



KOPEĆ & ZABOROWSKI

LAW FIRM

Guideline



ARREST

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ARREST

In Polish criminal law, arrest can be divided into three primary categories:

- I. Citizen's arrest;
- II. Arrest by the Police
- III. Arrest by the prosecutor/procedural arrest.

Arrest, regardless of how it was conducted, is one of the coercive measures in Polish criminal procedure. It always involves a short-term deprivation of liberty of the person arrested for a purpose and in a manner permitted by law. Arresting means depriving an arrested person of the right to move freely and to communicate with others, as well as prohibiting such a person from receiving or transferring any items without the authorization of the competent authority and subordinating this person to instructions and orders of such authority. Arrested persons are usually placed in isolation and cannot freely dispose of themselves or take actions in accordance with their will.

CITIZEN'S ARREST

The first category of arrest is the so-called "citizen's arrest," regulated in **Article 243 of the Code of Criminal Procedure**. A citizen's arrest may be made by any person who witnesses a crime. Detaining a person by a citizen's arrest is the right of every individual (regardless of citizenship, function and relationship with the perpetrator), and not only onto the victim of the crime. It should be emphasized that a citizen's arrest is not an obligation, but the right of a person who witnesses a crime. Therefore, a witness of a crime will not be subject to any criminal penalty for failing to take such a step.

A citizen's arrest involves apprehending a person red-handed or in a pursuit immediately after committing a crime when the apprehending person is concerned that the person committing the crime may be hiding or evading the legal consequences of the crime or the identity of the person committing the crime cannot be established.



It is a duty of the person making the arrest to immediately, i.e. without undue delay, hand over the person arrested to the Police.

A citizen's arrest is permissible when it occurs in the act or in a pursuit immediately after a crime was committed. The above clearly indicates that it is possible when the crime is obvious, i.e. when the suspicion of committing a crime is near to certainty.

The ways of approaching a person to be arrested may be different. Arresting is not only capturing a person and handing them over to the Police. The list of activities connected with arresting is not closed-ended. It may also involve locking the perpetrator in the room they broke into and calling the Police.

If a person being arrested puts up resistance, it is permissible to use physical force to the extent needed to arrest them, i.e. sufficient to effectively carry out the arrest. The use of physical force may include, among other things, holding down a person trying to escape from the crime scene.

The person making an arrest is obliged to hand over the person captured to the Police, and therefore it is necessary to detain the arrested person until the services arrive. The duration of detention of an arrested person is not precisely defined. It is supposed to last only as long as it takes to hand over the arrested person to the Police. This deadline is determined by the actual possibilities of fulfilling this obligation.

A citizen's arrest should be distinguished, first of all, from arrests made by authorized officers. For example, the arrest of a person red-handed by a forest guard, security guard, railway security guard, etc. while performing their duties will not be considered a citizen's arrest.

Therefore, a citizen's arrest is the arrest of a person in the act or in pursuit immediately after committing a crime by a third party who has no official authority in this regard.



ARREST BY THE POLICE

The second category of arrest is arrest by the Police, regulated in Article 244 of the Code of Criminal Procedure. Even if the regulations say about the Police as an authority authorized to make a proper arrest, this authorization has been granted to other authorities, such as the Border Guard, Internal Security Agency, National Tax Administration, Central Anticorruption Bureau, Military Police within the scope of the competences of these services, as well as the authorities indicated by specific regulations.

An arrest is made when the conditions for it are met. The arrest by the Police can be optional and compulsory.

The grounds for the optional arrest of a suspect can be divided into evidential grounds and special grounds. **Only their joint fulfillment makes an arrest justified and legal.**

The evidential ground is to demonstrate the existence of a "reasonable suspicion" that the arrested person has committed a crime. The degree of this assumption is lower than that required to initiate an investigation and lower than necessary to charge a crime.

There are three special grounds:

- fear that the suspect may escape or hide or that any traces of the crime will be obliterated, or that the suspect will be impossible to identify;
- there are grounds for expedited proceedings against the suspected person;
- A violent crime has been committed against a person living together and the suspect will likely commit the crime again, especially if the suspect has threatened to commit such a crime.

For arrest to be obligatory, the following conditions must be met:

- evidential condition, i.e. there is a justified assumption that a violent crime has been committed to the detriment of a person living together, and a violent crime will likely be committed again against this person;
- specific condition, i.e. a violent crime has been committed to the detriment of a person living together, using a firearm, knife, or other dangerous object, and there is a real fear that the suspect will again commit a violent crime against a person living together, especially when the suspect has made such threats.

