



**Dać radę  
w Polsce**

Informacja i pomoc  
prawna dla migrantów

# **Victims, suspects, accused**

## **Rights of foreigners in criminal proceedings – a guide**







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# **Victims, suspects, accused** Rights of foreigners in criminal proceedings – a guide

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**HR HELSIŃSKA FUNDACJA  
PRAW CZŁOWIEKA**

 **UNIA EUROPEJSKA  
FUNDUSZ AZYLU,  
MIGRACJI I INTEGRACJI**

Save haven

Victims, suspects, accused.

Rights of foreigners in criminal proceedings – a guide.

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# WHY THIS GUIDE AND WHO IS IT FOR?

It is a well-known fact that a lack of adequate knowledge or awareness of relevant legal procedures makes it difficult for crime victims to assert their rights, and for suspects in criminal cases to seek proper legal defence. If you are a foreigner in Poland, and are not familiar with the legal system here, the competences and roles of relevant institutions, government agencies and authorities, and do not speak Polish, you may find such circumstances all the more difficult and daunting. This publication aims to be your step-by-step practical guide on the procedures that any victim of a crime or suspect in a criminal case faces. It also tackles subjects important specifically to foreigners, such as your right to an interpreter or being issued with a decision imposing the return obligation (i.e. being forced to leave Poland). It discusses at length offences which, by their nature, are associated with foreign citizens only, such as illegal crossing of the state's border, irregular stay in Poland, or work without a valid permit. Also, some particular instances of violence have been discussed, including domestic violence and hate crimes.

# I. POLISH CRIMINAL LAW AND FOREIGN CITIZENS



Polish law, and more specifically criminal law, warrants every person's protection against violence, be it physical or psychological violence, or violence aimed at causing property damage or loss. Protection against violence and punishment penalization of its perpetrators is one of the state's responsibilities. Hence, every person has the right to seek assistance from relevant law enforcing authorities, such as the Police or the Prosecutor's Office (*prokuratura* in Polish). Such institutions have a duty to provide assistance, support and protection, or provide an individual with information on how she or he may assert her/his rights. At the same time, Polish law explicitly forbids seeking justice and punishing violence perpetrators on one's own. Attempting that may result in legal liability, even if the person liable is a victim of an actual crime or petty offence.

## ***What behaviours are considered violence and thus punishable by Polish law?***

All actions barred in Poland are clearly specified by the regulations of the law in force. The regulations are included in documents such as "Acts" or "Laws" and "Codes".

Actions that consist in using gross violence and are serious in nature are defined as **crimes** (*przestępstwa*). Crimes are primarily listed in the Penal Code. Cases related to crimes are examined by a court of law in the course of **criminal procedure**. The detailed course for examining this type of cases is governed by the Code of Criminal Procedure.

Examples of crimes include battery (beating a person up), inflicting injury, rape, theft, issuing threats, insults, false imprisonment, forced marriage, persistent reduction of due remuneration (your pay), not paying due remuneration on time or refusal of remuneration.

Actions less serious in character are termed **petty offences** (*wykroczenia*). They are specified in the Code of Petty Offences. The detailed course of proceedings where a person has been a petty offence victim is governed by the Code of Petty Offence Procedure. Examples of petty offences could be intentional causing alarm or distress, or unjustified refusal to provide services.



**Notice:** This publication primarily focuses on crimes, however the proceedings in cases related to petty offences are similar in the majority of cases.

## ***If I am a foreign citizen does it in any way limit my access to protection against crimes?***

The answer is no. Polish and foreign citizens are covered by the same legal protection against crime. You are covered by the same legal protection whether your legal status in Poland has been settled or not.



### ***If I am a foreign citizen does it result in different principles of legal liability for committing a crime or a petty offence?***

As a rule, foreign citizens who have committed a crime or a petty offence within the territory of Poland are subject to the same principles governing legal liability as Polish citizens. The same kind of proceedings are then instituted against them, and they are liable under the same principles, specified by the Penal Code or the Code of Petty Offences, as any Polish citizen would be.

This being said, the fact of having committed a crime or a petty offence by a foreigner may significantly affect the person's ability to further stay in Poland. A final and binding sentence issued by a Polish court with regard to a foreigner who has committed an intentional crime may result in entering the offender's personal data into in the register of foreigners whose stay in the territory of Poland is undesirable, as well as issuing a decision imposing the return obligation on said foreigner (i.e. forcing her/him to leave Poland). Whenever such a decision is formally issued, the foreign national loses the right to stay in Poland, their working permit is revoked, as is their permit to cross the Polish border under the principles governing local border traffic, and they are temporarily banned from re-entering Poland and the Schengen Area (a decision on imposing the return obligation includes a ban on re-entry into the territory of Poland and the Schengen Area for a specified period of time).

### ***How is crossing the border illegally punished?***

**Crossing the Polish border illegally against relevant regulations in force is considered a petty offence**, punishable by a fine of up to PLN 5,000. Crossing the border using threats, violence, deception, or in collaboration with others is considered a crime, punishable by up to 3 years of imprisonment. Crossing the border illegally may also result in a **decision on imposing the return obligation on a foreigner**.

Also, any person who for the purpose of financial or personal gains assists another person in staying in the territory of Poland against the law, or facilitates such a stay, is subject to criminal liability. Any such action is punishable by 3 months up to 5 years of imprisonment.

### ***Can I be punished for staying in Poland illegally?***

Yes. **A foreign national's illegal stay in Poland is considered a petty offence, punishable by a fine**. Administrative proceedings are instituted against a foreign national staying in Poland against the law, aimed at issuing a decision on **imposing the return obligation on a foreigner**. When such a decision is issued, it also stipulates (gives) a time period for which the person in question is banned from re-entering the territory of Poland, varying in length from 6 months to 3 years.

A foreign national's stay in Poland is considered illegal under the following circumstances:

- ✔ The foreigner does not hold a valid visa or another valid document entitling her/him to enter the territory of the Republic of Poland and stay therein.

