

**COVID 19**

**CRIMINAL**

**JUSTICE**

**CAMPAIGN**

**POLAND**

## **Has the SARS-CoV-2 coronavirus infected the criminal justice system?**

HFHR's report on how the coronavirus pandemic has affected  
the functioning of the criminal justice system

# Has the SARS-CoV-2 coronavirus infected the criminal justice system?

HFHR's report on how the coronavirus pandemic has affected the functioning of the criminal justice system

## Authors:

Adam Klepczyński  
Piotr Kładoczny PhD  
Piotr Kubaszewski  
Katarzyna Wiśniewska PhD

## Graphic design and typesetting:

Marta Lissowska

## Published by:

Helsinki Foundation for Human Rights  
Wiejska 16 Street  
00-490 Warsaw

ISBN: 978-83-67027-03-8

Warsaw, November 2021

## INTRODUCTION

The SARS-CoV-2 coronavirus pandemic has been a very serious challenge for individuals, societies as a whole and public authorities. One of these challenges was to properly structure the operations of the justice system so that they remain consistent with the assessment of epidemiological threats. Overall responsibility for responding to such threats lies with state authorities, primarily the legislature, but also the executive and the judiciary. The implementation of changes to the law by the legislative branch depends on its assessment of reality and the objectives and strategies it has set out, as well as its imagination regarding the occurrence of legal “adverse effects.” However, it is in the hands of public authorities (e.g. the police, sanitary services) and judges to sensibly, flexibly and consistently implement the adopted measures.

This report seeks to answer the question of how public authorities in Poland have fared in adapting the country’s criminal justice system to the specific social circumstances prevailing during the SARS-CoV-2 coronavirus outbreak. Have they carried out their relevant duties with a sense of responsibility and loyalty towards the citizens affected by the pandemic?

## METHODOLOGY

The functioning of the criminal justice system can be looked into at different levels. The key to answering the question posed in the title of this report, “has the SARS-CoV-2 coronavirus infected the criminal justice system?” will be the analyses of:

- the state of legislation and legislative changes made;
- publicly available statistical data and information obtained under the Access to Public Information Act;
- the practice of the operation of the justice system;
- views of the scholarship.

The above research methods will allow us to analyse the functioning of the criminal justice system at the various stages of its works, namely in pre-trial, judicial and criminal enforcement proceedings. In our deliberations, we will attempt to take into account the perspective of both parties to criminal proceedings and lawyers arguing cases on behalf of defendants and the state.

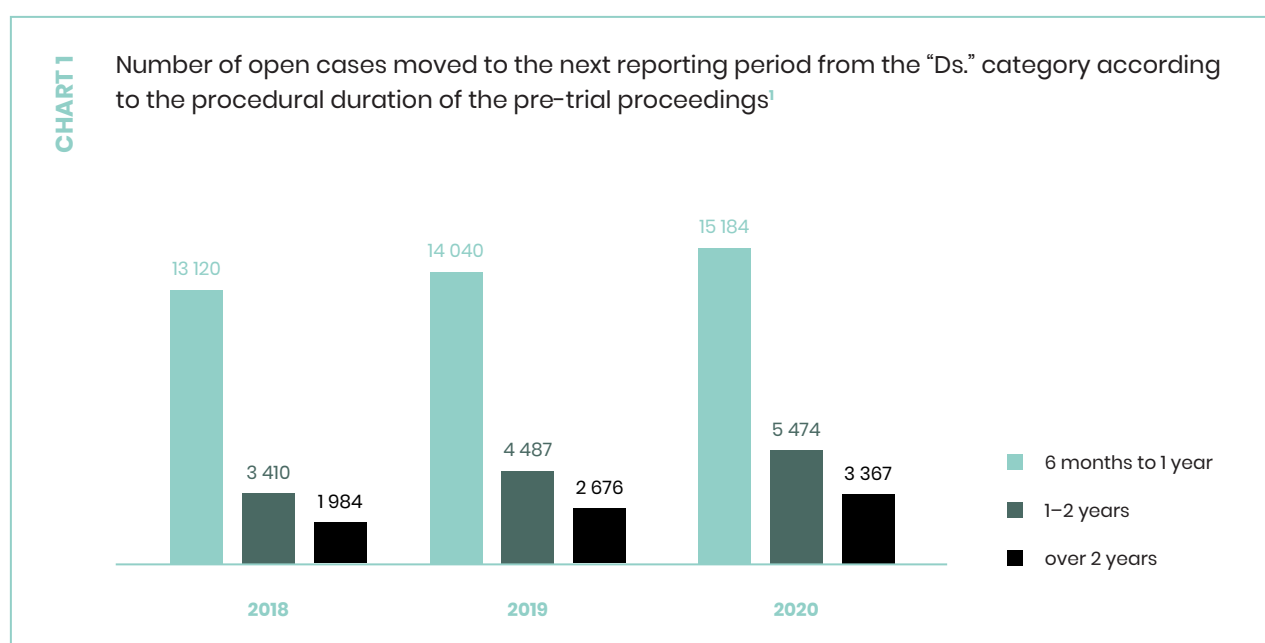
The conducted analyses will aim not only to take stock of the impact of the pandemic on the functioning of the general criminal justice system but also to answer the question of whether there are any lessons to learn from the past actions of authorities and lawyers.

## I. THE FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM DURING THE SARS-COV-2 PANDEMIC

The excessive length of criminal proceedings has been a prominent and long-standing feature of the Polish justice system. It undoubtedly affects the courts' perception in the eyes of both parties to the proceedings and the general public. This feature determines the day-to-day professional lives of judges, prosecutors and lawyers, but above all the lives of parties to proceedings. The pandemic, which has certainly changed how many public bodies operate, has also had an impact on the judicial reality and schedules of trial dates.

In 2019, 2,266,985 criminal cases were brought before Polish courts. In 2020, the case intake decreased by 200,000, reaching the level of 2,034,743. These figures alone show that the SARS-CoV-2 coronavirus pandemic has had an impact on the number of criminal cases landing in common courts. This chapter will evaluate, in broad terms, the effects of the pandemic, including the periods of lockdown and resulting restrictions on the operation of the justice system. It will also assess whether these have led to further backlogs in criminal courts and increased the length of proceedings.

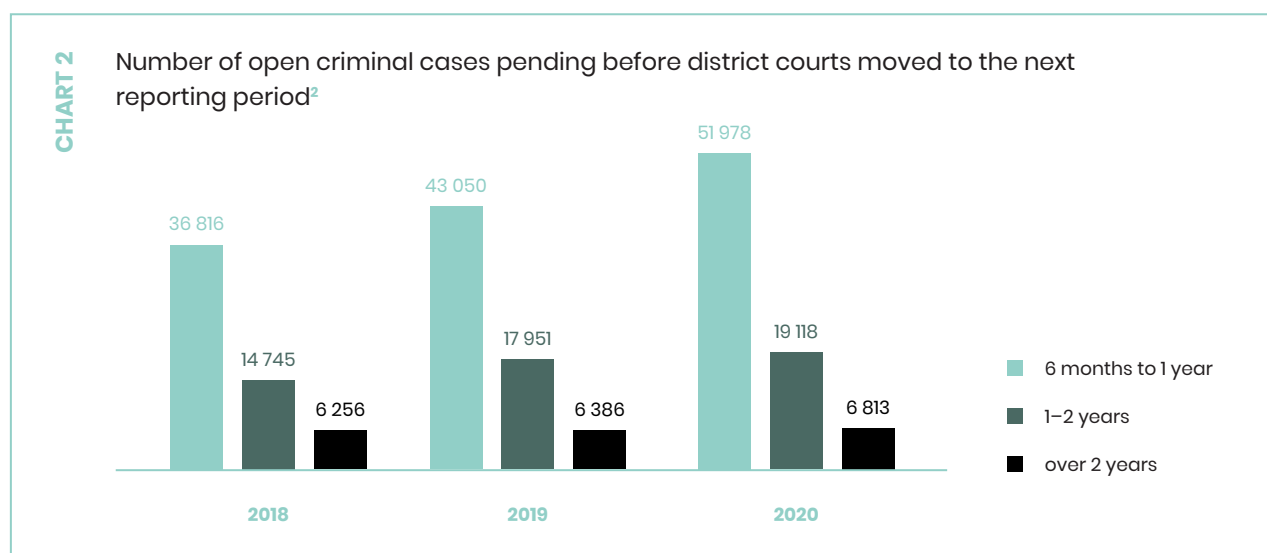
### Pre-trial proceedings



<sup>1</sup> The chart is based on the *Reports on the activities of general organisational units of the prosecution service in criminal matters* for the years 2018–2020 published by the National Prosecutor's Office at <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/>.

