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Statement for Parallel Session 1: "Pre-trial detention: too frequent? Too long? Which alternatives?" – Maria Ejchart / case study from Poland

Ladies and Gentlemen,

I would like to present the Polish experience from three perspectives: **where we stand today, what we have learned from the case-law of the European Court of Human Rights, and what we are doing to make alternatives to detention more effective in practice**.

Let me begin with the current situation that puts pre-trial detention in Poland in perspective: the proportion of pre-trial detainees in the overall prison population. As of 25 September 2026, 8,158 persons were held in pre-trial detention. They represented 11.65% of the total population held in penitentiary units. This proportion has remained broadly stable for approximately a decade.

The wider prison situation has also changed. In September 2026, the official occupancy rate was 82.40%, with 70,045 persons held in prisons and remand centres. This is very different from the past, when Poland faced systemic overcrowding.

Occupancy below official capacity does not mean that all European standards have been achieved. The statutory minimum living space remains 3 square metres per prisoner. That means that if we were to apply current numbers rates to the prison's living area, we would have the occupancy rate of 118%. We are gradually moving towards the CPT standard of 4 square metres in multiple-occupancy cells. We have achieved that in 20% of our cells.

To understand fully the situation in Poland today, it is worth looking back at the challenges we have faced over the past three decades and the measures that have helped us achieve the results we see today.

In 1997, there were 13,864 people in pre-trial detention in Poland, representing 24% of the prison population. In 1998, the figure was 13,334, or 22.9%, and in 1999 it was 13,059, or 23.6%. The trend then changed sharply. In 2001, the average annual number of people in pre-trial detention reached approximately 24,300, accounting for 30.8% of all prisoners.

This was a particularly important point in the history of pre-trial detention in Poland. Excessively lengthy detention and insufficient procedural safeguards became significant issues in the case-law of the European Court of Human Rights.

After 2001, the long-term trend gradually began to reverse. By 2013, the proportion of people in pre-trial detention had fallen to 8.1% of the prison population. In 2015 and 2016, it fell further, to 6.9%. In 2016, the number of people in pre-trial detention stood at 4,917 — almost 80% fewer than in 2001.

The decline was not linear or irreversible. After reaching its lowest point in 2015, the number of pre-trial detainees increased again, reaching 7,697 in 2025, representing 11% of all prisoners.

Pre-trial detention also contributed to wider pressure on the prison system. Between 2001 and 2009, national occupancy remained above official capacity, peaking at almost 120% in 2006. Poland responded both by reducing the prison population and by increasing capacity. Since 2010, the nationwide occupancy rate has remained below 100%, and it currently stands at around 82%.

How was this achieved? Like in every complex system – there is no single cause. Legislation changed, but so did the practice of courts and prosecutors. Judgments of the European Court of Human Rights and rulings of our Constitutional Tribunal also played an important role.

Between 2022 and 2026, the European Court of Human Rights delivered 14 judgments finding violations of Article 5 § 3 of the Convention in Polish cases, concerning 17 individuals.. In nine cases, pre-trial detention exceeded three years. In four cases it exceeded four years. In one case it exceeded six years.

The Court's concerns have focused particularly on prolonged detention supported by reasons that were no longer sufficiently concrete and individualised. The weight given to the severity of the potential sentence as a sole basis of arrest has also been an important issue.

The Strasbourg case-law therefore shows us where attention is most needed: not only when detention is first ordered, but particularly when it is repeatedly extended.

This diagnosis has shaped measures taken in Poland.

Cases in which pre-trial detention exceeds two years are subject to administrative monitoring by the Minister of Justice. This does not concern the

merits of judicial decisions but allows us to identify the scale and duration of particularly long detention.

Another part of the response is to make Convention standards accessible to those who apply them. Judgments of the European Court of Human Rights are translated and disseminated among practitioners.

