, Poland reported to the EU Commission that there are four national legal instruments implementing the Directive 2016/1919/EU: CCP, Act of 6 July 1982 on Attorneys-at-law, Act of 26 May 1982 on the Bar and the Regulation of the Minister of Justice of 23 June 2015 on the method of providing the accused with the right to defence counsel in accelerated proceedings. Second, the Ministry of Justice has stated on numerous occasions that the Directive 2016/1919/EU has been fully and properly transposed in several documents[88].

However, the independent entities, such as the Polish Ombudsman[89], the President of the National Council of the Bar[90] or Helsinki Foundation for Human Rights[91] expressed **serious doubts whether the transposition of the Directive 2016/1919/EU has been full and proper**. This chapter presents arguments in support of this position supported by the relevant case law and scholarly opinions presented in the debate regarding the implementation of the right to legal aid in Poland.

The most important discrepancies in transposition of the Directive 2016/1919/EU are caused by the already discussed[92] Polish formal notion of suspect that results in leaving without a right to legal aid all those who were not officially charged with a crime, i.e.

---

[88] Michał Wójcik, 'Ministry's of Justice response to the interpellation no. 32684' [2019] < https://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=BF7HE5 > (access 31 July 2025); Marcin Romanowski, 'Ministry's of Justice response to the President of the National Council of the Bar' [2020] < https://www.adwokatura.pl/admin/wgrane_pliki/file-dlpk-ii070452020-ms-do-nra-dostep-do-adwokata-dla-osoby-zatrzymanej-30198.pdf > (access 31 July 2025).

[89] The Ombudsman, 'Letter to the Minister of Justice' [2020] < https://www.rpo.gov.pl/sites/default/files/Pismo%20do%20MS%20ws.%20%20projekt%C3%B3w%20wzor%C3%B3w%20poucze%C5%84%20o%20uprawnieniach%20i%20obowi%C4%85zkach%20podejrzanego%2C%20pokrzywdzonego%20oraz%20%C5%9Bwiadka%20w%20sprawach%20karnych%2C%206%20listopada%202019.pdf > (access 31 July 2025).

[90] Jacek Trela, 'Letter to the Minister of Justice' [2020] < https://www.adwokatura.pl/admin/wgrane_pliki/file-20200812-pismo-prezesa-nra-do-ministra-sprawiedliwosci-w-sprawie-dostepu-zatrzymanego-do-obroncy-30082.pdf > (access 31 July 2025).

[91] HFHR and the Bar's 'List of proposals' regarding right of access to a lawyer [2019] < https://www.hfhr.pl/wp-content/uploads/2019/10/Lista-postulat%C3%B3w_EDP.pdf > (access 31 July 2025).

[92] See Sect. 5.3 (Introduction).

Co-funded by the European Union

arrested or searched individuals. Only for that reason it is doubtful whether the Directive 2016/1919/EU has been completely and properly implemented. Thus, the level of transposition of this right in Poland has to be assessed separately for those who are accused or officially granted status of a suspect and those who are not yet officially charged with a crime. Moreover, in relation to both groups the implementation has to be assessed as unsatisfactory, mostly because Article 4 (5) understood in the light of recital 19 of the Directive 2016/1919/EU has not been transposed since there is no mandatory postponement of procedural actions until the motion for legal aid is heard by the court. Furthermore, the right to consult with a lawyer before the interrogation is not guaranteed. Both determines that the right to legal aid granted only after the first interrogation may be highly ineffective. These briefly presented arguments, that will be further expanded below, should be considered as decisive for the conclusion that **the transposition of the Directive 2016/1919/EU is not effective**. This belief is not changed by the fact that some isolated provisions of the Directive have been in fact partially or even fully implemented. However, if Projected Amendment of 2025 becomes binding law, both mentioned issues will be solved.

4.2. Right to legal aid (Article 4)

With regard to persons who have formally acquired the status of a suspect or accused Article 4 (1) of the Directive 2016/1919 has been fully although indirectly implemented. The accused who does not have a defence counsel of his or her own choice may request the legal support of the court-appointed defence counsel, if he or she can duly prove that they are unable to bear the costs of defence without prejudice to the necessary maintenance of themselves, or their family (Article 78 § 1 CCP) which also extends to the suspect (Article 71 § 3 CCP). This provision does not refer to the interests of justice and it is also irrelevant whether the accused is deprived of liberty or entitled to take part in investigative procedures as provided in Article 2 (1) a) and c) of the Directive 2016/1919/EU. The rule provides simply that every suspect and accused is entitled to legal aid as long as he or she is unable to pay for assistance of a lawyer regardless of the complexity or seriousness of the case.

