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JUDICIAL COOPERATION IN CRIMINAL MATTERS

RIGHTS OF SUSPECTED AND ACCUSED PERSON

TEXT 1

RIGHTS OF SUSPECTED AND ACCUSED PERSON

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Before you start studying the lesson it is recommended:

- to have intermediate knowledge of general English;
- to have knowledge of key terms.

AIM: After studying the text you will be able in English:

- to understand key terms used in judicial cooperation in criminal matters;
- to use key terms of rights of suspected and accused person;
- to identify and use English terminology related to different rights of suspected and accused person.

KEY TERMS (*key term – definition)*

GLOSSARY – *the Polish contribution to a single Glossary of legal terms used in EU criminal legislation. The definitions provided rely on: Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, Directive 2013/48/EU of the European Parliament on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and communicate with third person, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Convention for the Protection of Human Rights and Fundamental Freedoms (213 U.N.T.S. 222,* entered into force *Sept. 3, 1953), Polish Code of Criminal Procedures*

inadmissible evidence *- evidence, which according to established legal principles cannot be received into evidence at a trial for consideration by a judge or a jury in deciding the merits of a case; the admissibility of evidence is determined by rules of evidence, which vary by jurisdiction and it is the judge's duty to apply these rules in the case at hand; the evidence cannot be presented at a trial for a variety of reasons, for example – because it was improperly obtained, it is prejudicial, it is hearsay, it is not relevant to the case or it was gathered using illegal methods.*

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fruit of the poisonous tree *– is a legal metaphor used to describe evidence that is obtained illegally; the logic of the terminology is that if the source (the "tree") of the evidence or evidence itself is tainted, then anything gained (the "fruit") from it is tainted as well; such evidence is not generally admissible in court; the 'fruit of the poisonous tree' doctrine is an offspring of the 'exclusionary rule' which mandates that evidence obtained from an illegal arrest, unreasonable search, or coercive interrogation must be excluded from trial; under the fruit of the poisonous tree doctrine, evidence is also excluded from trial if it was gained through evidence uncovered in an illegal arrest, unreasonable search or coercive interrogation; both the law of exclusion and the fruit of a poisonous tree doctrine were created to discourage law enforcement officials from using illegal activities in efforts to obtain evidence; This doctrine was also used by the European Court of Human Rights in Gafgen v. Germany.*

Self-incrimination *- is the act of exposing oneself (generally, by making a statement) to an accusation or charge of crime; an incriminating statement includes any statement that tends to increase the danger that the person making the statement will be accused, charged or prosecuted – even if the statement is true, and even if the person is innocent of any crime; in many legal systems, accused criminals cannot be compelled to incriminate themselves - they may choose to speak to police or other authorities, but they cannot be punished for refusing to do so.*

the right to remain silent *is a legal right recognized, explicitly or by convention, in many of the world's legal systems, the right covers a number of issues centered on the right of the accused or the defendant to refuse to comment or provide an answer when questioned, either prior to or during legal proceedings in a court of law, in the United States, informing suspects of their right to remain silent and of the consequences for giving up that right forms a key part of the Miranda warning*

Miranda rights (the Miranda warning) *– warning given by police in the United States to criminal suspects in police custody (or in a custodial interrogation) before they are interrogated to preserve the admissibility of their statements against them in criminal proceedings; the Miranda warning is part of a preventive criminal procedure rule that law enforcement are required to administer to protect an individual who is in custody and subject to direct questioning or its functional equivalent from a violation of his or her Fifth Amendment right against compelled self-incrimination; in Miranda v. Arizona the Supreme Court held that the admission of an elicited incriminating statement by a suspect not informed of these rights violates the Fifth Amendment and the Sixth Amendment right to counsel, through the incorporation of these rights into state law; thus, if law enforcement officials decline to offer a Miranda warning to an individual in their custody, they may interrogate that person and act upon the knowledge gained, but may not use that person's statements as evidence against him or her in a criminal trial.*

minutes of the hearing (also record in writing) *- minutes are an official written record of the proceedings of a meeting or hearing; minutes usually include : the designation of the action taken, the time and the place of the conduct thereof, the identity of the persons participating in it, the conduct of the procedural action and the statements and motions made by participants, orders and rulings issued in the course of the procedural action, statements of other circumstances concerning it; under provisions of some states taking the minutes of some procedural actions is mandatory; under Polish provisions record in writing is required inter alia of information received orally with respect to a criminal offence, of a motion for prosecution*

or its withdrawal, of the questioning of the accused (suspect), witness, expert witness, and probation officer, of an inspection, of an autopsy of a corpse, of the conduct of an experiment, a confrontation, and an identification, of searches of persons, premises, of the final presentation to the suspect, the injured, and defence counsel and attorneys of materials collected in investigation, of the course of the trial.

order (decision) on presenting the charges *– a formal charging decision which is issued by an authority conducting preparatory proceedings (i.e. prosecutor, police officer) by which a certain person is formally designated as a suspect; under Polish provisions an order on presenting charges is drawn up if the data existing at the time of the institution of an investigation or inquiry or collected during their course contains grounds sufficient to suspect that an act has been committed by a specified person and it should specify the identity of the suspect, detailed data on the alleged act (with an indication of the time, place, manner and circumstances related to its commission as well as of the consequences, and particularly of the value of the resulting damage) and the legal classification of the offence; a decision on the presentation of the charges shall be announced without delay to the suspect, who shall then be subjected to questioning, unless the announcement of the decision and the questioning of the suspect are impossible because the suspect is hiding or is staying abroad; the suspect may request, before they are given notice of the date on which they may review the materials of the principal investigation, that they be given an oral presentation of the grounds for the charges, and that a statement of reasons be prepared in writing, of which they shall be advised; the statement of reasons for such an order should in particular, indicate what facts and evidence were adopted as the grounds for the charges.*

plea bargaining *(also* ***plea agreement***, ***plea deal***, ***or plea in mitigation***) *is a criminal proceeding arising from the Anglo- American judicial establishment that requires a pragmatic attribution of criminal responsibility for a person who committed one or more crimes, in the sense that both the prosecutor and the Defense, taking into the specific circumstances of the case, reach a mutually beneficial agreement, according to which the defendant accepts a self-incrimination while the prosecutor ensures a more convenient penalty than that the defendant would expect, if found guilty at the final judgment; a plea bargaining allows both parties to avoid a lengthy criminal trial but the agreement must be approved by the court; in exchange for the defendant's admission of the alleged facts, the prosecutor may waive some charges in exchange for the defendant's admission of committing others, he may offer a reduced penalty or lighter modes or less coercive forms of penalty enforcement*

conviction without a trial *– one of modes of consensual resolution of criminal proceedings laid down in The Polish Code of Criminal Procedure (art. 335 CCP); it is an institution under which a suspect and prosecutor may at the stage of preparatory proceedings, enter into a settlement concerning the type and measure of penalty and other criminal sanctions and the payment of costs of proceedings; if an agreement is reached, the prosecutor will refer the case to the court that will deliver a conviction without conducting a trial and evidentiary proceedings, provided that the circumstances of committing an offence do not cause any doubts and the conduct of the defendant shows that objectives of the proceedings will be attained; the defendant, in return for cooperation with judicial bodies, can hope for mitigation of penalties and other means of criminal sanctions they may face, however, the Polish Code of Criminal Procedure, does not provide for any rigid rules in this regard (e.g. mitigation of penalties to the extent stipulated by statute); the measure of penal sanctions is determined through negotiations between prosecutor and a defendant, though, the statutory threat of punishment laid*

down in a penal law is binding; the institution of conviction without a trial could be applied in cases involving all offences with exception of felonies (acts involving penalty of deprivation of liberty for a period of no less than 3 years or with a more severe penalty)

voluntary submission to criminal liability *- the second mode of consensual resolution of criminal proceedings laid down in The Polish Code of Criminal Procedure (art.387 CCP); it is an institution which enables the defendant to file a motion for conviction and imposing a specific penalty without conducting an evidentiary hearing until the termination of the first questioning of all the accused at the first trial in court; the Court may consider this motion if the circumstances in which the offence was committed arise no doubts and the objectives of the proceedings will be accomplished despite the fact that a full trial has not been conducted; granting of the motion is possible only when the public prosecutor, as well as the injured duly informed about the date of the trial and advised of the possibility of submission of such a motion by the accused, do not object to that; the institution of conviction voluntary submission to criminal liability without a trial could be applied in cases involving a sentence of up to 15 years of deprivation of liberty*

specialty principle *- a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered (a principle laid down in article 27.2 of European Arrest Warrant Framework Decision, exceptions from this principle are prescribed in article 27.3 of EAW FD)*

PART I. WARM-UP EXERCISES. Words and phrases used in criminal law.

Exercise One:

Fill in the gaps with an appropriate word or phrases that fit the context:

The typical warning under jurisdiction of U.S. states said to a person arrested or placed in a custodial situation :

- You have the right to .....1..... silent and refuse to answer questions.
- Anything you say may be used .....2..... you in a court of .....3.....
- You have the right to .....4..... an attorney before speaking to the police (and to have an attorney present during questioning now or in the future).
- If you cannot .....5..... an attorney, one will be .....6..... for you before any questioning if you wish.
- If you decide to answer questions now without an attorney .....7..... you will still have the right to stop answering at any time until you talk to an attorney.
- Knowing and understanding your rights as I have .....8..... them to you, are you willing to answer my questions without an attorney present?