- ✔ The foreigner did not leave the territory of the Republic of Poland upon having exhausted the permitted time of stay.
- ✔ The foreigner crossed the border or attempted to cross the border illegally.
- ✔ The foreigner is working, or worked, illegally in Poland, i.e. without a valid work permit.
- ✔ The foreigner set up business activity (a business) in Poland in breach of (against) relevant regulations in force.
- ✔ The foreigner does not have sufficient financial means (enough money) to stay within the territory of the Republic of Poland.
- ✔ The foreigner is entered in the SIS II (Schengen Information System II) for the purpose of refusing entry or in the Polish register of foreigners whose stay in the territory of Poland is undesirable (in which case the ban on entry may be valid for up to 5 years).



**Schengen Information System II (SIS II)** is a database that collects information regarding nationals of third countries traveling within the Schengen Area and on its borders. The database includes personal information of individuals who have been refused the right to enter the Schengen Area, pursued for their criminal record, or missing. SIS II is a highly efficient electronic database that contains biometric data, such as fingerprints and photographs.

### ***What are the penalties for working without a valid work permit in Poland?***

**Working without a valid work permit in Poland is considered a petty offence, punishable by a fine of PLN 1,000 up to 5,000.** Such an offence also adversely influences the offender's ability to further stay in Poland and work legally. The National Labour Inspectorate and the Border Guard are the national agencies entitled to perform employment legality checks, and they work closely together on that issue. Whenever a case of illegal employment is identified, the National Labour Inspectorate may file a court case, whereas the Border Guard may issue a decision on imposing the return obligation on a foreigner. The decision also stipulates (gives) the time period for which the foreigner is banned from re-entering Poland. The period related to illegal work may vary in length from 6 months to 3 years. The relevant Voivode may also revoke or deny a permit for the foreigner's employment with a given employer.

### ***What does "return obligation" mean?***

The return obligation is an administrative decision which may be issued to a foreign national in several types of circumstances, including (among others):

- ✔ The foreigner has breached regulations concerning the entry and stay in the territory of Poland, or committed certain petty offences or crimes (e.g. did not leave Poland after being refused a residence permit or a refugee status and international protection).

- ✔ The foreigner has been considered a threat to national defence or security or to the protection of public security and order.
- ✔ The foreigner is included in the Schengen Information System II for the purpose of refusing entry or in the Polish register of foreigners whose stay in the territory of Poland is undesirable.

The proceedings on imposing the return obligation on a foreigner are conducted by the Border Guard. They may result in a decision on a voluntary return. In such circumstances, the foreigner is obliged to leave the territory of Poland within a stipulated period, ranging from 15 to 30 days since the receipt of said decision (under exceptional circumstances the time period may be extended up to 1 year). If the foreigner fails to comply with the obligation to leave Poland within the stipulated period of time, the decision on imposing the return obligation is enforced by relevant authorities (the person is deported from Poland).



**Notice:** Leaving Poland by entering another member state of the European Union or the Schengen Area is not considered complying with the decision to voluntarily return!

The decision on imposing the return obligation on a foreigner is also enforced by relevant authorities without allowing the person in question to freely comply with the decision whenever the Commander of the Border Guard decides there exists a justified suspicion or high probability that the person may attempt to escape, or for important reasons related to national defence or security or the protection of public security and order. Whenever the decision on imposing the return obligation on a foreigner is enforced by relevant authorities, the person in question is liable to cover the costs involved.



**Notice:** A final and binding decision on the return obligation involves a default expiration of the person's visa, work permit and temporary residence permit, as well as revocation of a permit to cross the border under the principles governing local border traffic.

**A decision on imposing the return obligation on a foreigner cannot be issued** under the following circumstances:

- ✔ The foreigner has the refugee status or subsidiary protection.
- ✔ The foreigner has been granted residence permit for humanitarian reasons or a tolerated residence permit, or there exist premises to grant any of the above.
- ✔ The foreigner has been granted a temporary residence permit due to the fact that her/his stay in Poland is necessary to respect her/his right to family life.
- ✔ The foreigner has been granted a temporary residence permit due to the fact that her/his leaving Poland would breach a child's rights.

- ✔ The foreigner is married to a Polish citizen or a foreigner granted a temporary residence permit or a long-term EU residence permit (provided that her/his stay does not pose a threat to national defence or security or to the protection of public security and order).
- ✔ The foreigner is staying in Poland under a valid Schengen visa issued under humanitarian premises, due to the state's interest, or international obligations.
- ✔ The foreigner is staying in Poland under a temporary residence permit issued due to the presence of circumstances necessitating a short-term residence in Poland.
- ✔ The foreigner is staying in Poland under a temporary residence permit granted to foreigners who have been victims of human trafficking.
- ✔ The foreigner has been granted a permanent residence permit or a long-term EU residence permit to stay in Poland.
- ✔ The foreigner holds a residence permit issued by another Schengen Area member state (under the condition that her/his stay in Poland does not pose a threat to national defence or security or to the protection of public security and order), unless the foreigner failed to return to the country in question (Schengen Area member state) after having been notified of the obligation to immediately leave Poland.
- ✔ The foreigner has been temporarily delegated to provide services in Poland by her/his employer with a registered seat in another EU or EFTA member state, or the foreigner has the right to stay and take up employment in that country, if the decision on imposing the return obligation on foreigner were to be issued owing to her/his stay in Poland without a valid visa or residence permit card.
- ✔ The foreigner may be immediately transferred to the state's border if s/he is detained in the border zone immediately upon unintentional illegal crossing of the border.
- ✔ The foreigner is residing in Poland under a formal statement by relevant authorities confirming there is a suspicion that s/he has been a victim of human trafficking.

### ***Can I appeal the decision on imposing the return obligation?***

Yes, it is possible. An appeal may be submitted with the Head of the Office for Foreigners within 14 days from the receipt of the decision. As long as the appeal is in progress, you are not required to comply with the decision in question.

If the Head of the Office for Foreigners upholds the decision on the return obligation, you may file a complaint with the Voivodeship Administrative Court in Warsaw within 30 days from the receipt of the decision. Your complaint may include an application for the decision on the return obligation to be withheld. As a result of filing a complaint including the relevant application, the time period allowed for complying with the return obligation is suspended. This is relevant both for voluntary and compulsory (enforced) return.

