

# EU wide Letter of Rights

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# **EU–Wide Letter of Rights in Criminal Proceedings: Towards Best Practice**

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**Final report July 2010**

**Electronic version of the complete report is available on:**  
<http://arno.unimaas.nl/show.cgi?did=24161>



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## **Preface and acknowledgments**

This report presents the results of the research project '*EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice*' that aims to obtain up-to-date information on the way suspects in the EU Member States are informed in writing of their rights in criminal proceedings and to develop a model for an EU-wide Letter of Rights. The project, initiated by the Federal Ministry of Justice of Germany, received a grant from the European Commission provided by the Specific Programme on 'Criminal Justice' in 2008. The project could not have been conducted without the generous financial support both of the Federal Ministry of Justice of Germany and the European Commission.

The research has been carried out by Prof. dr. Taru Spronken, Maastricht University, with the assistance of Liesbeth Baetens, Junior Researcher, Maastricht University and Anna Berlee, Student-Assistant, Maastricht University.

Other partners to the project are the Ministry of Justice Austria, the Council of Europe the European Criminal Bar Association and the Deutscher Richterbund.

The project advisory board provided valuable feedback and encouraged critical reflection during the research. The Advisory Board included: Stefan Caspari and Peter Schneiderhan (Deutsche Richterbund), Carlo Chiaromonte (Council of Europe), Holger Matt (European Criminal Bar Association), Christian Pilnacek (Austrian Ministry of Justice), Signe Ohman (Swedish Ministry of Justice), Nóra Kovács (Hungarian Ministry of Justice), Vicky De Souter (Belgian Ministry of Justice), Caroline Morgan (European Commission), and Eberhardt Siegismund, Birgit Hufeld, Karin Bilda, Martina Peter, Angelika Wingenfeld, Anne Zimmerman (German Federal Ministry of Justice).

The research started in 2009 and the report was finalised in July 2010. The results of the research are presented at a workshop in Berlin, Germany on 6 September 2010, to which experts in the field and representatives of each of the Member States were invited.

At the time the results of this study were finalised, the European Commission presented a Directive on the right to information in criminal proceedings on 20 July 2010 including an indicative Model Letter of Rights that is inspired on the model developed in this study. Hopefully this research will provide a valuable source of information and analysis to contribute to the process to adequately inform all persons that are arrested and detained in the EU of their fundamental rights.

July 2010

Taru Spronken

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## Chapter 1 Introduction and background

### 1.1. *The power of knowledge*

Everybody who is arrested or questioned by the police on suspicion of involvement in a criminal activity has certain rights, such as the right to remain silent or to consult a lawyer. Persons questioned by the police often find themselves in a particularly vulnerable position at early stages in the proceedings, the effect of which is augmented when one is not aware of his or her rights. In the *Dayanan* case the European Court of Human Rights ('ECtHR') held that the fairness of proceedings against an accused person in police custody requires that he be able to obtain the whole range of services associated with legal assistance: discussion of the case, organisation of the defence, collection of evidence, preparation for questioning, support to an accused in distress, and checking of the conditions of detention.<sup>1</sup> These rights presuppose that the prosecution in a criminal case seeks to prove its case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. When suspects or charged individuals are not informed of these rights their protective value will be ineffective in practice. There is, however, a degree of tension between procedural safeguards in law and their application in practice as may be illustrated by the following anecdote from Dutch parliamentary record.

When the criminal procedure was reformed in 1926 in the Netherlands, the right to silence and the duty of the investigative authorities to caution suspects on this right was introduced. In 1937 the duty to caution the suspect on his right to silence was abolished again in the mainstream of national socialism and totalitarian ideas that flooded Europe, according to which it was considered a suspect's duty to cooperate with the investigative authorities. The right to silence remained in law, but suspects were not informed of it. In 1974, during the due process wave that had its impact on Western criminal processes, a duty solicitors' scheme was introduced which provided every suspect kept in police custody was to be assigned a lawyer for free. During the parliamentary debates, the Dutch Parliament proposed the reintroduction of the caution. During the debate the following argument arose:

*Minister of Justice Van Agt:* This I do not understand, Chairman! The suspect will get the right to consult a lawyer even without asking for one and I do not deem it necessary to add a statutory change that would impose on the police to invite the suspect to remain silent.

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1 ECtHR 13 October 2009, *Dayanan v. Turkey*, no. 7377/03, § 32.

*MP Ms Goudsmit:* But it is in the law that the suspect does not have to answer questions!

*Minister of Justice Van Agt:* Yes, for sure!

*MP Ms Goudsmit:* Isn't the Minister of Justice of the opinion that a suspect, who does not yet have a lawyer, should be informed of this right?

*Minister of Justice Van Agt:* I would not recommend such an amendment. First, one cannot control whether the police is actually giving the warning to the suspect and second, if the police does, it can be done in such a way, *en passant*, that it does not have any effect.

*MP Ms Goudsmit:* So the Minister of Justice suggests that the police would frustrate the duty to caution the suspect if it would be incorporated in the law. I would never presume such a thing!

*Minister of Justice Van Agt:* No, I am not stating that the police would intentionally obstruct instructions that are in the law. But one should not burden the police with briefs that so obviously prejudice the criminal investigation! The police already have considerable difficulty in solving a reasonable percentage of serious crimes, so I absolutely object to burden the police with the obligation to start each interrogation with the announcement that the suspect has the right to remain silent!

*MP Ms Goudsmit:* But it is in the law!

*Minister of Justice Van Agt:* Yes, so the suspect could know!

*MP Ms Goudsmit:* Must it then be kept secret?<sup>2</sup>

Studies on the position of suspects in criminal proceedings in the EU, as well as the case law of the ECtHR, indicate that while in most EU states there are legal provisions governing defence rights of suspects and defendants in criminal proceedings, their effectiveness and observance depends to a large extent on the existence of procedural and institutional enforcement mechanisms that are designed to put these rights into practice.<sup>3</sup> One of the key factors in ensuring fair proceedings is whether suspects have a sufficiently detailed knowledge of their rights. This is of particular importance in the pre-trial phase because national criminal proceedings increasingly attach consequences to the attitude of the suspect at the initial stages of police interrogation, which are

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2 So the debate continued, but in the end the amendment was with unanimous vote accepted by the Parliament, *Handelingen II TK 1972-1973*, p. 1788-1789, and p. 1812.

3 See Spronken & Attinger 2005; Cape, Hodgson, Prakke & Spronken 2007; Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009; Cape, Namoradze, Smith and Spronken 2010.

decisive for the prospects of the defence in any subsequent criminal proceedings.<sup>4</sup> It cannot be presumed that suspects know their rights at the moment they are confronted with a criminal investigation. Especially in situations where they are deprived of their liberty during arrest or police custody, suspects might find themselves in a stressful situation unaware of their rights or without knowledge of how they can invoke them. Provision of information of rights is therefore a prerequisite to accessing them.

## **1.2. The EU context**

The suggestion to inform suspects and accused persons of their basic rights was for the first time addressed on the EU level by the Commission in its Green Paper of 19 February 2003 on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union.<sup>5</sup> The Commission stated that it is important for both the investigating authorities and the persons under investigation to be fully aware of what rights exist and suggested that a scheme be instituted requiring Member States to provide suspects and defendants with a written note of their basic rights – a “Letter of Rights”. According to the Commission, this suggestion received a favourable response during its consultations prior to the Green Paper. In the proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union of 28 April 2004<sup>6</sup>, the Commission proposed a written Letter of Rights notifying suspects of their rights to be introduced as one of the common minimum standards to be regulated in a framework decision<sup>7</sup>. To require Member States to produce a short, standard written statement of basic rights and to make it compulsory for all suspects at the earliest possible opportunity, especially before the first police interrogation, in a language that the suspect would be able to understand, was according to the Commission a simple and inexpensive way to ensure an adequate level of knowledge. Article 14 of the proposed framework decision contained the following text:

### *Article 14*

#### Duty to inform a suspected person of his rights in writing - Letter of Rights

1. Member States shall ensure that all suspected persons are made aware of the procedural rights that are immediately relevant to them by written notification of them. This information shall include, but not be limited to, the rights set out in this Framework Decision.

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4 ECtHR, Grand Chamber, 27 November 2008, *Salduz v. Turkey*, no. 36391/02.

5 COM(2003) 75 final.

6 COM(2004) 328 final.

7 Next to access to legal advice, access to free legal interpretation and translation, special features for vulnerable suspects and access to consular assistance.

2. Member States shall ensure that a standard translation exists of the written notification into all the official Community languages. The translations should be drawn up centrally and issued to the competent authorities so as to ensure that the same text is used throughout the Member State.

3. Member States shall ensure that police stations keep the text of the written notification in all the official Community languages so as to be able to offer an arrested person a copy in a language he understands.

4. Member States shall require that both the law enforcement officer and the suspect, if he is willing, sign the Letter of Rights, as evidence that it has been offered, given and accepted. The Letter of Rights should be produced in duplicate, with one (signed) copy being retained by the law enforcement officer and one (signed) copy being retained by the suspect. A note should be made in the record stating that the Letter of Rights was offered, and whether or not the suspect agreed to sign it.

As there was insufficient consensus between Member States for the proposals the original draft framework decision was significantly diluted. At the end of 2006, a more limited compromise of a proposal was put forward by the Austrian Presidency, listing general rights such as the right to information, right to legal assistance and the right to interpretation.<sup>8</sup> In this proposal the concept of a written Letter of Rights was abolished and the right to information was phrased in general terms in Article 2:

## *Article 2*

### Right to information

1. Member States shall ensure that any person subject to criminal proceedings is provided with effective information, in a language which he or she understands, on the nature of the suspicion and of the fundamental procedural rights that he or she has.

2. This information shall be delivered as soon as these rights become relevant.

3. The information referred to in paragraph 1 shall include in particular information on the right to legal assistance, the right to such assistance free of charge and the right to free interpretation and translation.

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8 19 May 2006, 9600/06 DROI PEN.

The German Presidency prioritised this proposal but even a more watered down version that did not include the third paragraph of the proposed Article 2<sup>9</sup> could not find agreement at the Justice and Home Affairs Council on 19-20 April 2007 or on 13 June 2007.

The controversy regarding a framework decision, which would regulate procedural safeguards, was caused essentially by two issues. Some Member States did not believe the European Union had the competence to deal with these measures and other Member States believed that there needed to be strong evidence that the proposal offered “added value” in terms of the European Convention on Human Rights (‘ECHR’). On the other hand there had been increasing concern for procedural rights in criminal proceedings because the ‘area of freedom security and justice’ on the basis of ‘judicial cooperation’ and ‘mutual recognition’ of judicial decisions requires mutual trust and confidence between the Member States of the EU.<sup>10</sup> It was acknowledged that there are divergent standards for suspects’ procedural rights within the EU and that this could hinder the full acceptance of the principle of mutual recognition.<sup>11</sup> However, the then Third Pillar instruments required unanimity for the adoption of a framework decision and unanimity on what the content should be of a framework decision on procedural rights in criminal proceedings could not be reached, not even on a rather straightforward issue such as the introduction of a Letter of Rights. After the failure to reach agreement in June 2007, there was no timetable set for further discussion and it was suggested that there could be no further action until there was real evidence of the kind of problems which might arise. Those who had pleaded in favour of a regulation of minimum standards for procedural safeguards in criminal proceedings hoped that the issue might be brought forward again after the entry into force of the reforms in the Lisbon Treaty when qualified majority voting provisions would make it easier to secure agreement.

On the eve of the coming into force of the Lisbon Treaty, the Swedish Presidency again took up the issue of procedural safeguards by presenting a roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings which provided for a step-by-step approach.<sup>12</sup> The roadmap was incorporated into the Stockholm Programme for the period 2010-2014,<sup>13</sup> which was adopted by the European Council on 10/11 December 2009. On 16 June 2010 the European Parliament adopted the Directive on the right to interpretation and to translation in criminal proceedings, also named Measure A in the Roadmap.<sup>14</sup> At the time of finalising

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9 2 April 2007 8182/07 DROIPE 30.

10 Tampere Conclusions.

11 See Vernimmen-Van Tiggelen, Surano & Weyembergh 2009.

12 Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings, 1 July 2009, 11457/09 DROIPE 53 COPEN 120.

13 See the Annex to the Presidency note of the Council of the EU 2 December 2009, The Stockholm Programme- an open and secure Europe serving and protecting the citizens, 17024/09, § 2.4.