Exercise Two:

Fill in the blank spaces in the text with the words or phrases provided below:

admissibility	**evidence**
custody (3 times)	**incrimination**
decline	**suspects**
enforcement	**violates**

The above warning is given by police in the United States to criminal ……1…….in police ……2……..before they are interrogated to preserve the……3…… of their statements against them in criminal proceedings. The warning is part of a preventive criminal procedure rule that law ……4……..authorities are required to administer to protect an individual who is in ……5……. and subject to direct questioning or its functional equivalent from a violation of his or her Fifth Amendment right against compelled

self-……6…….... In Miranda v. Arizona (1966), the Supreme Court held that the admission of an elicited incriminating statement by a suspect not informed of these rights ……7……the Fifth Amendment and the Sixth Amendment right to counsel , through the incorporation of these rights into state law. Thus, if law enforcement officials ……8……..to offer this warning to an individual in their ……9……., they may interrogate that person and act upon the knowledge gained, but may not use that person's statements as ……10……against him or her in a criminal trial.

Exercise Three:

Match the words from column A and B

A	***B***
impose	of English
admission	discontinuation
access	party
provide	public defender
legal	to case file
command	aid
personal	of evidence (expert's opinion)
appoint	punishment
aggrieved	explanations
conditional	appearance

Exercise Four:

Fill in the gaps with an appropriate word or phrases that fit the context:

GUIDANCE ON THE RIGHTS AND OBLIGATIONS OF A SUSPECT IN THE CRIMINAL PROCEDURE (Source J.L. 2015 item 893)

Suspect in the criminal procedure has the following rights:

1. The right to provide or refuse to provide ……1…….. or refuse to answer particular questions (…), it is not necessary to specify ……2…..for refusal. In case of notice of personal……3……., justification of non-appearance caused by sickness is possible only upon presentation of certificate issued by medical practitioner authorised by court. Other certificates are……4……

2. The right to legal …5……of a defence counsel selected by a suspect. If suspect proves that he/she cannot afford a defence counsel, court may ……6……..public defender. It is not permitted to have more than ……7…. defence counsels simultaneously. In the event of conviction or conditional ……8…….of criminal procedure, expenses on public defence may be charged upon suspect.

3. Defence counsel may be present at suspect's ……9…….upon suspect's request.

4. If suspect's ……10……..of Polish is insufficient – the right to use assistance of translator, free of charge, also in contacts with defence counsel.

5. The right to information about the content of……11……., supplementing or changing them and legal classification of alleged offence.

6. The right to file ……12……for performing actions connected with investigation or inquiry, e.g. for interrogation of witness, obtaining document, ……13……of expert's opinion (…)

7. The right of access to……14……., to make copies and extracts. This right may be refused due to important interest of the state or in the interest of proceeding.

8. The right to examine documentation of investigation or inquiry before its completion (…)

9. The right to request to refer case to mediation proceeding to reconcile with an ……15……party (art. 23a). Participation in mediation proceeding is voluntary. Positive results of mediation are taken into account by court in imposing……16……(……)

Legal framework: The European Convention on Human Rights (art. 5 and 6)

Exercise Five:

Fill in the blank spaces in the text with the words or phrases provided below:

charge	**extradition**	**unsound**	**compensation**
entitled	**accordance**	**obligation**	**unauthorized**
suspicion	**supervision**	**contravention**	**spreading**
guarantees	**lawfulness**	**view**	**promptly**

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in ……**1**…….with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfillment of any ……**2**…….prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable ……**3**……..of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational ……**4**…….or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the ……**5**…….of infectious diseases, of persons of ……**6**……mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an ……**7**……..entry into the country or of a person against whom action is being taken with a ……**8**…… to deportation or ……**9**……...

2. Everyone who is arrested shall be informed……**10**……, in a language which he understands, of the reasons for his arrest and of any ……**11**……..against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be ……**12**…….to trial within a reasonable time or to release pending trial. Release may be conditioned by ……**13**……to appear for trial.

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4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the ……**14**……of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in ……**15**…….of the provisions of this Article shall have an enforceable right to……**16**…….

Exercise Six:

Fill in the gaps with an appropriate word or phrases that fit the context

Article 6

1. In the determination of his civil rights and ……1…….or of any criminal charge against him, everyone is entitled to a fair and public hearing within a ……2……. time by an independent and ……3……..tribunal established by law. Judgment shall be pronounced publicly but the press and public may be ……4……..from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the……5…… of justice.

2. Everyone charged with a criminal offence shall be ……6……. innocent until proved guilty according to law.

3. Everyone ……7…… with a criminal offence has the following minimum rights:

(a) to be informed ……8……., in a language which he understands and in detail, of the nature and cause of the ……9…… against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in ……10…… or through legal assistance of his own choosing or, if he has not ……11……. means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his ……12……under the same conditions as witnesses against him;

(e) to have the free ……13……. of an interpreter if he cannot understand or speak the language used in court.

Exercise Seven:

Read the summaries of the facts of the cases referred to ECtHR and decide if there was a violation of Article 6 (3) (e) of the Convention (THE RIGHT TO FREE INTERPRETATION AND TRANSLATION OF DOCUMENTS)

CASE OF ÖZTÜRK v. GERMANY (Application no. 8544/79), 21 February 1984

The Heilbronn administrative authorities imposed on a Turkish citizen Mr. Öztürk, a fine of DM 60 for causing a traffic accident by colliding with another vehicle as a result of careless driving; in addition he was required to pay DM 13 in respect of fees and costs. On 11 April 1978, the applicant, who was represented by Mr. Wingerter, lodged an objection against the above-mentioned decision; Sitting in public on 3 August 1978, the Heilbronn District Court heard Mr. Öztürk, who was assisted by an interpreter, and then three witnesses. Immediately thereafter, the applicant withdrew his objection. The Heilbronn administrative authorities' decision of 6 April 1978 accordingly became final. The District Court directed that the applicant should bear the court costs and his own expenses. On 12 September 1978, the District Court Cashier's Office fixed the costs to be paid by Mr. Öztürk at DM 184.70, of which DM 63.90 represented interpreter's fees.

Seraffedin AKBINGÖL against Germany, (Application no. 74235/01), 18.11. 2004

On 30 June 1997 the applicant, Mr Seraffedin Akbingöl (a Turkish national), was convicted by the Munich Regional Court of an offence under the Associations Act and sentenced to six months imprisonment on probation. He was found guilty of having participated in Germany in activities of illegal Turkish organisations. On 31 October 1997 the Public Prosecutor at the Munich Regional Court served the applicant with a notice to pay the costs, including costs for the translation of his telephone conversations from Kurdish and Turkish into German. These conversations were taped in the course of the criminal investigation.

Husain v. Italy (Application no. 18913/03), 24. February 2005

The applicant was convicted in absentia in Italy and sentenced to life imprisonment. The prosecutor's office subsequently issued an enforcement order, ordering the applicant's arrest and appointing official counsel for him. The applicant was arrested in Greece and extradited to Italy. On his arrival in Italy, the authorities served him with a copy of the enforcement order. As the applicant was a Yemeni national, an interpreter was instructed to interpret the content of the document into Arabic for him. The document stated the date of the judgment by which the applicant had been found guilty, the sentence imposed and the legal classification of the charges, and referred to the pertinent articles of the Criminal Code and the other relevant texts. The applicant complained that there was no written translation into Arabic of the enforcement order and applied unsuccessfully to have it set aside. He argued that he had been unable to understand the content of the order served on him, and had thus been unaware of his rights in

Italy, which had deprived him of the option of applying for a reopening of the criminal proceedings.