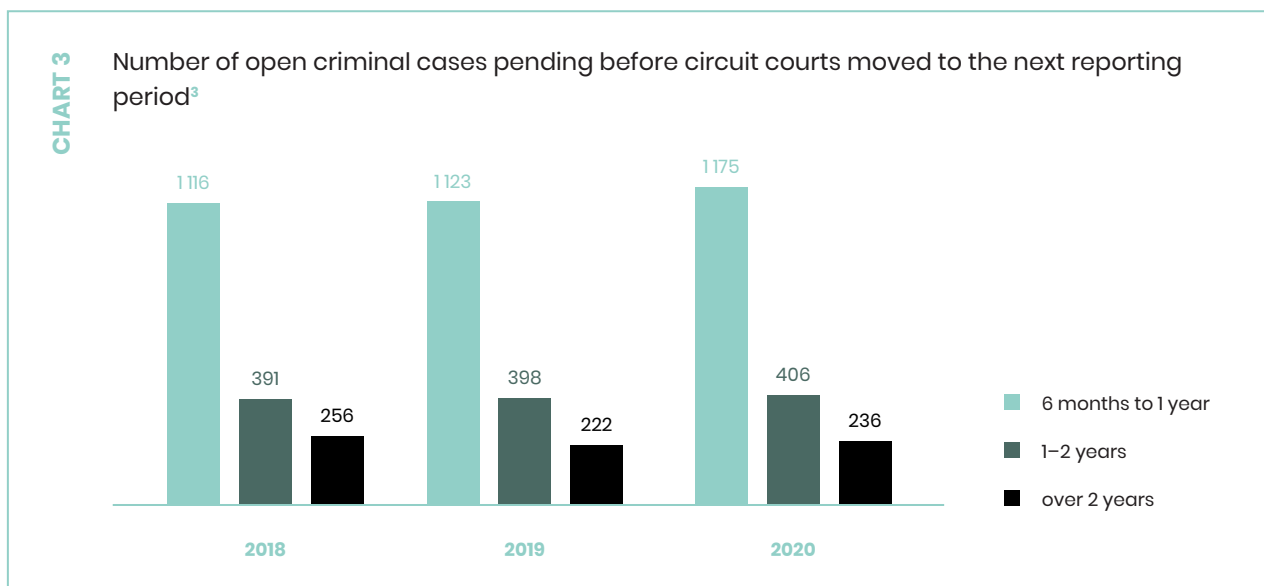
At the outset, attention should be paid to pre-trial proceedings. Notably, the number of cases in which pre-trial proceedings lasted from 6 months to 12 months significantly increased, from 13,120 in 2018 to 15,184 in 2020. This means that over the last 3 years, the number of such criminal cases increased by almost 2,000. The situation is no different for proceedings lasting from 1 to 2 years – since 2018, when there were 3,410 such cases, a systematic increase has been observed also in this category. By comparison, in 2020 there were 5,474 criminal cases with a duration of 1–2 years. Accordingly, we can notice an increase of more than 2,000 proceedings of this type. In addition, in 2018–2020, more cases lasted over 2 years – in 2018, there were 1,984 such cases as compared to 3,367 in 2020, which translates into an increase of almost 1,400. This means that the duration of pre-trial proceedings was extended, which undoubtedly affected both suspects and victims.

## Judicial proceedings

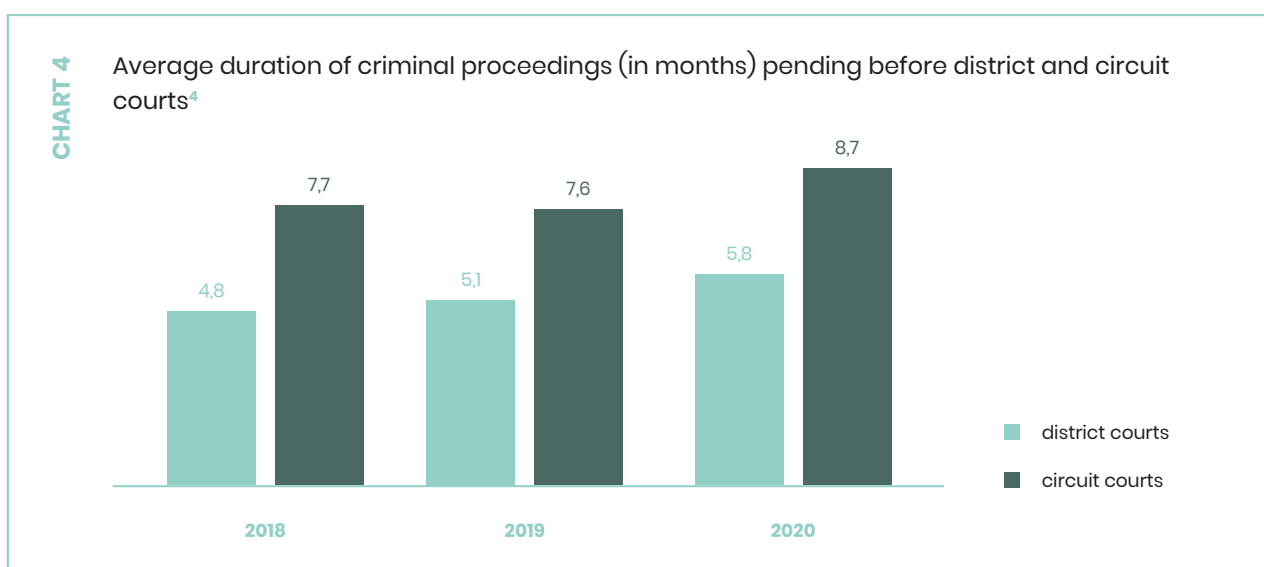


One can present a similar assessment of the situation at the judicial stage of criminal proceedings. Since 2018 district courts have examined more criminal cases with a duration of 6–12 months. In 2018 and 2020, there were 36,816 and 51,978 such cases, respectively, which equals an increase of over 15,000. Since 2018, district courts have also heard more cases of a duration between 1 to 2 years. The relevant figure increased from 17,951 in 2017 to 19,118 in 2020. Furthermore, since 2018 district courts have seen an increase in criminal cases with a duration of over 2 years, from 6,266 in 2018 to 6,813 in 2020.

<sup>2</sup> The chart is based on a set of statistical data entitled *Average duration (hitherto: “efficiency”) of judicial proceedings in selected categories of cases tried in the first instance (including the duration of mediation)* published by the Ministry of Justice, <https://isws.ms.gov.pl/pi/baza-statystyczna/opracowania-wieloletnie/download,2853,52.html>.



Since 2018, the annual number of criminal cases with a duration between 6 and 12 months heard by circuit courts has remained at a similar level, with a slight increase recorded over that period. As for criminal cases lasting from 1 to 2 years, their number also increased slightly, from 391 in 2018 to 406 in 2020. At the same time, the number of criminal cases with a duration exceeding 2 years heard in circuit courts decreased, from 256 in 2018 to 222 in 2019. However, in 2020 the number of such cases increased by 14, to 236.



<sup>3</sup> The chart is based on a set of statistical data entitled *Average duration (hitherto: “efficiency”) of judicial proceedings in selected categories of cases tried in the first instance (including the duration of mediation)* published by the Ministry of Justice, <https://isws.ms.gov.pl/pi/baza-statystyczna/operowania-wieloletnie/download,2853,52.html>.

<sup>4</sup> The chart is based on a set of statistical data entitled *Average duration (hitherto: “efficiency”) of judicial proceedings in selected categories of cases tried in the first instance (including the duration of mediation)* published by the Ministry of Justice, <https://isws.ms.gov.pl/pi/baza-statystyczna/operowania-wieloletnie/download,2853,52.html>.

Since 2018, the duration of criminal proceedings in district courts has increased by 1 month, from 4.8 to 5.8 months.

In 2018, the average duration of proceedings heard in circuit courts was 7.7 months; in 2019 it remained at a similar level. However, the figure for 2020 was 8.7 months.

It should certainly be noted that the SARS-CoV-2 coronavirus pandemic may have a further, negative impact on the duration of criminal proceedings, which may also affect the duration of preventive measures, including the most severe one, pre-trial detention.

However, despite the lockdown – particularly the first one, which took place from mid-March to June 2020 – the courts operated on a limited basis and considered only those cases that were classified as “urgent”. The list of urgent matters is included in the Act of 2 March 2020 on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and the ensuing emergencies.<sup>5</sup> Examples of urgent criminal cases are those concerning the application and extension of pre-trial detention or the European Arrest Warrant.

## Remote proceedings during the SARS-CoV-2 pandemic

The SARS-CoV-2 coronavirus pandemic has exposed the maladies afflicting the Polish justice system, including a major one, the lack of digitisation of common courts. The introduction of remote trials and hearings is one of the most obvious solutions that may address the problem of the excessive length of court proceedings conducted in times of pandemic-related restrictions. When the pandemic started, the Polish courts were not quite ready to embrace such a change of working methods. In criminal cases, this solution should nevertheless be applied only exceptionally. Indeed, remote trials do not provide full procedural guarantees for suspects/accused persons and limit the principle of direct examination of evidence by the court, which is crucial in particular for the testimony of persons.

---

<sup>5</sup> A consolidated text published in the Journal of Laws of 2020, item 1842, as amended, hereinafter: the “Special Measures Act”.



## Timeline of legislative changes

### Before March 2020

Before the pandemic started, the Code of Criminal Procedure<sup>6</sup> enabled the remote conduct of criminal trials falling under the head of accelerated proceedings (*postępowanie przyspieszone*) specified in Chapter 54a of the Code. Furthermore, technical devices for distance communication with the simultaneous transmission of video and sound could be used to obtain testimonies of witnesses (art. 177 § 1a CCP), experts (art. 197 § 3 CCP) or interpreters (art. 204 § 3 CCP).

### March 2020

Article 14f (1) of the Special Measures Act, effective as from 31 March 2020, reads as follows: *“During the state of pandemic emergency or state of pandemic declared due to COVID-19, where a convicted person who has been deprived of liberty attends a penitentiary court hearing, that hearing may be conducted with the use of technical devices that allow remote communication with the simultaneous transmission of video and sound. A representative of the prison’s or detention centre’s administration shall be present at the place where the convicted person is detained.”* This provision has since remained applicable and, according to data obtained by the HFHR, penitentiary courts readily use this measure. For example, from 31 March 2020 to 31 December 2020, the Circuit Court in Świdnica used this measure to remotely examine 1,075 cases, the Circuit Court in Bydgoszcz remotely conducted 1,995 such cases and the Circuit Court in Gorzów Wielkopolski – 968.<sup>7</sup>

### June 2020

The remote conduct of trials and hearings on the application or extension of pre-trial detention had not been enabled until the relevant amendments to the Code of Criminal Procedure entered into force on 24 June 2020. The above change was introduced by the Act of 19 June 2020 on the interest relief available for business operators affected by consequences

<sup>6</sup> Act of 6 June 1997 – Code of Criminal Procedure, consolidated text: Journal of Laws of 2021, item 534, as amended, hereinafter: “CCP”, “Code of Criminal Procedure”.

