



DETENTION OF AN INDIVIDUAL

guide to rights and obligations

FOREWORD

Law enforcement agencies have numerous instruments at their disposal to prevent and prosecute crime. These include forceful means such as detaining individuals. A public prosecutor, the police, or other public authorities can order a person to be detained for instance where it is highly likely that they have committed an offence and there is concern that the person will hide or eliminate offence-related evidence.

Essentially, when a person is detained, they are deprived of liberty in order for further procedural measures to be taken with regard to the individual. Usually, when a person has been detained, law enforcement agencies conduct searches of premises and residences, seize items and property as future security, and file indictments. They also decide whether preventative measures (i.e. bail, pre-trial detention) are necessary and can serve their purpose. Where applicable, they can bring the detained individual before a competent authority in order to perform specific procedures (such as conducting an interview).

Recently, there have been several reports in the media concerning high-profile cases of CEOs, management board members, or company directors being detained, which raised questions whether these people should be detained in this way. In particular, the issue is whether, in order to interview or indict these people, it was in fact necessary to detain them early in the morning and publicise this fact in the media.

Detention infringes the key legal freedoms of any individual, especially personal liberty. For this reason, various guarantees are provided for in a range of laws (for instance the Criminal Procedure Code, Police Act, the Polish Constitution, and the European Convention on Human Rights). For these guarantees to be enforced effectively, it is crucial to know when the law enforcement agencies can detain individuals, the procedure that should be followed when detaining an individual, and what demands the detained individual can make. This publication addresses these issues.



Artur Pietryka
advokat



Aleksandra Stępniewska
advokat, partner



Angelika Bednarz

DETENTION

What does the detention mean?

Detention is short-term deprivation of liberty in order to achieve certain procedural goals. Detention might be for instance a preventative measure or a means of bringing a suspect or the accused before a procedural authority by force¹.

The detained individual does not have to be arrested on a temporary basis, but this can happen. Frequently, while an individual is detained, and when an individual is detained in order for them to be brought before an authority, public prosecutors ask courts to employ temporary arrest. If a court employs temporary arrest, the period for which that measure can be employed is counted from the moment the person is detained (the date and time).

What does not constitute detention?

Not every instance of deprivation of liberty is detention. The European Court of Human Rights (ECHR) has stated that detention occurs when a range of circumstances exist, relating to the type, objective, duration, consequences, and manner of implementation of the forceful measure². In particular, a distinction needs to be made between detention and:

1. penitentiary detention, unrelated to criminal procedures, where individuals fail to return to penitential institutions³,
2. detention for reasons of public order⁴,
3. administrative detention of inebriated persons⁵, and
4. detention of foreigners on the basis of an act of law on foreigners⁶.

The purpose of these procedures is different to that of detaining an individual, and in fact are measures aimed at eliminating a specific threat to order and public safety⁷.

Who has the power to detain an individual?

A person can be detained by a public prosecutor or police, or, as applicable, the Border Guard, Internal Security Agency, Central Anti-Corruption Bureau, the Military Counterintelligence Service, National Treasury Authorities, the Military Police, or for example the Forest Ranger Service. A court can also decide that an individual is to be detained in order to be brought before an authority by force.

1) K. Eichstaedt, Commentary on Art. 243 of the Criminal Procedure Code (in:) D. Świecki (ed.) Criminal Procedure Code. Update to Commentary, Lex.

2) See ECHR judgment of 29 March 2010 in *Medvedyev and others v. France*, complaint 3394/04, § 74.

3) See Art. 15(1)(2a) of the Police Act.

4) See Art. 15(1)(3) of the Police Act.

5) See Art. 40(5) of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism.

6) Act on Foreigners of 12 December 2013.

7) See Supreme Court ruling of 26 February 2004, I KZP 44/03.

When is it possible to detain an individual?

Firstly, the police (and other services) can detain an individual for procedural reasons. This requires reasonable suspicion that the individual in question has committed an offence. There also has to be concern that the person will flee or hide, or eliminate evidence related to an offence, or it has to be impossible to determine the person's identity. There are also grounds for detaining somebody where accelerated proceedings can be conducted⁸.

Secondly, Criminal Procedure Code provides for special requirements for detaining individuals due to suspicion of commission of an offence involving violence in a manner harmful to a co-inhabitant of the perpetrator⁹.