Exercise Eight:

Read the summaries of the following judgments of the ECtHR and decide violation of which rights they concern:

I. THE RIGHT TO INFORMATION

1.) **Information regarding rights** -*Violation of Art.6(1) in conjunction with Art. 6(3)(c)*

2.) **Information about arrest, the nature and cause of the accusation, and charge** (2 judgments)

a.) *No violation of Article 5(2)*

b.) Violation of Article 6(1) in conjunction with Article 6(3)(a) and (b)

3. **Information regarding material evidence and the case** - *Violation of Article 5(4)*

II. THE RIGHT TO DEFENCE

1.) **The right to self- representation** - *Claim under Article 6(1) and 6(3)(c) inadmissible as manifestly ill-founded*

2.) **The right to legal assistance from the outset of the investigation** - *Violation of Article 6(1) and 6(3)(c) (2 judgments)*

3.) **The right to private consultation with a lawyer** - *Violation of Art. 6(3)(c) taken together with Art. 6(1)*

4.) **Waiving the rights to legal assistance** - *Violation of Article 6(1) in conjunction with Article 6(3)(c)*

III THE RIGHT TO LEGAL AID

1.) **Quality of legal aid** - *Violation of Art. 6(1) taken together with Art. 6(3)(b), (c) and (d)*

2.) **Choice of a legal aid lawyer** - *Claim under Article 6 (3)(c) inadmissible as manifestly ill-founded*

IV THE PRIVILEGE AGAINST SELF-INCRIMINATION AND THE RIGHT TO SILENCE - *Violation of Article 6(1)*

V PROCEDURAL RIGHTS AT TRIAL

1. **The right to be tried in presence and participate in process** - *Violation of Article 6*

2.**The right to equality of arms in calling and examining witnesses** - *Violation of Article 6(3)(d)*

V. THE RIGHT TO FREE INTERPRETATION AND TRANSLATION OF DOCUMENTS - *No violation of Article 6(3)(a)*

Van Ulden v. the Netherlands 12 May 1997, European Commission of Human Rights (decision), App no 24588/94

The applicant complained that authorities failed to satisfy his request and replace a state-appointed lawyer, Mr. W., by another legal aid lawyer, Ms. Hegeman. The request was not based on an alleged lack of quality of Mr. W.'s professional activities, but on the applicant's preference to be represented by Ms. Hegeman who was his defence lawyer in two other criminal proceedings. The Commission reiterated that Article 6 did not confer an absolute right to be defended by a lawyer of the defendants' own choosing. The Commission further stated that "in view of the general [in the eyes of the State] desirability of limiting the total costs of legal aid" it was not unreasonable to deny replacement of a legal aid lawyer once he was assigned to a case and undertook certain activities.

Titarenko v. Ukraine, 20 September 2012, ECtHR, App no 31720/02

The applicant was invited to meet police officers "for a confidential talk," where he confessed to murder. After being officially presented with charges, he repeated his confession with his lawyer present. Relying on Salduz the Court held that Article 6 required assistance of a lawyer at the initial stages of police interrogation. Any conversation between a detained criminal suspect and the police must be treated as formal contact and cannot be characterized as "informal questioning," as claimed by the domestic courts. After being questioned without legal assistance the applicant confessed to a very serious crime. The fact that he repeated his confession in the presence of the lawyer did not undermine the conclusion that the applicant's defence rights were irretrievably prejudiced at the very outset of the proceedings. The domestic courts did not react to this procedural flaw in an appropriate manner, which would be to exclude such statements from the evidentiary basis for the applicant's conviction.

Sejdovic v. Italy, 1 March 2006, ECtHR [Grand Chamber], App no 56581/00

The applicant complained that he was convicted *in absentia* without presenting his defence before the Italian courts, while the Government argued that he waived his right to appear at the trial. The ECtHR reiterated that the refusal to reopen proceedings conducted in the accused's absence, without any indication that the accused has waived his or her right to be present during the trial, was "flagrant denial of justice" rendering the proceedings "manifestly contrary to the provisions of Article 6 or the principles embodied therein". Where an accused had not been notified in person of the charge, it could not be inferred merely from his status as a "fugitive" that he had waived his right to appear at the trial and defend himself. In the present case, it was not shown that the applicant had sufficient knowledge of his prosecution and of the charges against him, thus he could not waive his right to participate at the trial.

Correia de Matos v. Portugal, 15 November 2011, ECtHR (decision), App no 48188/99

The applicant, a lawyer by profession, complained that he was prevented from defending himself because the judge assigned him a lawyer against his wishes. The ECtHR considered that the decision to allow an accused to defend himself in person or to assign him a lawyer fell within the margin of appreciation of the Contracting States. The domestic courts are entitled to consider that the interests of justice require the compulsory appointment of a lawyer. In the present case the authorities did not exceed their margin of appreciation and the applicant's defence was conducted effectively.

Polyakov v. Russia, 29 January 2009, ECtHR, App no 77018/01

The applicant complained that the domestic courts had arbitrarily rejected his requests to examine several witnesses whose testimony would confirm his alibi. The ECtHR pointed out that the right to call witnesses was not absolute and could be limited in the interest of the proper administration of justice. An applicant claiming a violation of his right to obtain the attendance and examination of a defence witness should show that the examination of that person was necessary for the establishment of the truth and that the refusal to call that witness was prejudicial to the defence.38 In the present case, the applicant's request for defence witnesses was not vexatious, was sufficiently reasoned, relevant to the subject-matter of the accusation and could arguably have strengthened the defence position or even led to the applicant's acquittal. The Court found that in circumstances where the applicant's conviction was based primarily on the assumption that he was in a particular place at a particular time, he should be afforded a reasonable opportunity to challenge this assumption effectively, *inter alia*, through examination of witnesses.

Plonka v. Poland, 31 March 2009, ECtHR, App no 20310/02

The applicant, who had been suffering from alcohol problems for the last 20 years, was arrested on suspicion of homicide. She claimed that she had not been properly informed about the possibility to obtain legal assistance during questioning. The ECtHR found that given

the applicant's particular vulnerability a pre-printed declaration form signed by the applicant acknowledging that she had been reminded of her right to remain silent or to be assisted by a lawyer could not be considered reliable. The position of the applicant should have been taken this into account during questioning and in particular when apprising her of her procedural rights.

Fox, Campbell, and Hartley v. the United Kingdom , 30 August 1990, ECtHR, App nos 12244/86, 12245/86 and 12383/86

The applicants were only told that they were arrested under section 11 (1) of the 1978 Act on suspicion of being terrorists. The ECtHR stated that it was insufficient for an arresting officer to simply tell the suspects that they were arrested under a particular law. Instead, they must be informed of "the reasons why they were suspected of being terrorists" and of "their suspected involvement in specific criminal acts and their suspected membership of proscribed organisations." The Court also held that such information must be conveyed in way that the person can understand, using "simple, non-technical language" . It did not find a violation of the Convention, because the applicants were provided with the details on the charge "promptly," i.e. seven hours after the arrest.

Stojkovic v. France and Belgium, 27 October 2011, ECtHR, App no 25303/08

A French investigating judge issued an international letter of request asking Belgian police to question the applicant in relation to an armed robbery which took place in France. During the interview, the applicant was simultaneously notified of the provisions of Belgian law, which did not provide for legal assistance, and of his French status as "legally assisted witness," which allowed him to be assisted by a lawyer. Relying on Article 6(3)(c), the applicant complained that he was not provided with legal assistance. The ECtHR found that the applicant must have been understandably confused by contradicting information provided to him. His choice to make a confession thus could not be regarded as informed. The Court acknowledged that it had been for the French criminal authorities to ensure that the acts carried out in Belgium were not in breach of the rights of the defence and to verify the fairness of the proceedings under France's supervision. There was thus a violation of Article 6 in respect to France; the complaint against Belgium was inadmissible due to the six-month rule.

Kamasinski v. Austria , 19 December 1989, ECtHR, App no 9783/82

The applicant, an American citizen, complained that the indictment which was served on him in Austria was not translated into the English language. The ECtHR reiterated that Article 6(3)(e) applies "not only to oral statements" made during the trial but also to "documentary material and the pre-trial proceedings". While it does not require a "written translation of all items of written evidence or official documents in the procedure," the interpretation assistance has to be sufficient to "enable the defendant to have knowledge of the case against him and defend himself by being able to advance his version of the events". The Court held that, as a result of the oral explanations given to him in English, the applicant had been sufficiently

informed of "the nature and cause of the accusation against him". Given that the charges were not complex in regards to the facts and the law and that the applicant had been questioned at length and in the presence of interpreters about the suspected offences, the absence of a written translation of the indictment neither prevented him from defending himself nor denied him a fair trial.

Brennan v. the United Kingdom 16 October 2001, ECtHR, App no 39846/98

The applicant submitted that his right under Article 6(3)(c) was violated by the presence of a police officer attending within sight and hearing the consultation with a lawyer. According to the Government, the restriction on private communication served the purpose "of preventing information being passed on to suspects still at large". The ECtHR found no allegation that the lawyer was in fact likely to collaborate in such an attempt and thus there was no compelling reason to impose the restriction. According to the Court, "the presence of the police officer would have inevitably prevented the applicant from speaking frankly to his solicitor and given him reason to hesitate before broaching questions of potential significance to the case against him".

Zaichenko v. Russia, 18 February 2010, ECtHR, App no 39660/02

The applicant's car was stopped and inspected by the police. Although the applicant was not formally arrested, he answered questions and effectively confessed to taking diesel from a company vehicle for personal use. The Government maintained that the applicant had waived his right not to testify against himself . The Court noted the applicant was apprised of the right to remain silent after he had already made a self-incriminating statement in the inspection record. The Court further pointed out that "being in a rather stressful situation and given the relatively quick sequence of the events, it was unlikely that the applicant could reasonably appreciate without a proper notice the consequences of his being questioned in proceedings which then formed basis for his prosecution for a criminal offence of theft." Consequently, the applicant did not validly waive the privilege against self-incrimination before or during the drawing of the inspection record.

Pelissier and Sassi v. France, 25 March 1999, ECtHR [Grand Chamber], App no 25444/94

The applicants complained that the trial court reclassified the charges against them without an adjournment of the proceedings and thus they had no opportunity to prepare their defence on a new charge. The Court clarified that the suspect has to be provided information both on the cause – acts allegedly committed – and the nature –"the legal characterisation given to those acts" – of the accusation. The scope of Article 6(3)(a) must be assessed in the light of a more general right to a fair hearing and the accused's right to prepare his defence. Applying these principles to the facts of the case, the Court found that domestic courts failed to afford the applicants the possibility of exercising their defence rights in a practical and effective manner and in good time.