<sup>7</sup> The above data can be found in P. Kładoczny, K. Wiśniewska (Eds.), *Nowe technologie – nowa sprawiedliwość – nowe pytania. Wdrażanie nowych technologii w wymiarze sprawiedliwości* (*New technologies – New justice – New questions. Implementation of New Technologies in Justice*), Warszawa 2021, p. 177, <https://www.hfhr.pl/wp-content/uploads/2021/07/Raport.-Nowe-Technologie-Nowa-Sprawiedliwosc-Nowe-Wyzwania.-Wdrażanie-nowych-technologii-w-wymiarze-sprawiedliwosci.pdf>, hereinafter: *“New Technologies – New Justice...”*.

of the COVID-19 pandemic who have taken out bank credit and on the simplified procedure for the ratification of arrangements with creditors in connection with the emergence of COVID-19.<sup>8</sup> As compared to the measures introduced by art. 14f of the Special Measures Act, the introduced changes are notably not temporary but have been introduced permanently into the Code of Criminal Procedure.

One of the amendments concerned art. 250 CCP, enabling the remote conduct of hearings on the application or extension of pre-trial detention. Under the amended provisions, the court may refrain from having a suspect conveyed to physically appear in court and remotely conduct the detention hearing provided that the participation of the suspect in the meeting is ensured, in particular by allowing them to testify by means of remote communication (§ 3b). In such a situation, a court registrar or judicial clerk employed in the court local to the suspect's location or, if the suspect is held in a penitentiary facility, Prison Service officers, are present during the hearing at the location where the suspect is present (§ 3c). Importantly, a defence lawyer should participate in the hearing at the location where the suspect is present unless the lawyer appears physically in court or the court obliges the defence lawyer to attend the hearing in the court building because of the necessity to avoid the risk of the application for pre-trial detention being not examined before the expiry of the permissible period of the accused's post-arrest detention (§ 3d). Also, if a defence lawyer attends a hearing being present elsewhere than in the place where the suspect is present, the court may order, at the request of the suspect or the suspect's defence lawyer, a recess of a pre-defined duration and allow telephone contact between the defence lawyer and the suspect, unless granting the request may disrupt the proper conduct of the hearing or may lead to a situation in which the pre-trial detention request cannot be considered before the expiry of the permissible period of the accused's initial detention (§ 3e).

However, it is worth noting that research carried out as part of the *New Technologies – New Justice...* project shows that by December 2020 no court of appeal or regional court in Poland invoked the new provisions to apply or extend pre-trial detention. Moreover, as evidenced by data obtained by the HFHR, one remote hearing on the extension of pre-trial detention took place in the District Court for Warszawa Praga-Północ in

---

<sup>8</sup> A consolidated text published in the Journal of Laws of 2021, item 1072, as amended, hereinafter: "Interest Relief Act".

Warszawa (in October 2020)<sup>9</sup> and one hearing on the application of pre-trial detention (in December 2020) and one hearing on the extension of pre-trial detention (in January 2021) took place in the District Court for Bielsk Podlaski<sup>10</sup>. Interestingly, an online hearing on the application or extension of pre-trial detention was conducted in the District Court for the capital city of Warszawa in Warszawa already in May 2020<sup>11</sup>, before the introduction of laws enabling a remote hearing.

Another amendment introduced by the Interest Relief Act applied to art. 374 CCP, a provision governing the remote conduct of criminal trials. The above change too entered into force on 24 June 2020. According to the amendment, a court may exempt the accused, subsidiary prosecutor or private prosecutor who is deprived of liberty from the obligation to appear during the trial if those parties are provided with technical devices that allow their remote participation with the simultaneous transmission of video and audio (§ 4). In such a case, a court registrar or judicial clerk, employed in the court in whose district the party is present (§ 5), takes part in the trial at the location where the above parties are present. A defence lawyer attends the trial at the place where the accused is present unless the defence lawyer physically appears in court for this purpose (§ 6), and if a defence lawyer attends a trial being present elsewhere than in the place where the accused is present, the court may order, at the request of the accused or the accused's defence lawyer, a recess of a pre-defined duration so that the trial may continue on the same day to allow telephone contact between the defence lawyer and the accused, unless the submission of the request clearly does not serve the purpose of exercising the right to a defence, and in particular is aimed at disrupting or unreasonably prolonging the trial (§ 7). Furthermore, if the trial is conducted remotely, an interpreter should attend the trial at the location where the accused is present unless the court orders otherwise (§ 8). However, a prosecutor may also attend the trial outside the court building if they request to do so, and the court must grant such a prosecutor's request (§ 3).

---

**9** Letter from the Vice-President of the District Court for Warszawa Praga-Północ in Warszawa dated 18 February 2021, ref.: Adm-0143-133/20. Data for a period ending on 31 December 2020.

**10** Letter from the Vice-President of the District Court in Bielsk Podlaski dated 11 June 2021, ref. A-057-27/21. Data for a period ending on 1 April 2021.

**11** Letter from the President of the District Court for the capital city of Warszawa dated 20 January 2021, ref.: Adm. 0143-3480/20. Data for a period ending on 31 December 2020.

## Judicial practice concerning remote trials

Despite the actions of the legislator, common courts relatively rarely conduct trials remotely based on art. 374 CCP, which is confirmed by research carried out as part of the *New technologies – New justice...* report by the HFHR and Clifford Chance. The collected data show that from June to December 2020, criminal trials were conducted remote by only 5 out of 11 courts of appeal. For example, one remote trial was conducted at the Court of Appeal in Warszawa, in July 2020<sup>12</sup>; the Court of Appeal in Kraków conducted another in December 2020<sup>13</sup>. Moreover, criminal trials were remotely conducted in as few as 21 out of 45 surveyed regional courts – by December 2020, the Circuit Court in Łódź conducted 5 remote trials<sup>14</sup>, the Circuit Court in Siedlce – 3<sup>15</sup> and the Circuit Court in Gliwice – 14<sup>16</sup>.

The above data clearly illustrate that the remote conduct of trials in criminal cases, as well as hearings on the application or extension of pre-trial detention, has not been widely embraced within the Polish common courts system. Barbara Piwnik, a judge of the Circuit Court for Warszawa-Praga in Warszawa, said in a piece published in the *Rzeczpospolita* daily newspaper: *“I respect the other person. An accused person, expert or witness who is a source of evidence in a given case must be confident that the court will hear them directly. On the other hand, the court must have the opportunity to observe their behaviour, to look at the attitude of the accused, their reaction to the witnesses’ testimonies, and so on.”* At the same time, as another judge who spoke in the above-mentioned piece emphasised, *“... observing, say, the accused on-screen – we wonder if anyone is standing behind or next to them, prompting them, writing down the answers, etc.”*<sup>17</sup> The above statements are a clear indication of judges’ fear of remote trials in criminal cases, as well as a desire to preserve the principle of direct examination

<sup>12</sup> Data provided by the Court of Appeal in Warszawa in an e-mail of 23 December 2020. Data for a period ending on 23 December 2020.

<sup>13</sup> Letter from the President of the Court of Appeal in Kraków dated 18 December 2020, ref.: Adm.-0143-248/20. Data for a period ending on 18 December 2020.

<sup>14</sup> Letter from the President of the Circuit Court in Łódź dated 17 December 2020, ref. A.XX-0263-375/20. Data for a period ending on 17 December 2020.

<sup>15</sup> Letter from the President of the Circuit Court in Siedlce dated 18 December 2020, ref. A-0151-126/20. Data for a period ending on 18 December 2020.

<sup>16</sup> Letter from the President of the Circuit Court in Gliwice dated 18 December 2020, ref.: Adm.-058-228/20. Data for a period ending on 18 December 2020.

<sup>17</sup> A. Łukaszewicz, “Przeciwnicy zdalnych procesów karnych: sąd musi obserwować zachowania oskarżonego” (*Opponents of remote criminal trials: court must observe defendant’s behavior*), *Rzeczpospolita*, 8 June 2021, <https://www.rp.pl/prawo-karne/art94611-przeciwnicy-zdalnych-procesow-karnych-sad-musi-obszrowac-zachowanie-oskarzonego>.

of evidence, which undoubtedly allows judges to fully assess the behaviour of those involved in the proceedings. At the same time, as Vice-Dean of the Warsaw Bar Association Katarzyna Gajowniczek-Pruszyńska noted, *“There are serious concerns whether a criminal trial conducted online meets the requirements of a fair sentence and conforms to all those obligatory directives such as the right to a defence. The lack of confidence in online proceedings, which is prevalent also among defence lawyers, results from the fear that the legislator may, so to speak, ‘guarantee’ that abuses, which we [defence lawyers] will need to deal with, are a part of the criminal law. An example of this is the highly controversial online detention hearing.”*<sup>18</sup>