### ***For how long is the ban on re-entry valid?***

The re-entry ban included in the return obligation decision is issued for a period of **6 months up to 5 years**. A ban on re-entry valid for 5 years is issued for a foreigner whose stay

in Poland poses a threat to national defence or security or to the protection of public security and order. A ban of 3 to 5 years is issued for a foreigner who has been sentenced to imprisonment by a final and binding decision of the court and there are premises for instituting proceedings related to transferring the person in question to another country to enforce the punishment she/he has been sentenced to. Also, persons included in SIS II for the purpose of refusing entry or in the Polish register of foreigners whose stay in the territory of Poland is undesirable, as well as persons who pose a threat to public health may be issued with a ban of 3 up to 5 years. A breach of law governing the entry and stay in Poland may result in a ban on re-entry valid for 6 months up to 3 years, whereas illegal employment or work in Poland – from 1 year up to 3 years.

### ***Is it possible to withdraw (lift) the ban on re-entry to Poland?***

Yes, a foreign national may apply for her/his ban on re-entry to be withdrawn (lifted). Such a decision is issued by the authority that originally issued the obligation to return (e.g. the Border Guard). The ban on re-entry may be withdrawn if the foreigner is able to evidence the following:

- ✔ She/he complied with the duties resulting from the decision on imposing the return obligation (e.g. she/he left Poland within the period of time stated in the decision).
- ✔ Her/his re-entry to Poland or another member state of the Schengen Area is justified, particularly under humanitarian premises.
- ✔ She/he was granted assistance in voluntary return.

There are, however, certain circumstances under which a ban on re-entry cannot be withdrawn. The ban shall not be lifted if the foreigner's re-entry to or stay in Poland may pose a threat to national defence or security or to the protection of public security, or infringe upon Poland's interests. Also, the ban shall not be lifted if the person in question did not cover the expenses related to issuing and enforcing the decision obliging the foreigner to return.

### ***While staying in Poland, can I be liable for a crime committed in another country?***

Yes, but only in the case of some crimes. A foreign national staying in Poland is liable for an offence committed in another country, if the offence in question was directed against the goods or interests of the Republic of Poland, a Polish citizen, a Polish legal person, or a Polish entity not having legal personality. Also, all activities of a terrorist character are punishable in Poland. What is more, such activities are punishable in Poland by at least 2 years of imprisonment. The Polish state may, however, decide to transfer the foreign national in question to the country where the crime was committed.

## II. THE CRIMINAL PROCEDURE



### *What is the course of the criminal procedure and who conducts proceedings?*

The criminal procedure is typically divided into two stages: pre-trial proceedings and court proceedings. Pre-trial proceedings are usually carried out by the police and the Prosecutor's Office (*prokuratura*), with the Prosecutor's Office handling more serious cases. These are the authorities which a victim should notify of a crime. It is their role to thoroughly investigate the circumstances of the crime, collect the necessary evidence and, wherever relevant, file an act of indictment with the court against the alleged offender. At that point, court proceedings begin, aimed at obtaining a court verdict sentencing the alleged offender, at this stage referred to as the defendant.

According to Polish criminal law, **there are two instances of court proceedings**. This means it is always possible to appeal an unfavourable court verdict **to the court of the second instance**. Depending on the crime, this may be **a regional court (*sąd okręgowy*)** or **a court of appeal (*sąd apelacyjny*)**. The Court of Appeal may either uphold the original verdict (whereby the case is finalized), or reverse it (if any errors or irregularities are found) and pass the case for re-examination to a court of the lower instance.

### *Will the Police or the Prosecutor's Office act in the name of the victim in all cases, and secure a sentencing verdict?*

In the majority of cases yes, but there are exceptions. This depends on the nature of the acts the offender is alleged to have committed. The law differentiates between three categories of such actions:

- ✓ actions prosecuted **ex officio** (if the Police or the Prosecutor's Office learn about such an action, they are obliged by the law to prosecute the perpetrator);
- ✓ actions prosecuted **upon a request** (a request in this case is a formal petition filed by the victim with the Police or the Prosecutor's Office, whereby the authorities are obliged to prosecute the offender, and at this point the proceedings are initiated ex officio);
- ✓ **privately prosecuted** actions (whereby it is the victim who must submit an indictment to the court, and support it there).

It is a general rule that cases related to more serious offences are prosecuted ex officio. Offences prosecuted upon a request are typically those committed by someone personally related to the victim. This allows the victim to decide whether she/he wishes to seek the offender's punishment.

Importantly, it is clearly specified in law whether any given crime accounted for by the regulations is to be prosecuted ex officio, upon a request, or by way of private prosecution.

### ***How am I to know what legal measures I should take as either a victim or a suspect in any given situation?***

The general rule is that the Polish model of the criminal procedure is designed in such a way that every victim and suspect should be formally advised (either orally or in writing) as to their rights and obligations in all circumstances requiring her/him to make necessary decisions affecting the course of proceedings. Prior to the first interview by the Police or the Prosecutor's Office, both the victim and the suspect receive instructions in writing, informing them of their basic rights and obligations in the course of the procedure. Next, as the proceedings advance, they receive further instructions, oral and written, as to their rights in relation to particular decisions received from relevant authorities.

If a foreigner knows Polish, such instructions may prove helpful. Otherwise, the system of instructions may turn out irrelevant and useless for the person in question. In practice, it is only the instructions received prior to the first interview that are by default translated into foreign languages.<sup>1</sup> The remaining written instructions provided to the victim and the suspect in the course of the criminal procedure are available solely in Polish. Hence the importance of ensuring the assistance of a professional legal representative or defender or any institution offering such services free of charge.



**Notice:** For a list of organizations providing free legal assistance see Annex 1.

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<sup>1</sup> Templates of the instructions in question translated into 26 languages are available from the Ministry of Justice's website at : <https://ms.gov.pl/pl/dzialalnosc/wzory-pouczen/> (access: 15 December 2016). They should also be available at every Police unit and Prosecutor's Office unit.