14 COD/2010/0801, after the Presidency on 17/18 May 2010 reached a provisional agreement with the European Parliament and with the Commission on the text of the draft Directive, Council of the

this report (July 2010) the directive is awaiting Council decision. According to the Roadmap, Measure A will be followed by a directive on information on rights, described as follows in Measure B:

#### Measure B: Information on Rights and Information about the Charges

##### *Short explanation:*

The suspect or defendant is likely to know very little about his/her rights. A person that is suspected of a crime should get information on his/her basic rights in writing [, ideally by way of a letter of rights]. Furthermore, that person should also be entitled to receive information about the nature and cause of the accusation against him or her. The right to information should also include access to the file for the individual concerned.<sup>15</sup>

Measure B is to be followed by legislative proposals on the right to legal advice for both suspects and accused persons, Measure C. Together with rights to communication for vulnerable persons and the right to review of pre-trial detention, these measures are regarded as fundamental, with action on them identified as being a priority.<sup>16</sup>

In conformity with the Action Plan implementing the Stockholm Programme of 20 April 2010<sup>17</sup> the European Commission presented on 20 July 2010 a proposal for a Directive on the right to information in criminal proceedings.<sup>18</sup> The proposed Directive lays down minimum requirements at EU level for the information of suspected and accused persons about their procedural rights and the case against them and imposes a general duty to inform suspected or accused persons that are deprived of their liberty by Member States' competent authorities in the course of the criminal proceedings to inform these persons of their relevant rights *in writing*. The proposed Directive includes an indicative Model Letter of Rights that is inspired on the model developed in this study.

### **1.3. The research project 'EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice'**

In the course of events described in the previous paragraphs, at the moment that the negotiations on the proposed Framework Decision on procedural safeguards terminated, the research project 'EU-wide Letter of Rights in Criminal Proceedings:

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European Union, Report from the Presidency to COREPER, nr. 2010/0801 (COD) 10013/10, and COD/2010/0050.

15 Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings, 1 July 2009, 11457/09 DROIPEN 53 COPEN 120.

16 Proposal for a Directive of the European Parliament and of the Council on the right to interpretation and to translation in criminal proceedings, 9 March 2010 COM(2010) 82 final, 2010/0050 (COD).

17 COM(2010) 171 final.

18 COM(2010) 392/3, included in Annex 6 to this report.

*Towards Best Practice'* was initiated in 2008 by the Federal Ministry of Justice of Germany in collaboration with Professor Taru Spronken of Maastricht University.

The aims of the project are threefold:

- first to explore whether and to what extent suspects are informed in writing of their rights in criminal proceedings in the 27 Member States of the EU in order to gain an insight in existing practice and to gather examples of how information is given and what kind of information is provided;
- second to develop a normative framework for an EU wide Letter of Rights by assessing the extent to which a suspect should be informed of his procedural rights, taking the jurisprudence of the ECtHR, where available, as establishing a minimum standard. In addition other relevant applicable international treaties and soft law as well as common practice in Member States are taken into account to sustain arguments and a legal basis in favour of providing a suspect with written information regarding their defence rights; and
- finally to develop a model Letter of Rights to be applicable throughout the EU.

The ultimate goal of the project is to provide Member States with a model Letter of Rights that can function as an inspiration for initiatives on the national level. Now legislative proposals on the EU level in respect of the rights of individuals in criminal proceedings, as set out in the Stockholm Programme, are on the table again, the research intends also to contribute to the development of an EU-wide Letter of Rights.

#### ***1.4. Methodology and steps of the research***

##### **1.4.1. Definitions and use of legal terms**

The Letter of Rights is no legal concept as such and the first step in the research was to define a provisional working definition in order to be able to conduct purposeful research into the practice of the Member States. In the Green Paper on procedural safeguards<sup>19</sup> the Letter of Rights is considered as a short document to be given to suspects as early as possible, preferably at arrest, by which a suspect would be given information regarding his fundamental rights in writing in a language he understands.

For the purpose of exploring existing practice in Member States in this research the Letter of Rights was understood to mean: written information of the suspect's procedural rights in a standardised form that is handed over to the suspect in the course of the criminal investigation or proceedings prior to an investigative act or

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19 COM(2003) 75 final.

hearing. The purpose was to use a broad definition because it might be that written information that is given to the suspect is not called a Letter of Rights.

Important terms that are used in this research, namely suspect/defendant/accused and arrest/custody/detention may have different meanings across jurisdictions. In certain Member States these terms lack legal definition and in others a person does not have the status of 'suspect' until they are officially charged.<sup>20</sup> Therefore when these terms are used in this report we are referring to the factual situation. If we use the term suspect, defendant or accused we are addressing the situation where a person is suspected of having committed a criminal offence, regardless of whether he is officially charged. This reflects the autonomous approach the ECtHR has adopted for example in the case of *Zaichenko*.<sup>21</sup> The same applies to the terms arrest, custody and detention. When we use these terms we refer to the factual situation that a person is deprived of his liberty by the authorities involved in a criminal investigation, regardless of whether this is according to national standards regarded as an 'arrest'.

#### **1.4.2. Steps of the research**

First information on the existence and use of a Letter of Rights or other written information in the Member States was gathered through a questionnaire that was sent out to the Ministries of Justice in each of the 27 Member States. Responses to the questionnaire indicated that in 10 Member States suspects were informed of their rights by means of a Letter of Rights and in 16 Member States the Ministries' responses indicated that suspects were informed in writing, without explaining whether this was done by means of a standardised document. In two Member States, Germany and the Netherlands a Letter of Rights was introduced after completion of the questionnaire.

The next step was to gather and analyse the texts of the existing Letters of Rights and other information provided in writing. It was decided that the data to be gathered would be restricted to written information on procedural rights that is distributed on the national level. This means that, for instance, divergent brochures and information sheets that exist in some countries on a local level were not included within the scope of the research. In addition, interviews with practitioners in countries where a Letter of Rights exist were conducted to obtain information on their experiences with the Letter of Rights to gain an insight into the practicalities. The results of this analysis provides a comprehensive overview of the contents of Letters of Rights and other written information given to suspects in a range of EU Member States, what rights are addressed and in what kind of language the information is given as well as the practical implications.

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20 See Cape, Hodgson, Prakken & Spronken 2007, p. 16.

21 ECtHR 18 February 2010, *Zaichenko v. Russia*, no. 39660/02, § 42 and § 52-60. See also § 3.2.8.

In parallel with the research undertaken on existing practice in Member States, a study into ECtHR case law was conducted in order to identify whether minimum standards can be derived from it with regard to the rights suspects should be informed on and by which means this information should be given. In addition a research visit was conducted at the European Court of Human Rights in Strasbourg, encompassing a library visit and interviews with judges at the Court and members of the Registry. As a result the desk review was extended to a literature and soft law analysis in addition to the case-law research to sustain arguments for providing suspects with written information on their defence rights.

In the final phase of the research on the basis of the data obtained from the Member States on existing practice on the one hand and the desk review of Strasbourg case law and other relevant sources on the other, a model for a EU-wide Letter of Rights was developed based on the standards that can be derived from ECtHR case law and other relevant material and common practice within Member States. The model has been developed and discussed with the advisory board of the project composed of representatives of the project partners and other experts.

### **1.5. Other parallel research projects**

The research in this project has been conducted in parallel with two other research projects and because there has been cross-fertilisation they need to be mentioned here. In 2009 a study arranged for by the European Commission was conducted to obtain up-to-date information on the level of provision of four fundamental procedural rights in criminal proceedings in the EU Member States: the right to information, the right to legal advice, the right to legal assistance free of charge and the right to translation and interpretation of documents.<sup>22</sup> In this study an online questionnaire was sent to all EU Member States in which questions were also included on the existence of a Letter of Rights in which suspects are informed of their rights as indicated in the previous paragraphs. The second project 'Effective defence rights in the EU and access to justice: investigating and promoting best practice' was conducted over a three year period commencing in September 2007 and was aimed to explore access to effective defence in criminal proceedings in eight EU Member States and Turkey. This project was completed in June 2010.<sup>23</sup> The current study focuses on the way suspects are informed of their procedural rights and has a narrower scope but will

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22 This is a follow up of the study performed by Taru Spronken and Marelle Attinger, 'Procedural Rights in criminal proceedings: Existing Level of Safeguards in the European Union', of 12 December 2005 an has been conducted on behalf of the European Commission by Maastricht University (Prof. dr. Taru N.B.M. Spronken, project coordinator, and Dr. Dorris de Vocht) in partnership with the Institute for International Research on Criminal Policy (IRCP) of Ghent University (Prof. dr. Gert Vermeulen and Laurens Van Puyenbroeck). The study has been finalised in October 2009 and published in a book, see Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009.

23 See Cape, Namoradze, Smith & Spronken 2010.

make use of the analysis and results that have been obtained in the other two research projects.

## **Chapter 2 Existing practice in EU Member States**

### ***2.1. Questionnaire EU procedural rights in criminal proceedings***

In April 2009 a questionnaire was sent out to each of the 27 EU Member States on behalf of an EU-wide research project in relation to 4 procedural rights in criminal proceedings: the right to information, the right to legal advice, the right to legal assistance free of charge and the right to translation and interpretation (Questionnaire EU Procedural Rights in Criminal Proceedings). The aim of this questionnaire was to obtain information on the extent to which these procedural rights are guaranteed in formal legislation in the Member States. The questionnaire included questions on how a person charged with a criminal offence is informed of the nature and cause of the accusation against him, as provided for in Articles 5 § 2 and 6 § 3a ECHR and on how suspects are informed of their (other) fundamental procedural rights, which, as such, is not covered by the ECHR.<sup>24</sup> Each of the questions explored the ways in which suspects are informed either of the nature and cause of the accusation or the other rights that were the subject of the study, including a sub-question asking whether information was given in writing or by a Letter of Rights. As described above, a 'Letter of Rights' meant: written information of the suspect's procedural rights in a standardised form. It appeared from the responses to the questionnaire that in 10 Member States (Austria, Czech Republic, England and Wales<sup>25</sup>, Italy, Latvia, Luxemburg, Poland, Slovak Republic, Spain and Sweden) suspects are informed by a Letter of Rights, but that there are considerable differences among Member States as to which rights are included.

It has to be borne in mind that the responses to the questionnaire present the status quo in the Member States in the period april 2009-july 2009 and that in some Member States the situation has changed afterwards. For instance Germany introduced a Letter of Rights on 1 January 2010 and the Netherlands on 1 April 2010. Another general remark that has to be made is that the conclusions drawn in the study are based on the answers as provided for by the representatives of the Ministries of Justice of the Member States that were digitally processed and it was not possible to research the accuracy of the answers.

Nevertheless the study revealed a general picture on how suspects are informed in criminal proceedings. Each of the Member States have legal provisions that oblige investigating and judicial authorities to inform suspects of the nature and cause of the accusation (or charge), as is prescribed in Article 6 § 3a ECHR, but there is divergence

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24 See Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009. The report and annexes with the complete research data are available online: <http://arno.unimaas.nl/show.cgi?fid=16315>

25 For the purposes of this project, we refer to England and Wales and not the UK as an EU Member State. It is noted, however, that Scotland, a country of the United Kingdom, was not considered within the scope of this research.

in the way this is conducted, orally or in writing, and at what moment in the proceedings the information is given.<sup>26</sup> In addition, no legal obligation exists in each Member State to give this information in a language the suspect understands.<sup>27</sup>

With regard to the way in which suspects should be informed of their right to consult a lawyer, in the majority of the countries this information is provided orally.<sup>28</sup> The same applies in situations where a suspect can have his or her lawyer present during police interrogation.<sup>29</sup> In only 7 Member States is the suspect informed in writing of his right to legal assistance free of charge and the moment at which this information should be given varies considerably.<sup>30</sup> The same picture arises with regard to the information on the right to translation and interpretation.<sup>31</sup> The right to have access to the file is not guaranteed in formal legislation in 4 Member States and of the States where this right exists, 6 Member States do not provide an obligation to inform the suspect thereof.<sup>32</sup> Quite notable is the finding that the right to remain silent is no statutory right in France and Luxembourg, and in Belgium and Finland there is no legal obligation to caution the suspect on the right to silence.<sup>33</sup>

The overall picture that can be drawn from the results of the questionnaire is the absence of legal obligations in many Member States for the authorities to inform suspects on procedural rights and, if the obligation exists, there is substantial divergence in the way and at what moment in the proceedings suspects are informed.<sup>34</sup>

## **2.2. Analysis of existing Letters of Rights and other written information**

The responses to the Questionnaire EU Procedural Rights in Criminal Proceedings made it possible to identify in which Member States a Letter of Rights exists. In order to obtain an insight as to the contents of such Letters, the texts were collected from the 10 Member States that had initially stated having such a Letter of Rights, namely Austria, Czech Republic, England and Wales, Italy, Latvia, Luxemburg, Poland, Slovak Republic, Spain and Sweden. In the course of the research Germany introduced a Letter of Rights on 1 January 2010 and the Netherlands on 1 April 2010. These texts were also included in the research. The complete texts can be found in **Annex 1**;

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26 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 92 (online version p. 100).