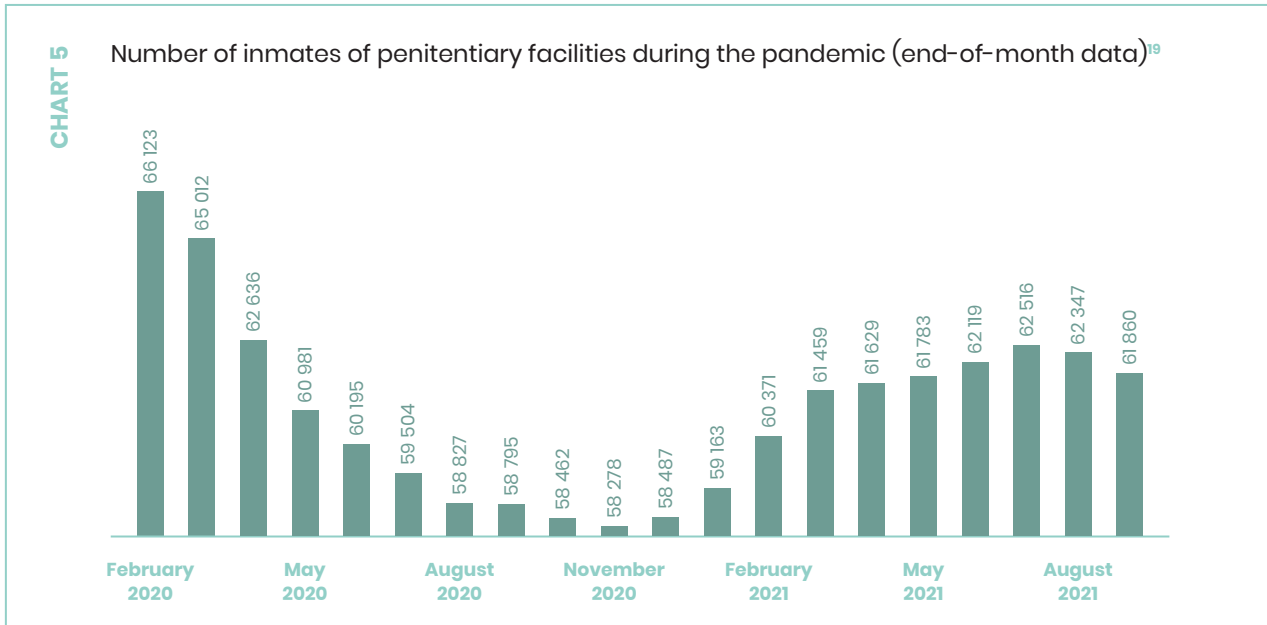
A side note should be made under this chapter about art. 83 (1) of the Interest Relief Act, as it specifies that: *“For the duration of the state of pandemic emergency or state of pandemic, the president [of the panel] may prescribe that the parties, defence lawyers or legal representatives may take part in the trial through the use of technical devices enabling the trial to be conducted remotely with the simultaneous direct transmission of video and audio while staying in a room or rooms of the court with facilities enabling the conduct of the trial with the use of such devices.”* This means that the court can conduct a remote trial having the parties present in different courtrooms.

## II. CHANGES IN THE FUNCTIONING OF PENITENTIARY FACILITIES AMID THE SARS-COV-2 CORONAVIRUS PANDEMIC

Without a doubt, the SARS-CoV-2 coronavirus pandemic has had an impact on the functioning of penitentiary facilities. Prisons and remand centres suspended family visits; inmates were unable to work outside detention facilities. The following chapter will thus present the situation in Polish penitentiary facilities and describe the measures taken by the Prison Service to limit the spread of the SARS-CoV-2 coronavirus. It should be noted at the outset that there are a total of 172 prisons, remand centres and external penitentiary units operating in Poland. On the eve of the outbreak of the SARS-CoV-2 coronavirus pandemic, nearly 75,000 persons were deprived of liberty in Poland, and the occupancy rate at the facilities exceeded 91%.

<sup>18</sup> J. Ojczyk, P. Rojek-Socha, “Sądy potrzebują nowych technologii, ale priorytetem prawa stron” (*Courts need new technology, but parties’ rights must be a priority*), 20 October 2020, Prawo.pl, <https://www.prawo.pl/prawnicy-sady/informatyzacja-sadow-debata-helsinskiej-fundacji-praw-czlowieka,503926.html>.

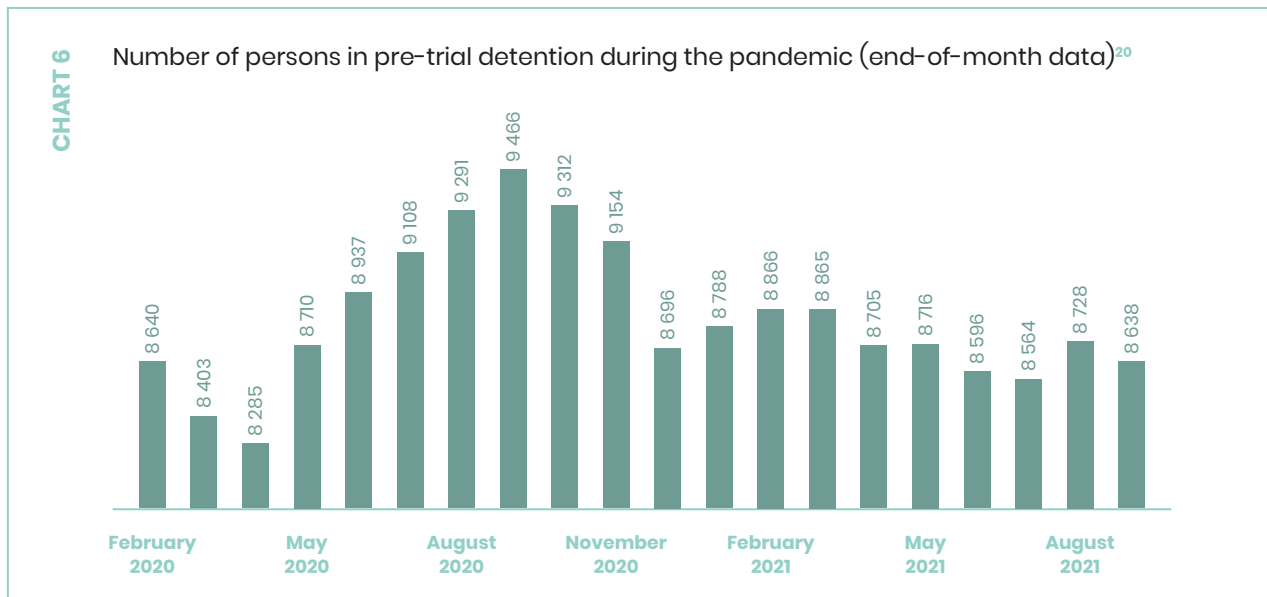
## Number of inmates of Polish penitentiary facilities



During the first year of the SARS-CoV-2 coronavirus pandemic, the number of convicted persons held in penitentiary facilities in Poland noticeably decreased – in February 2020, a month before the announcement of the nationwide state of the pandemic, 66,123 convicted persons were serving their sentences and this figure had been successively decreasing until November 2020, when it reached the level of 58,278. This means that the prison population decreased by almost 8,000. However, the number of inmates of penitentiary facilities has been steadily increasing since December 2020, and in July it already reached the level of 62,516, which translates into an increase of over 4,000 over the preceding period of 8 months. Notably, the largest increases in the number of prison inmates (1,000) were observed in the periods of January–February 2021 and February–March 2021, when the third wave of the SARS-CoV-2 coronavirus pandemic hit Poland.

<sup>19</sup> The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

## Number of persons in pre-trial detention



The number of persons in pre-trial detention was changing differently as compared to the prison population. Between April and September 2020 the number of persons held in pre-trial detention rose to 9,466. Later, in the period of October–December 2020, the number of pre-trial detainees materially decreased (by almost 800). From December 2020 onwards, no consistent trend in the number of pre-trial detainees can be demonstrated. However, there are still more than 8,500 persons held in remand centres.

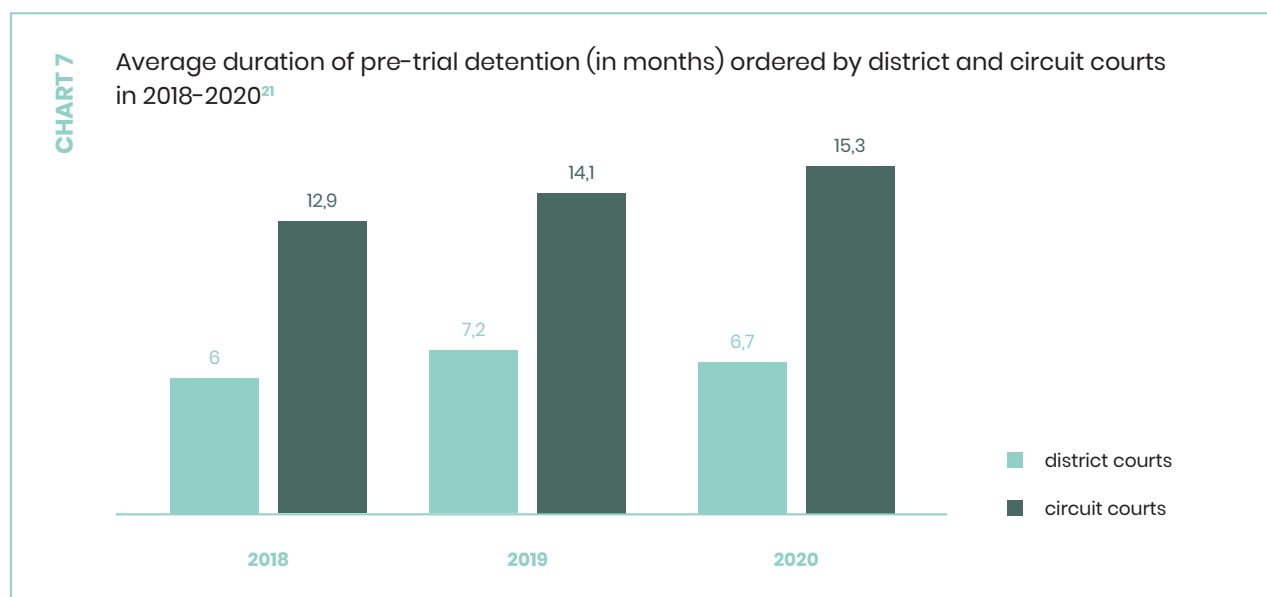
## Duration of pre-trial detention

It is worth noting the average duration of pre-trial detention ordered by Polish district and circuit courts in 2018–2020. In light of the data presented below, it is impossible to identify a uniform trend in the average duration of pre-trial detention in first instance court proceedings pending before district courts. In the years 2018, 2019 and 2020 it was 6, 7.2 and 6.7 months, respectively.