In March 2025 Article 78a CCP was introduced, which provides that another category of suspects apart from the indigent is entitled to a court-appointed counsel if they have not appointed one, namely soldiers, Police officers and Border Guard officers who are accused of a crime committed in consequence of using means of physical coercion or weapon when performing duties related to specific threats to national security described in separate provisions, counterterrorism or when they were defending themselves or another person from a direct attack on their life, health or liberty. This provision has been introduced after one of the incidents at the Polish-Belarussian border and it seems irrelevant for the assessment of the Directive's transposition.

The Polish law additionally provides for certain situations where assistance of a defence counsel is mandatory. This is applicable to all persons after formal presentation of charges irrespective of their financial situation if they are unable to defend themselves due to being underage, deaf, mute or blind or because of their mental health (Article 79 § 1 CCP). It also pertains to those who are accused of felony but in such case the right to legal aid is applicable only during proceedings held before the court, that is after indictment has been filed with court (Article 80 § 1 CCP). These circumstances may be qualified as an indirect expression of the threshold "when the interests of justice so require" as referred to in Article 4 (1) of the Directive 2016/1919. However, this does not mean that only court-appointed counsel may represent a suspect (accused) in such cases. A person may appoint the lawyer of her or his choice but if he or she does not do that, a court-appointed counsel will be chosen by the relevant authority.

However, the assessment of the completeness and correctness of the Directive's implementation has to be different **with regard to persons who are not yet formally charged – in this respect Article 4 (1) of the Directive 2016/1919/EU cannot be considered as transposed at all**. Such person is not a party to proceedings and thus enjoys the right to be represented by a counsel – even of their own choice and at their own expense – only if their interest in the proceedings so requires (Article 87 § 2 CCP). What is more, such counsel may be refused to participate in proceedings if in the opinion of the authority it is not necessary for the protection of the interests of the person concerned. This means that only upon discretionary decision of the prosecutor such individual may be assisted by the counsel. Moreover, since the general right to appoint a counsel is not properly guaranteed to these persons and depends on the assessment of the authorities, also the right to legal aid has to be deemed as not entirely transposed. It obviously applies as well to persons described in Article 2 (3) of the Directive 2016/1919/EU who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority. Their legal position in terms of legal aid changes only with the formal presentation of charges.

Another possibility of appointing a lawyer opens if a person who has not yet been charged is arrested. During arrest the right to consult with the lawyer is guaranteed but such lawyer is not officially a defence counsel (Article 245 § 1 CCP). It is, however, where the effective implementation fails the most. In this crucial moment when the person is arrested and not yet officially confirmed as a suspect, the questioning may take place and there are no rules that provide for an immediate assistance of a lawyer or for a legal aid.

This consequently leads to the conclusion that **Article 4 (5) of the Directive 2016/1919/EU has been only partially and improperly transposed**. In relation to suspects and accused persons the transposition has been to some extent direct. An ex officio defence counsel is appointed immediately by the court; the accused and the appointed counsel are informed in a suitable way, e.g. by telephone, if the defence shall be taken immediately (Article 81a § 2 and 3 CCP). In 2019 it was added to Article 81a § 3 CCP that in such urgent situations the suspect's motion for legal aid may be sent by the prosecutor to the court by e-mail or fax[93]. What is more, a legal counsel has to be available on duty all the time in each district for the purposes of granting legal aid to arrestees and in accelerated proceedings (Article 245 § 2 CCP and Article 517j CCP). However, the right to consult with the lawyer before questioning or any investigative acts is generally not guaranteed in Polish legal system[94]. There is

[93] *Ustawa z dnia 19 czerwca 2019 o zmianie ustawy Kodeks Postępowania Karnego i niektórych innych ustaw* (Dziennik Ustaw 2019, poz. 1694), Act of 19 July 2019 on the amendment of CCP and other acts. The Act has not been listed as implementing the Directive 2016/1919/EU by Polish government.
[94] See the subchapter on Directive 2013/48/EU.