27 See the answers to questions 87-91 of the Questionnaire EU procedural rights in criminal proceedings, <http://arno.unimaas.nl/show.cgi?fid=16315>

28 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 40 (online version p. 34).

29 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 52 (online version p. 46).

30 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 62 (online version p. 60).

31 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 86 and 90 (online version p. 92 and 98).

32 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 94 (online version p. 102).

33 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 96 (online version p. 104).

34 Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 107 (online version p. 117).

some were not available in English (Czech Republic, Italy, and Poland) and were translated.

Many Member States had also indicated that information on rights is given in a written form. Documents have been received from Belgium, Estonia, Hungary, Ireland, Italy, the Netherlands, Slovak Republic and Portugal. A selection of these documents is included in **Annex 2**.

### **2.2.1. The categorisation of data**

The Letters of Rights and the written information turned out to differ significantly per Member State as regards their contents. Because of the multitude and diversity of information and data, structured overviews were composed that can be found in Annexes to this report in order to provide an accessible survey of the data obtained. This was achieved by categorising the information received from different angles:

- **Annex 3** provides a summary overview of rights mentioned per Member State including particularities that were identified in each Letter of Rights.
- **Annex 4** gives a similar overview of the written information per Member State.
- **Annex 5** provides an overview of the different ways in which the information on certain rights is formulated in the Letters of Rights and written information. This is done to provide an overview and examples as to what detail information is given, what exact language is used and to identify best practices. This survey is useful to conceptualise an EU model for a Letter of Rights that should be drafted in a simple and accessible form so as to be understood easily even by a suspect or defendant with a limited reading ability or a low IQ or by children.
- **Annex 6** contains the Proposal of the European Commission for a Directive on the right to information in criminal proceedings of 20 July 2010, COM(2010) 392/3.

### **2.2.2. Letters of Rights, standardised records or written information?**

When looking at the content of the received documents it became questionable whether all documents received under the label of a Letter of Rights could be

considered as Letters of Rights according to our working definition<sup>35</sup> because of the format they are provided in and because it is not clear whether the information is actually provided in writing i.e. whether the document is handed over to the suspect prior to questioning or a hearing. In the Czech Republic, the Letter of Rights appears to be a standardised form of the record of the questioning of the suspect by the police. It contains a lengthy enumeration of the content of legal provisions regarding rights and duties of suspects that according to the record have to be read out or explained to the suspect before questioning. It includes parts where the suspect can declare that his lawyer is present during questioning. The suspect has to sign the record confirming that he 'was advised by the questioning officer and fully understood the contents of the advice'. This is all prefabricated text that is included in the record of questioning that also contains the statement the suspect has made during questioning. The completed record is added to the case file.<sup>36</sup> It may be that the record is handed over to the suspect after questioning but according to its wording this is not done before questioning.<sup>37</sup>

Respondents from Ireland, Belgium and Portugal indicated in the Questionnaire EU Procedural Rights in Criminal Proceedings that they do not provide a Letter of Rights but information in writing. From these countries however documents were received that do fall within the scope of our working definition of a Letter of Rights.<sup>38</sup> For the purposes of our research this finding demonstrates that the term 'Letter of Rights' has different meanings across the EU and will need a more precise definition as to what is meant by an EU wide Letter of Rights. We will come back to this later.<sup>39</sup> As for the current research irrespective of the labelling or nomenclature ascribed to the information given to suspects on their rights, the content of the information will be taken into account in the analysis.

Another, although general, remark that can be made is that some Member States have various Letters of Rights or forms of written information with different contents subject to the phase of the criminal proceedings or the legal status of the person addressed. For example, in the Netherlands there is a separate Letter of Rights for adults and juveniles.<sup>40</sup> In addition, rights are listed in a standardised form on the reverse of the summons to appear on trial and considers rights that are applicable in the trial stage such as the right to summon witnesses and experts. In Italy the suspect is informed at the beginning of the investigation<sup>41</sup> and subsequently when invited for interrogation by

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35 See § 1.4 : written information of the suspect's procedural rights in a standardised form that is handed over to the suspect in the course of the criminal investigation or proceedings prior to an investigative act or hearing.

36 See Annex 2.

37 See Annex 1. Similar documents were received from Estonia and Hungary that were labelled as written information, see Annex 2.

38 See Annex 2.

39 See § 2.6.1.-2.6.3.

40 See Annex 1.

41 See Annex 1.

the public prosecutor.<sup>42</sup> Germany provides different Letters of Rights depending on various grounds for arrest,<sup>43</sup> and in the Slovak Republic there are 9 Letters of Rights covering suspects, witnesses, foreigners and specific reasons for arrest.

### **2.2.3. Availability in different languages**

It is particularly important for foreign suspects who do not speak or understand the language in the jurisdiction seized to receive the Letter of Rights in a language they understand. It appeared that the Letter of Rights in the Czech Republic, Italy and Poland is only available in the language of that Member State. According to the responses to the Questionnaire EU Procedural Rights in Criminal Proceedings the suspect has the right to be provided with a written translation of the Letter of Rights in Luxembourg, Slovak Republic, Estonia and Italy. How this is done in practice when no translation in the requested language is available will be addressed below in § 2.5.6. The Letter of Rights of England and Wales is available in 44 languages<sup>44</sup>, the German Letter of Rights in 48 languages, the Swedish Letter of Rights in 42 languages, the Belgian written information in 46 languages and the Dutch Letters of Rights<sup>45</sup> in 8 languages.

### **2.2.4. Sanctions**

In Italy and Poland the requirement to provide a person deprived of his liberty with a Letter of Rights follows from a national legal obligation. If the police or other investigative authorities fail to do so, their subsequent actions might be void.

## **2.3. Overview and analysis of topics in Letters of Rights and written information**

To provide a general picture of what kind of rights are addressed in the Letters of Rights and written information the diagrams below were prepared, based on Annexures 3 and 4 that provide a summary overview of the information given to suspects per Member State. Subsequently the topics are analysed more in detail based on the way the information is formulated as can be viewed in Annex 5.

The diagrams show a detailed breakdown grouped under the main topics that are mentioned in the Letters of Rights and written information:

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42 See Annex 2.

43 See Annex 1.

44 <http://www.homeoffice.gov.uk/police/rights-entitlements-foreign-la1>

45 <http://www.rijksoverheid.nl/zoeken?search-keyword=Je+bent+aangehouden+en+meegenomen+naar+het+politiebureau.&search-submit=>

1. legal assistance including legal aid
2. the right to silence
3. contact with trusted persons
4. interpretation and translation
5. medical care
6. consular assistance
7. access to the file
8. information on charge or suspicion
9. detention and custody
10. provisions for vulnerable suspects
11. conditions of detention
12. participation in proceedings
13. and a rest category 'other' that covers all kinds of topics for example the right to settle with the victim, to submit complaints regarding actions of officials, the right to be presumed innocent.

The topics are listed in the sequence of the number of times that they are mentioned in a Letters of Rights or in written information.

The right to legal assistance, number 1, is addressed in each of the Letter of Rights and written information, but in more detail in some, such as information for example on the right to private communication with a lawyer, the right to have the lawyer present during questioning or the right to legal aid.

The second frequent mentioned right is the right to silence, which appears in each of the Letters of Rights and written information except in the Letters of Rights of Italy, Latvia, Slovak Republic and Sweden or written information of Belgium and Ireland.

The third category is the right to inform a trusted person or family member of the arrest, the right to interpretation and translation, medical care and access to consular assistance.

Rights relating to access to the file, information on the charge or suspicion, detention and release of custody, conditions of detention and participation in proceedings appear rarely in the existing Letters of Rights and written information.

### 2.3.1. Diagrams of topics in Letters of Rights

#### OVERVIEW TOPICS LETTER OF RIGHTS

	AT	CZ	E&W	DE	IT	LV	LU	NL	PL	SK	ES	SE	SUM
<b>LEGAL ASSISTANCE</b>													
right to a defence lawyer	x	x	x		x	x	x	x	x	x	x	x	11
right to notify/contact a lawyer	x		x			x				x			4
right to keep in touch with the lawyer			x										1
right to private communication with the lawyer		x	x			x		x					4
right to consult a defence lawyer before questioning			x	x				x					3
right to have lawyer present during questioning	x	x	x						x		x		5
right to have a lawyer present during other acts		x											1
information on the procedure of appointment of the lawyer and the role of the lawyer			x					x					2
right to legal aid	x	x	x		x	x		x			x	x	8
<b>RIGHT TO SILENCE - NEMO TENETUR</b>													
right to remain silent	x	x	x	x		x		x	x		x		8
right not to incriminate oneself											x		1
possibility of a guilty plea		x											1
right to inspect written notes before making statement		x											1
<b>CONTACT WITH TRUSTED PERSON</b>													
right to notify trusted person	x		x	x			x			x	x	x	7
right to keep in touch with trusted person			x										1
<b>INTERPRETATION - TRANSLATION</b>													
right to use your native language or the language you declare to speak		x											1
right to translation		x								x			2
right to interpretation	x	x	x	x					x	x	x	x	8
right to check the report of the interpreter			x										1
<b>MEDICAL CARE</b>													
right to medical care	x		x	x			x			x	x	x	7
<b>CONSULATE</b>													
right to notify consular representative		x	x	x							x	x	5
right to communication with consular representation		x	x	x								x	4
right to request consular representation	x	x											2

	AT	CZ	E&W	DE	IT	LV	LU	NL	PL	SK	ES	SE	SUM
<b>FILE</b>													
right to access file		x				x			x				3
right to read and correct the report of the questioning		x											1
right to require the minutes of your explanation immediately after being turned in to the police										x			1
right to make copies of the file		x											1
right to obtain a decree on the person's detention from the police										x			1
right to a copy of the custody report			x										1
right to receive a copy of the decision indicating the person as a suspect, as well as written information regarding the rights and duties of a detained person						x							1
right to a final examination of the material of the investigation									x				1
<b>CHARGE - SUSPICION</b>													
right to information on the charge									x	x		x	3
<b>DETENTION - RELEASE FROM CUSTODY</b>													
right to be informed on reasons of detention / apprehension / why turned in / restriction of personal freedom										x		x	2
information on duration of detention	x		x	x						x		x	5
right to be immediately given over to the body which asked for the person to be turned in										x			1
right to be brought before a judge				x						x		x	3
right to judicial remedy: right to appeal detention / arrest	x									x			2
right to judicial remedy: right to be released from custody	x									x	x		3
right to request whether the reasons for detention still exist										x			1
right to be heard about the decision to extend the detention			x										1

	AT	CZ	E&W	DE	IT	LV	LU	NL	PL	SK	ES	SE	SUM
<b>VULNERABLE SUSPECTS</b>													
juvenile specific rights: obligatory notification custodian	x												1
suspect under 17, learning or mental problems: right to appoint an "appropriate adult"			x										1
right to have "appropriate adult" present when told about rights, cautioned, interviewed, and other police actions			x										1
juvenile specific rights: right to have trusted person present during questioning	x							x					2
<b>CONDITIONS OF DETENTION</b>													
right to use telephone			x										1
right to food and drinks			x									x	2
right to rest			x									x	2
right to have a clean cell			x										1
right to go outside for fresh air			x										1
right to clothing			x										1
access to toilet facilities			x										1
<b>PARTICIPATE IN PROCEEDINGS</b>													
right to initiate investigative acts						x			x				2
right to participate in investigative actions		x				x							2
right to participate in the collection of evidence				x					x				2
right to judicial remedy: right to appeal procedural decisions						x							1
right to pose questions to the witnesses		x											1
right to be informed on an expert examination						x							1
<b>OTHER</b>													
right to ask prosecutor to eliminate delays or deficiencies in the proceedings		x											1
right to look at the police rule-book (Codes of Practice)			x										1
right to familiarise him/herself with the Criminal Proceedings Register						x							1
right to be instructed on the rights of the person immediately after the detention in a language that one understands										x			1
right to settle with the victim						x			x				2
right to request the termination of the proceedings if the pre-trial terms are violated						x							1
right to submit a recusation of officials						x							1
right to submit complaints regarding actions of officials						x							1

### 2.3.2. Diagrams of topics in written information

	BE	EE	HU	IE	IT	NL	PT	SK	SUM
<b>DEFENCE LAWYER</b>									
right to a defence lawyer (by choice or appointed)		x	x		x	x	x	x	6
right to contact a lawyer			x						1
right to private communication with the lawyer		x	x				x	x	4
right to private communication with the lawyer either by telephone or in writing				x					1
right to have lawyer present in proceedings		x			x		x	x	4
right to legal aid					x	x	x	x	4
<b>RIGHT TO SILENCE – NEMO TENETUR</b>									
right to remain silent		x	x		x		x	x	5
know that his or her testimony may be used in order to bring charges against him/her		x			x				2
<b>CONTACT WITH TRUSTED PERSON</b>									
right to notify trusted person	x			x			x		3
right to communicate with trusted person			x						1
right to keep in touch with trusted person				x					1
<b>INTERPRETATION – TRANSLATION</b>									
right to use mother tongue both in verbal and written communication			x						1
right to interpretation					x		x		2
<b>MEDICAL CARE</b>									
right to medical care	x								1
right to medical examination by a doctor of choice	x								1
<b>CONSULATE</b>									
right to notify consular representative			x				x		2
right to private communication with the consular representation			x						1
<b>FILE</b>									
right to access file			x		x	x <sup>46</sup>		x	4
right to receive a copy from different parts of the file			x		x	x			3
examine the report of procedural acts		x							1
<b>CHARGE – SUSPICION</b>									
know the content of the suspicion		x	x		x		x		4
right to information on the charge			x	x	x		x		4
<b>DETENTION - RELEASE FROM CUSTODY</b>									
right to be informed of reasons of arrest							x		1
right to habeas corpus/ask to be released							x		1
information on duration of detention	x						x		2

46 The right of access to the file and to receive copies mentioned in the Dutch reverse of the summons to appear in court is not mentioned in the translated version in English. The Dutch version reads: '6. Kennisneming processtukken  
U heeft recht op inzage en afschrift van de processtukken. Als u van dit recht gebruik wilt maken kunt u de griffie van de rechtbank bellen voor nadere informatie.'