At the same time, the average duration of pre-trial detention in proceedings before circuit courts in 2018 was 12.9 months, and in 2020 – 15.3 months, which translates into an increase by almost 2.5 months. It is worth pointing out that it is the circuit courts that handle the most difficult and complex criminal cases, and the increase in the average duration of pre-trial detention was likely caused

<sup>20</sup> The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

by the extension of the duration of criminal cases before the above-mentioned courts, which, in turn, is probably a consequence of the prevailing SARS-CoV-2 coronavirus pandemic.



### Pre-trial detention and the SARS-CoV-2 coronavirus pandemic – examples of cases monitored by the HFHR

P.P. was arrested in November 2017 and has remained in pre-trial detention since then. The indictment in his case was prepared in March 2020 – shortly after the introduction of restrictions related to the SARS-CoV-2 coronavirus pandemic. Due to restrictions in the work of courts during the first wave of the pandemic, the first date of the hearing was not set until three months later and for the next four months the hearings were held relatively regularly – until one of the members of the adjudicating panel, Circuit Court Judge Igor Tuleya, was suspended by the Disciplinary Chamber. The court proceedings had to start from scratch, and another three months had to pass before the date of the first hearing was set. Meanwhile, the

<sup>21</sup> The chart is based on the statistical document entitled *Środki zapobiegawcze orzeczone przez sądy rejonowe i okręgowe w latach 2005-2020 (Preventive measures imposed by district and circuit courts between 2005 and 2020)* published by the Ministry of Justice, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,53.html>.



period pre-trial detention has been consistently extended, with the severe punishment that the accused may receive being cited as a justification for the extensions.

In autumn 2020, R.P. became ill with COVID-19. Due to the severity of his disease and numerous serious co-morbidities (in particular, the history of cerebral infarction), he required hospitalization and assisted ventilation. Debilitated by the illness and related complications, the man was arrested in January 2021 and the court decided to place him in pre-trial detention. The most severe preventive measure was applied against him although his defence lawyers repeatedly signalled that the suspect's health condition was too serious for him to be detained. Moreover, the suspect spoke only Italian, so it was impossible to provide him with effective medical assistance – all the more so as the prosecutor refused to allow an Italian-speaking attorney at law to contact the suspect.

T.M. was arrested in September 2019 and has remained in pre-trial detention since then. The most serious preventive measure was applied against him although he pleaded guilty to the charges and provided extensive testimony. As a result of the SARS-CoV-2 coronavirus pandemic, his family situation deteriorated significantly – his wife had limited job opportunities and, due to the closure of schools, preschools and nurseries, the burden of caring for four children fell entirely on her. However, when this circumstance was brought up by the defence lawyer, the prosecutor indicated that the wife could apply for an allowance and that thanks to “reduced professional activity” she could devote more time to the children – therefore, the help of the suspect was not needed.

Three criminal proceedings are pending against P.K. regarding related similar crimes – in all cases, his pre-trial detention was ordered, in the first proceedings for a total of two years, in the second for more than a year. In February 2021, he tested positive for SARS-CoV-2, which, due to serious, primarily cardiac co-morbidities,

posed a particular threat to his life and health. The prosecutor presented a medical opinion, which showed that the suspect's health and life were not at risk. The court considered it to be of no probative value, as it was prepared by a doctor who did not specialise in cardiology. Having stated that the medical care provided so far was inadequate and insufficient and that there was no real risk of the suspect obstructing the proceedings, the court decided to revoke detention. However, P.K. has not been released as the most severe preventive measure is still applied against him as part of two parallel proceedings.

## Measures implemented in penitentiary facilities concerning the SARS-CoV-2 coronavirus pandemic

From February 2020 to July 2021, on average 66,076 persons (both convicted persons and pre-trial detainees) were detained in Polish penitentiary facilities. During that time, 6,687 tests for the detection of the SARS-CoV-2 coronavirus were performed among the inmates<sup>22</sup>. In the above-mentioned period, the Prison Service quarantined 7,141 prisoners<sup>23</sup>. At the same time, a positive result for SARS-CoV-2 coronavirus infection was detected among 1,853 inmates, and 7 inmates died due to COVID-19 disease during the given period<sup>24</sup>.

In 2020, the Prison Service employed 28,597 officers and civilian employees<sup>25</sup>. The letter from the Central Prison Service Authority dated 12 July 2021 addressed to the HFHR in response to the request for access to public information shows that the Prison Service does not collect data on the tests carried out for the presence of the SARS-CoV-2 coronavirus among Prison Service officers and staff. However, as follows from earlier data obtained by the HFHR from the Central Prison Service Authority from 1 March to 3 December 2020, 6,881 tests for SARS-CoV-2 coronavirus

<sup>22</sup> The above data were compiled based on the letter from the Central Prison Service Authority dated 12 July 2021, ref.: BDG.0143.163.2021.BA.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Ministry of Justice, Central Prison Service Authority, *Roczna informacja statystyczna za rok 2020 (Annual statistical information for the year 2020)*, ref. BIS.0332.17.2020.AP, p. 40, <https://sw.gov.pl/assets/75/75/32/23899642353949621fad5eb978ce3f2713c4aeba.pdf>.

were performed in the above-mentioned group, and 3,199 of them were positive.<sup>26</sup> In the period from March 2020 to July 2021, 10,513 officers and civilian employees of the Prison Service were quarantined.<sup>27</sup> Moreover, in the above-mentioned period, 6,180 officers and civilian employees of the Prison Service were infected with the SARS-CoV-2 coronavirus and 3 officers died from COVID-19.<sup>28</sup>

At the same time, it is worth noting the situation that took place in February 2021 in the Garbalin Prison, which allegedly was the scene of the largest outbreak of COVID-19 cases in a Polish penitentiary facility since the beginning of the pandemic. In just a few days a total of 82 inmates were reportedly infected. All those working in a production hall were said to become ill, as well as some of the prisoners who were not part of this group. This situation allegedly occurred because the prison management violated internal procedures for the isolation of patients<sup>29</sup>.

The HFHR sent a letter to the Regional Director of the Prison Service in Łódź inquiring about the above situation. In his response, the Regional Director indicated that on 29 March 2021, 743 prisoners were held in the Garbalin Prison, two of whom were in isolation in outpatient settings due to COVID-19 infection (in addition, two Prison Service officers were in isolation at home). Between 1 January and 1 March this year, the local penitentiary facility carried out 158 tests for SARS-CoV-2 coronavirus infection among inmates and another 36 among Prison Service officers. In total, 98 inmates and 11 officers were isolated during the indicated period due to SARS-CoV-2 coronavirus infection. The Director also informed that, due to the situation, two residential wards in the Garbalin Prison were converted into isolation cells, and in other

<sup>26</sup> The above data were compiled based on the letter from the Central Prison Service Authority dated 8 December 2020, ref. BDG.0143.303.2020.KS.

<sup>27</sup> The above data were compiled based on the letter from the Central Prison Service Authority of 12 July 2021, ref.: BDG.0143.163.2021.BA.

<sup>28</sup> *Ibid.*

<sup>29</sup> Prepared on the basis of the HFHR's letter to the Regional Director of the Prison Service in Łódź dated 5 March 2021, letter ref. 217/2021/CJC/KJ, accessed on: [https://www.hfhr.pl/wp-content/uploads/2021/04/2392\\_001.pdf](https://www.hfhr.pl/wp-content/uploads/2021/04/2392_001.pdf)

wards special cells were designated for quarantine and preventive isolation (which was imposed on those inmates who had contact with infected persons). The investigation concluded that the infection began to spread due to a failure to comply with the sanitary requirements during the work of convicts in the production hall. The Director of the Garbalin Prison, Colonel Grzegorz Tomaszewski, sent a letter to a contractor indicating the necessity of maintaining an appropriate sanitary regime in the production hall and conducting proper supervision in this respect. This issue was also raised during a meeting between the contractor and Colonel Tomaszewski. In addition, the Regional Director of the Prison Service in Łódź pointed out that, inmates working in the production hall, the contractor's employees and Prison Service officers were being monitored for compliance with the rules of sanitary regime. Failure to comply with the appropriate procedures are to be met with a response from superiors (e.g. in the form of a letter to the contractor or disciplinary penalties imposed on inmates).<sup>30</sup>

Vaccination is an effective method to combat the spread of the SARS-CoV-2 coronavirus. According to the data obtained from the Central Prison Service Authority, by 12 July 2021 at least 8,215 inmates had been vaccinated with at least one dose and 5,292 inmates had been vaccinated with two doses. In addition, 41,179 inmates were vaccinated with a single-dose vaccine.<sup>31</sup> At the same time, according to information provided by the Prison Service, until 6 May 2021, vaccinations were only administered by non-prison medical providers and inmates were registered at vaccination centres closest to their place of stay. As of 7 May 2021, vaccinations could be administered in medical units of penitentiary facilities, and on 7 June 2021, the Government Agency for Strategic Reserves delivered the supply of vaccines to all those units.<sup>32</sup>

<sup>30</sup> Prepared on the basis of the letter from the Regional Director of the Prison Service in Łódź dated 30 March 2021, letter ref.: OI.SZ.4001.1.3.2021.MPH, accessed on: [https://www.hfhr.pl/wp-content/uploads/2021/04/2540\\_001-1.pdf](https://www.hfhr.pl/wp-content/uploads/2021/04/2540_001-1.pdf)

<sup>31</sup> The above data were compiled based on the letter from the Central Prison Service Authority dated 12 July 2021, ref.: BDG.0143.163.2021.BA.

<sup>32</sup> *Ibid.*

By 12 July 2021, at least 20,894 officers and employees of the Prison Service had been vaccinated with at least one dose of a SARS-CoV-2 coronavirus vaccine, and 19,513 persons had been fully vaccinated.<sup>33</sup>

### III. THE PANDEMIC-ERA CRIMINAL JUSTICE SYSTEM FROM THE PERSPECTIVE OF PROFESSIONAL ASSOCIATIONS OF LAWYERS – THE DIFFICULTIES THAT LEGAL REPRESENTATIVES AND DEFENCE LAWYERS FACE IN CONNECTION WITH THE SARS-COV-2 PANDEMIC

In June 2021, the HFHR made enquiries to selected regional level units of professional associations of Polish legal practitioners (*adwokaci* and *radcowie prawni*) about their actions taken to address complaints raised by legal practitioners about the exercise of their professional duties in courts and penitentiary facilities.