Garcia Alva v. Germany, 13 February 2001, ECtHR, App no 23541/94

The Public Prosecutor's Office dismissed the lawyer's request for consultation of the investigation files on the ground that it would endanger the purpose of the investigation. The contents of the files played a key role in the court's decision to prolong the applicant's detention. The ECtHR explained that the right for suspected or accused persons to access evidence in their case-files is drawn from the right to an adversarial trial. The Court further stated that "both the prosecution and the defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party". While in particular circumstances the information collected during investigations may be kept secret "in order to prevent suspects from tampering with evidence and undermining the course of justice," these legitimate goals "cannot be pursued at the expense of substantial restrictions on the rights of the defence." Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to a suspect's lawyer.

Falcao dos Santos v Portugal, 3 July 2012, ECtHR, App no 50002/08

The applicant was convicted for making malicious accusations. He complained that during the hearing before the first instance court the State-appointed legal aid lawyer remained silent, did not cross-examine witnesses or intervene on the applicant's behalf. As a result the applicant was found guilty and ordered to pay a fine. The ECtHR found that the applicant was left without effective legal assistance before the first instance court, which is a crucial phase in the proceedings. He repeatedly alerted authorities about poor legal representation and thus they had a duty to intervene. Therefore, the authorities failed to guarantee real "assistance", not mere "appointment" of the lawyer.

Padalov v. Bulgaria, 10 August 2006, ECtHR, App no 54784/00

The applicant complained about a violation of his right to legal assistance. The government submitted that the applicant had tacitly waived his right to free legal assistance since he had never expressly requested the appointment of an ex officio lawyer. The ECtHR pointed out that any waiver of the right had to be unequivocal and could not run contrary to an "important public interest". Although the applicant did not specifically request the lawyer, he informed the authorities about lack of sufficient means to retain a private lawyer. Given the complexity of the applicable law at that time, the authorities should have made sure that the applicant was fully aware of a possibility to be assisted by a legal aid lawyer.

References:

C A S E D I G E S T S European Standards on Criminal Defence Rights: ECtHR Jurisprudence APRIL 2013,

https://www.opensocietyfoundations.org/sites/default/files/digests-arrest%20rights-european-court-human-rights-20130419.pdf

Admission of evidence obtained illegally (fruit of the poisonous tree)

CASE OF GÄFGEN v. GERMANY, Judgment 1 June 2010 *(Application no. 22978/05)*

Summary of the case, linguistic exercises, discussion

Exercise Nine:

Read the summary of the case and fill in the blank spaces in the text with the words or phrases provided below:

extortion	**reveal**	**mitigating**	**instructed**
excluded	**incited**	**surveillance**	**suffocating**
aimed	**allegations**	**examination**	**abuse**
remorse	**tracks**	**trace**	**prior**

On 27.09.2002 the applicant lured J., aged 11, into his flat in Frankfurt am Main and then killed the boy by ……1……...him. Subsequently, the applicant deposited a ransom note at J.'s parents' place of residence stating that J. had been kidnapped and demanding one million euros. The applicant then drove to a pond located on a private property near Birstein and hid J.'s corpse under a jetty. On 30.09.2002 at around 1 a.m. the applicant picked up the ransom at a tram station. From then on he was under police……2…….. He paid part of the ransom money into his bank accounts and hid the remainder of the money in his flat. That afternoon, he was arrested at Frankfurt am Main airport and then taken to the police headquarters. He was informed by detective officer M. that he was suspected of having kidnapped J. and was ……3……about his rights as a defendant, notably the right to remain silent and to consult a lawyer. He was then questioned by M. with a view to finding J. Meanwhile, the police, having searched the applicant's flat, found half of the ransom money and a note concerning the planning of the crime. At 11.30 p.m. the applicant was allowed to consult a lawyer, Z., for 30 minutes at his request. He subsequently indicated that F. and R. had kidnapped the boy and had hidden him in a hut by a lake.

Early in the morning of 01.10.2002, before M. came to work, Mr Daschner ("D."), deputy chief of the Frankfurt police, ordered another officer, Mr Ennigkeit ("E."), to threaten the

applicant with considerable physical pain, and, if necessary, to subject him to such pain in order to make him ……4……..the boy's whereabouts. Detective officer E. thereupon threatened the applicant with subjection to considerable pain at the hands of a person specially trained for such purposes
if he did not disclose the child's whereabouts. According to the applicant, the officer further threatened to lock him in a cell with two huge black men who would sexually ……5……..him. For fear of being exposed to the measures he was threatened with, the applicant disclosed the whereabouts of J.'s body after approximately ten minutes.

The applicant was then driven to Birstein and on the communicated order of the police officer in command and while being filmed, he pointed out the precise location of the body. The police found J.'s corpse under the jetty at the pond near Birstein as indicated by the applicant. Upon forensic ……6…….of the scene, the police discovered tyre ……7……left by the applicant's car near the pond near Birstein. Under questioning by detective officer M. on the return journey from Birstein the applicant confessed to having kidnapped and killed J. He was then taken by the police to various other locations indicated by him where they secured J.'s school exercise books, a backpack, J.'s clothes and a typewriter used for the blackmail letter in containers. An autopsy carried out on J.'s corpse on 2 October 2002 confirmed that J. had died of suffocation.

In a note for the police file dated 1 October 2002, the deputy chief of the Frankfurt police, D., stated that he believed that that morning J.'s life had been in great danger. In order to save the child's life, he had therefore ordered the applicant to be threatened by detective officer E. with considerable pain which would not leave any ……8…….of injury. He confirmed that the treatment itself was to be carried out under medical supervision. According to the note, the threat to the applicant was exclusively ……9……at saving the child's life rather than furthering the criminal proceedings concerning the kidnapping.

During subsequent questioning by the police on 4 October 2002, by a public prosecutor on 4, 14 and 17 October 2002, and by a district court judge on 30 January 2003 the applicant confirmed the confession he had made on 1 October 2002.

In January 2003 the Frankfurt am Main public prosecutor's office opened criminal investigation proceedings against the deputy chief of the Frankfurt police D., and detective officer E. on the basis of the applicant's …10……..that he had been threatened on 01.10. 2002.

On 9 April 2003, the first day of the hearing, the applicant, represented by counsel, lodged a preliminary application for the proceedings to be discontinued. The basis of his claim was that during interrogation and ……11……to confessing he had been threatened by detective officer E. with being subjected to severe pain. The applicant's also applied for a declaration that, on account of the prohibited investigation methods, the use in the criminal proceedings of all items

of evidence, such as the child's corpse, which had become known to the investigation authorities as a consequence of the statements extracted from the applicant ought to be ……12……from trial. The Frankfurt am Main Regional Court dismissed the applicant's application for the discontinuation of the criminal proceedings.

Following the above ruling on the applicant's preliminary applications lodged on the opening day of the trial, the proceedings continued. The next day, in his statement on the charges, the applicant admitted having killed J., but stated that he had not initially intended to do so. As the trial proceeded, all further items of evidence found as a consequence of the applicant's original statement were adduced. At the close of the trial on 28 July 2003 the applicant admitted that he had also intended from the outset to kill the child. He also confirmed that he had volunteered his confession out of ……13…….and because he wanted to take responsibility for his crime.

On 28 July 2003 the Frankfurt am Main Regional Court convicted the applicant, *inter alia*, of murder and kidnapping with ……14……causing the death of the victim. It sentenced him to life imprisonment and declared that his guilt was of particular gravity, warranting a maximum sentence.

The Frankfurt am Main Regional Court convicted detective officer E. of coercion committed by an official in the course of his duties. However, in terms of penalty, it cautioned the defendant and imposed a suspended fine of 60 euros (EUR) per diem for 60 days, which the defendant would be required to pay if he committed another offence during the probation period. Furthermore, the court convicted the deputy chief of the Frankfurt police, D., of having ……15……..E., a subordinate, to commit coercion in the course of his duties. It also cautioned D. and imposed on him a suspended fine of EUR 120 per diem for 90 days.

In determining the sentences, the Regional Court considered that there were significant ……16……factors to be taken into account. It took into consideration that the defendants' sole concern had been to save J.'s life

Discussion

1. Did the treatment to which the applicant had been subjected during police interrogation concerning the whereabouts of a boy, J., on 1 October 2002 constitute torture prohibited by Article 3 of the Convention?

2. Should all confessions and statements made by the applicant before the police, a public prosecutor and a district court judge be deemed inadmissible as evidence in the criminal proceedings because they had been obtained through the use of prohibited methods of interrogation? What about his voluntary confession made before regional court?

3. Should 'real evidence', such as the child's corpse, which became known to the investigation authorities as a consequence of the statements extracted from the applicant by the use of prohibited investigation methods be excluded from trial?

4. Was the applicant's right to a fair trial (as guaranteed by Article 6 of the Convention, comprising a right to defend himself effectively and a right not to incriminate himself) violated in that evidence which was obtained in violation of Article 3 was admitted at his criminal trial.