	BE	EE	HU	IE	IT	NL	PT	SK	SUM
<b>VULNERABLE SUSPECTS</b>									
juvenile specific rights: notification custodian				x					1
juvenile specific rights: right to have custodian present at police station				x					1
<b>CONDITIONS OF DETENTION</b>									
right to use telephone to exercise suspect's rights							x		1
right to food and drinks	x			x					2
access to toilet facilities	x								1
<b>PARTICIPATE IN PROCEEDINGS</b>									
right to adequate time and facilities for preparation of defence			x						1
right to legal remedies			x					x	2
right to judicial remedy: right to appeal						x	x		2
right not to appear before court						x			1
participate in the hearing of an application of an arrest warrant in court		x							1
right to be heard							x		1
right to participate in investigative actions							x		1
right to attend any stage of the proceedings that concerns the suspect directly							x		1
right to submit requests & complaints		x			x				2
right to deferment of proceedings						x			1
right to lay a complaint for being suspected			x						1
right to call witnesses or experts					x	x		x	3
right to explanation of reasons of searches				x					1
right to be assisted by person of trust during searches					x				1
right to object to the summons						x			1
submit evidence		x	x		x		x		4
right to present at the collection of evidence			x						1
<b>OTHER</b>									
right to be informed in writing on rights							x		1
right to information regarding rights			x				x		2
right to respect	x								1
right to be presumed innocent							x		1
disciplinary punishment in case of disobedience								x	1
right to settlement proceedings		x			x	x			3

### 2.3.3. Legal assistance including legal aid

As indicated above, the right to legal assistance is addressed in each of the Letters of Rights and similar forms of written information, but the different aspects or details of legal assistance that we have identified next to the general right to a defence lawyer are not covered in all of them. The Letter of Rights in England and Wales is the most detailed, dealing with almost all components i.e. the right to notify or contact the lawyer, to keep in touch with the lawyer, to communicate in private, to consult a lawyer before questioning, to have the lawyer present during police interrogation, information on appointment and the role of the lawyer and the right to legal aid. The

Czech Republic is the only Member State that also mentions the right of the lawyer to be present at other investigative acts.<sup>47</sup>

#### **2.3.4. The right to remain silent**

Except for the Letter of Rights of Italy, Luxembourg, Slovak Republic and Sweden the remaining 8 Member States mention the right to remain silent in their Letter of Rights, as do Estonia, Italy, Hungary, Portugal and the Slovak Republic in the written information. As noted before in § 2.1 right to remain silent is no statutory right in Luxembourg and in Belgium there is no legal obligation to caution the suspect on the right to silence and this is reflected in the information given to the suspect.

It is interesting to note that in the Letters of Rights that contain the right to silence the wording that a suspect has the right to 'remain silent' is only used in the Spanish and Dutch Letter of Rights. The Letter of Rights of England and Wales uses the wording: "If you are asked questions about a suspected offence, you do not have to say anything." and continues with the caution that is typical for the legal context of England and Wales, where adverse inferences can be drawn from the suspects' silence: "However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."<sup>48</sup>

In most other Member States the right to silence is phrased in combination with the right of the suspect to make statements. For example "You can make a statement about the charges against you or refrain from making statements about the case."<sup>49</sup> or "According to the Section 33 Paragraph 1 of the Code of Criminal Procedure, you have a right to express your opinion to all the facts that you are charged with, and of the evidence thereof, but you are not obliged to testify."<sup>50</sup> or "to testify or refuse to provide testimony".<sup>51</sup> In the Italian written information (record of the questioning by the police) it is prescribed that the interrogation has to end as soon as the suspect has invoked the right to remain silent.

Only in the information given in England and Wales and Hungary it is expressly stated that anything a suspect says may be used against him in evidence.<sup>52</sup>

Remarkable and divergent from most other Letters of Rights and written information is the Austrian Letter of Rights that in respect of the right to silence also contains advice

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47 See Annex 5 for a complete overview of the way in which the right to legal assistance is phrased in the various Letters of Rights and written information.

48 See for a more elaborate explanation of the particularities of the right to silence in England and Wales: Ed Cape, Chapter 4 England and Wales, in Cape, Namoradze, Smith & Spronken 2010, p. 138-140.

49 Letter of Rights Germany.

50 Letter of Rights Czech Republic.

51 Letter of Rights Latvia.

52 See Annex 5 for a complete overview of the ways in which the right to silence is phrased.

to the suspect: "You have the right to refuse to give information and to answer questions in respect of the charges that have been proffered against you. You should, however, consider that your statement might help to clarify your position and to dispel the suspicions against you. When you refuse to give evidence you deprive yourself of the possibility to provide your version of the facts and to identify possible errors or false allegations. Should your statement contribute to establishing the truth, this will be considered an extenuating circumstance in the judicial proceedings."

### **2.3.5. Contact with trusted persons**

In the majority of the Letters of Rights and written information the right to notify or have notified a trusted person or relative is mentioned.<sup>53</sup> In Sweden and Belgium this may be done under the restriction that the investigation may not be compromised and in Hungary it is expressed that the communication will be supervised.

### **2.3.6. Interpretation and translation**

The issue of interpretation is addressed in the majority of the Letters of Rights but the right to translation of documents only in the Czech Republic and Slovak Republic Letters of Rights. This is probably connected with the fact that apart from Poland, Hungary, and the Netherlands, these are the only countries that also mention some right to documents or access to the file. The Czech Republic Letter of Rights is the only one that explicitly lists the documents that are to be translated and the Slovak Republic Letter of Rights the only one that states that the suspect is entitled to be informed of his rights immediately after detention in a language that he understands.<sup>54</sup> The Hungarian written information and the Czech Republic Letter of Rights also state that the suspect has the right to use his mother tongue or other language he declares to speak.<sup>55</sup>

### **2.3.7. Medical care**

Many Letters of Rights inform the suspect on the right to medical care upon arrest as does the Belgian written information. The England and Wales, German, Luxembourg and Spanish Letters of Rights formulate this as an unconditional right and the Luxembourg Letter of Rights even mentions the term 'immediately'. The Austrian Letter of Rights imposes the restriction that a medical examination should not considerably delay the criminal investigations. The Swedish one provides the right to

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53 Austria, England and Wales, Germany, Luxembourg, Slovak Republic, Spain, Sweden, Belgium, Hungary and Portugal.

54 See Annex 1 and the overview of formulations in Annex 5.

55 See the overview of formulations in Annex 5.

receive health and medical care, unless it is apparent that a medical examination is unnecessary.

The right to be examined by a doctor of the suspect's choice is provided in Austria, Germany and Belgium, although in Austria this can only be done if the suspect bears the costs. Germany offers explicitly the choice between a male or female doctor. A bit disquieting is the wording in the Slovak Republic Letter of Rights: "if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment".<sup>56</sup>

### **2.3.8. Consular assistance**

According to Article 36 of the Vienna Convention on Consular Relations<sup>57</sup> a foreign national who is deprived of his liberty has the right to inform his embassy or consular authority of his detention and have free communication and access to consular officers. Although all EU Member States are party to this Convention only Austria, Czech Republic, England and Wales, Germany, Spain, Sweden, Hungary and Portugal mention this right in their Letter of Rights or written information. Most Letters of Rights that do contain the right to consular assistance only mention the right to contact or notify the consular authority. The Czech Republic and England and Wales Letters of Rights describe in more detail what consular assistance includes, for instance that the consular authority can arrange for legal representation and that the suspect can be visited by consular officers. Only the England and Wales Letter of Rights stipulates that consular officers can visit the detained foreign suspect in private.<sup>58</sup>

### **2.3.9. Access to the file**

A minority of Letters of Rights and written information deal with access to the file, and it is assumed that this is very much dependent on the criminal procedure that applies in each Member State.<sup>59</sup> Information that is given on access to the file can be divided into 3 categories: first, the right to inspect or receive copies from the case file in general (Czech Republic, Poland and Hungary); second, the right to have certain specified documents such as the statement the suspect has made or reports of procedural acts (Latvia, Slovak Republic, Estonia and Hungary) and; third, documents that are directly related to the custody (such as the custody record in England and Wales, the decree of detention in the Slovak Republic) and the decision to be formally

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56 See the overview of formulations in Annex 5.

57 Vienna Convention on Consular Relations done at Vienna on 24 April 1963. Entered into force on 19 March 1967 United Nations, Treaty Series, vol. 596, p. 261.

58 See the overview of formulations in Annex 5.

59 See for the divergent practice with regard to disclosure of evidence and access to the case file Cape, Namoradze, Smith & Spronken 2010, p. 557-558.

considered as a suspect in Latvia. In no Letter of Rights or written information it is specified at what moment this right arises. From the Polish Letter of Rights can be derived that the suspect will receive notice of the date on which he can inspect the file.<sup>60</sup>

### **2.3.10. Information on charge or suspicion**

Only the Polish, Slovak Republic and Swedish Letter of Rights say that the suspect has the right to know the reasons for his detention or to know what offence he is suspected of. The same is provided in the written information in Estonia, Hungary and Portugal. The moment the suspect has to be informed varies. In Poland the time limit is within 14 days after arrest, although the suspect may request for an earlier oral explanation. In the Slovak Republic the suspect has to be informed 'immediately'. The Portuguese written information provides that the suspect should be informed promptly and says in addition that the suspect should be informed about the facts he is charged with before giving evidence.<sup>61</sup>

### **2.3.11. Detention and release from custody**

In 5 Member States that have a Letter of Rights the suspect receives information on the possible duration of the detention at the police station and what will happen when the suspect is not released within this time.<sup>62</sup> The Spanish Letter of Rights only mentions the right to *Habeas Corpus*, and it is questionable whether a lay person understands what this means. In Belgium written information is given to those kept in administrative custody and mentions the maximum number of hours that the loss of liberty can last.

### **2.3.12. Provisions for vulnerable suspects**

3 Letters of Rights contain special information for vulnerable suspects. In Austria a suspect under the age of 21 who is not yet represented by counsel may request that a person of trust be present during interrogation. If the suspect is under the age of 18, the detention must be notified to a person who has parental custody, the youth welfare office or, when applicable, to the probation officer that has been assigned to the suspect. Also, the England and Wales Letter of Rights has a provision for vulnerable suspects, although with a broader scope. Those under 17, or who have learning problems or mental problems should have an 'appropriate adult' present

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60 See the overview of formulations in Annex 5.

61 See the overview of formulations in Annex 5.

62 Austria, England and Wales, Germany, Slovak Republic and Sweden, see Annex 5 for further details.

during police interview, when the case is reviewed, when the suspect has to remove more than his outer clothes, during an identification parade and when the suspect is charged with an offence. In the Netherlands there is a separate Letter of Rights for juvenile suspects under the age of 18. The Dutch Letters of Rights were introduced on 1 April 2010 following the *Salduz* judgment of the ECtHR<sup>63</sup>, providing that legal assistance should be available for suspects already at the initial phase of police interrogation. Juveniles accordingly have the right to consult a lawyer or person of trust before the first police interrogation and to have a lawyer or person of trust present during interrogation. For those aged between 12 and 15 and suspected of a serious offence, there should always be a lawyer present. Those who are 16 or 17 and suspected of a serious offence can choose to have a lawyer present. In both situations the legal assistance is free of charge. In case of suspicion of less serious offences the juvenile may choose to have a lawyer, but this will be at his own costs. Adults only have the right to consult a lawyer prior to police questioning and have no right to have the lawyer present during interrogation. The Irish written information provides for the notification of the custodian for those under 17 and to have a parent or guardian present at the police station.