Co-funded by the European Union

no provision in Polish legal system that would oblige the authorities either to allow the suspect to communicate with the lawyer before interrogation or to postpone procedural actions until legal aid is granted. Bearing in mind the wording of recital 19 to the Directive 2016/1919/EU, introducing such obligation is necessary to properly implement the right to legal aid[95]. Furthermore, in 2019 Article 338a § 1-3 CCP has been added[96]. This provision pertains only to main proceedings and obliges the accused to apply for legal aid within 7 days of being served with the act of indictment. The motion shall contain necessary evidence of the defendant's poverty. Otherwise the motion is admissible but will be heard after the next court hearing. Consequently, **Article 4 (5) of the Directive 2016/1919/EU has not been properly transposed in relation to neither accused persons and suspects, nor persons who have not yet been charged**.

When deciding on the right to legal aid of a suspect or an accused person, the means test is applied (Article 4 (2 and 3) of the Directive 2016/1919/EU). The Code of Criminal Proceedings does not precisely provide for specific criteria applied to assess if the accused (suspect) is in fact incapable to bear the costs of appointing a counsel. It is indicated in the case-law that the court is obliged to conduct the means test thoroughly, taking into account various factors. A good example of this approach is the Supreme Court's resolution of 19 March 2019, IV KS 5/19[97]. The facts of the case were as follows. The accused was represented by a defence counsel of his choice but decided to terminate the power of attorney in the course of first instance proceedings. He then applied for legal aid, stating that he lacked sufficient funds to appoint another counsel. The request was refused, and the defendant was convicted. The Regional Court heard an appeal, found that the right of defence of the accused was violated and annulled the District Court's judgment, sending the case for retrial. The prosecutor filed an appeal to the Supreme Court against the Regional Court's judgment, but it was upheld. The Supreme Court stated that the court deciding on a motion for legal

[95] Bartosz Przeciechowski 'Regulacje krajowe a transpozycja dyrektywy Parlamentu Europejskiego i Rady (UE) 2016/1919 z dnia 26 października 2016 r. w sprawie pomocy prawnej z urzędu dla podejrzanych i oskarżonych w postępowaniu karnym oraz dla osób, których dotyczy wniosek w postępowaniu dotyczącym europejskiego nakazu aresztowania' < http://www.adwokatura.pl/admin/wgrane_pliki/file-regulacje-krajowe-a-transpozycja-dyrektywy-ue-20161919-28075.pdf > (access 31 July 2025).

[96] *Ustawa z dnia 19 czerwca 2019 o zmianie ustawy Kodeks Postępowania Karnego i niektórych innych ustaw* (Dziennik Ustaw 2019, poz. 1694), Act of 19 July 2019 on the amendment of CCP and other acts.

[97] http://www.sn.pl/sites/orzecznictwo/orzeczenia3/iv%20ks%205-19.pdf (access 31 July 2025).

aid should assess the financial situation of the accused at the time of adjudicating. The court should consider whether, because of the current financial and family situation, the accused does not have the possibility of incurring the costs of defence counsel of his or her own choice. Referring only to the fact that earlier in the course of proceedings the defendant was assisted by a lawyer of his own choice was criticised by the Supreme Court as a far-reaching simplification. In the Supreme Court's opinion it is necessary to oblige the accused to provide necessary documents if he or she failed to prove his or her poverty in the motion. Otherwise, the motion may not be duly verified which may lead to the deprivation of the right to be assisted by the defence counsel.

The described approach of the judiciary strengthens the already expressed conclusion that **Article 4 (3) of the Directive 2016/1919/EU is in fact properly – although indirectly – transposed to Polish legal system**.

However, both means and merits test are applied to persons that are not yet formally charged because their right to appoint a counsel depends both on the authorities' assessment of their procedural interests and proving lack of financial resources[98]. There are no provisions that would oblige the authorities to take into account the fact that the person is arrested or brought before a competent court in order to decide on detention. The standard set by Article 4 (4) of the Directive 2016/1919/EU is not met.

Only the merits test is applied in case of mandatory defence referred to in Article 2 (1) (b) of the Directive 2016/1919/EU. **The transposition of Article 4 (4) of the Directive 2016/1919/EU is thus indirect and partial – it is proper in relation to accused and suspects who are required to be assisted by the lawyer but has not been done in case of persons who have not yet been charged**.