5. Did German authorities afford the applicant appropriate and sufficient redress for prohibited methods of interrogations by carrying out a thorough and effective investigation against German detective officers which resulted in convicting them of coercion and imposing suspended fines?

6. Is torture ever justified? Is it justified to torture one person, someone who is suspected of having planted a bomb somewhere, in order to save the lives of – possibly thousands of – others ('the ticking time bomb scenario')?

European Arrest Warrant (rights of a requested person, specialty principle, possible prosecution for other offences) – practical approach

Exercise Ten:

Match the words from column A and B

A	**B**
delivery (announcment)	report
make	consent
file	office
grant	person
cease	arrest
detention	statement
consular	to exist
temporary	date
closest	motions (complaint)

Exercise Eleven:

Fill in the gaps with an appropriate word or phrases that fit the context:

GUIDANCE ON THE RIGHTS OF A PERSON DETAINED UNDER EUROPEAN ARREST WARRANT (Source J.L. 2015 item 874)

Person detained under the European Arrest Warrant has the following rights:

1. The right to information about the reasons for ……**…1**…… and to be listened to.

2. The right to provide or refuse to provide explanations (…)

3. The right to ……**2**…….. contact an attorney or legal counsel and talk directly to him/her

4. The right to legal aid (….)

5. (…) the right to use assistance of translator, free of charge.

6. The right to receive a copy of a detention **…3**…….and examine the case file within the scope referring to the reasons for detention.

7. The right to inform about detention the ……**4**……. 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 (…)

8. If detained person is not a Polish citizen – the right to contact ……**5**…….office or diplomatic mission of the state of which he/she is a citizen (…)

9. The right to file to court ……**6**…….against detention within 7 days from detention date, in which examination of relevance, legality and correctness of detention may be demanded.

10. The right to immediate release, if reasons for detention ……**7**……..to exist, or after expiry of 48 hours from detention, unless detained person is brought within this period to court with a……**8**…….. for temporary arrest. If detained person is brought to court, he/she will be released, if an order for such arrest is not delivered to him/her within 24 hours from bringing to court.

11. The right to information about the ……**9**…… of European Arrest Warrant and to receive its copy together with translation and notice of court session in the matter of transferring (…).

12. The right to make ……**10**…… in the matter of transferring and the right to ……**11**……..consent for transfer and consent for prosecuting for other offences than included in the motion for transfer, and also consent for execution of a punishment consisting in deprivation of liberty or remedies consisting in deprivation of liberty for such offences Consent may not be……**12**…….. The effect of consent is acceleration of proceeding in the matter of European Arrest Warrant

13. The right to ……**13**……. a complaint against transfer within 3 days from the order ……**14**…….date, and in the event if detained person is not brought to court session – from the order delivery date.

14. Access to any necessary medical aid.

Upon a motion of the state which issued European Arrest Warrant, it is possible to …**15**……. temporary arrest for a period not exceeding 7 days, before receipt of European Arrest Warrant and then for a period necessary for …**16**……, however not exceeding 100 days.

"I confirm that I received guidance"

(date, signature)

III EAW case based on a Polish Supreme Court judgment regarding specialty principle

The Regional Public Prosecutor's Office in W. conducted criminal proceedings against Jan R. who was suspected of committing 6 crimes under Articles 258§1 and 286 §1 of the Polish Penal Code. On 21.12. 2005 the Regional Court in W. issued a European Arrest Warrant which comprised the above offences. By virtue of the above warrant, Jan R. was detained in Madrid on 18.01.2006 and on 10.02.2006 he was transferred to Poland. After the evidence had been completed, the Regional Public Prosecutor's Office in W. issued and presented to the suspect the decision to change the decision on presenting the charges which modified and extended the description of the crimes under Article 286 §1 of the Penal Code and accused him of committing other acts which had not been stipulated in the European Arrest Warrant. On 07.04.2008 the prosecutor informed the suspect that the Prosecutor's Office intended to request the Kingdom of Spain to consent to the extension of the scope of his prosecution by additional 36 crimes which had not been stipulated in the European Arrest Warrant. Jan R. stated for the record that he had been informed by the prosecutor of the above intention and he further stated that he agreed to the extension of the scope of his prosecution beyond the crimes which had caused his transfer by the Kingdom of Spain within the process of the execution of the European Arrest Warrant. In October 2008, without prior request to the Kingdom of Spain to consent to the extension of the scope of his prosecution, an indictment against Jan R., which comprised the total 42 crimes, was transferred to the court.

In the course of the examination of the case by the Regional Court in W., which proceeded in over 40 court hearings in the years 2009 – 2010, during the court hearing on 25.03.2010, in the presence of defence lawyer of his choice, the suspect made a declaration in which he stated that "after the procedural situation had been explained to me by the Presiding Judge (…), pursuant to Article 607e §3 item 7 of the Code of Criminal Procedure, I hereby waive the speciality principle, that is the right stipulated in Article 607e §1 concerning all 42 acts which I am charged with in the indictment". On 08.06.2010, the Regional Court sentenced Jan R. to the penalty of deprivation of liberty for 5 years for all the acts he had been charged with. About two months after the Regional Court had issued the judgement of conviction and before filing an appeal against this judgement by his defence counsel Jan R. filed a letter to the court in which he withdrew the above waiver of the speciality principle on the grounds that he had been mistaken and had not understood the consequences of his previous declaration. The defence counsel was of the opinion that it meant a renewed impediment to the prosecution of the suspect for the acts he was charged with and which had not been included in EAW, and that it should lead to discontinuance of the proceedings in this scope. The court of appeal did not share this point of view and it acknowledged that such withdrawal is impermissible. What is more, in its opinion on the grounds for appeal concerning the validity of the specialty principle regarding the accused, the court of appeal stated that there were two prerequisites in the case which excluded the specialty principle regarding Jan R., because, except for the waiver to exercise this principle, the exclusion stipulated in Article 607e §3 item 2 of the Code of Criminal Procedure came into play. According to what was stated, after the transfer – when in the course of the preparatory

proceedings his provisional detention was revoked, he left the territory of Poland as a suspect and then returned, because, as he himself admitted, at the end of May and in the beginning of June 2008 he left for Spain where he stayed for a few days. This would mean that even if the inefficacity of the waiver of the rights stipulated in Article 607e §1 of the Code of Criminal Procedure was accepted, the limitations of the prosecution of the accused would not be operating.

Article 607e of the Polish Code of Criminal procedure

§ 1. *A person extradited as a result of warrant execution may not be prosecuted for offences other than those that constituted the basis for the extradition, and penalties of imprisonment for such offences imposed on that person or other measures consisting in deprivation of liberty may not be executed against them.*

§ 3. *The provision of § 1 shall not be applied if:*

2) despite such a possibility, the extradited person has not left the territory of the Republic of Poland within 45 days as of the date when the proceedings have been finally concluded or, after having left the territory of the Republic of Poland, returned there.

4.) the criminal proceedings are not related to application of a measure consisting in deprivation of liberty against the prosecuted person

7) following their extradition, the wanted person has made a statement before the court competent to hear the case about waiving their right specified in § 1 with regard to acts committed before the extradition,

8) judicial authority of the warrant executing state that has extradited the wanted person, on the motion of the court competent to issue the warrant, has expressed its consent to prosecution or execution of the penalty of imprisonment or of other measures consisting in deprivation of liberty for offences specified in subparagraph (1).

Questions for the Discussion

1. Is the reasoning of the Court of Appeal concerning the availability of the second prerequisite (stipulated in Article 607e §3 item 2 of the Code of Criminal Procedure) excluding the principle of specialty regarding Jan R. appropriate?

2. Was the statement of Jan R. concerning his waiving of specialty principle made in an appropriate way during the pre-trial stage?

3. At what point after the surrender the subject to the EAW issuing judicial authority is it permissible to receive the waiver of the specialty principle from the person who was transferred? May the declaration in this scope be revoked?

4. What decision should the prosecutor make if the suspect refuses to waive the specialty principle and if the state which recognized the European Arrest Warrant refuses its consent to the extension of the prosecution?

IV. EAW case – practical approach (ne bis in idem principle)

In 2003 Regional Court in Białystok (Poland) convicted a Polish citizen Zbigniew B. of illicit trafficking in narcotic drugs committed in Belgium in 2003 and sentenced him to 3 years imprisonment. The decision became valid and final. During enforcement proceedings the execution of the sentence was postponed for a period of 6 months on the request of the sentenced person. At that time Belgium judicial authorities sent to Poland EAW against Zbigniew B concerning the same offence and requesting his surrender for executing a custodial sentence of 3 years. At the session before a Polish court competent to execute the warrant Zbigniew B. expressed his consent to surrender and explained that he would prefer to serve the sentence in Belgium because of better conditions in prisons in that country. The Regional Court in Białystok refused to execute the Belgium EAW on the grounds that the subject had been finally judged in Poland in respect of the same act and that the sentence was currently being served. The court was of the opinion that postponing the execution of the sentence in Poland did not give grounds to assume that the imposed penalty was not 'actually in the process of being enforced' in the meaning of article 54 of the CISA. The decision on refusal to execute EAW became valid and final and it was sent to Belgium authorities for recognition. Zbigniew B. did not appear in a Polish prison in due time and as it turned out later he had abandoned Polish territory and fled to Belgium. Regional Court in Białystok issued EAW against him and instituted international search of his person.