Thirdly, a public prosecutor can order that a suspect be detained and brought before them by force if there is reasonable concern that the person will not appear when summoned (e.g. in order to file or modify an indictment, for tests, examination, collection of material) or might obstruct proceedings in some other unlawful way. A similar situation exists when a preventative measure needs to be taken promptly.

Fourthly, under the Criminal Procedure Code, a court or public prosecutor can order a witness detained and brought before them by force as a disciplinary measure. In truly exceptional situations, this measure can also be applied to an interpreter or expert witness who, without sufficient justification, fails to attend when summoned by an authority conducting proceedings, or leaves the venue of the proceedings without the authority's permission before they are completed.

Other laws also provide for special grounds for detaining individuals, for example laws on detaining people suspected of committing an act of terrorism¹⁰, and laws on detention at mass public events¹¹.

A person apprehended in the direct commission of a petty crime can be detained if there are grounds for employing the accelerated procedure or the person's identity cannot be determined.

What is the difference between detaining and apprehending someone?

There is a distinction between citizen's arrest, and detaining an individual. This distinction is that any person (for example a victim) can apprehend a person caught in the direct commission of an offence (in flagrante) or during pursuit directly following commission of an offence if there is concern that the person will hide or the person cannot be identified. A citizen who has arrested someone in this way is required to call the police or make their way

8) In practice, the accelerated procedure applies mainly to cases in which an investigation is being conducted, as well as proceedings concerning incidents of vandalism posing a threat to safety at mass events.

9) See Art. 244 § 1a – 2 Criminal Procedure Code.

10) Art. 25 of the Act of 10 June 2016 on Counterterrorism Measures.

11) Art. 20(1)(5) of the Act on Safety at Mass Events of 20 March 2009.

to a police station¹² and promptly hand over the apprehended person to the police. When a person is apprehended, a certain level of physical force adequate to the circumstances is permitted (for instance holding an individual)¹³.

No complaint can be made to a court due to a citizen's arrest¹⁴. The person apprehended (detained) may however report an offence of unlawful deprivation of liberty (art. 189 of the Criminal Code).

What kind of documents can be grounds for detaining somebody?

No specific documents are required in order to detain an individual. A police officer is only required to show their ID to the person being detained. Before, the person is detained to bring them before an authority by force, the public prosecutor (court) is required to issue an order for the individual in question to be detained and brought before the authority by force. An order should also include authorisation for the organisation concerned to do this. In such a case, that document has to be served to the person being detained.

Is it possible to employ direct force when detaining an individual?

The police (and other legally authorised organisations¹⁵) may employ direct force (such as physical force, handcuffs, a nightstick) if necessary to detain somebody or prevent them escaping, or when pursuing that person, or to prevent such a situation arising. This is also possible if the detained person is being aggressive towards others or themselves.

When a person is being detained, direct force used must be appropriate and proportional to needs, which also means that means of force cannot be combined (for example using handcuffs and devices to overpower individuals). The ECHR has repeatedly addressed the issue of use of such means when detaining individuals, stating that excessive, unreasonable use of such means (including handcuffs) might be indicative of inhuman treatment, which is prohibited under Art. 3 of the European Convention on Human Rights¹⁶.

12) K. Eichstaedt, Commentary on Art. 243 of the Criminal Procedure Code (in: D. Świecki (ed.) Criminal Procedure Code. Update to Commentary, Lex.

13) Judgment of the Poznan Appellate Court of 20 September 2012, XVI K 62/12, Lex.

14) K. Eichstaedt, Commentary on Art. 246 of the Criminal Procedure Code (in: D. Świecki (ed.) Criminal Procedure Code. Update to Commentary, Lex.

15) On the basis of the Act of 24 May 2013 on Direct Force and Firearms.

16) In a judgment of 6 March 2007 in *Erdogan Yağız v. Turkey*, complaint 27473/02, the ECHR stated that use of handcuffs with respect to a physician, and publicly presenting the image of the physician in those circumstances, being action not justified by procedural necessity, was degrading treatment, as the sole purpose was to intimidate the complainant.

How should handcuffs be used when detaining somebody?