[98] That view is predominant in the legal doctrine. See Małgorzata Wąsek-Wiaderek, 'Aktywność obrońcy i pełnomocnika na etapie postępowania przejściowego' in Paweł Wiliński (ed), *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach* (Wolters Kluwer 2015) 226, 227-228; Sławomir Steinborn,'Commentary to Article 72' in Sławomir Steinborn (ed), *Kodeks postępowania karnego. Komentarz do wybranych przepisów* (2016) LEX < https://sip.lex.pl/#/commentary/587696233/493673/steinborn-slawomir-red-kodeks-postepowania-karnego-komentarz-do-wybranych-przepisow?cm=URELATIONS > (access 31 July 2025); Tomasz Grzegorczyk, 'Obrońca i pełnomocnik z urzędu w postępowaniu karnym po 1 lipca 2015 r., in Paweł Wiliński (ed), *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach* (Wolters Kluwer 2015) 47, 49.

Co-funded by the European Union

In general all the discussed issues will be solved if the Projected Amendment of 2025 becomes binding law as the notion of suspect will be redefined (as already mentioned) and the obligation to postpone the interrogation by not less than 3 hours as well as to provide at least one hour for consultation if a lawyer has to be appointed by the authorities prior to the interrogation will be introduced (projected Article 71 § 1 CCP and Article 301 § 5 and 6 CCP).

4.3. Legal aid in EAW proceedings (Article 5)

The right to legal aid of the persons subject to proceedings for the execution of a European arrest warrant (hereinafter: requested persons) as required by the **Article 5 (1) of the Directive 2016/1919/EU has been fully transposed**. As provided in the landmark case of Polish Constitutional Tribunal, the persons subject to proceedings for the execution of a European arrest warrant fully enjoy the rights of the accused[99] which extends to the right to legal aid. This right has been additionally strengthened by separate provision obliging the authorities to inform the requested person of the right to legal aid (Article 607l § 4 CCP).

The Polish law does not contain any provision that would directly or indirectly refer to the situation described in **Article 5 (2) of the Directive 2016/1919/EU**. Bearing in mind the wording of recital 21 of the Directive, this provision entitles the requested person to achieve legal aid in both issuing and executing Member State. General rules apply which means that the requested person may apply for legal aid in Poland regardless whether it is the issuing or executing Member State. The fact that he or she has already been granted legal aid in another Member State is of no importance. It may be argued in the motion that the legal aid is necessary to ensure effective access to justice although no national provision explicitly refers to this premise. That leads to the conclusion that the provision **is indirectly transposed**[100].

[99] Judgment of the Constitutional Court of 5 October 2010, SK 26/08, OTK-A 2010/8/73.
[100] See Michał Hara, 'Wpływ dyrektywy 2016/1919 na postępowanie dotyczące europejskiego nakazu aresztowania' (2018) 1-2 Kwartalnik o Prawach Człowieka 27.

Co-funded by the European Union

FULL PROOF

4.4. Decisions regarding granting legal aid (Article 6)

Article 6 of the Directive 2016/1919/EU has been indirectly and partially transposed. The defence counsel is immediately appointed by the president of the court, the court or the court referendary (Article 81a § 2 CPP, Article 88 § 1 CCP). Moreover, Article 81a § 4 obliges the Minister to take into account the necessity of ensuring a correct course of proceedings, as well as proper realisation of the right to defence, while regulating the issue of access to legal aid in accelerated proceedings and for arrestees. The court's decision on granting the legal aid or refusing it, takes the form of an order which is served to the applicant, subject to interlocutory appeal heard by another panel of the same court (Articles 81 § 1 a, 93 § 2 and 100 § 4 CCP). However, the level of transposition of Article 6 is weakened by the already discussed Article 338a CCP which allows to postpone adjudication on a motion for legal aid in main proceedings until next court hearing ends. This provision prioritises efficiency of proceedings over the rights of defence.

4.5. Quality of legal aid services and training (Article 7)

According to **Article 7 (1-3) of the Directive 2016/1919/EU** Member States shall ensure that the legal system is effective, legal aid services are of sufficient quality and adequate training regarding the issue of legal aid is provided to both judiciary staff and counsels. **Neither of these provisions has been explicitly transposed**. Nevertheless, the system of legal aid may be assessed as generally effective. Only a barrister or an attorney-at-law[101] may become a defence counsel in criminal proceedings (Article 82 § 1 CCP) and the court may appoint counsels only among lawyers mentioned on a list (Article 81a § 1 CCP) which is annually provided to each court by the Regional Bar. This assures a desired standard of expertise by those providing legal aid. Nevertheless, the system is often criticised, as counsels providing legal aid upon the court's appointment are remunerated remarkably lower than the market prices for legal

[101] In Poland barristers and attorneys-at-law are separate legal professions. To become a barrister or an attorney-at-law, a law degree is necessary, as well as finishing a three-year traineeship and passing a professional exam is needed. Both barristers and attorneys-at-law are entitled to appear before courts, including criminal ones since 2015. The only difference is that attorneys-at-law can be employed as in-house lawyers whereas barristers are forbidden to conclude an employment contract.