# III. A FOREIGN CITIZEN AS A VICTIM OF A CRIME / PETTY OFFENCE



## 1. What should I do if I fall victim to a crime?

### *What should be my first actions when I have been a victim of violence?*

The circumstances in which a person experiences violence may greatly vary, hence it is difficult to outline a single pattern of response to such a situation. It is usually helpful, however, to consider the following steps:

- ✓ First and foremost, try to make sure you are safe (e.g. immediately leave the place where you are in danger).
- ✓ If you need medical help, call an ambulance on 112, or head for the nearest hospital.
- ✓ If you have experienced serious violence and you know where the perpetrator may be found, call the police on 112 and ask them to come (in reality, it may take from several minutes up to 1 hour before the Police arrive).
- ✓ Whenever possible, gather all the evidence of the incident (e.g. use your telephone to take photos of any injuries you might have suffered, damaged objects, the place where the incident occurred; keep any objects related to the incident, if there are any witnesses to the incident, ask them to wait for the Police to arrive, or ask for their telephone numbers, so that the Police can contact them at a later time).
- ✓ If you have suffered any personal injuries (even minor ones), go to the nearest hospital, and ask for a personal injury medical examination and report. If possible, ask the report to be attached with photographs of your injuries or at least with information that such photos have been taken.
- ✓ If there is a public surveillance system of any kind at the place of the incident (such as CCTV cameras in a store or on public transport) that could have possibly recorded what happened, immediately ask the Police to secure it, as such recordings are stored for a limited number of days only.

As you attempt any of these steps, you may possibly face some obstacles (such as inability to communicate because of language difficulties, or a lack of willingness to provide assistance on the part of the Police or other services). In such circumstances, seek help from a professional legal representative or an institution providing free legal assistance.

### *Where can I report a crime?*

A crime should be reported to relevant law enforcing authorities, i.e. the Police or the Prosecutor's Office. In practice, make your report at the nearest Police unit. If it turns out that the



case should be handled by another Police unit or another institution, it will be instantly transferred there *ex officio* (which means by default, under the relevant law), and you will be notified in writing (you will receive a formal letter).

### ***How can I make the report?***

You can report a crime in several ways:

- ✔ During the Police's intervention, when police officers are present at the site of the incident.
- ✔ By going in person to the nearest Police unit.
- ✔ By sending a written report to the nearest Police or Prosecutor's Office unit. The report can be written in any language of your preference, yet it is advisable to submit it in Polish, as it will help speedier examination of your case. Also, it is advisable to send such a report by a registered letter (*list polecony*), and keep a copy for yourself.

### ***What should a written report sent by mail look like?***

The report may have any form. Make sure, however, to include the following information:

- ✔ The Police unit to which it is sent.
- ✔ Your name, surname and your correspondence address.
- ✔ A detailed account of the reported incident and your request that the offender be found and prosecuted.
- ✔ The date on which the report is made and your signature.

### ***Is a police officer obliged to accept the report?***

Yes. A police officer is obliged to accept every single crime report. Sometimes, a police officer may attempt to discourage you from submitting the report, giving various reasons (such as not having time, or saying there is nothing that can be possibly done in your case because the offender will be impossible to find, or that the case can only be privately prosecuted and it is you, not the Police, that are obliged to take relevant action). Should something like this happen, make sure to send your report by registered post (keep the post receipt and your copy of the letter you send).

### ***Do I need to cite any given regulations when reporting a crime?***

No. It is enough to describe the incident, and it is for the police officer to decide its legal category and specify what should happen next.

### ***Can anyone accompany me as I report a crime?***

Yes, you have the right to be accompanied by any person of your choice. It will be especially important, if you happen not to know Polish, and the person accompanying you could interpret and translate for you.

### ***Is it possible to classify my address information when reporting a crime, so that the offender has no access to it?***

Yes. You have the right for your address information to remain unknown to the crime perpetrator. It is then kept in separate case files that can only be accessed by the authorities handling the proceedings.

## **2. Pre-trial proceedings**

### ***What happens after I report a crime?***

After the report is made, proceedings in a given case are initiated or a refusal to institute the proceedings is formally issued. In the case of the refusal, you have the right to file a formal complaint (for more information see page 20: ***Can I dispute the decision denying to initiate or to continue the proceedings?***).

### ***Who handles pre-trial proceedings?***

The proceedings are handled by the Police or the Prosecutor's Office. In the course of pre-trial proceedings, the Police or the Prosecutor's Office collect evidence that allows them to verify the validity of the crime report, and to file an act of indictment against the suspect with the court.

### ***Do I have any special rights at this stage of the procedure?***

Yes, under the regulations in force you are equipped with a number of important rights. You may choose to act on them in the course of pre-trial proceedings, yet you are not obliged to exercise them.

The major ones include the following:

- ✔ The right to appoint and be assisted by a professional legal representative. This can be an attorney at law/solicitor/advocate (*adwokat* under the Polish legal system) or a legal counsellor (*radca prawny*). If you prove that you cannot afford to hire a legal representative, the court may appoint a public defender (*pełnomocnik z urzędu*) to assist you free of charge.



**Notice:** If the suspect is found guilty and sentenced by a court, they may be liable to cover the costs of your legal representative.

- ✔ The right to an interpreter free of charge. This right is, however, limited to the interpreter's presence at your interview, or while you are being familiarized with the evidence.
- ✔ The right to submit requests for certain measures to be taken in the course of pre-trial proceedings, such as hearing a witness, obtaining a document, allowing an expert opinion.

- ✓ The right to request to be present at all the proceedings, such as hearing witnesses or experts.
- ✓ The right to access case files and to make copies. Under exceptional circumstances, where it is necessary to safeguard the proper course of the proceedings, the relevant authority may temporarily deny the victim access to case files. You should be notified about the possibility to obtain such access at a later time.
- ✓ The right to submit a request for mediation aimed at reconciling you and the offender and discussing how the sustained damage may be redressed. Participation in mediation proceedings is voluntary, and it is possible to withdraw your consent to participate at any given stage.



**Notice:** A positive outcome of mediation is considered by the court when deciding on the offender's sentence.

- ✓ The right to request damages, e.g. for damaged property, or compensation for inflicted harm, such as emotional distress.
- ✓ The right to be notified about the suspect's temporary arrest being lifted, or her/his escape from custody.
- ✓ The right to obtain free medical, psychological, rehabilitation, legal, and material assistance from entities endowed with relevant financial means dedicated to this purpose by the state.<sup>2</sup>

### ***How long can pre-trial proceedings last?***

This part of the criminal procedure typically lasts from several weeks to several months (depending on the complexity of a given case).