Article 54 *of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), signed in Schengen (Luxembourg) on 19 June 1990 ('the CISA').:*

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party'

Questions for the Discussion

1.) Is the suspect entitled to choose the country in which he would like to be prosecuted and then to serve a sentence?

2.) Was the decision of the Regional Court in Białystok on refusing to execute the Belgium EAW justified?

2.) Should the Belgium authorities discontinue their proceedings conducted against Zbigniew B. on the basis of ne bis in idem principle enshrined in article 54 of the CISA after having received the decision of the Polish Court?

2.) Can you predict the subsequent course of events in this case, in particular – how the described conflict of jurisdiction was solved?

V. EAW case – practical approach (additional consent)

1.) By a European arrest warrant of 21.05 2010, Polish Regional Court in Warsaw, requested the Netherlands judicial authority to arrest and surrender Mr Jan Kowalski for the purposes of a custodial sentence. According to the arrest warrant, Mr Jan Kowalski was convicted of grievous bodily harm and sentenced to 5 years imprisonment. On 04.10.2011, the Netherlands judicial authority decided to surrender Mr Jan Kowalski to Poland on the basis of the request set out in the arrest warrant. During the proceedings before the Netherlands authorities Mr. Jan Kowalski did not renounce the specialty rule, that is - he did not consent to be prosecuted, sentenced or otherwise deprived of his liberty for other offences committed prior to his surrender and not described in the EAW. After surrendering the subject to Poland it turned out that Regional Prosecutors' Office in Białystok conducted criminal proceedings against Jan Kowalski, in which he was charged with trafficking in stolen vehicles and participation in a criminal organization. Before the competent Polish Court Jan Kowalski did not renounce entitlement to the specialty rule with regard to above mentioned offences, committed before his surrender.

Taking the above into consideration a request for consent to prosecute these offences was submitted to the Netherlands judicial authority which executed EAW against Jan Kowalski. The request was accompanied by all the information mentioned in article 8(1) of EAW Framework Decision, apart from a piece of information concerning "evidence of (…) an arrest warrant or any other enforceable judicial decision having the same effect". The prosecutor who was conducting the case against Jan Kowalski was of the opinion that according to Polish law it was not possible to issue a preliminary detention order for additional consent procedure because the subject was not hiding from justice (he was serving a custodial sentence of 5 years in prison in Poland) and because it could not be executed (without the consent of executing member state).

On 05.03.2012 Public Prosecutors' Office in Amsterdam sent a letter to Polish authorities kindly reminding that EAW or request for additional consent should be based on a national arrest warrant and asking for the reason why "no national arrest warrant was mentioned" in the Polish request for consent to prosecute additional offences.

Questions for the Discussion

1. Is there any possibility of solving the described problem, what course of action should be taken by the Polish authorities in order to obtain additional consent from the Netherlands authorities?

2. Is a prosecutor allowed to complete the charges against the suspect and then file a motion with a competent Regional Court to request the executing state to consent to prosecute additional offences?

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MLA request –

practical approach concerning the right to information in criminal proceedings

The request prepared on the basis of different requests for legal assistance drawn up in Regional Prosecutor's Office in Białystok :

Regional Public Prosecutor's Office
in Białystok

Białystok, 24 .08.2016

REQUEST FOR

LEGAL ASSISTANCE IN CRIMINAL CASE

The Regional Public Prosecutor's Office in Białystok is supervising an investigation, file reference number Ds 1111/16, against a Hungarian citizen Eva Kiss who is being under suspicion that on 02 June 2016 in Sokółka she drove a Volskwagen Polo, registration number BBB 1111 in the state of insobriety, i.e. she had 0.51 and 0.50 milligrams/cubic decimetres of alcohol content in the exhaled air. Eva Kiss had been convicted for driving a motor vehicle in a state of insobriety before and was in the period of prohibition of driving motor vehicles to which had been sentenced in connection with the above conviction. The above constitutes an offence under Article 178a paragraph 4 of the Polish Penal Code, the content of which is the following:

Article 178a paragraph 4 *If the perpetrator of the act referred to in § 1 had previously been convicted for operating a motor vehicle while being intoxicated or under the influence of a stupefacient substance by a final and valid ruling, or for committing a crime provided for in arts. 173, 174, 177 or art. 355 § 2 while being intoxicated or under the influence of a stupefacient substance, or has committed the act referred to in § 1 while the prohibition of operating motor vehicles that had been imposed for a crime was still effective, he is subject to the penalty of deprivation of liberty for between 3 months and 5 years.*

Article 178a paragraph 1 *Whoever in the state of insobriety or under the influence of an intoxicating drug operates a motor vehicle over the land, in the air, or on water, shall be subject to a penalty of fine, the restriction of liberty or depravation of liberty for up to 2 years.*

In the course of the investigation it has been found out that on 02 June 2016 in Sokółka a police patrol stopped a Volskwagen Polo passenger car driven by Eva Kiss, registration number

BBB 1111, for a roadside check. She was breathalyzed and it showed that the woman was in the state of insobriety. She spontaneously explained to the police officer that she had drunk alcohol the previous day, i.e. approximately 400 grams of vodka and that the next day knowing that she was still intoxicated she got into a VW Polo, and drove to a shop to buy cigarettes. The police officer made an official note from what he had heard from the woman. He could not perform formal procedural activities with her due to her insobriety. The woman was summoned to appear in the Police Station in Sokółka tomorrow, which unfortunately she failed to do.

As a result of the further proceedings in this case it was ascertained that Eva Kiss had been sentenced in the Kingdom of Denmark with a prohibition from driving motor vehicles for the period of 3 years. The sentence is valid from 01.12.2015.

On 08 July 2016 a decision on presenting Eva Kiss the charges was made. However it was not pronounced to her due to the fact that it was not possible to establish her place of stay in Poland. In the course of the proceedings it was established that Eva Kiss went to Slovenia and her current place of residence is: Preseren Square 3, Ljubliana, Slovenia. With regard to the above, I would like to kindly ask you to conduct the following proceedings with participation of Eva Kiss:

I Please pronounce the decision on presenting her the charges, which is attached to this request. and deliver to her the copy of the above described decision with its translation into Slovenian language. Please make her sign the box named 'Suspect's signature' on the decision to confirm that it was pronounced and delivered to her.

If the suspect requests a justification of the decision on presenting the charges, she may do so by filling in the appropriate section of the decision. Please inform her that a written justification will be sent to an address of her choice in Poland.

II Please instruct Eva Kiss on her rights and obligations and present her with a copy of the attached instruction and its Slovenian translation and make her state in writing on one of the copies an appropriate declaration that she has received it.

III Please interrogate Eva Kiss as a suspect in order to establish the facts presented in the charge including the question if she pleads guilty of the charged offence. Please also inform her that she has the right to refuse to provide explanations and to refuse to answer the asked questions. I ask for documenting the action of hearing of the suspect in the form of a record

IV Please advise the suspect that she may put forward the motion for final familiarization with the files of the proceedings according to Article 321 paragraph 1 of the Polish Code of Criminal Procedure (the content of the article can be found in the excerpt from the laws in force which is attached to this request). If the suspect wishes to file such a request, she may appear at the District Public Prosecutor's Office in Białystok, ul. Mickiewicza 103 during the office hours, i.e. from 8:00 am to 3:45 pm within 2 months from the date of the interrogation. Please ask the suspect to make an appropriate statement that she has been informed of the above. Please also inform the suspect that in the case when she expresses her will that she would like to be familiarized with the files of the proceedings, no preventive measures would be used against her in that case while she comes to Poland in order to take part in the above mentioned action.

IV. If the suspect pleads guilty as charged, please inform her of the possibility of sentencing her without conducting a trial to the penalty agreed on with the prosecutor and propose her the

following penalty:

- deprivation of liberty for eight months conditionally suspended for a three-year trial period, a valid penal measure prohibiting from driving any motor vehicles for the period of two years and a fine which equals to 100 day-fine units of PLN 10 each.

If the suspect gives her consent to willingly surrender to the penalty offered by the prosecutor, please state this fact in the minutes of her interrogation with the exact scope of the penalty that the suspect agreed to. Furthermore, please advise her on the content of the article 447§5 of the Polish Code of Criminal Procedure, which stipulates that the basis for an appeal cannot be objections defined in article 438 (3) and (4) of the above mentioned Code.

The possibility of sentencing the suspect without conducting a trial is based on Article 335 of the Polish Code of Criminal Procedure.

The content of all the above mentioned provisions can be found in the excerpt from laws in force, which is attached to this request.

I would also like to inform you that even if Eva Kiss exercises her right to refuse to provide explanations, the minutes of her examination as a suspect must be drawn and it must include all the above issues.