Co-funded by the European Union

counselling and paid only upon the finality of a judgment[102]. With regard to training, the institution responsible for training of the judges is the National School of Judiciary and Public Prosecution. In the training programme for future judges the issue of granting legal aid is not separately mentioned. Barristers, attorneys-at-law and judges are all legally obliged to further training. There is no accessible data on whether such training involves in a particular manner the issue of legal aid.

On the other hand, **Article 7 (4) of the Directive 2016/1919/EU has been indirectly and properly transposed**. Upon a justified request of the accused or the defence counsel, the court may appoint a new defence counsel to replace the former (Article 81 § 2 CCP).

4.6. Remedies (Article 8)

The transposition of Article 8 of the Directive 2016/1919/EU is indirect and only partial. The refusal to grant legal aid can be challenged by an interlocutory appeal heard by another panel of the court (Article 81 § 1a CCP). If during the course of proceedings, the court revokes the right to legal aid due to the change of circumstances, such decision is subject to interlocutory appeal also heard by another panel (Article 78 § 2 CCP). However, there is no provision obliging the investigating authorities to postpone a procedural action, i.e. interrogating witness, in order to wait for the appointment of a court appointed defence counsel. There is also no regulation that would allow the court to exclude the evidence obtained in violation during such period. This may lead to a breach of rights of suspects, accused persons and requested persons under the Directive 2016/1919/EU. In case of violating the right to legal aid otherwise than by refusing it or revoking a previously granted legal aid there is no specific remedy but the general remedies may be applied, e.g. by invoking the violation of the rights of defence and right to legal aid in the appeal against a judgment. Only if the defence was mandatory but no counsel took part in judicial proceedings it is expressly stated in Article 439 § 1 point 10 CCP that the judgment has to be *ex officio* quashed by the

[102] See e.g. Antoni Bojańczyk, 'Obrona na żądanie – czyżby jeszcze jeden krok w kierunku hipergwarancyjności procesu karnego?' (2015) 1-2 Palestra 197, 201.

Co-funded by the European Union

court of higher instance and the case send for retrial. The system of remedies shall thus be seen as incomplete.

Projected Amendment of 2025 aims at improving the level of implementation with respect to the discussed matter with the introduction of Article 171 § 7a CCP, making statements given by the suspect interrogated with the violation of the right of access to a lawyer (including interrogations that were not postponed in order to wait for a state appointed lawyer to appear and consult with the suspect) inadmissible unless the accused applies otherwise (projected Article 301 § 5 and 6 CCP).

4.7. Vulnerable persons (Article 9)

Lastly, there is no provision in Polish CCP that would explicitly refer to particular needs of vulnerable suspects, accused persons and requested persons in the context of legal aid. However, it has to be noted that if the suspect or accused is underage, deaf, mute, blind or was insane at the time of committing an alleged offence or is unable to participate in proceedings or reasonably defend him- or herself, the assistance of the defence counsel is mandatory under Article 79 § 1 CCP. This means that if no counsel of one’s own choice is appointed, the public defender will be appointed even if such request is not made by the party. In other situations that are not covered by Article 79 § 1 CCP taking into account particular needs of vulnerable persons depends solely on the approach of the investigating authorities.

5. Conclusions

5.1. Directive 2012/13/EU

The right to information about basic procedural rights provided by the Directive 2012/13/EU is fully implemented in Polish law. Simplicity and accessibility of their language has been significantly improved in 2024. Particular needs of vulnerable suspects or accused persons have also finally been taken under consideration by providing separate Letter of Rights for minors and additional explanation to the Letter of Rights for different categories of vulnerable persons.

Co-funded by
the European Union

Right to information in case of arrest or detention is also almost fully implemented in Polish law. The notification about the right to legal aid and the conditions for obtaining it as well as the right to access the case file are, however, missing. The transposition of the Directive 2012/13/EU is full in relation to Letter of Rights handed to a person arrested or detained for the purpose of executing EAW.