An additional category of arrest postulated in the doctrine **is the so-called preventive arrest**. In practice, it involves arresting a person not only when there is a reasonable suspicion that he or she has committed a crime, but also to prevent such a person from committing a prohibited act.

Immediately after arresting a person, the arresting authority should start collecting the necessary data relevant to further proceedings and notify the prosecutor about the arrest.

An essential element of the arrest is the preparation of a report which should confirm the correctness of the arrest. The report should include, first of all, the name, surname, and function of the person performing this activity, the name and surname of the arrested person, and if it is impossible to determine his or her identity - his or her description as well as the day, time, place and reason for arrest, including the crime this person is suspected of committing. The report should also include a statement made by the arrested person and information that this person was informed about his or her rights.

A copy of the report should be handed over to the arrested person.



In practice, a situation may arise in which no report has been prepared. Despite this failure, **the arrest has procedural consequences resulting from the nature of this activity**. The lack of an arrest report constitutes a very serious obstacle to determining critical issues such as the actual time of arrest and the information provided to the arrested person about his or her rights.

ARREST BY THE PROSECUTOR/PROCEDURAL ARREST

An arrest by the prosecutor is procedural in nature and **may apply to both a suspected person and a suspect**. This type of arrest involves the forcible bringing of the arrested person.

The prosecutor's decision to arrest and forcibly bring a suspect or suspected person takes the form of an order, which results directly from the wording of the relevant provision.

For the decision of the prosecutor or the competent authority to arrest and forcibly bring a person to be justified and lawful, apart from the evidential basis, at least one of the specific conditions justifying the arrest must be met. For the validity and lawfulness of the arrest, both conditions must be met jointly. Article 247 § 1 and 2 set out independent grounds for the arrest by the prosecutor. The authority is not bound by the substantive grounds for arrest specified in Article 244 § 1-1b (regulating the arrest by the Police).

The first special condition **is a justified fear that a suspected person or suspect will not appear when summoned to present a charge** and be questioned as a suspect, or to issue a new decision to present charges and interrogate the suspect, or to carry out an inspection, examination or other activities such as external examination of the body, psychological and psychiatric tests, and taking a swab from the cheek mucosa by a Police officer.

The second condition occurs when a suspect or suspected person may obstruct the proceedings in another unlawful way, and the list of possible obstructions to the proceedings is not exhaustive.



The prosecutor's order **is executed by the Police or the Border Guard**, the Internal Security Agency, the National Tax Administration, the Central Anticorruption Bureau, and the Military Police, within the scope of their authorizations, and other bodies identified by specific regulations. These other authorities have such power within their jurisdiction only if the law empowers them to arrest a person.

Immediately after a person is arrested, the procedural activities for which this person was arrested should be conducted. After performing the above-mentioned activities, the arrested person should be released, unless there is a need to apply a preventive measure, e.g. provisional arrest.

As in the case of arrest by the Police, a report is prepared on the procedural arrest.

INSTRUCTION

An important element of arrest, regardless of whether it is an arrest by the Police or a procedural arrest, is **the obligation of the arresting authority to properly advise the arrested person**. The arrested person should be immediately informed about the reasons for arrest and his or her rights, including in particular the right to use the assistance of a lawyer or legal advisor, to use free assistance of an interpreter if the arrested person does not have a sufficient command of the Polish language, to submit a statement and to refuse to make a statement, to receive a copy of the arrest report, to have access to first medical aid, to contact a lawyer or legal advisor and to talk to him or her directly, to file a complaint to the court against arrest, to contact the appropriate consular office or diplomatic mission, in the case of arrest a foreigner, to be immediately released when the reasons for arrest cease to exist, and also **if within 48 hours of being arrested** he or she is not placed at the disposal of the court together with a request for provisional arrest, to be released if he or she does not receive a decision about provisional arrest **within 24 hours of being placed at the disposal of the court**, and to be heard.

Additionally, following items 2 and 3 of Article 41 of the Constitution of the Republic of Poland, every arrested person has the right to immediately notify his or her family or a designated person.