For example, the Dean of the Warsaw Bar Association noted the significant difficulties in accessing file reading rooms in courts notified by lawyers who complained about having been deprived of full and unrestricted access to case files. The reported problems involved, among other things, the requirement to submit requests for access to case files in advance (often, a week earlier). Lawyers also complained about having been unable to access files in urgent situations due to the limited availability of seats in court reading rooms. Furthermore, the letter shows that lawyers were deprived of the right to urgently review case files also when they have been appointed as *ex officio* defence lawyers responsible for providing free legal aid for clients who were subjects of pre-trial detention. Lawyers also complained about the limited time allowed to view files in the reading rooms, usually no longer than one hour, which, given the large volumes of files in criminal cases, resulted in them having been forced to return to the reading room several times. Dean of the Warsaw Bar Association also noted that lawyers complained about the shortening of the office hours at courts registry offices (which closed at 2.30 p.m.). After that time there was no place in the court where correspondence could be handed over – in some registry offices did not work at all while others only accepted time-sensitive submissions. Lawyers were also concerned over the requirement to state the reason for visiting the court at the courthouse entrance, which was then to be verified by security staff. According to the Dean's letter, lawyers were not informed about cancellations of trials and hearings, which resulted

---

33 *Ibid.*

in unnecessary appearances in court. They also complained about trials having been closed to the public. Dean of the Warsaw Bar Association informed that he had addressed the above problems in courts by asking court presidents to enable lawyers to exercise their procedural rights. Moreover, the Dean asked the Minister of Justice, the Ombudsman and the Association of Polish Judges “Iustitia” to make changes aimed at reviewing the restrictions in place. The Dean of the Warsaw Bar Association also made note of complaints about irregularities in the functioning of Warszawa-Białołęka Remand Center in Warszawa, which manifested in defence lawyers having been required to wait for several hours before accessing the facility or subject themselves to searches by sniffer dogs. The Dean responded to those incidents by sending letters to the above-mentioned remand centre and spoke with its leader. The Warsaw Bar Association also received complaints about refusals to postpone a trial due to health reasons (mainly in civil cases) and cases of lawyers having been sent to quarantine/isolation. In these cases, the Dean intervened in writing with the presidents of the courts concerned.<sup>34</sup>

Dean of the Wrocław Bar Association indicated in a letter that no complaints from lawyers had been received. He also noted that “[t]hanks to permanent ‘pandemic duty hours’ of members of the Bar Council’s Presidium, we were able to react quickly to minor impediments related to pandemic restrictions (such as limitations on the number of visits to detention centres or excessively long waiting times for a seat in file reading rooms), thereby avoiding serious complications. At the same time, a group of young lawyers organised a substitution system which made the proceedings run smoothly.”<sup>35</sup>

Meanwhile, the Poznań Bar Association received lawyers’ complaints about difficulties in contacting persons deprived of their liberty who were held in penitentiary facilities. These complaints primarily concerned long waiting times for visits due to scheduling congestion. The above problem occurred primarily at the Poznań Remand Centre, where lawyers often had to wait several hours before seeing their clients. The Poznań Bar Association responded by initiating negotiations with the leadership of the Remand Centre, which resulted in the visit system having been somewhat streamlined. At present, the problems with visits are less frequent. According to the letter from the Dean of the Poznań Bar Association, he noted an inflow of complaints from lawyers about difficulties with accessing case files in court reading rooms. Also in this regard, Poznań Bar Association engaged in talks with the management of local courts, which yielded a positive result. It is also

<sup>34</sup> Letter from the Dean of the Warsaw Bar Association dated 2 August 2021, ref.: SEK.070.1.2.2021.2.

<sup>35</sup> Letter from the Dean of the Wrocław Bar Association dated 1 July 2021, ref.: D/2021/HFPC.

apparent from the letter that the Poznań Bar Association did not record any complaints about lawyers being prevented from interrupting or postponing a trial due to obligatory quarantine. Dean of the Poznań Bar Association indicated that the courts had been very accommodating in this respect and had even respected justifications communicated by phone or e-mail for the absence of lawyers who had come in contact with an infected person or who were sent to quarantine.<sup>36</sup>

The Dean of the Szczecin Bar Association stated that his Association had only received complaints about lawyers having been prevented from reading case files in the reading room of a district court because of the SARS-CoV-2 coronavirus pandemic within a reasonable period. In view of the above, the Szczecin Bar Association issued a position statement, indicating, among other things, the need to change the organisational policy of the reading room. This statement, sent to the president of the district court concerned and the President of the Regional Court in Szczecin, led to a modification of the district court's reading room policy concerning lawyers access to files.<sup>37</sup>

According to a letter from the Dean of the Katowice Association of Attorneys at Law, *"... attorneys raised concerns about the increasingly widespread practice of courts conducting trials remotely. Their concerns related to both technical and legal issues linked to the remote conduct of trials. However, these were only concerns and not complaints and we tried to address such issues as they arose."*<sup>38</sup>

Dean of the Lublin Association of Attorneys at Law pointed out that in February 2021, the Association received complaints about difficulties with access to case files kept by the Circuit Court in Lublin. The complaints stated that security procedures put in place and the resulting court operational policy resulted in waiting times of up to 10 days for requested files in some of the court's facilities. Taking into account the described situation, the Dean of the Lublin Association of Attorneys at Law sent a letter to the President of the Circuit Court in Lublin inviting the President to consider the possibility of increasing the number of rooms designated as reading rooms or moving them to larger premises, as well as taking into account attorneys' notifications regarding the upcoming deadlines for lodging appellate measures. Upon the receipt of the Dean's letter, the President of the Circuit Court in Lublin was to take immediate action and order the opening of additional reading rooms, as well as instruct the court staff to

---

<sup>36</sup> Letter from the Dean of the Poznań Bar Association dated 23 July 2021.

<sup>37</sup> Letter from the Dean of the Szczecin Bar Association dated 28 July 2021, ref.: RA/239/2021.

<sup>38</sup> Letter from the Dean of the Katowice Association of Attorneys at Law dated 6 July 2021, ref.: OIRP/375g/2021.

give priority access to attorneys who notified the upcoming deadlines for lodging appellate measures.<sup>39</sup>

However, it appears from the letter from the Lublin Bar Association that the lawyers have been reporting, by e-mail and telephone, restrictions on visits to persons detained in prisons and remand centres. In addition, the Association reportedly received written notifications and copies of orders from local prisons regarding their visitation policies and the nature of restrictions. The letter also shows that the Lublin Bar Association received letters from lawyers asking the Association to intervene in connection with the closure of registry offices of the Chełm District Prosecutor's Office and the Lublin Circuit Court. After the intervention of the Lublin Bar Association, the registry offices reopened (in the Circuit Court, a limited number of customer service counters was provided).

#### IV. FORMS OF CRIMINAL SANCTIONS IMPLEMENTED TO ADDRESS VIOLATIONS OF RESTRICTIONS INTRODUCED IN CONNECTION WITH THE SARS-COV-2 PANDEMIC

Since the outbreak of the SARS-CoV-2 coronavirus pandemic in Poland, the infected persons ordered to isolate, or persons sent to quarantine due to contact with an infected person are obliged to stay at home without the possibility to leave the place of residence. Violations of isolation or quarantine rules are subject to administrative penalties of up to PLN 30,000 imposed by the sanitary inspectorate. Certain violations are also prosecuted under art. 165 § 1 (1) of the Criminal Code<sup>40</sup>, which reads as follows: “*Whoever brings danger to the life or health of many persons or property of a large size by causing an epidemiological threat or the spread of an infectious disease or an animal or plant contagion shall be subject to the penalty of deprivation of liberty from 6 months to 8 years.*”

An example of the above situation is the case of a 28-year-old footballer of the Kmita Zabierzów club who played a match despite knowing that he was infected with the SARS-CoV-2 coronavirus. The police found that the footballer was supposed to be in home isolation but had already played one match and was preparing for another, despite testing positive for coronavirus, for the second time, the day before. The prosecutor's office decided to charge the footballer under art.

<sup>39</sup> Letter from the Dean of the Lublin Association of Attorneys at Law dated 19 July 2021, ref.: 1971/21/JK.

<sup>40</sup> As per the Code's consolidated text published in the Journal of Laws of 2020, item 1444, as amended, hereinafter: “CC” or “Criminal Code”.



165 § 1 (1) CC. After the player testified and pleaded guilty to the charges, the court ordered his pre-trial detention for three months.<sup>41</sup> Ultimately, he was detained for one month.<sup>42</sup> Finally, the footballer voluntarily agreed to the penalty proposed by the prosecution and was sentenced by the Regional Court in Kraków on 19 April 2021 for 1 month of imprisonment, which was deemed served during the pre-trial detention period. He also received the penalty of restriction of liberty for 18 months during which he was obliged to perform unpaid community service and was ordered to pay the penalty assessment of PLN 10,000.<sup>43</sup>

Another case concerned a home quarantined resident of Toruń, who went shopping on two separate occasions in May 2020. Shortly afterwards, it turned out that she had tested positive for the coronavirus, as a result of which 31 persons with whom she had been in contact had to be placed in mandatory quarantine. The woman explained that she had left the house because she had been treated for depression for a long time and wanted to buy her prescription medicine. There was no one to help her because she lives alone with her elderly, sick husband. Also, in that case, the prosecutor's office decided to present charges under Article 165 § 1 (1) CC. In May 2020, the court put her in pre-trial detention until September 2020.<sup>44</sup> On 10 May 2021, the Circuit Court in Toruń found the defendant guilty of the offence charged and sentenced her to 1 year of imprisonment, conditionally suspending execution of the penalty for 1 year and obliged her to pay PLN 180 to each of 12 persons she had contact with.<sup>45</sup> The prosecution asked for a sentence of 1 year and 6 months of unconditional imprisonment. The court reportedly found

---

**41** "Piłkarz usłyszał zarzuty i trafił do aresztu. 'Nie wiedzieliśmy o jego zakażeniu'" (*Footballer charged and detained. "We didn't know he was infected"*), eurosport.tvn24.pl, 22 August 2020, <https://eurosport.tvn24.pl/pilka-nozna,105/pilkarz-zakazony-koronawirusem-zagrał-w-meczu-uslyszal-zarzuty,1027314.html>.