### ***Will I receive any information on how the proceedings conducted by the Police or the Prosecutor's Office are concluded?***

Yes, the authorities will notify you in writing about their decision. If they identify grounds for criminal liability of the offender, the authorities will file an act of indictment with the court. However, after your notification the authorities may also issue a decision refusing initiation of the procedure (the police or the prosecutor will not take further actions) or, if they have already initiated the proceedings, they may decide to discontinue them for various reasons.

<sup>2</sup> The up-to-date list of entities providing such assistance (in different locations throughout Poland) is available at <http://pokrzywdzeni.gov.pl/siec-pomocy/> (access: 17 December 2016)

### ***Can I dispute the decision denying to initiate or to continue the proceedings?***

Yes. You have the right to lodge a complaint about such a decision, and you will be notified of that possibility. In such circumstances, you also have the right to view the case files.

### ***How can I submit a complaint and in what timeframe?***

The complaint must be lodged in writing within 7 days since the receipt of the relevant decision in writing. The complaint is lodged with the court, but through the authority conducting pre-trial proceedings. In practice, this means that the complaint is addressed to the court, yet submitted with the authority which issued the decision. To meet the 7-day deadline for submitting the complaint, within this timeframe you should send the complaint by post to the authority handling the proceedings, or hand it in at the authority's formal seat. The complaint should specify in detail the alleged errors or irregularities that, in your view, led to an incorrect decision. Make sure to sign the complaint.

### ***What happens after the complaint has been lodged?***

If a complaint is successfully submitted, the relevant authority will refer it to the court which will examine the correctness of the decision issued. You have the right to be present at the court's sitting aimed at examining your complaint. Hence, it is a good idea, once your complaint has been referred to the court by the relevant authority (of which you will be notified in writing), to contact the Customer Service Office of the court in question to ask about the date and time when your complaint is to be examined. The court may dismiss your complaint, deciding that the original decision was correct (in which case the proceedings shall be considered closed), or consider your complaint favourably and revoke the original decision (the case will then be continued by the relevant authority, which will be required to address all the issues specified by the court).

If the authority handling the proceedings still fails to identify sufficient grounds for an indictment, they will issue a decision discontinuing the proceedings. Under such circumstances, within 1 month since the receipt of another decision to this effect, you will have the right to file an act of indictment with the court on your own (known as subsidiary indictment), and you will be notified of this possibility (Art 55 of the Code of Criminal Procedure). A subsidiary act of indictment should, however, be drawn up and signed by a professional legal representative.

## **3. Court proceedings**

### ***What happens after an indictment has been filed with the court?***

As soon as an indictment is filed with the court, the second stage of the criminal procedure, i.e. court proceedings, begins.

### ***Who conducts court proceedings?***

Court proceedings are carried out by the court. At this stage, the Prosecutor's Office will seek a sentencing verdict by the court.

### ***Will I be forced to meet the offender?***

At this stage of the proceedings, you will probably meet the offender at every court hearing, if you and the offender are both present.

### ***How long can court proceedings last and how are they concluded?***

This stage of the procedure usually lasts between several weeks and several years (usually several months), depending on the case's complexity, and finishes when the court finds the suspect guilty and issues a sentence, or finds the suspect innocent.

### ***Do I have any special rights at this stage of the procedure?***

Yes, but in fact only if you declare the intent to act in the capacity of the so-called 'subsidiary' prosecutor. If you decide to do that you will have similar rights to those you enjoyed during pre-trial proceedings. You will be able to act on those rights, but you will not be obliged to.

### ***Will I be notified about the necessity to declare the intent to act as a 'subsidiary prosecutor'?***

Yes, the prosecutor will advise you of your right to make such a declaration when notifying you about the indictment having been submitted to the court. The declaration may be submitted at any time prior to arraignment (formal reading of the indictment at the first court hearing). You can either submit the declaration in writing, sending it by post (remember to do it by registered post), or orally at the first hearing in court, before the arraignment. In this case, your declaration will be included in the hearing's formal record.

### ***Are there any advantages of acting in the capacity of a subsidiary prosecutor?***

Yes. Adopting this role will allow you to aid the Police and the Prosecutor's Office throughout court proceedings, and closely monitor the developments in your case. Acquiring this status also entitles you to appeal the court's decision to the court of the second instance (depending on the crime, this may be a regional court [*sąd okręgowy*] or a court of appeal [*sąd apelacyjny*], if you are dissatisfied with it. Additionally, if you act in the capacity of a subsidiary prosecutor, the court's decision will be translated for you in writing.

### ***What happens if I choose not to make the declaration?***

The proceedings as such will not be affected. However, your influence on the course of the proceedings will be limited. The court will not notify you about the dates of subsequent hearings or new developments. In such circumstances, the only time you will be expected to make an appearance in court will be for your hearing.

Nonetheless, remember you can always call the court's Customer Service Office and request the court files for reading in the court's reading room to stay up to date with all the developments in your case. Also, you can make a formal request to be formally notified by the court about the conclusion of the case and for the court's final verdict to be sent to you by post.

### ***What should I do if I wish to act in court yet I am afraid to meet the offender?***

When the proceedings reach the courtroom stage, you must be aware that you will come in contact with the offender not only in the courtroom, but also in the court's hallway prior to the hearings. Nonetheless, remember that at the court's premises your safety is always ensured.

Also, you have the right to request the offender's removal from the courtroom before your hearing if her/his presence causes your distress.

In exceptional circumstances, if there is a risk of further aggression on the offender's part, including during her/his presence at court proceedings, you have the right to request additional protection from the state as a victim with particular needs in the scope of protection and assistance.

## **4. Special types of cases**

### **4.1 Domestic violence**

#### ***If the violence perpetrator is a member of my family, am I entitled to any additional protection?***

Yes, such protection is provided under the co-called 'Family Blue Cards procedure', implemented under the Act on Counteracting Domestic Violence.

#### ***How can I obtain such protection?***

If the Police or social welfare workers are informed or in any other way gain knowledge about instances of family or domestic violence, they are obliged to cover the members of the family in question with relevant protection against the perpetrator of violence, and file the so-called 'Family Blue Card'.