The National School of Judiciary and Public Prosecution provides training on pre-trial detention, non-custodial preventive measures and European human rights standards for judges, prosecutors and future judges and prosecutors.

Earlier this month, Council of Europe experts presented a detention checklist to Poland's network of judges-coordinators. This provides a practical tool for applying Convention standards when ordering and extending detention.

The concerns identified by the European Court of Human Rights also require us to examine whether the law itself gives courts the appropriate framework for deciding when detention is necessary and when it must end. We have taken the Court's findings as a reason to act.

The Polish Code of Criminal Procedure has been amended on several occasions in the area of pre-trial detention, to a large extent in response to the case-law of the European Court of Human Rights.

For example, legislation adopted in 2013 strengthened access to evidence supporting detention applications. Further provisions, effective from July 2015, required prosecutors to specify the evidence and procedural risks supporting their applications, and courts to explain why detention was necessary and another measure would not suffice.

This process is continuing. The Ministry of Justice prepared a further reform of pre-trial detention which was adopted by Parliament but did not enter into force following a presidential veto in March 2026. The reform sought to make pre-trial detention more exceptional, particularly by limiting reliance on the severity of the potential sentence and requiring closer scrutiny of whether continued detention remained necessary. Legislative work is now continuing on three proposals – one presidential and two parliamentary proposals.

The direction of the reform is important. One proposed change is to limit the role of the severity of the potential sentence as a basis for detention. The threshold at which the severity of the possible sentence may be taken into account would be raised from offences punishable by a maximum of at least eight years' imprisonment to those punishable by at least ten years' imprisonment.

At the same time, the general threshold below which pre-trial detention should not be applied would be raised from offences punishable by up to one year of imprisonment to offences punishable by up to two years. This would increase the number of less serious offences for which detention would, as a rule, not be available.

Legislative change alone will not solve the problem. A court deciding whether detention is necessary must have credible alternatives available. Polish law already provides a broad range of non-custodial preventive measures, including bail, police supervision, reporting obligations, restrictions on movement and contacts, and travel bans.

In cross-border cases, another instrument – implemented by Poland – is available: the European Supervision Order. This is particularly relevant when the accused lives in another Member State. It allows supervision measures to be transferred to and executed in that state instead of treating the person's foreign residence as a practical obstacle to supervision.

At the same time, further measures proposed by the government fill an important gap in the current Polish system.

Traditional non-custodial measures may sometimes be considered insufficient to manage the identified risk, while detention in a remand prison may be more restrictive than necessary.

The Ministry of Justice has therefore prepared a proposal for a new preventive measure – electronic arrest. It would allow an accused person to remain at a designated place of residence under electronic supervision and would provide an intermediate measure between traditional non-custodial supervision and detention in a remand prison.

An important element of the proposal is that, when requesting or ordering pre-trial detention, it would be necessary to explain why electronic arrest would not be sufficient. This could make the consideration of alternatives a much more concrete part of the decision-making process.

However, we are very conscious of the risk of "net-widening". Electronic arrest should be used for a person who would otherwise be detained – not as an additional restriction on someone who could safely remain subject to a less intensive measure.

Poland already has considerable experience on which this new instrument can build. Electronic monitoring is widely used in the execution of custodial

sentences outside prison, and approximately 90% of persons admitted to the system complete their sentence without revocation of the authorisation.

I mention them because they demonstrate that Poland already has substantial institutional experience in managing criminal justice risks outside prison. The challenge now is to make fuller use of that experience at the pre-trial stage.

The Polish experience leads me to one conclusion.

A modern system of pre-trial detention cannot be assessed only by asking how many people are detained. We must also ask for how long, for what reasons, and whether the purpose of detention could be achieved by a less restrictive measure.

The objective is not to weaken the effectiveness of criminal proceedings. It is to protect that effectiveness with no more interference with personal liberty than is necessary.

That, in our view, is the balance that Article 5 of the Convention requires – and the balance that we are working to achieve.