**42** "Piłkarz Kmity Zabierzów był zakażony koronawirusem i zagrał w meczu Pucharu Polski. Teraz poddaje się karze przed krakowskim sądem" (*Infected Kmita Zabierzów footballer played in a Polish Cup match. He waives trial and is being sentenced by a Kraków court*), gazetakrakowska.pl, 14 April 2021, <https://gazetakrakowska.pl/pilkarz-kmity-zabierzow-był-zakazony-koronawirusem-i-zagrał-w-meczu-pucharu-polski-teraz-poddaje-sie-karze-przed-krakowskim/ar/c1-15556874>.

**43** *Polski piłkarz skazany, bo zagrał w meczu mimo zakażenia koronawirusem* (Polish footballer sentenced because he played a match despite being infected with the coronavirus), sport.pl, 20 April 2021, <https://www.sport.pl/pilka/7,65045,26995517,polski-pilkarz-skazany-bo-zagrał-w-meczu-mimo-zakazenia-koronawirusem.html>.

**44** "Kobieta od maja przebywająca w areszcie za złamanie kwarantanny, wychodzi na wolność" (*Woman jailed since May for evading quarantine released*), polsatnews.pl, 24 September 2020, <https://www.polsatnews.pl/wiadomosc/2020-09-24/od-maja-siedziala-w-areszcie-bo-zlamala-kwarantanne-zostala-zwolniona/>.

**45** "Była zakażona koronawirusem, chodziła na zakupy. W areszcie spędziła pięć miesięcy, teraz usłyszała wyrok" (*Infected with the coronavirus, she went shopping, spent five months in jail and now has heard the sentence*), tvn24.pl, 10 May 2021, <https://tvn24.pl/pomorze/koronawirus-w-polsce-torun-wyrok-dla-kobiety-ktora-chora-na-covid-19-wychodzila-na-zakupy-5090031>.

that the accused wore a handkerchief or a mask, which, in the court's opinion, made it highly unlikely that she would infect others. The above conclusion was confirmed by a virologist's testimony during the trial and the fact that none of the people with whom the accused had contact had contracted the disease.<sup>46</sup>

It is also worth noting that law enforcement authorities invoke art. 165 § 1 (1) CC also to achieve a different purpose. Warsaw Circuit Prosecutor's Office decided to file an indictment against the leaders of the Women's Strike Marta Lempart, Klementyna Suchanow and Agnieszka Czerederecka, in connection with them organising assemblies caused by the so-called judgment<sup>47</sup> of the Constitutional Court of 22 October 2020, case no. K 1/20, which led to the tightening of abortion law.<sup>48</sup> The women were charged under art. 165 § 1 (1) CC based on the conclusion that the organisation of assemblies has reportedly brought a threat to the life and health of many people and caused an epidemiological threat by creating the possibility of infection with the SARS-CoV-2 virus and spread of COVID-19 infectious disease by organising and leading the marches in October, November and December 2020 on the streets of Warsaw.<sup>49</sup> These proceedings are pending.

## V. THE PROBLEM OF EXPIRY OF A LIMITATION PERIOD FOR PROSECUTION

Article 15 (6) of the Special Measures Act, which entered into force on 31 March 2020, at the beginning of the SARS-CoV-2 coronavirus pandemic in Poland, provided that during the period of the state of pandemic emergency or the state of the pandemic declared due to COVID-19, the period of limitation for the prosecution of (and execution penalties for) criminal offences, petty offences and tax offences and petty offences would not run. This provision ceased to be effective on 16 May 2020. At the same time, art. 68 (5) of the Act of 14 May 2020 amending certain laws on protective measures implemented to address the outbreak of

<sup>46</sup> "Toruń. Wyszła na zakupy i złamała kwarantannę. Jest wyrok" (*Toruń. She went out shopping and broke quarantine. Sentence has been handed down*), polsatnews.pl, 10 May 2021 <https://www.polsatnews.pl/wiadomosc/2021-05-10/torun-wyszla-na-zakupy-i-zlamala-kwarantanne-wyrok/>.

<sup>47</sup> Position statement of the Helsinki Foundation for Human Rights of 22 October 2020, [https://www.hfhr.pl/wp-content/uploads/2020/10/Stanowisko-HFPC-ws-tzw-orzeczenia-TK\\_v1.1.pdf](https://www.hfhr.pl/wp-content/uploads/2020/10/Stanowisko-HFPC-ws-tzw-orzeczenia-TK_v1.1.pdf).

<sup>48</sup> "Ziobro chce więzienia dla liderki Strajku Kobiet. Akt oskarżenia jest już w sądzie. Czy ma sens?" (*Ziobro wants the Women's Strike leader in prison. The indictment has been filed in court. Does it make sense?*), oko.press, 9 July 2021, <https://oko.press/ziobro-chce-wiezienia-dla-liderek-strajku-kobiet-akt-oskarzenia-jest-juz-w-sadzie-czy-ma-sens/>.

<sup>49</sup> "Marta L. i inne liderki Strajku Kobiet oskarżone. Grozi im kara więzienia" (*Marta L. and other Women's Strike leaders charged, facing prison sentences*), rp.pl, 9 July 2021, <https://www.rp.pl/prawo-karne/art34781-marta-l-i-inne-liderki-strajku-kobiet-oskarzone-grozi-im-kara-wiezienia>.

SARS-CoV-2 virus entered into force on 16 May 2020<sup>50</sup>, stipulating that the limitation period for the prosecution of, and execution of sentences for, criminal offences, petty offences and tax offences and petty offences “starts running” on 16 May 2020.

As the Ombudsman noted in a letter to the Minister of Justice: “... a doubt arises as to the accuracy of the language used as to whether the limitation period resumes running or starts to run anew. The mere repeal of art. 15zrz of the Act of 2 March 2020 would have the effect of resuming the running of the limitation periods (since the legal basis for their suspension would be removed). However, the introduction of the norm expressed in art. 68 (5) of the Act of 14 May 2020, accompanied by the use of the expression ‘starts running’ (rozpoczynają bieg) instead of ‘resumes to run’ (wznawia się bieg) (or similar), may lead to the conclusion that the legislator intends to restart those limitation periods. While, in principle, an extension of a limitation period is permissible provided that the original limitation period has not yet expired, there are no reasonable grounds for arguing that the limitation periods suspended in relation to the pandemic situation between March and May 2020 should run anew rather than resume running from the point at which they were suspended.”<sup>51</sup> According to the Ministry of Justice’s reply to the Ombudsman’s letter, art. 15zrz (6) of the Special Measures Act introduced a measure known as “the resting of a limitation period”, which means that “in the case of circumstances that result in the resting of a limitation period, the period does not run for as long as these circumstances persist. Once the circumstances cease to exist, the limitation period continues to run, and the resting period is not be counted towards the time determining the limitation period. On the other hand, if an offence has been committed during the resting period, the period of limitation for criminal prosecution does not start until the resting period ends.” At the same time, the Ministry of Justice pointed out that “With the repeal of Article 15zrz (6) of [the Special Measures Act], the limitation periods indicated in this provision, which rested during the suspension period, began to run further. On the other hand, art. 68 (5) of the Act of 14 May 2020 on specific protective measures implemented to address the outbreak of SARS-CoV-2 virus apply exclusively to the situation where a limitation period has not started to run at all during the period in which Article 15zrz (6) of [the Special Measures Act] remained in force. Two arguments support the above conclusion: the grammatical interpretation of the provision of art. 68 (5) of the

<sup>50</sup> Journal of Laws of 2020, item 875, as amended.

<sup>51</sup> Letter from the Ombudsman to the Minister of Justice dated 22 August 2020, ref. II.510.474.2020, <https://bip.brpo.gov.pl/sites/default/files/Do%20MS%20w%20sprawie%20terminu%20biegu%20przedawnienia,%2022.08.2020.pdf>.

*Act of 14 May 2020 on the amendment of certain laws on protective measures implemented to address the outbreak of SARS-CoV-2 virus and the assertion that a rational legislator would not intend to introduce a measure restarting all limitation periods for the prosecution of, and execution of a sentence for, criminal offences, petty offences and tax offences and petty offences after the entry into force of this provision.”<sup>52</sup>*

However, these legislative changes and the interpretation of the Ministry of Justice must have been highly controversial. Accordingly, on 22 June 2021, art. 15zr<sup>1</sup> of the Special Measures Act entered into force, reading as follows: “1. During the period of the state of pandemic emergency or state of pandemic declared due to COVID-19, and for 6 months following their revocation, the period of limitation for the prosecution of, and execution of a sentence for, criminal and tax offences shall not run. 2. The periods referred to in paragraph 1 shall begin on 14 March 2020 – in respect of the state of pandemic emergency and on 20 March 2020 – in respect of the state of pandemic. According to the explanatory memorandum to the proposal of the law that introduced the aforementioned provision, “[d]eclaration of the state of the pandemic due to COVID-10 has triggered several restrictions, which also affected judicial proceedings in criminal cases. In cases involving multiple subjects such as accused persons or witnesses, the need to comply with sanitary requirements during trials may result in extending the duration of the proceedings. ... Therefore, there is the risk that suspects (accused) may not be held criminally responsible as a result of the fact that criminal proceedings are conducted in a state of pandemic or pandemic emergency. ... Therefore, a failure to suspend the limitation periods during the state of pandemic or pandemic emergency may be considered an omission of the legislator, who does not provide adequate protection for the victims.”<sup>53</sup>

## VI. THE SARS-COV-2 PANDEMIC IS A PRETEXT FOR AMENDING THE CRIMINAL CODE

The SARS-CoV-2 coronavirus pandemic in Poland provided an opportunity for the legislature and the executive to implement changes to the Criminal Code, not necessarily related to the pandemic itself. These changes, placed in the thicket

<sup>52</sup> Letter from the Minister of Justice to the Ombudsman dated 23 September 2020, ref. DLP-K-I.053.12.2020, <https://bip.brpo.gov.pl/sites/default/files/MS%20o%20biegu%20porzedawnienia%20w%20tarczach%20antyktryzysowych,%2023.09.2020.pdf>.