#### ***What are the advantages of being covered by such protection?***

Protection offered under this procedure includes the right to:

- ✓ medical, psychological, legal, social, professional and family counselling;
- ✓ crisis intervention and support;
- ✓ protection against further harm by preventing the perpetrator from sharing a residence and having contact with their victims;

- ✓ safe shelter;
- ✓ a medical examination aimed at determining the cause and type of injuries suffered as a result of domestic violence, and a relevant medical report.

***Is it possible to immediately detain a domestic violence perpetrator to prevent them from staying in the same home with me?***

Yes. If there are reasonable grounds for believing that domestic violence has occurred and it may happen again, you have the right to demand immediate custody (arrest) of the perpetrator.

In such circumstances, you can also demand the Police or the Prosecutor's Office to immediately issue a non-occupation injunction, obliging the violence perpetrator to leave the home s/he shares with the family. This is aimed at preventing her/him from returning to the residence after she/he is released from custody. The order is valid for up to 3 months, whereupon it may be renewed for another period of time and stay valid for the entire course of the criminal procedure.

Regardless of the preventive measures discussed above, in circumstances where the violence perpetrator makes sharing a residence exceptionally onerous or distressing for their family members, you may request that the court order the perpetrator to leave the shared premises. The decision in this respect should be issued following a hearing that is to be held within 1 month of the date a relevant application is submitted. A decision to this effect becomes effective upon announcement, and may be amended or revoked if the circumstances change (hence, it may also be valid for an indefinite period of time).

***Can I apply for the non-occupation injunction even if I am not the owner of the residence?***

Yes, the decision issuing the non-occupation injunction is valid regardless of whether you are the owner of the residence or not. The only relevant fact is that you live there. Importantly, even if the perpetrator happens to be the owner of the residence, they may be ordered by the court to leave.

***If, ultimately, I divorce the violence perpetrator, and the marriage originally constituted the grounds for obtaining my residence permit in Poland, will I lose my eligibility to stay in Poland?***

Not necessarily. If you have stayed in Poland legally on the grounds of being married to a Polish citizen or a foreigner settled in Poland, in the case of a divorce or separation you can obtain a permit to remain in Poland if important reasons exist, such as exercising child custody. Such a permit is issued once, and granted for a period of time not exceeding 3 years. Remember, however, that you can apply for another temporary residence permit on other grounds, such as being employed in Poland or studying at a Polish university.

## 4.2. Racist crimes

### *What are racist crimes?*

Racist crimes are crimes where a given person or group of persons are attacked due to their national or ethnic background, their skin colour or their religion. These also include crimes against personal property and venues, e.g. demolition of a restaurant run by foreigners, devastation of a dedicated place of remembrance or worship. Racial crimes also include insults related to a person's background or skin colour, as well as incitement to racial, national or religious hatred. While deciding on the sentence, the court considers the offender's motivation, treating them more seriously under said circumstances.

The Polish Criminal Code explicitly forbids the following types of actions:

- ✔ use of violence and threats against a group of persons or a given person on the grounds of their national, ethnic, racial, political or religious background, or on the grounds of a lack of a religious belief;
- ✔ incitement to hatred on the grounds of national, ethnic, racial, political or religious background, or on the grounds of a lack of a religious belief;
- ✔ public insult of a group of persons or a given person on the grounds of national, ethnic, racial, political or religious background, or on the grounds of a lack of a religious belief;
- ✔ assault on a person's corporal integrity on the grounds of national, ethnic, racial, political or religious background, or on the grounds of a lack of a religious belief;
- ✔ intentional disturbance or disruption of burials, memorial events and services, or other religious ceremonies held by a church or other religious denomination with a registered legal status.

### *How are crimes in this category prosecuted?*

All the crimes specified above are prosecuted *ex officio*. After a crime of this kind has been reported (in any of the ways described in section II.1 above), law enforcing authorities pursue measures aimed at the offender's conviction.



**Notice:** When reporting a hate crime, make sure to point out to the Police or the prosecutor the offender's racial motivation. You can do that by citing the offender's racial insults or statements, or pointing out the relevant circumstances of the incident (for instance if the assault occurred when you were leaving a dedicated place of worship, or during a demonstration against foreigners).

### *Can I obtain additional protection if I am a victim of a racial or religious crime?*

Yes, indeed. Crimes with racial motives are considered especially harmful, and are often-times associated with a serious danger for the victim's life or health. As a result, apart from having the rights common to all victims of crime in the course of the criminal procedure, being a



victim of crime associated with aggravated danger entitles you and your family to additional protection by the state.

It is granted under the Act on the Protection and Assistance for Victims and Witnesses. Before it is granted, individual assessment of the victim's needs in the scope of protection and assistance is required, with the Police being obliged to carry out such an analysis. If the victim's life or health is at risk, the victim is entitled to be granted the following:

- ✔ police protection during procedural acts, i.e. the presence of the Police during procedural acts the victim takes part in, on the way to the place where a procedural act is to take place, and on the way back;
- ✔ personal protection, i.e. permanent or temporary presence of the Police near the victim; temporary surveillance of the victim and their surroundings;
- ✔ assisted relocation to a safe place;
- ✔ financial aid;
- ✔ psychological assistance.

### ***How can I obtain such protection?***

To obtain relevant protection, you should apply with the relevant Voivodeship Chief Police Officer through:

- ✔ the authority handling pre-trial proceedings in your case or conducting verification proceedings prior to initiating pre-trial proceedings (i.e. through the Police or the Prosecutor's Office).
- ✔ the court examining your case (if court proceedings in your case are already in progress).

# IV. A FOREIGN CITIZEN AS A SUSPECT AND DEFENDANT



## 1. What should I do when I find myself a suspect in a criminal case?

### *How will I know that I am a suspect in a criminal case?*

You will be notified by the Police or the Prosecutor's Office. Depending on the circumstances of the offence you are charged with, this may be immediately after you have been detained by the Police or following a notification in writing requiring you to appear before the Police or at the Prosecutor's Office on a given date. Then you will be informed of the charges pressed against you. After you have been presented with the charges, interrogation will follow.

### *What should I do in the first place if I am presented with charges?*

Most importantly, remember that in the entire course of the criminal procedure you are not required to prove your innocence. Neither are you obliged to provide any self-incriminating evidence. In practice, this means that from the moment you are presented with charges, you have the right to remain silent without having to justify your reasons for doing so.