As a fundamental rule, handcuffs are put on hands held behind the back¹⁷, but in some situations (with respect to aggressive individuals) the legs can be shackled at the same time¹⁸. The person detaining the individual may however handcuff the individual with their hands to the front, if they believe that there is little risk that the detained person will not comply with instructions¹⁹.

Is a report drawn up concerning detention?

An officer conducting a procedure is required to draw up a report concerning the detention (four identical copies, one for the person detained). This report serves as a guarantee and documents the way in which the detention proceeded. Failure to draw up this report is a grave breach of procedure²⁰.

What points are important in the report?

The drawing up of the report is a formal procedure, in which a number of factors need to be considered.

Element of the report	Important issue
Information as to the times and dates (when detention begins and ends, time of handover to the public prosecutor or court)	These factors make it possible to determine whether the deprivation of liberty might have been excessive, whether it was reasonable in light of the procedural goals, and whether the maximum periods of detention permitted by law were observed. The ECHR has stated that the period of detention is important when evaluating a particular instance of deprivation of liberty. A short period (for example two hours) does not by itself mean that particular deprivation of liberty in fact constitutes detention ²¹ .

17) Art. 15(4) of the Act on Means of Direct Force.

18) Art. 15(5) of the Act on Means of Direct Force.

19) Art. 15(6) of the Act on Means of Direct Force.

20) See Warsaw Regional Court judgment of 21 August 2018, VIII Ko 71/18, at www.orzeczenia.ms.gov.pl (access on 8 May 2019).

21) See judgment of 23 September 2010 in *Iskandarov v. Russia*, complaint 17185/05, and of 7 January 2010 in *Rantsev v. Cyprus and Russia*, complaint 25965/04.

Information as to the persons involved in the procedure	In practice, although a number of officers are involved in detaining an individual, only the particulars of the person who draws up the report are recorded in the report. Recording information as to all of the persons involved in detaining the individual is crucial for the purposes of contesting whether a person was detained correctly and for legitimate reason (for example when a large number of officers were involved in the detention ²²).
Grounds for detaining an individual	<p>Frequently, the grounds for detaining somebody are vague, for example “<i>suspected commission of an offence under Art. 228 of the Criminal Code, fear of hiding</i>”. Meanwhile, the act being grounds for detention must be described specifically. This means that the officer detaining the individual must inform the person detained not only of the legal classification of the act being the grounds for detaining the individual, but also the circumstances justifying use of this means of force.</p> <p>The ECHR has stated that the prerequisite of “fear of hiding” cannot be abstract. A public authority that deprives an individual of liberty must base this on specific facts²³.</p>

22) In a judgment of 14 June 2011 in *Garlicki v. Poland*, complaint 36921/07, the ECHR stated that one of the factors leading to the detention being found to be degrading treatment was being brought before authorities by ten or more masked and armed officers.

23) Judgment of 13 September 2005 in *Skrobol v. Poland*, complaint 44165/98, § 60.

<p>Statement advising of the grounds for detaining the individual and the individual's rights</p>	<p>Usually, in this section of the report, the officer states that the person detained understood the grounds for being detained and their rights. In this section of the report, notes also have to be made regarding a request to be put in contact with an attorney, and the action taken by the detaining officer to fulfil requests of this kind. In addition, any objections regarding direct force employed when detaining the person should be noted in this section. The ECHR stresses that among the factors important for establishing whether the detention in question was a breach of the guarantees in the European Convention of Human Rights is whether, even during a brief period of deprivation of liberty, direct force was used (such as physical force, handcuffs)²⁴.</p>
<p>Statement of state of health, including description and reasons for any injuries</p>	<p>The officer detaining the individual is required to describe the situation as to state of health accurately, and this includes any illnesses suffered, treatment, and ongoing therapy and treatment.</p> <p>Similarly, the officer has an obligation to note visible injuries, and the cause. In practice, vague wording is used in the report, such as “abrasions”, “lividity”, or “bruising”, without explaining how they came about. Meanwhile, employing means of direct force when detaining an individual is evaluated in terms of rules prohibiting torture and inhuman or degrading treatment. In this respect, the ECHR has stressed that public authorities have an obligation to duly investigate cases of improper treatment of detained individuals by officers²⁵.</p>

24) Judgment of 24 June 2008 in *Foka v. Turkey*, complaint 28940/95.

