



KOPEĆ & ZABOROWSKI

LAW FIRM

# Guideline

# SAFE CONDUCT LETTER

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## WHAT IS A SAFE CONDUCT LETTER?

This is a **special document** (a ruling issued by a court) under which the defendant (suspect) remains at large until the final conclusion of criminal proceedings if he or she meets the conditions specified by the applicable Act of Parliament. After a safe conduct letter is issued, the person it protects may not be deprived of liberty in any form, e.g. as a result of detention, detention, and forcible bringing to court or prosecutor or provisional arrest in the case in which the safe conduct was issued.

The procedure for issuing a safe conduct letter and the formal requirements to issue such a document are regulated by Articles 281-284a of the Polish Code of Criminal Procedure.

## WHO MAY APPLY FOR A SAFE CONDUCT LETTER?

You may apply for a safe conduct letter **both at the stage of preparatory proceedings (against the suspect) and during court proceedings (against the defendant)**. It is important to note that a safe-conduct letter can only be issued to a person who has already been charged in the proceedings.

At the stage of preparatory proceedings, an application for a safe conduct letter may be submitted by the prosecutor, as well as by the suspect and his defense attorney. In the latter case, there is a condition that the prosecutor does not object to the submitted application.

At the stage of court proceedings, the proceedings for issuing a safe conduct letter are initiated by either the court or the suspect and his defense attorney.

A safe conduct letter **may be requested for a Polish citizen**, a citizen of another country, or a person without any citizenship.



## WHAT CONDITIONS MUST BE MET FOR A SAFE CONDUCT LETTER TO BE ISSUED?

In order for a safe conduct letter to be issued, the person against whom criminal proceedings are pending (suspect or defendant):

- must stay outside Poland (regardless of whether this stay is permanent or temporary and what its grounds are);
- must submit a statement that he or she will appear on a specified date at the request of the court, and in preparatory proceedings also at the request of the prosecutor (in practice, such a statement is usually a document in writing attached to the submitted application);
- will return to Poland, choose a place of stay in Poland, and will not leave it without the court's permission;
- will not induce false testimony or explanations and will not attempt to obstruct criminal proceedings in any other unlawful manner.

## COMPETENT COURT

The issuance of a safe conduct letter, both in preparatory and court proceedings, is decided by the competent regional court. It is the regional court having jurisdiction over the region where the case in which the safe conduct letter is to be issued to the suspect or defendant is to be heard (for a case at the preparatory stage) or is being heard (for a case at the judicial stage). Therefore, it should be noted that if the case is already at the court stage and is pending before a regional court, an appellate court or the Supreme Court, the competent regional court will still decide whether or not the safe conduct letter is to be issued.

## BAIL BOND

An application for a safe conduct letter is **free of court fees**. However, it should be noted that in some cases the court may make a safe conduct letter conditional on submitting a bail bond. In such a situation, the procedure for issuing a safe conduct letter is a two-stage process. First, the court issues an order specifying the amount, type and conditions of the bail bond and the deadline for submitting the bail bond, and only after the bail bond is submitted the regional court issues the safe conduct letter as an order.

## SCOPE OF A SAFE CONDUCT LETTER

A safe conduct letter may only be issued for one ongoing proceeding against a suspect or defendant person. However, it is possible to issue more than one safe conduct letter to the same person in various proceedings.

A safe conduct letter has effects only in the proceedings in which it is used. This means that **if several proceedings are pending against the defendant at the same time, and a safe conduct letter was issued in only one of them, the defendant's detention and provisional arrest are permissible in the remaining proceedings**. In addition, it does not cover cases in which a final conviction judgment has been issued.

## CANCELLATION OF A SAFE CONDUCT LETTER

A safe conduct letter is a guarantee that the suspect (defendant) will remain free until the final conclusion of the proceedings. However, the Court will revoke the safe conduct letter if the person it protects has:

- violated at least one of the conditions specified in Article 282 § 1 of the Code of Criminal Procedure, i.e. leaved the chosen place of stay in Poland, indicated to the court, without permission; induced false testimony or explanations or otherwise unlawfully obstructed criminal proceedings;
- failed to appear without justification when summoned by the court or prosecutor.



In such a situation, the guarantees provided by the safe conduct letter cease to apply and **the defendant/suspect may be detained, detained and forcibly brought to court** or prosecutor or temporarily arrested in the case.

Moreover, if a bail bond has been provided in a case and the safe conduct letter is revoked, the submitted assets are subject to forfeiture or enforcement.

## SAFE CONDUCT LETTER IN THE EVENT OF PROVISIONAL ARREST AND THE EUROPEAN ARREST WARRANT

A safe conduct letter may not be issued for a defendant for whom extradition has been requested. The same applies **if a European Arrest Warrant has been issued**.

If, after submitting an extradition request or issuing a European Arrest Warrant, the defendant applies for a safe conduct letter, there are no obstacles to withdrawing the extradition request, revoking the European Arrest Application or lifting the provisional arrest and, then, issuing the requested safe conduct letter. For the same reasons, **the extradition of a defendant who has received a safe conduct letter may not be requested**; in such a case, the court's order to issue this safe conduct letter prevents provisional arrest from being applied, and the extradition request may not be filed without such arrest.

It was considered permissible to issue a safe conduct letter if the provisional arrest, **European Arrest Warrant** or extradition imposed in the same case is revoked. A court that intends to issue a safe conduct letter for a person subject to an isolation or search measure must either request the relevant court to revoke such preventive measure, including search measures, or make such a procedural decision itself. **This is also possible due to the subject-matter jurisdiction of the regional court adjudicating on the European Arrest Warrant or extradition and safe conduct letter.**

Article 281 § 4 of the Code of Criminal Procedure **sets out that the court when issuing a safe conduct letter, must revoke provisional arrest if this preventive measure has already been applied in the case.** However, the decision to lift such provisional arrest becomes enforceable only on the day the order to issue the safe conduct letter becomes final.

## COMPLAINT

A complaint may be filed against the court's order:

- approving a request to issue a safe conduct letter;
- refusing a request to issue a safe conduct letter;
- revoking a safe conduct letter;
- ordering the forfeiture or enforcement of assets submitted as a bail bond.

A complaint will be examined by the court of appeal.

## SAFE CONDUCT LETTER AND THE CONCLUSION OF THE PROCEEDINGS

When a safe conduct letter ceases to be valid (i.e. after the final conclusion of the proceedings), the defendant ceases to benefit from the guarantees provided by it. However, if a cassation appeal is filed and, as a result, the judgment is reversed and the case is returned for reexamination, the letter will be "renewed." The case starts anew, so the defendant has full rights under this letter. No new order is required to issue a safe conduct letter.



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