Moreover, from that moment on you also have the right to appoint your legal defender (such as an attorney or legal counsellor). If you find yourself held in temporary custody, the defender may also be appointed by another person, including a member of your family.



**Notice:** If you are presented with charges, it is a good idea to consider remaining silent (not make any statements or provide any explanations) until you have appointed and contacted your defender to analyse your situation and agree on the best possible way to proceed to safeguard your vital interests.

### *If I cannot afford a legal defender, can I be granted a public defender?*

Yes. If you can prove that you cannot afford the costs of hiring a legal defender, you can apply for a public defender appointed by the court to represent you in the course of the criminal procedure. You will not be liable to fees during the proceedings.



**Notice:** If you are found guilty by the court and sentenced, the court may decide that you are liable for the costs of public defence and order you to cover them.

In certain circumstances, the law stipulates that legal representation is obligatory. This means that if you fail to appoint a defender of your choice, the court will appoint a public defender for you. This is relevant in the following circumstances:

- ✓ You are under 18 years old.
- ✓ You are deaf, mute or blind.
- ✓ There is reasonable doubt as to your ability to understand the significance of the act or to control your behaviour at the time of committing the crime.
- ✓ There is doubt as to your mental fitness to participate in the proceedings or independently and reasonably defend yourself.
- ✓ There are other circumstances complicating your defence.
- ✓ The case is examined by a regional court (*sąd okręgowy*) and you have been charged with an act punishable by a minimum of 3 years of imprisonment.

### ***Can I find out the specific reasons for charges against me?***

Yes. Both you and your defender have the right to familiarize yourself with evidentiary material constituting the grounds for charges against you. Until you are given access to the relevant materials, you have the right to be orally explained the grounds on which the charges were made, and also to be given a statement of reasons in writing. The statement of reasons should include the facts and evidence assumed as the grounds for the charges against you.

### ***Can I be detained pre-trial (detained on remand) after being held in police custody?***

Yes, but only if there are reasonable grounds for such measures to be taken. The conditions that have to be met to put the suspect in detention on remand (under temporary arrest) include the following:

- ✓ There is high probability that you did in fact commit the crime.
- ✓ There are circumstances suggesting you may obstruct the course of justice, or commit another serious crime.
- ✓ There is a high risk that you may escape or go into hiding, especially when your identity is impossible to determine, you have no permanent place of residence in Poland, or there is a high risk that you will induce others to testify falsely (commit perjury), or you will in any other way illegally obstruct the course of justice.

The decision on pre-trial detention (temporary arrest) is issued by the court. Such a measure may be applied for a period no longer than 3 months. You should remember, however, that pre-trial detention may be extended and may be applied until the court has issued the final verdict in your case.



**Notice:** You have the right to lodge a complaint with the court about pre-trial detention being applied to you (being temporarily arrested).

### ***If I am detained pre-trial, do I have the right to inform anybody?***

Yes. Immediately after you have been detained pre-trial (detained on remand), you have the right to inform important persons in your life, a non-governmental organization, and your defender. You can also notify your country's diplomatic unit in Poland.

## **2. Preparatory proceedings**

### ***What happens after I have been presented with charges?***

Once you have been presented with charges, you will participate in pre-trial proceedings handled by the Police or the Prosecutor's Office. At this stage, the Police or the Prosecutor's Office will collect evidence allowing them to verify the validity of the charges against you, and to submit an act of indictment to the court.

### ***What is my role in pre-trial proceedings?***

During this stage, you have the opportunity to present the Police or the Prosecutor's Office with arguments or evidence questioning the validity of the charges against you.

### ***Do I have any rights in this stage of the procedure?***

Yes, you are bestowed by the law with a number of important rights. You can, but you are not obliged to act on those rights in the course of pre-trial proceedings. Your most important rights include:

- ✔ the right to your defender's presence during your interrogation;
- ✔ the right to an interpreter free of charge, also in your communication with your defender if you do not know Polish well enough, including the right to receive translated decisions on charges against you, or your charges being amended in any way, and to receive a translated act of indictment;
- ✔ the right to be notified whenever the charges against you are amended in any way or their legal classification is altered;
- ✔ the right to apply for certain measures to be taken in the course of pre-trial proceedings, such as hearing of a witness, obtaining a document or allowing an expert's opinion;
- ✔ the right to participate in procedural acts;
- ✔ the right to have access to case files and make copies (remember, it is possible that you will be temporarily denied access to the files if necessary to ensure a proper course of proceedings or protect a serious interest of the state, yet you will be granted access to case files before an act of indictment is submitted to the court);
- ✔ the right to apply for access to the entirety of the evidentiary material before the proceedings are concluded (in your defender's company if you wish). You have 3 days from

the date on which you are given access to evidence to apply for additional measures to be taken to introduce new evidence;

- ✔ the right to apply for your case to be referred for mediation aimed at reconciliation with the victim (participation in the mediation proceedings is voluntary). A positive outcome of mediation is considered by the court when deciding on the defendant's sentence.

### ***At this stage of the proceedings, do I have any obligations?***

Yes, the law stipulates several obligations of the defendant. The most important ones include:

- ✔ the obligation to undergo examinations not compromising your corporal integrity, fingerprint- and photograph-taking, and an identification parade.
- ✔ the obligation to undergo psychological and psychiatric evaluation, as well as medical procedures such as blood, hair, or secretion (e.g. saliva) sampling whenever necessary.



**Notice:** Refusal to undergo such procedures may result in a warrant for detention and compulsory appearance or participation, possibly including physical force or measures aimed at incapacitating you if it proves necessary.

Additionally, you have the obligation to:

- ✔ Appear before the summoning authority and notify the relevant authority about every change of your place of residence which lasts longer than 7 days. If you fail to appear when summoned and reasonably justify your absence, you may be detained and summoned by force.
- ✔ Provide the address to which all the correspondence in your case will be directed. Otherwise, you will not be aware of the measures taken in your proceedings or about court hearings (held in such circumstances in your absence). Not providing the address may also prevent you from being able to appeal any unfavourable decisions made in the course of the proceedings.