25) Positive, procedural duty of public authorities.

<p>Objections as to the contents of a report and statement made by the person detaining the individual / signatures</p>	<p>In practice it is common, due to stress, for detained individuals, not to voice objections concerning the contents of the report, while it has been established in case law that if no objections are raised this is considered to be acknowledgement that the person was correctly detained²⁶.</p> <p>Detained persons do at times refuse to sign the report due to the report not reflecting the true facts. Usually, however, these circumstances are treated as completely irrelevant²⁷.</p>
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Can the detention process be recorded?

Detention is not only documented in a written report, it can also be recorded. A recording and photographic documentation, for example of injuries, are very important in the event of allegations of unprofessional conduct on the part of officers (e.g. due to the excessive and arbitrary nature of the direct force employed). Essentially, video and audio recording can be, but does not have to be, used when detaining an individual. This is however solely a question of the wishes and technical capabilities of officers.

It is only compulsory to make a video recording when a person is detained when officers enter a premises by force (when locks are broken and doors are broken down) in order to detain the individuals on the premises. In such a case, the recording or photographs are inserted into the detention report. If the detention is recorded, the officer is required to inform the participants in advance and note this in the report, stating the devices used²⁸.

Can a person other than an officer record the detention process?

Under current laws, it is not prohibited for another person to record the detention process. The making of a recording by a different person is not an offence, in particular under art. 267 of the Criminal Code, due to information being obtained due to the recording, which the person concerned did not have authorisation to access. In addition, a recording may be useful in the event of doubt as to whether a person was correctly detained.

26) See Gliwice Regional Court judgment of 12 May 2014 IV Ko 36/13, at: www.orzeczenia.ms.gov.pl (access on 8 May 2019).

27) To give an example, the Legionowo District Court stated in a judgment of 14 March 2017, II K 363/16, that *refusal to sign a detention report by the detained person is not a procedural obstacle of any kind, and neither does it trigger any additional procedures on the part of the police officer drawing up that report, apart from noting accordingly that the person "refused to sign"*. Judgment accessible at: www.orzeczenia.ms.gov.pl (access on 8 May 2019).

28) The currently applicable template for a detention report does not include a separate section for stating that the proceedings were recorded.

How can care be provided for a minor or for premises in situations in which there is no other adult at the location apart from the person detained?

If the only person on the premises on which the detention takes place is the detainee, the problem arises of care for that location, and of notifying another person that the individual has been detained. In such a situation, officers are required to take measures to secure the premises or the property of the person detained, taking into consideration, as far as possible, the remarks made by that person²⁹. In practice, they also leave notices on the door or in a visible place on the premises stating that the person in question has been detained.

If the only persons with the detained person are minors, the problem is to provide care for those persons. In such a situation, officers are required to contact persons specified by the detainee (persons close to them, neighbours) to take care of the minors.

How long can an individual be detained?

An individual can be detained for a maximum of 72 hours. At the same time, the person detained is available to the public prosecutor for the first 48 hours from the moment the person is detained by the competent authority (for example the police). During this time, the public prosecutor has to decide whether to ask a court to hold the person on remand or release them. In the case of a citizen's arrest, the 48-hour period begins from the moment the apprehended person is handed over to the police.

Once the detainee is handed over to a court, the person is available to the court for 24 hours from the moment of the handover. During this period, the court is required to schedule and conduct a hearing, and make a decision concerning the request for pre-trial detention.

Where are detained persons held?

Detained persons are held in detention facilities operated by the police or other organisation as appropriate (such as the Border Guard).

What happens if the 72-hour period expires on a national holiday?

When a person is detained, which is the measure that most invades upon an individual's liberty, laws extending this period to cover holidays or weekends do not apply. For this reason, even during holidays, persons are present in courts and public prosecutors' offices to review cases of this kind. In courts, cases concerning detained persons, including those with respect to whom temporary arrest is sought, are treated as urgent cases³⁰, and take priority. Also, under the Criminal Procedure Code, Saturday is not a statutory day off work³¹, and therefore if

29) § 87 (11) of Guide 3 of the Central Police Headquarters of 30 August 2017 on Certain Investigative Procedures Conducted by Police Officers (Central Police Headquarters Official Journal 2017 item 59 of 7 September 2017).