### **2.3.13. Conditions of detention**

The Letter of Rights of England and Wales describes in considerable detail the conditions of detention for example that the cell should be clean, warm and lit, that the suspect must be offered 3 meals a day with drinks and should be allowed outside each day for fresh air and that the suspect should be allowed at least 8 hours rest in any 24 hours in custody. The Swedish Letter of Rights says that the suspect has the right to receive food and rest as needed and the Belgian written information to people who are in administrative custody provides for food, meal times, adequate water and access to toilet facilities.

### **2.3.14. Participation in proceedings**

In 4 Letters of Rights<sup>64</sup> and 5 forms of written information<sup>65</sup> the suspect is notified of several rights to participate in the criminal proceedings such as to participate in investigative acts and pose questions to witnesses and experts, to apply for evidence to be taken in his defence, to participate in hearings, to make settlement proposals to the prosecutor, to appeal from unfavourable decisions *etcetera*. A complete overview can be found in Annex 5.

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63 ECtHR, Grand Chamber, 27 November 2008, *Salduz v. Turkey*, no. 36391/02.

64 Czech Republic, Germany, Latvia and Poland.

65 Estonia, Hungary, the Netherlands, Portugal and the Slovak Republic.

### 2.3.15. Other Rights

The rights and information given that could not be categorised under one of the previous topics are gathered in the diagrams under the category 'other' that covers all kinds of topics for example the right to settle with the victim, to submit complaints regarding actions of officials or the right to be presumed innocent. A notable mention can be found in the Belgian written information: "The person deprived of his freedom: has the right to RESPECT" in capitals!

### 2.4. Format and linguistic usage

The assumption is that the aim of a Letter of Rights or other written information that is handed over to suspects is to ensure that the rights and information it contains can be understood by lay persons and even by those with poor reading ability or a low IQ. Therefore format and wording are important conditions to meet this aim. The Letters of Rights and written information that have been collected differ considerably when looking at format and linguistic usage.

In most Letters of Rights, very formal and legal language is used with references to legal provisions that will be difficult to read and understand by most lay people.<sup>66</sup> The most extreme example of formal language is the Letter of Rights of the Czech Republic that is formatted as a 'report on the questioning of the charged person' and contains the following text and format:

*Advice of the charged person:*

*According to Section 33 Para 1 of the Code of Criminal Procedure you have a right to express your opinion to all the facts that you are charged with and of the evidence thereof, but you are not obliged to testify.*

*You may specify circumstances and evidence serving for your defence, lodge motions and lodge applications and legal remedies. You have a right to choose a defence counsel and consult him/her even during the acts performed by the authority competent for criminal proceedings. However, you cannot consult the defence counsel during questioning about how to answer already laid question. You may request to be questioned in the presence of your defence counsel and you may request the presence of the defence counsel during other acts within the pre-trial stage (Section 165 of the Code of Criminal Proceedings). If you are in the custody or serving a term of imprisonment, you may speak with the defence counsel without presence of a third person.*

*According to Section 92 Para 2 of the Code of Criminal Procedure you have the possibility to express yourself in detail to the charge, especially you can continuously describe the facts which are subject of the charge, state the circumstances which weaken or disprove the charge or offer the evidence.*

*According to Section 92 Para 3 of the Code of Criminal Procedure you may be asked questions to supplement the testimony or to remove the ambiguity, unclarity and contradictions. Questions must be posed clearly and without pretence of deceiving and false circumstances; it may not be indicated in these questions how to answer them.*

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66 See for all Letters of Rights Annex 1.

*According to Section 93 Para 1 of the Code of Criminal Procedure it may be allowed to you, before answering a question, to have a look at the written notes, which you must, if the person conducting the questioning requests so, submit to inspection to his or her.*

*According to Section 33 Para 2 of the Code of Criminal Procedure, if you attest to have not money enough to pay the defence costs, the presiding judge and in pre-trial stage the judge shall determine that you are entitled to free defence or defence for reduced fee. According to Section 33 Para 3 of the Code of Criminal Procedure you lodge a motion for decision on free defence or defence for reduced fee, including the attachments proving its justification, through the public prosecutor in pre-trial stage and through the court carrying out the first instance proceedings in trial-stage.*

*According to Section 55 Para 1 point. c) of the Code of Criminal Procedure you have the obligation to give an address for the purpose of service of documents addressed to you.*

*According to Section 65 Para 1 of the Code of Criminal Procedure you have a right to inspect the files, make extracts and notes and make copies of the files and any part thereof on your own costs.*

*According to Section 65 Para 2 of the Code of Criminal Procedure the police authority may deny you this right based on the serious grounds; if you request so, the ground for the denial will be reviewed by the public prosecutor.*

*According to Section 157a Para 1 of the Code of Criminal Procedure you have a right at any time during the pre-trial stage to ask the public prosecutor to eliminate the delays in the proceedings or deficiencies in the procedure of the police authority.*

*According to Section 165 Para 1 of the Code of Criminal Procedure you may with the consent of the police authority participate in the investigative acts and pose questions to the witnesses being questioned.*

*According to Section 95 Para 2 of the Code of Criminal Procedure you have the right that the report is submitted to you after the questioning for reading, or should you have asked, that the report is read. You have the right to ask that the report is supplemented or corrected in consistency with your testimony.*

*According to Section 95 Para 3 of the Code of Criminal Procedure the report on the questioning, which was undertaken without the court reporter, it must be submitted for reading or must be read in presence of non-participating person before it is signed. In case you have objections regarding its contents, it is necessary to deal with them in presence of other participant joining the proceedings and the result must be recorded in the report.*

*According to Section 66 Para 1 of the Code of Criminal Procedure I further advise you that who disturbs the proceedings despite prior warning or who behaves abusively towards the court, public prosecutor or police authority or fails to obey the warning notified to that person according to the Code of Criminal Procedure, can be punished with a fine of up to 50 000 CZK awarded by public prosecutor or police authority in the pre-trial proceedings.*

*According to the Section 345 Para 1 of the Criminal Code it is a criminal offence if you falsely accuse somebody from committing an offence, according to the Section 345 Para 2 of the Code of Criminal Procedure it is a criminal offences if you falsely accuse somebody from committing an offence with the intention to bring on criminal prosecution upon that person.*

*According to Section 307 Para 1 of the Code of Criminal Procedure in proceedings conducted for a delict, which is a crime committed with a negligence, or an intentional crime for which the law sets the term of imprisonment the upper limit of which does not exceed five years, the court with the consent of the charged person and the public prosecutor in pre-trial proceedings may conditionally terminate the criminal prosecution, if the charged person has pleaded guilty to the crime, has compensated the damage if caused by the crime or the charged person and the injured person have concluded an agreement on the compensation of the damage, or the charged person has taken any other measures necessary to compensate the damage, and such a decision may be considered sufficient with regard to the person of the charged person, taking into consideration his/her life up to now and the circumstances of the case.*

*According to Section 309 Para 1 of the Code of the Criminal Procedure in proceedings conducted for a delict, which is a crime committed with a negligence, or an intentional crime for which the law sets the term of imprisonment the upper limit of which does not exceed five years, the court with the consent of the charged person and the injured person and the public prosecutor in pre-trial proceedings may decide to approve settlement and terminate the prosecution if the charged person pleads guilty before the court as a response to the charges for which he is being prosecuted, and there is no doubt that his statement was made as free act and deed, pays the damages caused by the delict to the injured person, or takes the necessary steps to pay them, or compensates the damages caused by the delict in any other way, and he deposits a sum of money at the court's account addressed to a specific beneficiary to be used for public benefit, provided that*

*the redress is clearly not disproportional to the seriousness of the delict, and the court may consider such way of settlement is sufficient with regard to the nature and seriousness of the delict committed, to the extent the delict was damaging to the public interest, to the personality of the charged person, his private life and financial status.*

*According to Section 2 Para 14 of the Code of Criminal Procedure you have the right to use your native language or a language you declare to speak.*

*According to Section 28 Para 1 of the Code of the Criminal Procedure if you do not indicate a language which you speak, or if you indicate a language or a dialect which is not a language of your nationality or an official language of the state of which you are a national and there is no person registered for such language in the register of interpreters, the authority responsible for the prosecution will set an interpreter of language of your nationality or an official language of the state of which you are a national.*

*According to Section 36 .... Letter ... of the Code of the Criminal Procedure you must have a defence counsel. In case you will not choose the defence counsel until ... o'clock dated....., or in case the defence counsel will not be chosen even by your direct relative, sibling, adoptive child, adoptive parent, spouse, partner, cohabite or a participating person (section 37, 38 of the Code of the Criminal Procedure), the defence counsel will be appointed on your behalf according to section 39 of the Code of the Criminal Procedure. According to Section 37 paragraph 2 of the Code or Criminal Procedure in case you will choose two or more defence counsels, in case you will not communicate to the authority responsible for the prosecution which one of these defence counsels is authorized to receive the written instrument and to be informed of the acts carried out in criminal proceedings, the presiding judge or the public prosecutor in pre-trial proceedings will appoint him.*

It is hard to imagine that any suspect can understand this text or will even read the text and also how the police officer who conducts the interrogation gives this 'advice' in practice. Less lengthy but still very formal are the Polish, Slovak Republic, Latvian and Italian Letters of Rights. By way of illustration an extract of the Polish Letter of Rights is provided below.

### **CAUTION**

#### **Regarding the rights and obligations of the suspect**

1. The suspect shall have a right to:
  - make statements, not to make statements, or not to reply to any questions posed without giving any reason (Criminal Procedure Code [“CPC”] art. 175 § 1);
  - put a motion to commence the acts of the inquiry or investigation, participate at the evidence collection (CPC art. 315 § 1 and 2 as well as art. 317 § 1 and 2 and art. 325a § 2). The suspect who is present at the evidence collection has the right to provide explanations concerning each evidence (CPC art. 175 § 2);
  - have a defense counsel (CPC art. 77 and art. 78);
  - demand to be questioned in the presence of appointed defense counsel, whose absence does not stop the hearing (CPC art. 301).
  - use the services of an interpreter free of charge if his command of Polish language is insufficient (CPC art. 72 § 1);
  - put an application for the case to be submitted for conciliatory proceedings by trustworthy person or institution, or agree for such, subject to injured party's approval (CPC art. 23a § 1);
  - demand, before he is given notice of the date on which he can examine the files of the inquiry or investigation, that he should be given an oral presentation of the grounds for charges as well as reasons for them prepared in writing. The reasons for the decision on the

charges are served upon the suspect and his defence counsel within 14 days (CPC art. 313 § 3 and art. 325a § 2);

The Austrian Letter of Rights is written in narrative but not always using easily understandable language. The German, Luxembourg and Spanish Letters of Rights contain lists of rights expressed in relatively clear and understandable language. In the written information that is included in Annex 2 the same diversity can be distinguished.

The most straightforward and simple language is used in the Letters of Rights of England and Wales and the Netherlands; the latter seems to have been inspired by the former. The first page of the England and Wales Letter of Rights reads as follows:

**The following rights and entitlements are guaranteed to you under the law in England and Wales and comply with the European Convention on Human Rights.**

## **Remember your rights:**

**1. Tell the police if you want a solicitor to help you while you are at the police station. It is free.**

**2. Tell the police if you want someone to be told that you are at the police station. It is free.**

**3. Tell the police if you want to look at their rule-book called the Codes of Practice.**

**You will find more details about these rights inside**

## **2.5. Practical issues**

The analysis above is based on the content of the Letters of Rights and written information that is given to suspects and does not reflect how the information is provided and perceived in practice. Questions remain such as at what moment the Letters of Rights are handed over, whether the authorities (mostly police officers) provide oral explanations and what are the arrangements to make sure that the suspect has received the Letter of Rights and has understood its contents.

In order to obtain some insight of the practice, defence lawyers in the relevant Member States were interviewed about their experience with the Letter(s) of Rights. Because of limited resources and time it was not possible to conduct an empirical research in depth and the number of interviews remained limited. In total 38 lawyers spread over the 12 EU Member States that have a Letter of Rights were approached of whom 20 were actually interviewed.<sup>67</sup> All interviews were conducted with a standardised question list by telephone, except for two lawyers who responded to the questions in writing. All information that is given here is approved by the interviewed lawyers. Given the limited survey we cannot generalise the outcomes. Nevertheless the interviews provide useful information with regard to the practical implications and effectiveness of providing written information on rights to suspects.