The right to information about the accusation is almost fully transposed to Polish legal system, with the exception of Article 313 § 1a CCP which allows to present charges to a person who is incapable of taking part in their presentation and interrogation due to his or her health condition or intoxication. The provision, although disturbing, has limited scope of application, including temporary one, and thus does not substantially affect the overall positive assessment of the Directive's implementation in the discussed matter.

The right that has not been implemented correctly is the right of access to case file. The transposition is insufficient in relation to arrestee and detained person during investigation, because the relevant CCP's provisions allow the prosecutor or other investigating authority to deny access to documents essential to challenging the lawfulness of the arrest or detention. Moreover, there is also no judicial review over decisions to refuse access to case file issued by Police or other investigating authority. Those faults are intended to be eliminated by the Projected Amendment of 2025.

5.2. Directive 2013/48/EU

The transposition of the Directive 2013/48/EU into Polish legal system is seriously flawed. The most important deficiency is related to the fact that the suspects to whom charges were not officially presented are not offered a right of access to lawyer to the extent provided in the Directive 2013/48/EU. The right to contact a lawyer before the first interrogation is also not fully guaranteed in the Polish CCP. In addition, the privileged lawyer-client communication is not sufficiently protected, because during the first fourteen days of detention a prosecutor may decide that it is supervised. These serious issues are intended to be solved by Projected Amendment of 2025.

The additional rights guaranteed in the Directive 2013/48/EU are correctly transposed. That refers to the right to have a third person informed of the deprivation of liberty, the right to communicate with consular authorities as well as the right to communicate, while deprived of liberty, with third persons. Nonetheless in the latter case it might be questioned whether the implementation is full, since there are no domestic provisions related to the communication with third persons of the arrestee.

As opposed to right of access to lawyer in domestic criminal proceedings, the same right is more accessible in the EAW proceedings. In that case, however, there are also deficiencies related to access to lawyer before the first interrogation in EAW procedure, insufficient protection of the confidentiality of lawyer-client communication and lack of explicit provisions regarding dual legal representation.

5.3. Directive 2016/1919/EU

Accordingly, as in case of Directive 2013/48/EU, the transposition of Directive 2016/1919 into the Polish legal system must be evaluated as flawed, because the suspects to whom charges were not officially presented are not offered a right to legal aid to the extent provided in the EU law. Moreover, there are no provisions in Polish law that guarantee free communication of the suspect with his or her lawyer before interrogation and postponement of any procedural action until legal aid is granted. The aforementioned faults are supposed to be eliminated by Projected Amendment of 2025.

The transposition of right to legal aid is better in case of EAW proceedings. In that respect, legal aid is secured for all persons subject to surrender. However, assistance of a lawyer faces similar challenges as mentioned in case of Directive 2013/48/EU. There are deficiencies related to access to lawyer before the first interrogation in EAW procedure and protection of the confidentiality of lawyer-client communication.

The Directive 2016/1919 obliges the Member states to organise an effective legal aid system and guarantee that legal aid services are of sufficient quality. Neither of these provisions has been explicitly transposed to Polish law. Taking into account the low remuneration paid to *ex officio* lawyers, as well as lack of any dedicated procedures allowing to verify the quality of legal aid, the transposition of these requirements seems deficient. That, of course, does not necessarily mean that the legal aid services

Co-funded by the European Union

themselves function ineffectively. But there is no national mechanism to verify that issue.

Polish law offers a possibility to challenge the refusal to grant legal aid. However as mentioned above, there is no obligation to postpone procedural acts (e.g. interrogation) for the time the ex officio lawyer will be appointed, as well as for example exclude evidence obtained before ex officio lawyer was appointed. To that extent Article 8 Directive 2016/1919 referring to obligation of Member states to offer effective remedies for the breach of rights guaranteed by the Directive 2016/1919 has not been implemented in the domestic legal order.

The Directive 2016/1919 has not been also transposed in part referring to the need to take into account particular needs of vulnerable suspects, accused persons and requested persons. It should be noticed that Polish law provides for mandatory defence if the suspect or accused is under 18 years old, deaf, mute, blind or suffered mental disorder at the time of committing an alleged offence as well as is unable to participate in proceedings or reasonably defend himself of herself. However, apart from these situations the special needs of vulnerable suspects, accused persons and requested persons are not anyhow formally recognised.

Co-funded by the European Union

FULL PROOF

FULL-PROOF.EU

Co-funded by the European Union.

Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the European Commission can be held responsible for them.

Co-funded by the European Union