30) § 2 (5) of the Regulation issued by the Minister of Justice of 23 December 2015 on the Functioning of Common Courts.

31) Supreme Court ruling of 24 November 2003, IV KZ 43/03, Lex.

a time limit for detention-related procedures (for example a complaint) expires on that day, the person detained also has to comply with this deadline.

How does detention come to an end?

Detention comes to an end when the detained person is released by the public prosecutor or court. If a court grants a request for temporary arrest, the person is deprived of liberty on the basis of that decision, while the period of this measure is counted from the moment the person is detained.

RIGHTS OF A PERSON WHO HAS BEEN DETAINED

What rules have to be followed when a person is detained?

Due to the fact that detaining a person also involves force, a person can only be detained in situations in which other measures have proven to be without purpose or ineffective³². This means that a procedural authority (police or public prosecutor) cannot employ this measure in arbitrary fashion without regard for the facts of the case and the grounds for detention. If the procedural authorities decide to detain a particular person, that procedure should be conducted in the manner that is the least cumbersome and least infringes that person's interests³³.

An officer's obligations

Before detaining an individual, an officer is required to advise the detainee of the grounds for detaining them and their rights. The officer is first required to caution the detained individual, advising them of the following rights:

- to assistance from an attorney,
- to the services of an interpreter, provided free of charge, if the person does not have sufficient command of Polish,
- to make or refuse to make a statement,
- to be provided with a copy of the report concerning detention,
- to access to first aid,
- to have other persons notified that they have been detained,
- to file a complaint regarding the detention,
- to have a consul or diplomatic representative notified that they have been detained,
- to be advised of the maximum period for which they can be detained,
- to be interviewed.

In practice, the person detained is often served a caution in writing, advising them of their rights, according to a standard form.

32) See Art. 15 (3) of the Police Act.

33) See Art. 15 (6) of the Police Act.

APPENDIX

GUIDANCE ON THE RIGHTS OF A PERSON DETAINED IN THE CRIMINAL PROCEDURE

Person detained in the criminal procedure has the following rights:

1. The right to information about the reasons for detention and to be listened to (art. 244 § 2).
2. The right to make or refuse to make statement in his/her case (art. 244 § 3).
3. The right to immediately contact an attorney or legal counsel and talk directly to him/her (art. 245 § 1).
4. If detained person's command of Polish is insufficient – the right to use assistance of translator, free of charge (art. 72 § 1).
5. The right to receive a copy of a detention report (art. 244 § 3).
6. The right to inform about detention the closest person or other specified person, as well as an employer, school, university, commander and any person managing detained person's enterprise, or an enterprise for which he/she is responsible (art. 245 § 2, art. 261 § 1, § 2 and § 3). Police notifies about detention an authority which conducts proceeding against detained person in any other case, if they are aware of such case (art. 261 § 2a).
7. If arrested person is not a Polish citizen – the right to contact consular office or diplomatic mission of the state of which he/she is a citizen. If he/she is not a citizen of any state – the right to contact with representative of the state of detained person's habitual residence (art. 612 § 2). If a consular agreement between Poland and the state of which temporarily arrested person is a citizen includes provisions to such effect, competent consular office or diplomatic mission should be informed about detention also without his/her request.
8. The right to file to court a complaint against detention within 7 days from detention date. Examination of relevance, legality and correctness of detention may be demanded in such a complaint (art. 246 § 1).
9. The right to immediate release, if reasons for detention ceased to exist, or after expiry of 48 hours from detention, unless suspect is brought within this period to court with a motion for temporary arrest. If detained person is brought to court, he/she will be released if an order for temporary arrest is not delivered to him/her within 24 hours from bringing to court. (art. 248 § 1 and § 2).
10. Access to any necessary medical aid.

„I confirm that I received guidance”

.....

(date, signature)

Form for the current caution advising a detained person of their rights.

The caution given to a detained person who does not speak Polish must be served in a language that the person understands. If the wording is not available in the person's language, an officer is required to summon an interpreter of the language in question and note in the detention report that the interpreter translated the caution verbally. In addition, the officer is required to inform the person that they can demand to be served a list of their rights in writing in a language that they understand³⁴.

Does a detained person have the right to remain silent?