### **2.5.1. Findings from interviews with practitioners**

The interviews with the practitioners provided some evidence that in the 12 Member States that do offer a Letter of Rights, the intended effect thereof is limited in practice due to various reasons such as the attitude of the investigative authorities, whether the Letter of Rights is effectively handed over in person, the language used or the moment at which the Letter of Rights is provided.

In the Member States where the Letter of Rights<sup>68</sup> was recently introduced, Germany<sup>68</sup> and the Netherlands<sup>69</sup>, some interviewed defence lawyers were not aware of its existence. One Swedish lawyer had never seen it being used.

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67 Austria: H. Stranglechner and another lawyer who did not want his name to be published; Czech Republic: P. Beneš; England and Wales: P. Caldwell, K. Carr and J. Harding; Germany: P. S. Solar; Italy: L. Autru Ryolo, M. Gazzola and B. Stramignoni; Latvia: S. Varpins and J. Rozenbergs; Luxembourg: R. Grasso; The Netherlands: K. Canatan and J. Soeteman; Poland: J. Tomczak and A. Demenko; Slovak Republic: J. Mišura; Spain: E. Díaz-Bastien; Sweden: B. Dahl and G. Hadding Wiberg.

68 The legal provisions introducing the German Letter of Rights entered into force on 1 January 2010.

69 The Dutch Letter of Rights was introduced on 1 April 2010.

### **2.5.2. Attitude of investigative authorities**

Interviewees from Austria, Latvia, Luxembourg, Poland, Slovak Republic and Sweden stated that the attitude of the police, prosecutor or other investigative authority often, negatively, influences the effectiveness of the Letter of Rights, because it is treated as a mere formality, requesting only a signature, without giving ample time to the suspect to fully understand its meaning. For example in Slovakia the person deprived of his liberty receives 4 pages filled with rights and obligation and each page needs to be signed for confirmation. In practice the police simply say; 'sign here, here, here and here', without offering the suspect the time to read each page. Defence lawyers from Latvia also stated that the suspect is not given sufficient time to read through the Letter of Rights before authorities start with questioning.

### **2.5.3. Availability**

In Austria, the Czech Republic, England and Wales, Germany, Italy, Latvia, Luxembourg, the Netherlands and the Slovak Republic a copy of the Letter of Rights is made available to the person deprived of his liberty, or he can at least request it. However, in Poland, Spain and Sweden there appears to be no right to keep a copy of the Letter of Rights. According to the Swedish lawyers interviewed, the legal obligation to hand over the Letter of Rights is not observed in practice in many police stations as it is merely posted on the wall in the police station. The Luxembourg lawyer stated that the Letter of Rights is only given to those suspects who are caught "red handed", which would have the consequence that the majority of suspects do not receive the Letter of Rights at all.

### **2.5.4. Language**

The interviewees confirmed that the language used in the Letter of Rights plays a key role as well. As indicated above the Czech and Slovak Letter of Rights merely enumerate legal provisions. The Austrian and Polish Letter of Rights use very formal legal language. It was confirmed by the Slovak, Polish and Austrian defence lawyers that this practice decreases the level of understanding considerably. In these circumstances, the police are responsible for explaining the legal provisions in understandable/comprehensible language. In practice, however, this hardly ever takes place. Often, police rush through the procedure in order to go straight to the interview, not taking note of whether or not the suspect understood the content of the Letter of Rights. In general it can be stated that the defence lawyer has an important role in checking whether the Letter of Rights has been understood and respected.

### **2.5.5. Timing**

The moment when a person deprived of his liberty is informed about his defence rights varies. In England and Wales and Luxembourg the Letter of Rights is provided at the moment of first contact with the police, for example at arrival at the police station. However, there are also Member States in which the Letter of Rights might be given at a later stage. For example, in Italy, there can be a 'blank period' in which a person deprived of his liberty is not informed of his rights and does not have a lawyer present to advise him accordingly. During such a period, suspects can make voluntary statements or confessions without being aware of the consequences thereof. It appeared that this situation occurs in Austria and Sweden as well.

### **2.5.6 Interpretation**

Letters of Rights are not always available in the language a foreign suspect can understand.<sup>70</sup> In those situations translations are provided by *ad hoc* interpretations by the interpreters involved in the criminal investigation. In Latvia this is done in writing because this is required by law but in other situations only an oral interpretation is provided as is the case, for instance, in the Czech Republic, Italy, Poland, Spain and Sweden. If a written translation has to be provided it is questionable whether the information is provided to the foreign suspect in time.

### **2.5.7. General observations**

Despite the specific shortcoming listed above, the interviewed defence lawyers are, in general, rather satisfied with the Letter(s) of Rights in their respective Member State. The interviewed lawyers from Latvia and one from England and Wales stated that the practice of informing a person about his defence rights is far better regulated now than it used to be. Moreover, it was often stated that having a Letter of Rights with certain deficiencies is better than no Letter of Rights at all. The usefulness of a Letter of Rights is however, according to the interviewed lawyers, closely linked to the attitude of the authority responsible for the providing thereof.

## **2.6. Conclusion and refining the scope of a EU wide Letter of Rights**

In 17 EU Member States suspects are informed of their rights by a Letter of Rights or in a similar standardised form. In the documents that were gathered 12 topics could

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<sup>70</sup> In the Czech Republic, Italy and Poland the Letters of Rights are only available in the language of the Member State.

be identified that were addressed, although in different compounds and with different frequency. All documents contain information on legal assistance, although to a lesser extent information on legal aid. Also, the right to silence, contact with trusted persons, the right to interpretation and translation, medical care and consular assistance are dealt with in a considerable number of Letters of Rights and similar forms. With lesser frequency access to the file, information on charge or suspicion, detention and custody, provisions for vulnerable suspects, conditions of detention and participation in proceedings are mentioned.

Some Letters of Rights and written information do not only inform the suspect on rights that are applicable in the stage of the first police interrogation or at the beginning of criminal proceedings, but give also information on rights that are relevant in the course of the criminal investigation. In this category fall the right of access to the case file at the closure of the pre trial investigation and the rights to participate in the proceedings such as questioning of witnesses, being present at investigative acts and hearings, possibilities to appeal *etcetera*.

More significant differences can be observed as to how and in what kind of format the information is provided. In some Member States information on rights is included in a standardised form of the record of the questioning of the suspect by the police, clearly functioning as a checklist for the interrogating officers to read out to suspects their rights and for the suspect to sign in order to record that the interrogating officer has performed his duty to caution the suspect.<sup>71</sup> Other Member States provide information in the form of leaflets or brochures that obviously are meant to be handed out to suspects.

An important aspect for a Letter of Rights or written information to be understandable is the language used. In many cases the rights are formulated in very formal and legal language, even using lengthy quotations of legal provisions, which are probably very difficult to understand for lay people. There are, however, also examples where more or less successful efforts have been made to draft the information in a simple form so as to be easily understood.<sup>72</sup> Where juveniles are concerned it has to be borne in mind that on average within the EU, children from the age of 15 years are considered criminally liable. Some Member States however apply diverging age limits. For example in Cyprus, children from the age of 7 can be considered liable and in France, children from the age of 10 are criminally liable.<sup>73</sup> Letters of Rights should also provide understandable information for this category of suspects. The best example of a Letter of Rights that meets the requirements of clear, simple and understandable language in

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71 Czech Republic, Luxembourg, Estonia.

72 See for instance the Letters of Rights of Austria, Germany, Luxembourg and Spain in Annex 1 and the written information of Belgium, Ireland.

73 See Spronken & Attinger 2005, p. 81.

combination with an accessible format is the Letter of Rights of England and Wales that has been used as model for the Dutch Letters of Rights.

Detrimental for the effectiveness of a Letter of Rights for foreign suspects is that there are few Member States that have the Letter of Rights available in more languages. England and Wales and Germany, Sweden, Belgium<sup>74</sup> are noticeable exceptions having a Letter of Rights (respectively written information) that is translated in more than 40 languages.

Interviews that were conducted with practitioners provide evidence that the Member States that have a Letter of Rights appear to have a well-organised procedural framework to support it. The effectiveness is, however, dependent on how this is carried out in practice. The attitude of police is pivotal to the question whether or not the Letter of Rights is given in accordance with the underlying legal obligation. In general, the attitude of the police towards the Letter of Rights is that it is considered as a nuisance, rather than a valuable procedural right for the defence. This means that the Letter of Rights is treated as a formality, which gets in the way of the interrogation.

Consequently, in the opinion of the interviewed lawyers, the police often negatively impact the effectiveness or value of the Letter of Rights, for example, by discouraging the person deprived of his liberty to exercise his defence rights, not explaining these rights adequately or by starting with informal chats before informing about the defence rights. It therefore seems that in many Member State adequate instructions as to how and when to make the Letter of Rights available to the person deprived of his liberty is lacking.

### **2.6.1. Refining the research and scope of a EU wide Letter of Rights**

Many aspects that have been dealt with in this chapter have been discussed during a meeting with the Advisory Board in September 2009 in order to make choices on what aspects and topics a model for an EU wide Letter of Rights should deal with and what the ideal format would be.

### **2.6.2 Core rights at the beginning of a criminal investigation**

It was decided that the rights contained in the Model EU Letter of Rights should consist of the core basic rights that are applicable at the first contact of the suspect with the police in relation to a criminal investigation, with, as a bare minimum, the rights contained in the ECHR and its jurisprudence. This implied that information relating to

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74 See for Belgium the written information given to persons in administrative arrest, Annex 2.

rights that arise in a later stage in the criminal proceedings would not be included nor information on circumstances of detention such as conditions of the cell, food and drink *et cetera*.<sup>75</sup> This was done for two reasons: first an EU wide Letter of Rights could not possibly deal with the divergent ways in which rights evolve during the course of proceedings in each criminal law system of the EU in order to cover all options and all stages. This would be too complicated to boil down to an easily digestible document. Second it was assumed that once the suspect has instructed a lawyer (a right the person will be made aware of in the Letter of Rights if not before), that lawyer will be in a position to advise on the rights.

The research as to what minimum standards should be adopted should however be broadened to other sources of international human rights standards such as international treaties, other relevant instruments of the Council of Europe and of other international standards. And finally, common practice with regard to practical rights of suspects upon arrest, such as informing relatives should be taken into account.

Member States that have a statutory obligation to mention other rights that are not part of the EU version of a Model Letter of Rights (EU part) could add a national supplement with country specific measures. This approach would ensure EU wide consistency in the way information is given to the suspects regarding the identified core rights, which countries can further supplement with their national legislation.

### **2.6.3. Desired format and language**

Consensus was also reached on the form of the EU-Model Letter of Rights. The language of the Letter of Rights should be easily understandable for the suspect. This means that the language used should be clear, legal terms should be avoided and the Letter of Rights should not be too long. In addition, the Letter of Rights should be written in a style that would not discourage suspects to make use of their rights. Although simple language is desirable some level of detail would be needed as to what these rights encompass. The language used should also maintain a certain degree of flexibility because the interpretation of rights varies within the EU Member States. It was agreed that the Letter of Rights of England and Wales could serve as a model for the drafting of an EU Model Letter of Rights.

With regard to the question when the EU wide applicable Model Letter of Rights should be given to the suspect it was agreed that this should be done prior to the first interrogation, whether or not the suspect would be formally arrested. At that first contact with the police, advice from a lawyer is often lacking and the need for a Letter of Rights most pressing.

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75 See the Letter of Rights of England and Wales in Annex 1.

## **Chapter 3 The Normative Framework**

### **3.1. Introduction**

We explored in the previous chapter the scope and use of a possible EU-wide Letter of Rights at the moment of first contact between the suspect and the police. We now turn to examine the core basic rights protected by the ECtHR and its jurisprudence applicable at this initial stage of the criminal investigation. The rationale of this undertaking is to identify what legal basis is available for an EU wide duty to inform suspects of procedural rights and to determine what rights should be included in a Letter of Rights.

First it will be examined whether the ECHR and/or its case law provide for a right to information and what this right encompasses.

Second we describe the minimum standards provided by the case law of the ECtHR<sup>76</sup> with regard to the other rights applicable at the initial stages of a police investigation and of which the suspect should be made aware when involved in a criminal investigation. The research will be linked to the relevant topics in this phase that have been identified in the existing Letters of Rights and similar documents under consideration: legal assistance, the right to silence, the right to interpretation and translation, medical care, detention including release from custody and special or extra standards for vulnerable suspects.