<sup>53</sup> Explanatory memorandum to the proposed law amending the Criminal Code and certain other laws. Draft of 8 January 2021, Paper No. 867, pp. 19–20, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/3BAB-978255C6B3A2C125865700558711/%24File/867.pdf>.

of provisions known as the “COVID laws,” are permanent because, in accordance with the adopted regulations, their applicability was not limited to the period of the pandemic. What is more, in certain situations promoters of the new legislation did not justify the proposed legislative measures. Notably, the three COVID laws that were enacted between March and June 2020, included amendments to the Criminal Code.

One of these laws was the Act of 31 March 2020 amending the Act on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and the ensuing emergencies and certain other laws<sup>54</sup>, which, in article 13, amended the Criminal Code. This Act entered into force on 31 March 2020. One of the amendments concerned art. 161 CC, stipulating harsher penalties for the offence of directly exposing a person to HIV infection and a sexually transmitted or infectious disease, a serious incurable disease or life-threatening disease. Moreover, the March Act amended art. 190a CC, which criminalises persistent harassment and identity theft. Importantly, however, the explanatory memorandum to the above-mentioned legislative proposal offers no justification for the amendments.<sup>55</sup>

Another amendment to the Criminal Code was introduced in art. 8 of another “COVID law”, the Act of 14 May 2020 amending certain laws on protective measures implemented to address the outbreak of SARS-CoV-2 virus.<sup>56</sup> This amendment, which became effective on 30 May 2020, concerns an amendment to art. 304 CC, a provision that defines the offence of “exploitation of a contractual party”. The amendment added two new paragraphs to art. 304, designed to afford protection against usurious activities to consumers who obtain short-term, high-cost “payday loans”. The promoter of the amendment quite extensively commented on the proposed changes but in no way demonstrated their connection to the pandemic of the SARS-CoV-2 coronavirus prevailing in Poland.<sup>57</sup>

---

<sup>54</sup> Journal of Laws of 2020, item 568, as amended.

<sup>55</sup> The Government’s proposal of the law amending the Act on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and the ensuing emergencies and certain other laws, Sejm Paper No. 299, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/OED4D419861E-FC71C12585370038D29C/%24File/299.pdf>.

<sup>56</sup> Journal of Laws of 2020, item 875, as amended.

<sup>57</sup> Government’s proposal of the law amending certain laws on relief measures applied in connection with the spread of the SARS-CoV-2 virus, Sejm Paper No. 344, pp. 8-11 of the proposal’s explanatory memorandum, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/C684B92443AA2086C1258558002D9D50/%-24File/344.pdf>.

The latest and largest amendment to the Criminal Code, effected by art. 38 of the Interest Relief Act, became effective on 24 June 2020.<sup>58</sup> The proposal of the law contained changes, which were later adopted in the unaltered version, concerning the notions of aggregate penalty and continuing offences. However, the explanatory memorandum attached to the proposal contains no information on any link between the proposed amendments and the SARS-CoV-2 coronavirus pandemic.<sup>59</sup> Furthermore, one of the corrections to the proposed law made at a later stage of legislative works introduced a new offence, “audacious theft” under art. 278a CC: “§ 1. *Whoever commits particularly audacious theft shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years. § 2. If particularly audacious theft is committed to the detriment of a family member of a loved one, prosecution shall take place at the request of the aggrieved party.*” On the same occasion, a new section (§ 9a) was added to art. 115 CC which contains statutory definitions in the Criminal Code: “*Particularly audacious theft means (1) theft, the perpetrator of which by his behaviour shows a disrespectful or defiant attitude towards the holder of the stolen property or other persons, or uses violence other than violence against a person to seize the property; (2) theft of movable property carried directly by a person or in the clothing worn by that person or carried or moved by that person under conditions of direct contact or contained in objects carried or moved under such conditions.*” The proposal of the amending law had not contained a justification for the introduction of the above amendment because the provisions were submitted as corrections to the amendment’s proposed wording. Still, their language does not, in itself, show a connection with the SARS-CoV-2 coronavirus pandemic and such provisions should not be adopted in the “COVID laws”. Notably, the HFHR has negatively assessed the aforementioned provision, pointing to, among other things, the imprecise definition of audacious theft, which can cause many problems with interpretation.<sup>60</sup>

---

**58** It is also worth noting that the Interest Relief Act is the same law that amended the Code of Criminal Procedure by introducing the option of remotely conducting trials and hearings.

**59** Government’s proposal of the Act on the interest relief available for business operators that have obtained bank credit to ensure their financial liquidity in the wake of the Covid-19 pandemic and on the amendment of certain other laws, Sejm Paper No. 382, pp. 23-24, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/B2E9AA1082EE4696C12585700042D075/%24File/382.pdf>.

**60** Opinion of the HFHR on the Act of 4 June 2020 on the interest relief available for business operators that have obtained bank credit to ensure their financial liquidity in the wake of the Covid-19 pandemic, dated 14 June 2020, <https://www.hfhr.pl/wp-content/uploads/2020/06/druk-senacki-nr-142-uwagi-HFPC.pdf>.

## SUMMARY

The findings of this report clearly confirm that the crisis caused by the SARS-CoV-2 coronavirus pandemic has exposed and deepened the deficits already present in the Polish criminal justice system.

First, one should point out that the Polish lawmaking system lacks an institution that would be able to design reasonable legal measures in a professional, responsible manner and fairly independent of political pressures. The abolition of the Criminal Law Codification Commission in 2016 deprived the state of an institutional expert base that could counterbalance the rush to implement ideas that are often highly controversial and not always driven solely by the needs of society. The absence of such a body was particularly perceptible especially during the crisis caused by the pandemic. Consequently, the legislator readily adopted solutions that are incompatible with the principles of criminal substantive and procedural law – such as online detention hearings – or those that have nothing to do with the pandemic crisis and have previously been loudly and unanimously opposed by the legal profession (e.g. particularly audacious theft). It is only thanks to the prudence, and probably also a certain conservatism, of the courts and the attitude of defence lawyers that the online mode of criminal proceedings (except for hearings in execution proceedings) is rarely used.

Second, it is necessary to point to a shortcoming of the Polish justice system (including the criminal justice system) – the excessive length of proceedings and the long periods of pre-trial detention. Unfortunately, the SARS-CoV-2 coronavirus pandemic has visibly exacerbated the deficit in this area. Criminal cases have become even more protracted, although detention proceedings have been included in the list of so-called urgent cases, i.e. those which have been given priority for examination. The confusion caused by the imprecision of the legislative arrangements concerning the suspension of the limitation period only confirms the view that the chaos was caused by hasty legislation.

Another permanent fixture of Polish criminal proceedings is the lack of full exercise of the right to a defence at the outset of criminal proceedings. Also in this area difficulties have arisen, which have been reported by the defence lawyers and which have provoked a reaction from the professional associations of legal practitioners. Additional difficulties in this respect – linked to the pandemic situation – should be attributed not so much to a deliberate action as to the urgency of the situation and the lack of proper thought given to the anti-pandemic

measures used. These problems were mostly overcome thanks to the cooperation of the professional associations with the judges.

It is also worth noting that not all actions by the authorities of the general criminal justice system have been directed at preventing the pandemic. As mentioned above, the pandemic threat was used as a pretext to enact changes to criminal law that have nothing to do with the pandemic. Invoking time pressures and health risks to push through controversial criminal legislation has very little to do with the principles of good legislation and significantly undermines public confidence in the expediency of genuinely necessary solutions, often enacted in the same normative act together with inappropriate measures. Moreover, the arrangements that are not related to the transient pandemic situation will likely form a part of the permanent legislative legacy of criminal law.

Finally, one cannot ignore the fact that the pandemic restrictions imposed on civil liberties (in any case and to some extent, unconstitutionally) have been used to suppress social discontent caused by other actions of the authorities in the field of criminal law. One even has the impression that the moment of imposing a radical restriction on the possibility of performing legal abortions was chosen precisely at a time when demonstrations are not allowed for pandemic reasons.

All things considered, has the SARS-CoV-2 coronavirus indeed infected the criminal justice system? Arguably, in Poland the virus has hit a very fragile immune system, significantly exacerbating its weaknesses. At the same time, it provided a back door for those in power which was used to initiate various changes to the substantive, procedural and executive criminal law, something we will have to deal with for a long time to come.



## HELSINKI FOUNDATION FOR HUMAN RIGHTS

Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 by members of the Helsinki Committee in Poland, whose mission to develop human rights standards and culture in Poland and beyond its borders. Since 2007 HFHR has had consulting status at the UN Economic and Social Council (ECOSOC). HFHR promotes the development of human rights through educational activities, legal programmes, as well as co-participation in the development of international research projects.

### COVID 19 – CRIMINAL JUSTICE CAMPAIGN

In November 2020 Helsinki Foundation for Human Rights joined the international project Covid 19 – Criminal Justice Campaign coordinated by the international organization Fair Trial International.

Within its framework, organizations from all over the world monitor legislative changes introduced within the framework of criminal law and procedure in relation to the pandemic and look at judicial practice. The aim of the activities carried out is to counteract excessive interference with civil rights and freedoms, which, unfortunately, often accompanies new legal provisions, which are quickly introduced in the present circumstances.