The right to remain silent (also referred to as the right not to incriminate oneself) is a fundamental guarantee in criminal proceedings, particularly for detained persons. While the Criminal Procedure Code does not require that a caution be issued advising of the detained person's right to remain silent if they are not yet a suspect (has not been indicted for an offence by the public prosecutor), officers should adopt the practice of advising of this right. Failure to advise of this right leads to suspects being interviewed as witnesses in breach of their right to defence. These persons are at best advised in advance of their right not to answer questions.

At the same time, the law provides for the right of a detained person to be interviewed. This interview may, but does not have to, concern the grounds upon which the person is detained. It can also concern, for example, the right to inform officers of reasons (for example health-related reasons) for which the proceedings should not be conducted. Detainees' statements made in such a case do not constitute testimony or explanations³⁵. Statements of this kind may also not breach the right of the detained person not to incriminate themselves³⁶.

Does a detained person have the right to contact an attorney?

A detained person can ask to be put in contact with an attorney. If the person makes such a request, an officer is required to facilitate this promptly by telephone or in the form of a direct conversation. Under currently applicable law, the person detaining the individual can only insist that they be present when this contact takes place in exceptional circumstances³⁷. At the same time, the law does not allow information provided during that conversation to be used in criminal proceedings³⁸.

34) See § 87(7) of Guide 3 of the Central Police Headquarters of 30 August 2017 on Certain Investigative Procedures Conducted by Police Officers.

35) The standpoint of the Wrocław Appellate Court is noteworthy. The court stated that *in situations in which under current laws a detained person is guaranteed a right to remain silent, there is nothing to prevent a statement made by that person in the report on the proceedings in which that person participates being deemed to be evidence in a case subject to unrestricted assessment, which can be a basis in fact for adjudication regardless of whether, when being interviewed as a suspect (accused), that person confirms the text of the statement or revokes that content, or denies that content*". See Wrocław Appellate Court judgment of 29 May 2018, II AKa 85/18, Lex.

36) See K. Witkowska, a Detained Person's Guarantees, *Prokuratura i Prawo* 2011/9.

37) See Constitutional Tribunal judgment of 11 December 2012 K 37/11, Lex.

38) Art. 178(1) Criminal Procedure Code.

Compliance with this guarantee signifies the standard applicable in ECHR case law, of a right to an attorney during the first proceedings conducted, established in *Salduz v. Turkey*³⁹. In this judgment, the ECHR stated among other things that in order for the right to due process to be sufficiently “practical and effective”, in practice the right to an attorney must be observed, starting from the first time a suspect is interviewed by police. Unless in light of particular circumstances it is demonstrated that there are material grounds for restricting that right⁴⁰.

Does a detained foreigner have to be guaranteed contact with the competent consular or diplomatic services?

Upon the request of a detained person who is a foreign national, contact with the competent consulate or diplomatic mission must be allowed. If a detainee is not a national of any country, contact must be allowed with a representative of the country in which the person resides on a permanent basis⁴¹. If provided for by a consular treaty between Poland and the country of which the detained individual is a national, the competent consulate or diplomatic mission must be notified by the detaining person *ex officio*.

Does a detained person have the right to have family or other third parties notified that they have been detained?

At the request of the detained person, the authority that detained the person is required to notify a person close to the detained person, or a third party specified by the detained person, as the case may be, of the proceedings.

Can a search be conducted while a person is being detained?

At the time a person is being detained, the person is usually searched for any dangerous items or items that may be evidence in criminal proceedings. Telephones, and other devices that can be used for communication, such as tablets, are also seized.

What kind of items is the detained person allowed to have?

These issues are regulated in the regulation on the functioning of detention facilities⁴². Under this regulation, a detained person may not have money or valuables. In addition, the detained person may not have on their person dangerous items with sharp edges or ends, items used to overpower people, medication approved for sale on the market⁴³, alcohol, shoelaces, a

39) Judgment of 27 November 2008 in *Salduz v. Turkey*, complaint 36391/02, § 52.

40) See also: Judgment of 9 November 2018 in *Beuze v. Belgium*, complaint 71409/10.

41) § 87(4) of Guide 3 of the Central Police Headquarters of 30 August 2017 on Certain Investigative Procedures Conducted by Police Officers.