The legal basis of the above actions is constituted by the following regulations of Polish Code of Criminal Procedure: Article 143 paragraph 1 item 2, Article 300 paragraph 1, Article 301, Article 313, Article 314, Article 321, Article 335 paragraph 1. The content of the above articles can be found in the attached excerpt from the laws in force in Poland.

Sincerely Yours,

The Regional Prosecutor in Białystok

Attachments:

- two blank forms of the instruction for the suspect on his rights and obligations along with the translation into Slovenian,

- the original and the copy of the decision on presenting the charges along with its translations into Slovenian,

- extract from legal provisions of Polish law

- the blank form of the record of the hearing of a suspect

Topics for the discussion:

1.) Can an official note drawn up by a Police officer and describing what he heard from Eva Kiss be admitted as evidence? Is there a provision in your code of criminal procedure prohibiting the use of such notes?

2.) In which language the order on presenting the charges and instruction on rights and obligations of the suspect should be delivered to the suspect (Polish, , Slovenian or Hungarian). Should she be instructed only on Polish rights and obligations of the suspect?

3.) Is it necessary to attach to the request a Polish form of the record of the hearing of a suspect

4.) What actions in the field of international legal assistance can be taken if Eva Kiss fails to appear before Slovenian law enforcement authorities and leaves e.g. for Hungary?

5.) Is final familiarization with the files of the proceedings under provisions of your country obligatory or voluntary? Would there be a problem with acquainting the suspect with investigation material if she served a sentence of imprisonment?

6.) Would it be possibile for a Polish defence lawyer to be present at the interrogation of Eva Kiss by Slovenian authorities, what kind of information should the request contain in such a situation, who should pay the cost of a Polish translator who would have to be present during the execution of the request with the participation of a suspect's Polish defence lawyer?

7.) Could a defence lawyer give consent to willingly surrender to the penalty offered by the prosecutor instead of the suspect, Could the penalty offered by the prosecutor be changed by the suspect or her defence lawyer?

8.) Would the request be executed by the requested state in the part of 'plea bargaining' if similar institution were not known in criminal procedure of this country?

KEY TO EXERCISES

Exercise One:

1. remain
2. against
3. law
4. consult
5. afford
6. appointed
7. present
8. explained

Exercise Two:

1. suspects
2. custody
3. admissibility
4. enforcement
5. custody
6. incrimination
7. violates
8. decline
9. custody
10. evidence

Exercise Three

impose	punishment
admission	of evidence (guilt)
access	to case file
provide	explanations
legal	aid
command	of English
personal	appearance
appoint	public offender
aggrieved	party
conditional	discontinuation

Exercise Four

1. explanations
2. reasons
3. appearance
4. insufficient
5. aid
6. appoint
7. three
8. discontinuation
9. interrogation
10. command
11. allegations (charges)
12. motions
13. admission
14. case file
15. aggrieved
16. punishment

Violation of the right to remain silent and the right of access to a lawyer - examples of the judgments of the ECtHR

Legal framework

Exercise Five:

1. accordance
2. obligation
3. suspicion
4. supervision
5. spreading
6. unsound
7. unauthorized
8. view
9. extradition
10. promptly
11. charge
12. entitled
13. guarantees
14. lawfulness
15. contravention
16. compensation

Exercise Six:

1. obligations
2. reasonable
3. impartial
4. excluded
5. interests
6. presumed
7. charged
8. promptly
9. accusation
10. person
11. sufficient
12. behalf
13. assistance

Exercise Seven - *judgments of the* ECtHR :

CASE OF ÖZTÜRK v. GERMANY (Application no. 8544/79), 21 February 1984

Court finds that the impugned decision of the Heilbronn District Court violated the Convention: "the right protected by Article 6 § 3 (e) (art. 6-3-e) entails, for anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him the payment of the costs thereby incurred"

Seraffedin AKBINGÖL against Germany, (Application no. 74235/01), 18 November 2004
The Court notes that the applicant did not complain that he could not adequately defend himself. The applicant was granted the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it was necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial (see *Luedicke, Belkacem and Koç v. Germany*, judgment of 28 November 1978, Series A no. 29, p. 20, § 48). Moreover, the free assistance of an interpreter does not require a written translation of all items of writtenevidence or official documents in the procedure (see *Kamasinski v. Austria*, judgment of 19 December 1989, Series A no. 168, p. 35, § 74). The applicant's telephone conversations had to be translated for the purposes of the criminal investigation. Their translation was not necessary for the applicant's defence, since he knew the contents of these conversations. The translation thus did not concern a matter for which the free assistance of an interpreter was required under Article 6 § 3 (e). The Court concludes that in the present case the obligation to pay the costs for this translation as part of the costs of the criminal proceedings cannot be a basis for a complaint under the Article 6 § 3 (e).

Husain v. Italy (Application no. 18913/03), 24. February 2005 Inadmissible under Article 6 § 3(a) and (b): The Court pointed out that Article 6 § 3(e) did not go so far as to require a written translation of any documentary evidence or official paper from the case file, and noted that the wording of the provision in question referred to an “interpreter” rather than a “translator”. This gave ground to consider that oral linguistic assistance could satisfy the Convention’s requirements. Nevertheless, the interpretation provided was to be such as to

enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put his version of events to the court. Through the information contained in that document, the applicant had received, in a language he understood, sufficient information concerning the charges against him and the penalty imposed. He could then have consulted his officially-appointed counsel, whose name had been cited in the document, with a view to ascertaining the steps to be taken in order to appeal against the conviction and to prepare his defence in relation to the offences with which he had been charged. Thus, even supposing that Article 6 was applicable to proceedings to set aside the serving of an enforcement order, the application was in any event manifestly ill-founded.

Exercise Eight:

I. THE RIGHT TO INFORMATION

1.) **Information regarding rights** -*Violation of Art.6(1) in conjunction with Art. 6(3)(c)* - **Plonka v. Poland, 31 March 2009, ECtHR, App no 20310/02**

2.) **Information about arrest, the nature and cause of the accusation, and charge** (2 judgments)

a.) *No violation of Article 5(2)* - **Fox, Campbell, and Hartley v. the United Kingdom , 30 August 1990, ECtHR, App nos 12244/86, 12245/86 and 12383/86**

b.) Violation of Article 6(1) in conjunction with Article 6(3)(a) and (b) - **Pelissier and Sassi v. France, 25 March 1999, ECtHR [Grand Chamber], App no 25444/94**

3. **Information regarding material evidence and the case** - *Violation of Article 5(4)* - **Garcia Alva v. Germany, 13 February 2001, ECtHR, App no 23541/94**

II. THE RIGHT TO DEFENCE

1.) **The right to self- representation** - *Claim under Article 6(1) and 6(3)(c) inadmissible as manifestly ill-founded* - **Correia de Matos v. Portugal, 15 November 2011, ECtHR (decision), App no 48188/99**

2.) **The right to legal assistance from the outset of the investigation** - *Violation of Article 6(1) and 6(3)(c) (2 judgments):* - **Stojkovic v. France and Belgium**, **27 October 2011, ECtHR, App no 25303/08**; **Titarenko v. Ukraine, 20 September 2012, ECtHR, App no 31720/02**

3.) **The right to private consultation with a lawyer** - *Violation of Art. 6(3)(c) taken together with Art. 6(1)*- **Brennan v. the United Kingdom 16 October 2001, ECtHR, App no 39846/98**

4.) **Waiving the rights to legal assistance** - *Violation of Article 6(1) in conjunction with Article 6(3)(c)* - **Padalov v. Bulgaria, 10 August 2006, ECtHR, App no 54784/00**

III THE RIGHT TO LEGAL AID

1.) Quality of legal aid - *Violation of Art. 6(1) taken together with Art. 6(3)(b), (c) and (d)* - **Falcao dos Santos v Portugal, 3 July 2012, ECtHR, App no 50002/08**

2.) **Choice of a legal aid lawyer** - *Claim under Article 6 (3)(c) inadmissible as manifestly ill-founded* - **Van Ulden v. the Netherlands, 12 May 1997, European Commission of Human Rights (decision), App no 24588/94**

IV THE PRIVILEGE AGAINST SELF-INCRIMINATION AND THE RIGHT TO SILENCE - *Violation of Article 6(1)* - **Zaichenko v. Russia, 18 February 2010, ECtHR, App no 39660/02**

V PROCEDURAL RIGHTS AT TRIAL

1. **The right to be tried in presence and participate in process** - *Violation of Article 6* - **Sejdovic v. Italy, 1 March 2006, ECtHR [Grand Chamber], App no 56581/00**

2.**The right to equality of arms in calling and examining witnesses** - *Violation of Article 6(3)(d)* - **Polyakov v. Russia, 29 January 2009, ECtHR, App no 77018/01**

V. THE RIGHT TO FREE INTERPRETATION AND TRANSLATION OF DOCUMENTS - *No violation of Article 6(3)(a)* - **Kamasinski v. Austria , 19 December 1989, ECtHR, App no 9783/**

Admission of evidence obtained illegally (fruit of the poisonous tree) - CASE OF GÄFGEN v. GERMANY, Judgment 1 June 2010 (Application no. 22978/05)

Exercise Nine:

1. suffocating
2. surveillance
3. instructed
4. abuse
5. reveal
6. examination
7. tracks
8. trace
9. aimed
10. allegations
11. prior
12. excluded
13. remorse
14. extortion
15. incited
16. mitigating

European Arrest Warrant (rights of a requested person, specialty principle, possible prosecution for other offences) – practical approach

Exercise Ten

delivery (announcement)	date
make	statement
file	motions (complaint)
grant	consent
cease	to exist
detention	report
consular	office
temporary	arrest
closest	person

Exercise Eleven

1. detention
2. immediately
3. report
4. closest
5. consular
6. complaint
7. ceased
8. motion
9. content
10. statement
11. grant
12. revoked
13. file
14. announcement
15. apply
16. transfer

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KEY TERMS

(English key term – English definition – translation of a key term to Polish)

GLOSSARY – the Polish contribution to a single Glossary of legal terms used in EU criminal legislation. The definitions provided rely on: Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, Directive 2013/48/EU of the European Parliament on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and communicate with third person, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Convention for the Protection of Human Rights and Fundamental Freedoms (213 U.N.T.S. 222, entered into force Sept. 3, 1953), Polish Code of Criminal Procedures

inadmissible evidence (dowody niedopuszczalne) evidence, which according to established legal principles cannot be received into evidence at a trial for consideration by a judge or a jury in deciding the merits of a case; the admissibility of evidence is determined by rules of evidence, which vary by jurisdiction and it is the judge's duty to apply these rules in the case at hand; the evidence cannot be presented at a trial for a variety of reasons, for example – because it was improperly obtained, it is prejudicial, it is hearsay, it is not relevant to the case or it was gathered using illegal methods.

fruit of the poisonous tree – (owoce zatrutego drzewa) - is a legal metaphor used to describe evidence that is obtained illegally; the logic of the terminology is that if the source (the "tree") of the evidence or evidence itself is tainted, then anything gained (the "fruit") from it is tainted as well; such evidence is not generally admissible in court; the 'fruit of the poisonous tree' doctrine is an offspring of the 'exclusionary rule' which mandates that evidence obtained from an illegal arrest, unreasonable search, or coercive interrogation must be excluded from trial; under the fruit of the poisonous tree doctrine, evidence is also excluded from trial if it was gained through evidence uncovered in an illegal arrest, unreasonable search or coercive interrogation; both the law of exclusion and the fruit of a poisonous tree doctrine were created to discourage law enforcement officials from using illegal activities in efforts to obtain evidence; This doctrine was also used by the European Court of Human Rights in Gafgen v. Germany.

Self-incrimination (*samooskarżenie, dostarczenie dowodów na swoją niekorzyść***)** - is the act of exposing oneself (generally, by making a statement) to an accusation or charge of crime; an incriminating statement includes any statement that tends to increase the danger that the person making the statement will be accused, charged or prosecuted – even if the statement is true, and even if the person is innocent of any crime; in many legal systems, accused criminals cannot be compelled to incriminate themselves - they may choose to speak to police or other authorities, but they cannot be punished for refusing to do so.

the right to remain silent is a legal right recognized, explicitly or by convention, in many of the world's legal systems, the right covers a number of issues centered on the right of the accused or

the defendant to refuse to comment or provide an answer when questioned, either prior to or during legal proceedings in a court of law, in the United States, informing suspects of their right to remain silent and of the consequences for giving up that right forms a key part of the Miranda warning

Miranda rights (the Miranda warning) (prawo 'Mirandy', prawo do milczenia) – warning given by police in the United States to criminal suspects in police custody (or in a custodial interrogation) before they are interrogated to preserve the admissibility of their statements against them in criminal proceedings; the Miranda warning is part of a preventive criminal procedure rule that law enforcement are required to administer to protect an individual who is in custody and subject to direct questioning or its functional equivalent from a violation of his or her Fifth Amendment right against compelled self-incrimination; in Miranda v. Arizona the Supreme Court held that the admission of an elicited incriminating statement by a suspect not informed of these rights violates the Fifth Amendment and the Sixth Amendment right to counsel, through the incorporation of these rights into state law; thus, if law enforcement officials decline to offer a Miranda warning to an individual in their custody, they may interrogate that person and act upon the knowledge gained, but may not use that person's statements as evidence against him or her in a criminal trial.

minutes of the hearing (protokół z przesłuchania) (**also record in writing**) - minutes are an official written record of the proceedings of a meeting or hearing; minutes usually include : the designation of the action taken, the time and the place of the conduct thereof, the identity of the persons participating in it, the conduct of the procedural action and the statements and motions made by participants, orders and rulings issued in the course of the procedural action, statements of other circumstances concerning it; under provisions of some states taking the minutes of some procedural actions is mandatory; under Polish provisions record in writing is required inter alia of information received orally with respect to a criminal offence, of a motion for prosecution or its withdrawal, of the questioning of the accused (suspect), witness, expert witness, and probation officer, of an inspection, of an autopsy of a corpse, of the conduct of an experiment, a confrontation, and an identification, of searches of persons, premises, of the final presentation to the suspect, the injured, and defence counsel and attorneys of materials collected in investigation, of the course of the trial.

order (decision) on presenting the charges (postanowienie o przedstawieniu zarzutów) – a formal charging decision which is issued by an authority conducting preparatory proceedings (i.e. prosecutor, police officer) by which a certain person is formally designated as a suspect; under Polish provisions an order on presenting charges is drawn up if the data existing at the time of the institution of an investigation or inquiry or collected during their course contains grounds sufficient to suspect that an act has been committed by a specified person and it should specify the identity of the suspect, detailed data on the alleged act (with an indication of the time, place, manner and circumstances related to its commission as well as of the consequences, and particularly of the value of the resulting damage) and the legal classification of the offence; a decision on the presentation of the charges shall be announced without delay to the suspect, who shall then be subjected to questioning, unless the announcement of the decision and the questioning of the suspect are impossible because the suspect is hiding or is staying abroad; the suspect may request, before they are given notice of the date on which they may review the materials of the principal investigation, that they be given an oral presentation of the grounds for the charges, and that a statement of reasons be prepared in writing, of which they shall be

advised; the statement of reasons for such an order should in particular, indicate what facts and evidence were adopted as the grounds for the charges.

plea bargaining (negocjacje dotyczące przyznania się do winy i poddania karze) (also **plea agreement**, **plea deal**, **or plea in mitigation**) is a criminal proceeding arising from the Anglo-American judicial establishment that requires a pragmatic attribution of criminal responsibility for a person who committed one or more crimes, in the sense that both the prosecutor and the Defense, taking into the specific circumstances of the case, reach a mutually beneficial agreement, according to which the defendant accepts a self-incrimination while the prosecutor ensures a more convenient penalty than that the defendant would expect, if found guilty at the final judgment; a plea bargaining allows both parties to avoid a lengthy criminal trial but the agreement must be approved by the court; in exchange for the defendant's admission of the alleged facts, the prosecutor may waive some charges in exchange for the defendant's admission of committing others, he may offer a reduced penalty or lighter modes or less coercive forms of penalty enforcement

conviction without a trial *(skazanie bez przeprowadzenia procesu)* – one of modes of consensual resolution of criminal proceedings laid down in The Polish Code of Criminal Procedure (art. 335 CCP); it is an institution under which a suspect and prosecutor may at the stage of preparatory proceedings, enter into a settlement concerning the type and measure of penalty and other criminal sanctions and the payment of costs of proceedings; if an agreement is reached, the prosecutor will refer the case to the court that will deliver a conviction without conducting a trial and evidentiary proceedings, provided that the circumstances of committing an offence do not cause any doubts and the conduct of the defendant shows that objectives of the proceedings will be attained; the defendant, in return for cooperation with judicial bodies, can hope for mitigation of penalties and other means of criminal sanctions they may face, however, the Polish Code of Criminal Procedure, does not provide for any rigid rules in this regard (e.g. mitigation of penalties to the extent stipulated by statute); the measure of penal sanctions is determined through negotiations between prosecutor and a defendant, though, the statutory threat of punishment laid down in a penal law is binding; the institution of conviction without a trial could be applied in cases involving all offences with exception of felonies (acts involving penalty of deprivation of liberty for a period of no less than 3 years or with a more severe penalty)

voluntary submission to criminal liability *(dobrowolne poddanie się odpowiedzialności karnej)* the second mode of consensual resolution of criminal proceedings laid down in The Polish Code of Criminal Procedure (art.387 CCP); it is an institution which enables the defendant to file a motion for conviction and imposing a specific penalty without conducting an evidentiary hearing until the termination of the first questioning of all the accused at the first trial in court; the Court may consider this motion if the circumstances in which the offence was committed arise no doubts and the objectives of the proceedings will be accomplished despite the fact that a full trial has not been conducted; granting of the motion is possible only when the public prosecutor, as well as the injured duly informed about the date of the trial and advised of the possibility of submission of such a motion by the accused, do not object to that; the institution of conviction voluntary submission to criminal liability without a trial could be applied in cases involving a sentence of up to 15 years of deprivation of liberty

specialty principle (zasada specjalności) - a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered (a principle laid down in article 27.2 of European Arrest Warrant Framework Decision, exceptions from this principle are prescribed in article 27.3 of EAW FD