The ECtHR case law on the aforementioned rights has also been examined in the project Effective Criminal Defence in Europe and the relevant parts of that study will be relied on in this chapter.<sup>77</sup>

As regards the legal basis we should also mention here the EU Charter of Fundamental Rights that has become binding according to Article 6 of the Treaty of the European Union (TEU) when the Lisbon Treaty has come into force. Article 6 § 3 TEU states expressly that fundamental rights as guaranteed by the ECHR shall constitute general principles of Union Law. Article 48 of the Charter of Fundamental Rights provides that “[r]espect for the rights of the defence of anyone who has been charged shall be guaranteed”. Article 52 § 3 further states that the right guaranteed under Article 48 is among those who have the same meaning and the same scope as the equivalent right guaranteed by the ECHR. For establishing the legal framework for an EU-wide Letter of Rights we have also taken into account the text of the Directive on the right to interpretation and to translation in criminal proceedings adopted by the European

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76 For the purposes of this chapter, all article references are to the ECHR unless stated otherwise.

77 Cape, Namoradze, Smith & Spronken 2010, Chapter 2.

Parliament on 16 June 2010<sup>78</sup> At the time of finalising this report (July 2010) the directive is awaiting Council decision.

Finally we explore other sources of international human rights standards such as international treaties, relevant instruments of the Council of Europe and other international standards in order to identify whether there are supportive arguments to be found for providing suspects with written information on rights. We have found relevant information in the International Covenant on Civil and Political Rights, the CPT-standards, the European Prison Rules, a Recommendation of 27 September 2006 of the Committee of Ministers of the Council of Europe adopting 'the recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse'<sup>79</sup>, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN standard minimum rules for the treatment of prisoners. Consular assistance is regulated in the Vienna Convention on Consular Relations.<sup>80</sup>

With regard to drawing conclusions as to minimum standards established by the ECtHR jurisprudence the following must be noted. This is a precarious undertaking since the ECtHR always assesses whether proceedings in an individual case are fair as a whole. The fact that certain requirements are not met in a preliminary stage of the proceedings does not necessarily lead to a violation of ECHR rights provided that the shortcomings are compensated for or repaired at a subsequent stage. In addition most rights are not absolute in the sense that they may be weighed against other legitimate interests such as the proper course of criminal proceedings or the interests of witnesses. We must also bear in mind that many provisions allow the Contracting Parties a margin of appreciation as to how the fair trial requirements are implemented. It is, therefore, not always possible to define and articulate detailed standards that are operational and/or applicable to all criminal law systems or to particular stages of the criminal process.

There is, however, a development within the jurisprudence of the ECtHR that facilitates the drawing of conclusions for the implementation of elementary procedural rights at the national level. The ECtHR usually includes in its judgments a paragraph in which it expresses its general views on the issue under scrutiny.<sup>81</sup> At times the ECtHR gives very detailed directions on how national proceedings should be regulated or conducted and what sanctions should apply if the requirements are not met. A very clear example can be found in the *Salduz* doctrine with regard to the right of access to a lawyer at the investigative stage.<sup>82</sup> Equally important is that in most cases the relevant general

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78 COD/2010/0801.

79 (2006)13 CoM COE.

80 Vienna Convention on Consular Relations done at Vienna on 24 April 1963. Entered into force on 19 March 1967. United Nations, Treaty Series, vol. 596, p. 261

81 Harris, O'Boyle & Warbrick 2009, p. 835.

82 See § 3.2.5. of this chapter.

applicable principles have a de facto *erga omnes* effect. In *Opuz* the ECtHR expressed this as follows:

(..) bearing in mind that the Court provides final authoritative interpretation of the rights and freedoms defined in Section 1 of the Convention, the Court will consider whether the national authorities have sufficiently taken into account the principles flowing from its judgments on similar issues, even when they concern other States.<sup>83</sup>

Furthermore, the ECHR is a so-called 'living instrument' with the consequence that the way in which its provisions are interpreted and applied may be revised as criminal justice systems themselves evolve in order to deal with the changing character of criminal activity or policy. This also means that interpretations might be formulated in a more exacting manner as the European consensus as to what is required evolves. With due regard to these reservations we here seek to identify minimum standards that are applicable to the rights that are relevant for an EU wide Letter of Rights.

### **3.2. The right to information in the ECHR**

For the purposes of this research there are three aspects to the right to information: the right to be informed of the nature and cause of the accusation, as stipulated in Article 6 § 3a ECHR; the right to be informed of other defence rights, for example the right to legal assistance, which as such is not covered by the ECHR; and the right to have access to the evidence on which the accusations are based or, in broader terms, access to the case file.<sup>84</sup>

#### **3.2.1. The right to information about the nature and cause of the accusation**

The rationale of Article 6 § 3a and Article 5 § 2 ECHR impose an obligation on the judicial authorities to inform a suspect of the nature and cause of the accusation is to enable the suspect to fully understand the charges with a view to preparing a proper defence<sup>85</sup> or to challenge the lawfulness of his detention.<sup>86</sup> While Articles 5 and 6 ECHR are fairly specific in the information they require, they are limited to factual information on the arrest and the nature and cause of the accusation and the respective legal basis.<sup>87</sup> The amount of information and the detail and precision that has to be communicated to the suspect or accused is strongly dependent upon the nature and complexity of the case that always is assessed by the ECtHR in light of the

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83 ECtHR 9 June 2009, *Opuz v. Turkey*, no. 33401/02, § 163.

84 According to case law on Arts. 5 and 6 ECHR.

85 ECtHR 25 July 2000, *Mattoccia v. Italy*, no. 23969/94, § 60.

86 ECtHR 30 August 1990, *Fox, Campbell and Hartley v. UK*, no. 12244/86; 12245/86; 12383/86, § 40.

87 ECtHR 16 December 1992, *Edwards v. UK*, no. 13071/87, § 35-38.

right to prepare a defence (Article 6 § 3b ECHR)<sup>88</sup> and more generally, the right to a fair trial (Article 6 § 1 ECHR).<sup>89</sup> It follows that the authorities can be required to take additional steps in order to ensure that the suspect effectively understood the information.<sup>90</sup> The jurisprudence implies that most compliance problems arise with regard to the positive measures that should secure the effective enjoyment of a fair trial. It is not sufficient to make the information available only in the circumstance that the suspect requests it. The duty to inform the suspect on the nature and cause of the accusation rests according to the ECtHR entirely on the prosecuting authority's shoulders and cannot be complied with passively by making information available without bringing it to the attention of the defence.<sup>91</sup>

The ECtHR does not give any indication as to the means to be used to provide the information. Although in *Kamasinski* the ECtHR decided that a suspect should in principle be provided with a written translation of the indictment in case he/she does not understand the language of the proceedings, the Court accepted that oral explanations were sufficient in order to comply with Article 6 § 3a ECHR.<sup>92</sup>

In conclusion it can be said that the extent of the duty to provide information is to a certain degree at the discretion of the judicial authorities and Article 6 § 3a ECHR does not in itself guarantee that a suspect is to receive sufficient information so as to enable him prepare his defence. Nevertheless because information on the accusation is related to the possibility to commence *Habeas Corpus* proceedings, and this right arises immediately upon deprivation of liberty, it is logical to assume that the right to be informed on the nature and cause of the accusation applies at the same moment namely at the initial stages of police investigation when a suspect is deprived of his liberty.

Lastly, according to existing research, there appears to be no consensus within the different EU jurisdictions as to when the right to information on the nature and cause of the accusation arises and practice shows that different rules are applied with regard to persons who have not yet been arrested.<sup>93</sup>

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88 See § 2.4.3.

89 ECtHR 25 March 1999, *Pélissier and Sassi v. France*, no. 25444/94, § 54 and ECtHR 25 July 2000, *Mattoccia v. Italy*, no. 23969/94, § 60 and 71.

90 ECtHR 19 December 1989, *Brozicek v. Italy*, no. 10964/84, § 41; ECtHR 25 July 2000, *Mattoccia v. Italy*, no. 23969/94, § 65 and ECtHR 30 January 2001, *Vaudelle v. France*, no. 35683/97, § 59.

91 ECtHR 25 July 2000, *Mattoccia v. Italy*, no. 23969/94, § 65.

92 ECtHR 19 December 1989, *Kamasinski v. Austria*, no. 9783/82, § 79; ECtHR 25 March 1999, *Pélissier and Sassi v. France*, no. 25444/94, § 53.

93 See Spronken, Vermeulen, De Vocht & Van Puyenbroek 2009, p. 107 (online version p. 117).

### 3.2.2. Information on defence rights

The second aspect of the right to information deals with *how* a suspect is informed of his/her defence rights. In contrast to the first aspect, this is not explicitly mentioned in the ECHR implying that there is no right as such stipulated in the ECHR to be informed of defence rights. Nevertheless there is case law that requires that judicial authorities should take positive measures in order to ensure effective compliance with Article 6 ECHR.<sup>94</sup> This is more specifically reflected in the *Padalov* and *Talat Tunc* decisions in which the Court requires the authorities to adopt an active attitude in order to inform the suspect of the right to free legal aid.<sup>95</sup> According to the decision in *Panovits*, the authorities have a positive obligation to provide the suspect with information on the right to legal assistance and free legal aid, if the conditions thereof are fulfilled.<sup>96</sup> It is not sufficient that this information be given in writing, for instance by a Letter of Rights as was done by the authorities in the *Panovits* case. The ECtHR stresses that authorities have to take all reasonable steps to ensure that a suspect is fully aware of his rights of defence and can appreciate, as far as possible, the consequences of his conduct under questioning.<sup>97</sup>

Indications on how suspects should be informed can also be found in the ECtHR case law with regard to the waiver of rights. It is standard jurisprudence in which the ECtHR reiterates that neither the letter nor the spirit of Article 6 ECHR prevents a person from waiving his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial, as long as a waiver of a right is established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance.<sup>98</sup> A waiver of the right, once invoked, must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a right. Before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6 ECHR, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be.<sup>99</sup> As a consequence the ECtHR found in *Pishchalnikov* that a caution given by the investigating authorities informing an accused of the right to silence is a minimum recognition of the right, and as administered in this case, had barely met the minimum aim of acquainting the accused with the rights which the law confirms on him. The ECtHR found that additional safeguards are necessary, especially when the accused asks for counsel because if an accused has no lawyer, he has less chance of

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94 ECtHR 13 May 1980, *Artico v. Italy*, no.6694/74, § 36 and ECtHR, 30 January 2001, *Vaudelle v. France*, no. 35683/97, § 52, 59 and 60.

95 ECtHR 10 August 2006, *Padalov v. Bulgaria*, no. 54784/00 and ECtHR 27 March 2007, *Talat Tunc v. Turquie*, no. 32432/96.

96 ECtHR 11 December 2008, *Panovits v. Cyprus*, no. 4268/04 § 72-73. See for the conditions that have to be fulfilled § 3.2.6.

97 ECtHR 11 December 2008, *Panovits v. Cyprus*, no. 4268/04, § 67-68. See also ECtHR 31 March 2009, *Plonka v. Poland*, no. 20310/02, § 37-38; ECtHR 24 September 2009, *Pishchalnikov v. Russia*, no. 7025/04, § 79-80.

98 ECtHR 1 March 2006, *Sejdovic v. Italy*, no. 56581/00, § 86; ECtHR 2 August 2005, *Kolu v. Turkey*, no. 35811/97, § 53 and ECtHR 12 February 1985, *Colozza v. Italy* no. 9024/80, § 28.

99 See ECtHR 27 March 2007, *Talat Tunç v. Turkey*, no. 32432/96, § 59 and ECtHR 9 September 2003, *Jones v. the United Kingdom (dec.)*, no. 30900/02.

being informed of his rights and, as a consequence, there is less chance that they will be respected.<sup>100</sup>

Our research shows that *how* a suspect is informed of his rights varies widely and that in many occasions information on procedural rights is provided only orally, which decreases the effectiveness thereof and makes it more difficult to monitor.<sup>101</sup>

### **3.2.3. Information concerning material evidence available to the police or prosecutor; access to case file.**

It is standing case law of the ECtHR that the prosecution authorities should disclose to the defence all material evidence for or against the accused<sup>102</sup> and that both parties must be given the opportunity to have knowledge of and comment on the observations and evidence of the other party.<sup>103</sup> In *Natunen* the ECtHR ruled that disclosure includes the opportunity for the suspect to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings.<sup>104</sup> This right to full disclosure is however not absolute and can be restricted if it pursues a legitimate aim, for example, the protection of national security or sources of information, the need to protect witnesses at risk of reprisals or the need to keep police methods of investigating crime secret.<sup>105</sup> Nevertheless any such restriction on the rights of the defence must be strictly necessary and be remedied in the subsequent proceedings.<sup>106</sup> For example non-disclosure of certain material should be counterbalanced by making the information accessible at the appeal stage and giving the defence ample time to respond.<sup>107</sup> The ECtHR also requires that the (non-) disclosure of information should always be under examination of the trial judge as he is in the best position to assess the need thereof. On the other hand, the ECtHR requires that the person requesting disclosure of certain documents is required to give specific reasons for this request.<sup>108</sup> The defence should indicate the relevance of the information for the case.

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100 ECtHR 24 September 2009, *Pishchalnikov v. Russia*, § 78-79.