42) Regulation issued by the Minister for Internal Affairs of 4 June 2012 on Detention Facilities or Facilities for Inebriated Persons, Transit Facilities, Temporary Transit Facilities, Police Holding Facilities for Children, the Rules for Being Held in Such Facilities, and the Procedure with regard to Video Records from Such Facilities.

43) In practice, medication is submitted in a depository and is issued to the detained person according to dosage times and methods.

scarf, belt, matches, lighters, and other items that due to their dimensions or amount might breach order or safety in the facility⁴⁴. The law does however allow a person to have their own clothing, underwear, and footwear⁴⁵, religious items, provided that they do not pose a danger in the facility⁴⁶, and tobacco products⁴⁷. With respect to cleaning materials, the law states that these must be provided to the detained person by the facility personnel free of charge, while in practice detained persons are frequently allowed to use their own items of this kind.

Can a detainee demand to be examined by a physician while being detained?

A detained person is entitled to demand a medical examination. In such a case, the person must state that they suffer from a condition that requires permanent or periodical treatment, and that an interruption of the treatment would pose a risk to their life or health. A medical examination is also conducted when the detained person has visible bodily injuries, and also in the case of pregnant women, breastfeeding women, persons with infectious diseases, persons with mental disorders, and minors who have consumed alcohol or other substance of similar effect.

A detained person is entitled to demand to be examined by their own lead doctor of a particular area of specialisation (neurologist, cardiologist). If this is not possible, the examination is conducted by a physician employed at the clinic nearest to the location in which the person is detained. Upon conducting the examination, the physician is required to issue a note stating whether there are grounds preventing the person being held in the detention facility. The physician can also make specifications in the note, for example medication dosage.

44) § 5 (1) (2) of the Regulation described above.

45) § 9 (1) of the Regulation described above.

46) § 10 (1) (5) of the Regulation described above.

47) § 10 (1) (8) of the Regulation described above.

Appendix to the regulation issued by the Minister for Internal Affairs of 13 September 2012 (item 1102)

TEMPLATE

.....
(stamp of medical facility)

.....
(place, date, time)

MEDICAL CERTIFICATE

.....
(first name and surname, father's first name, date and place of birth of the subject)

I confirm the following:

that there are no medical contraindications preventing the person named above from being kept in a detention facility or facility for inebriated persons, a transit facility, temporary transit facility, police holding facility for children, remand facility, penitentiary facility, shelter for minors, or juvenile detention facility;

that there are medical contraindications preventing the person named above from being kept in a detention facility or facility for inebriated persons, a transit facility, temporary transit facility, police holding facility for children, remand facility, penitentiary facility, shelter for minors, or juvenile detention facility;

specifications for administering medication and dosage:
.....
.....
.....
.....
.....
.....
.....

.....
(signature and stamp of physician issuing certificate)

Mark the applicable box with an 'x'

Can a complaint be made regarding detention?

A detained person can file a complaint with the competent district court with regard to being detained for up to seven days from being detained. This means:

- the complaint can be filed while the person is being detained, while release of the detained person does not render the complaint redundant⁴⁸,
- the complaint is filed with the court directly, and if filed while the person is being detained it must be forwarded to the court promptly,
- the complaint is reviewed by the court competent for the location in which it is applicable, unless investigations are already in progress concerning the act that is the grounds for detaining the individual, in which case this is the court competent for the location in which the proceedings are conducted,
- the complaint cannot be filed by a person other than the person detained (for example a family member, or a company in which the detained person is a managing body member),
- if detaining the person also involved bringing them before an authority by force, filing a complaint is conditional upon the person in fact having been detained⁴⁹.

In the complaint, the person detained can demand review of whether they were detained lawfully, correctly, and for a legitimate reason.

Determining whether a person was detained **lawfully** means in particular determining whether the authority in question had the power to detain the individual.

Determining whether a person was detained **correctly** relates to the manner in which the person was detained, and the circumstances in which that took place⁵⁰. Above all, this is a question of whether an officer advised the detained person of the grounds upon which they were being detained and their rights, and whether they were given the opportunity to contact an attorney. It is also determined whether a report was drawn up and direct force was applied in the appropriate manner, and the period is determined for which the person was detained. According to the ECHR, the context in which the person was detained (for example the political context) is also important⁵¹.