### ***How long can pre-trial proceedings last?***

This stage of the proceedings typically lasts from several weeks to several months (depending on the case's complexity).

### ***Will I be notified by the Police or the Prosecutor's Office about the way the proceedings have been concluded?***

Yes, the authorities will notify you in writing about their decision. If an act of indictment is submitted to the court, you will be notified in writing.

### 3. Court proceedings

#### ***What happens after an act of indictment has been filed with the court?***

After an act of indictment has been submitted to the court, the second stage of the criminal procedure begins, which is conducted by the court. At this stage, the Prosecutor's Office will seek your conviction.

#### ***What is my role in court proceedings?***

During this stage, you can present the court with arguments or evidence against your potential conviction.

#### ***Do I have any rights and obligations at this stage of the procedure?***

Yes, at this stage of the criminal procedure your rights and obligations are the same as during pre-trial proceedings. Just like before, you may act on your rights, but you are not required to.

During court proceedings, you have the right to an interpreter free of charge. At this stage, this right includes the interpreter's assistance when evidence is examined, including at witness hearings. You will also receive the court's verdict with its translation. Interpreter's assistance is important, as during court proceedings you also have the right to ask questions to witnesses, as well as comment (for instance explain or elaborate) on all evidence presented in the court.

Also, remember that you have the right to participate in court hearings. The court will notify you of the dates in writing by post, or orally at the hearing (in which case you will not be sent a separate written notification).

There are, however, exceptional circumstances under which you are obliged to attend the hearing. This is the case if the court considers your presence obligatory, and also during some procedural acts related to cases where the defendant is indicted for a crime punishable by a minimum of 3 years of imprisonment. If, despite your obligation, you fail to appear at the hearing without reasonable justification, the court will issue an instant arrest and compulsory appearance warrant.

#### ***What if I am put in detention on remand for the time of court proceedings?***

If you are in detention on remand and your presence at the hearing is not obligatory, you can still apply to be delivered to the court. To do that, you have 7 days from the day you receive the notification of the hearing's date. If an application to this effect is submitted within the stipulated time, the court is obliged to consider it favourably.

Also, even if you are in detention on remand (under temporary arrest), you have the right to see the case files. To do that, you can ask the court examining your case to send the case files to the detention unit where you are held. However, under particular circumstances you may be delivered to view the case files at the court's registry.

### ***How long can court proceedings take and how are they concluded?***

This stage of the criminal procedure can take anywhere between several weeks and several months (depending on the case's complexity), and it finishes when the court issues a decision finding you either guilty (a conviction) or innocent (an acquittal). If you are dissatisfied with the verdict, you have the right to appeal it to court of second instance the Court of Appeal, citing errors or irregularities in your trial.

# ANNEX 1

## NON-GOVERNMENTAL ORGANIZATIONS PROVIDING LEGAL ASSISTANCE TO FOREIGNERS:

### **Helsińska Fundacja Praw Człowieka (Helsinki Foundation for Human Rights)**

ul. Zgoda 11, 00-018 Warszawa

tel.: +48 22 556 44 66 (pon.- pt. godz. 10<sup>00</sup>- 15<sup>00</sup>)

fax: +48 22 556 44 51

### **Stowarzyszenie Interwencji Prawnej (Legal Intervention Association)**

ul. Siedmiogrodzka 5/51, 01-204 Warszawa

tel.: +48 22 621 51 65

e-mail: [biuro@interwencjaprawna.pl](mailto:biuro@interwencjaprawna.pl)

### **Centrum Pomocy Prawnej im. Haliny Nieć (Halina Nieć Centre for Legal Assistance)**

ul. Krowoderska 11/7, 31-141 Kraków

tel.: +48 12 633 72 23

fax: +48 12 423 32 77

e-mail: [biuro@pomocprawna.org](mailto:biuro@pomocprawna.org)

### **Fundacja Instytut na rzecz Państwa Prawa (Rule of Law Institute Foundation)**

ul. Chopina 14/70, 20-023 Lublin

tel./fax: +48 81 743 68 05

e-mail: [status@panstwoprawa.org](mailto:status@panstwoprawa.org)

### **Caritas Archidiecezji Białostockiej (Caritas of the Archdiocese of Białystok)**

ul. Warszawska 32, 15-139 Białystok

tel.: +48 85 732 55 53

e-mail: [migranci-bialystok@caritas.pl](mailto:migranci-bialystok@caritas.pl)

### **Migrant Info Point**

Ul. Św. Marcin 78, pok. 421

61-809 Poznań

tel.: + 48 503 979 758



## **Centrum Wsparcia Imigrantów i Imigrantek (Centre of the Assistance for Immigrants)**

ul. Gdynskich Kosynierów 11, lok.1

80-866 Gdańsk

tel.: + 48 503 979 758

e-mail: centrum@cwii.org.pl

## **ANNEX 2**

### **INFORMATION BROCHURES FOR FOREIGNERS PUBLISHED BY THE HELSINKI FOUNDATION FOR HUMAN RIGHTS:**

Family Reunification of Foreigners in Poland. Law and Practice, Helsinki Foundation for Human Rights, Warsaw 2016, available at: <http://bit.ly/2kHDQWI>

Resident Legalisation and Employment, Helsinki Foundation for Human Rights, Warsaw 2015, available at: <http://bit.ly/2kHDQWI>

Social Assistance and Legal Protection, Helsinki Foundation for Human Rights, Warsaw 2014, available at: <http://bit.ly/2kHDQWI>

Taxes and Insurances, Helsinki Foundation for Human Rights, Warsaw 2014, available at: <http://bit.ly/2kHDQWI>

**POLONEWS** – Newsletter for foreigners living in Poland <http://bit.ly/2m3XUCK>





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The Helsinki Foundation for Human Rights was established in 1989 by the members of the Polish Helsinki Committee which had been operating underground since 1982. Today, it is one of the largest non-governmental organisations protecting human rights in Poland. The Foundation’s activities include: monitoring and research concerning human rights, strategic litigation, human rights education in Poland and abroad as well as legal assistance provided to citizens of Poland and foreigners. The Foundation collaborates with international human rights institutions and since 2007 has enjoyed a consultative status with the United Nations Economic and Social Council (ECOSOC).

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