THE RIGHT OF AN ARRESTED PERSON TO USE THE ASSISTANCE OF AN ATTORNEY OR LEGAL ADVISOR

Apart from the inconvenience related to the nature of such activity itself, **an arrested person has also certain rights which include the use of the assistance of an attorney or legal advisor**, as regulated in Article 245 of the Code of Criminal Procedure. At his or her request, the arrested person should be immediately allowed to contact an attorney or legal advisor in an available form, as well as to talk to them directly. In exceptional cases, justified by extraordinary circumstances, the person who made the arrest may reserve the right to be present during such talks.

In order to enable the accused person to use the assistance of a defense counsel in expedited proceedings, an obligation for attorneys and legal advisors to be on duty has been established. The arrested person may then use the assistance of an on-duty attorney or legal advisor during the arrest.

COMPLAINT

According to **Article 246 of the Code of Criminal Procedure**, an arrested person has the right to lodge a complaint with the court against the arrest. In such a complaint, the arrested person may demand that the validity, lawfulness, and correctness of the arrest be examined.

Pursuant to the above-mentioned provision, both the submission of the complaint to the court and the examination of the complaint by the court takes place without delay. **This means that all activities should be undertaken as quickly as possible, without undue delay.**



Pursuant to the rules of criminal procedure, **the deadline for filing a complaint is 7 days from the delivery of a copy of the arrest report to the arrested person.** The complaint is submitted through the arresting authority, which should immediately forward the complaint together with the case files to the court. The district court having jurisdiction over the place of arrest or the place of proceedings in which the complainant was arrested is competent to hear a complaint against arrest (so-called alternating jurisdiction). **The court hears the complaint in a single-member panel.**

In practice, due to the fact that all activities related to the transfer and examination of the complaint are undertaken immediately, a complaint against arrest should be forwarded for examination to the court that can ensure its immediate examination.

In view of the above, it should be recognized that time is important from the practical point of view and the perspective of the procedural situation of the arrested person. As indicated above, all activities related to the arrest and the examination of the complaint are undertaken immediately, which directly affects the current situation of the arrested person.

After examining the complaint, the court issues a decision. As a result of examining the complaint, the district court may:

- order the immediate release of the arrested person - if the arrest is found to be groundless or illegal;
- notify the prosecutor and the authority superior to the authority that arrested if the arrest is found to be groundless, illegal, or made incorrectly;
- disregard the complaint if it is found that the arrest was justified, lawful, and properly made.



It should also be noted that a complaint against arrest **will also be examined when the arrested person is released before such examination.** According to the Supreme Court's view, the court hearing a complaint decides to uphold or repeal the contested decision whether the complainant is actually deprived of liberty under arrest or is at large. In the second case, the court concludes ex-post that the arrest was groundless or that the law was violated during the execution of the arrest.

COMPENSATION FOR UNDOUBTEDLY UNJUST ARREST

Pursuant to Article 552 § 4 of the Code of Criminal Procedure, a person who, beyond doubt, was arrested unjustly is entitled to compensation and redress.

In order for an arrest to be considered undoubtedly unjust, the use of this type of coercive measure must take place in a situation where there were no justifiable reasons or no grounds were present. In other words, undoubtedly unjust arrest is a groundless arrest, i.e. not based on evidence that such a measure was necessary.

Moreover, for an arrest to be considered undoubtedly unfair, it must cause pain that the injured party should not have suffered.

Obtaining compensation does not exclude the possibility of obtaining redress. A necessary condition for obtaining redress is that the person wrongly arrested has suffered harm. The specific amount of redress is determined based on the individual circumstances of the case, such as the time of arrest, the behavior of officers while performing activities, or the conditions in which the unjustly arrested person was kept.

IN MATTERS RELATED TO ARREST, KOPEĆ & ZABOROWSKI LAW FIRM PROVIDES THE FOLLOWING SERVICES:

- detailed discussion of arrest, its admissibility, scope of application and resulting rights and obligations of the arrested person;
- analysis of the legal and actual situation of the arrested person, including the validity and lawfulness of activities conducted in connection with arrest;
- contacts of the arrested persons with a professional attorney/defense counsel;
- contact with the prosecutor overseeing the case and determination of the grounds and justification for the arrest;
- preparation of a complaint against the arrest warrant issued by the competent authority, in which you can demand examination of the justification, lawfulness and correctness of arrest;
- active participation in the court session to examine a complaint against arrest;
- preparation of a request for compensation or redress for unjust arrest.



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