48) K. Eichstaedt, Commentary on Art. 246 of the Criminal Procedure Code (in: D. Świecki (ed.) Criminal Procedure Code. Update to Commentary, Lex.

49) See Katowice Appellate Court ruling of 17 May 2017, II AKa 181/16, Lex.

50) K. Eichstaedt, Commentary on Art. 246 of the Criminal Procedure Code (in: D. Świecki (ed.) Criminal Procedure Code. Update to Commentary, Lex.

51) See Judgment of 15 March 2012 in *Austin and others v. United Kingdom*, complaint 39692/09, 40713/09 and 41008/09.

Legitimate reason relates to existence of grounds for detaining an individual, and necessity and proportionality⁵². A district court is required to review a complaint concerning detention promptly.

What happens if the court finds the complaint to be valid?

When reviewing a complaint, a court might find that an individual was detained without legitimate reason or unlawfully. If the person continues to be deprived of their liberty at the time the ruling is given, the court has to order their immediate release. Meanwhile, if the court finds that the individual was detained without legitimate reason, unlawfully, or incorrectly, it must notify the public prosecutor and the superior of the officer who detained the individual. This notification from the court is grounds for instituting criminal proceedings concerning conduct exceeding authority or failure to fulfil duties, and for holding an internal enquiry (for example disciplinary proceedings) in the organisation in which the officer who detained the individual serves.

Can a detained person seek compensation or damages due to being detained?

A person who has been detained can seek, in court proceedings, compensation or damages where a person was wrongfully detained beyond doubt.

When determining whether a person was detained wrongfully “beyond doubt”, a regional court will examine whether the person was detained lawfully and on legitimate grounds. Unlike in the case of a complaint relating to detention, in this case the court is not concerned with whether the person was detained correctly⁵³. In practice, the primary issue is whether being detained caused the detained person excessive distress⁵⁴, and whether there were adequate grounds, based on fact, being a procedural necessity (proceedings could not have been duly conducted if the person had not been detained)⁵⁵.

Also, the deadlines for filing a claim for compensation or damages with a regional court (with jurisdiction according to the place in which the person was released) vary according to the legal provisions being the basis for detaining an individual. If a person is detained for a petty crime, this deadline is six months. With respect to an offence, this deadline is a year from the day on which the person is released.

52) J. Skorupka, Commentary on Art. 246 of the Criminal Procedure Code (in:) J. Skorupka, Criminal Procedure Code. Commentary, Lex 2019.

53) K. Dudka, Commentary on Art. 247 of the Criminal Procedure Code (in:) Criminal Procedure Code. Commentary, K. Dudka (ed.), Lex 2018. See also Warsaw Regional Court judgment of 21 August 2018, VIII Ko 71/18, at: www.orzeczenia.ms.gov.pl (access on 8 May 2019).

54) W. Jasiński, Commentary on Art. 552 of the Criminal Procedure Code (in:) J. Skorupka, Criminal Procedure Code. Commentary, Lex 2019.

55) See Krakow Appellate Court judgment of 8 October 2008, II AKa 131/08, Lex.

Does a complaint concerning detention have to be filed before a claim for compensation or damages can be filed?

There is no requirement to file a complaint concerning detention before a claim is filed for compensation or damages⁵⁶. In such a situation, it has to be demonstrated in proceedings before the regional court reviewing the claim that a person was detained unlawfully and without legitimate reason.

Is there any other procedure for seeking damages or compensation once the time limit has expired?

In this situation, there is still the option of filing a lawsuit for breach of personality rights, being personal liberty, or for example dignity and good name. A period of detention is counted towards a sentence. That is why a court might dismiss a claim of this kind reviewed once a judgment has been given in a case in which a court counted the period of detention⁵⁷.

56) Supreme Court resolution of 23 May 2006, I KZP 5/06, Lex.

57) See Supreme Court ruling of 20 September 2007, I KZP 28/07, 15 November 2007, IV KK 82/07 and 18 December 2008, V KK 294/08.

Wardyński & Partners

Al. Ujazdowskie 10, 00-478 Warsaw

Tel.: + 48 22 437 82 00, 22 537 82 00

Fax: + 48 22 437 82 01, 22 537 82 01

E-mail: warsaw@wardynski.com.pl

