

National report – Poland

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1. Amendment to the Code of Criminal Procedure (2013)

In 2013, the Polish Parliament adopted an amendment to the Polish Code of Criminal Procedure (CCP) that will enter into force on July 1, 2015. The amendment introduces fundamental and complex changes to the course of criminal investigations and court proceedings, as it modifies regulations governing some basic principles, such as the presumption of innocence and the principle of material truth. The amendment introduces new rules aimed at reforming the criminal procedure so as to make more adversarial in nature. The most fundamental changes in the CCP relate to the rules regarding i.a.:

- a) conducting investigations, preparing the act of indictment and the evidence-gathering process by the prosecution authorities;
- b) the course of criminal trials, where the Court will not be entitled to play as active a role in the course of the evidentiary part of the proceeding,
- c) new, very active role of the prosecution and defence, in accordance with the “equality of arms” principle, especially with respect to evidentiary part of the proceeding;
- d) new safeguards of the right to defence, as at the court stage of the criminal proceeding everyone (regardless of any criteria regarding vulnerability) will be entitled to a state-appointed defence lawyer, while not only advocates, but also legal advisors will be entitled to act as defence counsels,
- e) limitation of the admissibility of illegally obtained evidence.

The amendment raises many inquiries and concerns among both theoreticians and practitioners of criminal law, particularly among prosecutors, who typically show no greater activity in the trial stage of criminal proceedings under the strongly inquisitorial procedural regime in place up to this point. There are many voices to postpone the entry into force of the amendment to allow the professional participants of the criminal trial to better prepare for the performance of their duties in the new realities of the criminal proceedings.

2. Amendment to the Criminal Code (2015)

In 2015, the Polish Parliament also adopted an amendment to the Criminal Code that will also enter into force on July 1, 2015. The amendment introduces fundamental and complex changes of reflecting the principles of the State's penal policy. The reform is aimed at increasing the frequency of use of fines and penalties of restriction of liberty by the Courts, while reducing imprisonment (custodial) sentences. Currently in Poland more than 60 % of prison sentences are suspended (non custodial). According to the authors of the reform –this weakens the deterrent and educational impact of criminal punishment as such. Custodial sentences are to be reserved for perpetrators of very serious offenses. The reform of the Criminal Code also expands the scope of applicability of the electronic surveillance system (tagging).

3. Implementation of the EU Directive on right to access to lawyer (2013/48/EU)

The deadline for implementation of the directive is 27 November 2016. No substantive steps directed specifically at a comprehensive implementation of the EU directive 2013/48/EU have yet been undertaken by the Polish authorities. However, the Ministry of Justice is currently in the process of drafting an ordinance which establishes the list of lawyers available to provide legal services via legal aid under the new rules of CCP, safeguarding the right to defence. Earlier this year, article 245 of the CCP regarding contact with a defence lawyer at the very first moments of the criminal proceeding was amended. This amendment is intended to ensure realisation of the right of an arrested person to receive assistance of a lawyer through duty shifts of advocates and legal advisors. The parliamentary Criminal Law Codification Commission by the Ministry of Justice recommended, in February this year, to refrain from implementing further amendments to the CCP (implementing further provisions of the EU Directive on the right to access to lawyer), before other EU directives relating to the right of the defendant are adopted. The Commission's objective is to implement these changes *en masse* to ensure maximum coherence, so further legislative action on this matter has intentionally not been taken by the Commission at this stage.