101 See also Spronken, Vermeulen, De Vocht & Van Puyenbroek 2009, p. 92-98 (online version p. 100-106).

102 ECtHR 16 December 1992, *Edwards v. UK*, no.13071/87, § 36.

103 ECtHR 28 August 1991, *Brandstetter v. Austria*, no. 11170/84; 12876/87; 13468/87, § 66; ECtHR 16 February 2000, *Jasper v. UK*, no. 27052/95, § 51; ECtHR 6 September 2005, *Salov v. Ukraine*, no. 65518/01, § 87.

104 ECtHR 31 March 2009, *Natunen v. Finland*, no. 21022/04, § 42; ECtHR 15 November 2007, *Galstyan v. Armenia*, no. 26986/03, § 84.

105 ECtHR 16 February 2000, *Jasper v. UK*, no. 27052/95, § 43 and ECtHR 24 June 2003, *Dowsett v. the UK*, no. 39482/98, § 42.

106 ECtHR 16 February 2000, *Jasper v. UK*, no. 27052/95, § 43 and ECtHR 16 December 1992, *Edwards v. UK*, no.13071/87, § 39.

107 ECtHR 16 December 1992, *Edwards v. UK*, no.13071/87, § 35-37; ECtHR 18 March 1997, *Foucher v. France*, no. 22209/93, § 35-38.

108 ECtHR 24 February 1992, *Bendenoun v. France*, no.12547/86, § 52.

There is no specific case law under Article 6 ECHR clarifying at what moment in the criminal proceedings material evidence should be disclosed. In the context of Article 5 § 4 ECHR, the ECtHR has however given some indication at what stage of the criminal procedure and to what extent access to the file should be provided. In cases relating to the proceedings for the review of detention pending trial the Court ruled that the principle of equality of arms requires access for the defence to those documents in the investigation file which are essential in order to effectively challenge the lawfulness of the pre-trial detention.<sup>109</sup> According to the ECtHR this means that the accused be given sufficient opportunity to be made aware of and access statements and other supporting pieces of evidence, such as the determination of the police and other investigations, irrespective of whether the accused is able to provide any indication as to the relevance of the evidence for his defence. Although the Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, essential information necessary for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer.<sup>110</sup> In addition the Court ruled that abstracts of the case file do not suffice, nor does an oral account of facts and evidence. Authorities should facilitate the consultation of files at moments that are essential for the defence and should not be over-formalistic in doing so.<sup>111</sup> Although there is no case law specifying the moment at which this should be done (because the right to review of pre-trial detention according to Article 5 § 4 ECHR arises immediately upon deprivation of liberty), documents that are essential to challenge the lawfulness of pre-trial detention should be disclosed for this purpose at the same time.

Again, existing research reveals that practice varies widely across EU Member States. In particular, in most Member States neither defence lawyers nor their clients are given a right to information about the evidence relating to the alleged offence at the very beginning of the investigative stage. However, most Member States do give a right to the accused (or their lawyer) at the trial or trial preparation stage to information about the evidence, although the precise formulation of the right varies

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109 ECtHR, 13 February 2001, *Garcia Alva v. Germany, Lietzow v. Germany and Schöps v. Germany*, nos. 23541/94, 24479/94 and 25116/94 *Edwards v. UK*, no.13071/87, § 35-37; ECtHR 18 March 1997, *Foucher v. France*, no. 22209/93, § 35-38.

109 ECtHR 24 February 1992, *Bendenoun v. France*, no.12547/86, § 52.

109 ECtHR, 13 February 2001, *Garcia Alva v. Germany, Lietzow v. Germany and Schöps v. Germany*, nos. 23541/94, 24479/94 and 25116/94 and ECtHR, 9 July 2009, *Mooren v. Germany*, no. 11364/03, § 124-125.

110 ECtHR, 13 February 2001, *Garcia Alva v. Germany*, no. 23541/94, § 41-42; ECtHR 9 July 2009, *Mooren v. Germany*, no. 11364/03, § 121-124.

111 ECtHR, 13 February 2001, *Schöps v. Germany*, no. 25116/94, § 47-55; ECtHR 9 July 2009, *Mooren v. Germany*, no. 11364/03, § 121-125.

enormously and, in particular, depends upon whether the jurisdiction has an inquisitorial or adversarial tradition.<sup>112</sup>

### **3.2.4. The right to legal advice and representation**

In the surveyed Letters of Rights and written information the right to legal advice is a key issue and for good reasons. A suspect who is assisted by an effective lawyer is in a far better position with regards to the enforcement of all his other rights, partly because he is better informed and partly because a lawyer is able to assist him in ensuring that his rights are respected.<sup>113</sup> We have identified that Letters of Rights list several aspects of legal assistance such as the right to appoint a lawyer, to notify a lawyer, to keep in touch with the lawyer, to privileged communication with a lawyer, to consult a lawyer before questioning, to have a lawyer present during questioning and information on the procedure with regard to the appointment of the lawyer including access to free legal assistance. In the subsequent paragraphs these aspects will also be dealt with.

### **3.2.5. The moment at which the right to legal assistance arises**

Given our refined definition<sup>114</sup> according to which Letters of Rights deal with the rights that arise at the first contact of the suspect with the police in relation to a criminal investigation, it is important to establish at what moment the right to legal assistance and representation arises according to the ECtHR jurisprudence. The ECtHR held for many years that the right arises immediately upon arrest.<sup>115</sup> When the suspect has to make decisions during police interrogations that may be decisive for the further course of the proceedings, he has the right to consult a lawyer prior to these interrogations.<sup>116</sup> Although the ECtHR acknowledged that the physical presence of a lawyer can provide the necessary counterbalance against pressure exerted by the police during interviews<sup>117</sup>, a right to have a lawyer present during police interrogation did not,

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112 Spronken, Vermeulen, De Vocht & Van Puyenbroek 2009, p. 94 (online version p. 102).

113 Green Paper, COM(2003) 75 final, section 4.1.

114 See § 2.6.2.

115 ECtHR 8 February 1996, *John Murray v. UK*, no. 18731/91; ECtHR 6 June 2000 *Magee v. UK* no. 28135/95.

116 ECtHR 6 June 2000, *Averill v. UK*, no. 36408/97.

117 ECtHR 6 June 2000, *Magee v. UK*, no. 28135/95 and ECtHR 2 May 2000, *Codron v. UK*, no. 35718/97 § 60: "The fact that an accused person who is questioned under caution is assured access to legal advice, and in the applicants' case the physical presence of a solicitor during police interview must be considered a particularly important safeguard for dispelling any compulsion to speak which may be inherent in the terms of the caution. For the court, particular caution is required when a domestic court seeks to attach weight to the fact that a person who is arrested in connection with a criminal offence and who has not been given access to a lawyer does not provide detailed responses when confronted with questions the answers to which may be incriminating."

according to the Court, derive from Article 6 § 3c ECHR.<sup>118</sup> In contradiction to that initial view, the ECtHR in recent judgments has underlined the importance of the investigation stage for the preparation of the criminal proceedings, and referred to the recommendations of the CPT:

“The Court finds that in order for the right to a fair trial to remain sufficiently ‘practical and effective’ Art. 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.”

The ECtHR further indicates that even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction may not unduly prejudice the rights of the accused. As a consequence, the ECtHR considers that the lack of legal assistance during a suspect’s interrogation would constitute a restriction of his defence rights and that these rights will in principle be irretrievably prejudiced when incriminating statements, made during police interrogation without access to a lawyer, are used for a conviction.<sup>119</sup>

This new interpretation of Article 6 § 3c ECHR, also referred to as the ‘*Salduz* doctrine’, has been confirmed in several judgments. In this (post-*Salduz*) case law the ECtHR has convicted defending states (often Turkey) by merely referring to the *Salduz* principle and adding that no exceptional circumstances were present that could justify an exception to this jurisprudence.<sup>120</sup> Moreover, in the case of *Shabelnik v. Ukraine* of 19 February 2009 the ECtHR was clear as regards the interpretation that should be given to its new jurisprudence:

“...the applicant, having been warned about criminal liability for refusal to testify and at the same time having been informed about his right not to testify against himself, could have been confused, as he alleged, about his liability for refusal to testify, especially in the absence of legal advice during that interview”.<sup>121</sup>

The ECtHR emphasised in *Pishchalnikov* that although the right to legal assistance may be waived, such a waiver “must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a right. Before an accused can be said to have implicitly, through his conduct, waived an important right under Art. 6, it must be

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118 ECtHR 6 October 2001, *Brennan v. UK*, no.39846/98; *Dougan v. UK*, ECtHR 14 December 1999, no. 44738/98.

119 ECtHR, Grand Chamber, 27 November 2008, *Salduz v. Turkey*, no. 36391/02, § 54-55 and ECtHR 11 December 2008, *Panovits v. Cyprus*, no. 4268/04, § 66 and 70-73.

120 ECtHR, 10 March 2009, *Böke and Kandemir v. Turkey*, nos. 71912/01; 26968/02 and 36397/03; ECtHR, 3 March 2009, *Aba v. Turkey*, nos. 7638/02 and 24146/04; ECtHR, 17 February 2009, *Aslan and Demir v. Turkey*, nos. 38940/02 and 5197/03; ECtHR, 17 February 2009, *Oztürk v. Turkey*, no. 16500/04.

121 ECtHR 19 February 2009, *Shabelnik*, no.16404/03.

shown that he could reasonably have foreseen what the consequences of his conduct would be.”<sup>122</sup> In the Court's view a valid waiver cannot be established by showing only that a suspect responded to further police-initiated interrogation even if advised of his rights. An accused who has expressed his desire to participate in investigative steps only through counsel should, according to the ECtHR, not be subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police or prosecution.<sup>123</sup>

In *Dayanan* the ECtHR underlined the importance of being assisted in the initial phase of the police interrogations and found a violation of Article 6 ECHR even though Dayanan had referred to his right to silence during police interrogation and had not given any evidence to the police. The ECtHR stressed in this case that the principle of equality of arms requires that fairness of proceedings against an accused person in custody required that he be able to obtain the whole range of services specifically associated with legal assistance: discussion of the case, organisation of the defence, collection of evidence, preparation for questioning, support to an accused in distress, and checking of the conditions of detention.<sup>124</sup>

On the basis of this case law it can be concluded that the right to consult a lawyer applies before the first police interrogation. From the study *Effective Criminal Defence in Europe* it can be determined that the legal position regarding access to legal assistance for people detained and interrogated by the police is changing rapidly across Europe as a result of the *Salduz* decision and a number of jurisdictions are introducing a clear legal right to legal assistance at this stage; although there are varying degrees of resistance to recognising that the right extends to having a lawyer present *during* police interrogations in France, Belgium, the Netherlands and Scotland.<sup>125</sup>

In addition, it can be concluded from this overview of the jurisprudence that a suspect has to be clearly informed of his right to legal assistance and that a Letter of Rights where the right is listed is not sufficient. The authorities have a positive obligation to

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122 ECtHR 24 September 2009, *Pishchalnikov v. Russia*, no.7025/04 § 76. See also ECtHR 31 March 2009, *Plonka v. Poland*, no. 20310/02.

123 ECtHR 24 September 2009, *Pishchalnikov v. Russia*, no.7025/04 § 79.

124 ECtHR 13 October 2009, *Dayanan v. Turkey*, no. 7377/03, § 32: “En effet, l'équité de la procédure requiert que l'accusé puisse obtenir toute la vaste gamme d'interventions qui sont propres au conseil. A cet égard, la discussion de l'affaire, l'organisation de la défense, la recherche des preuves favorables à l'accusé, la préparation des interrogatoires, le soutien de l'accusé en détresse et le contrôle des conditions de détention sont des éléments fondamentaux de la défense que l'avocat doit librement exercer.”

125 Cape, Namoradze, Smith & Spronken 2010, p. 79; p. 224; and p. 584. See the Dutch Letter of Rights in Annex 1 that does not provide for legal assistance during police interrogation for adults and the pending case before the UK *Supreme Court of Cadder v. HM Advocate UKSC 2010/0022* (on appeal from the High Court of Justiciary (Scotland)) where a final decision on the issue of access to a lawyer during police interrogation is expected in October 2010.

ensure that the suspect has actually understood the implications and the consequences of this right.

### **3.2.6. The choice, and free provision of a lawyer for indigent suspects**

Article 6 § 3c ECHR makes clear that suspects have a right to choose their lawyer if they are paying for the lawyer's services privately, but is ambiguous when legal assistance is to be provided free of charge. Article 6 § 3c stipulates that a suspect has the right to legal aid on two conditions: first if he does not have sufficient means to pay for legal assistance and second when the interests of justice so require. The ECtHR holds that the suspect does not have to prove 'beyond all doubt' that he lacks the means to pay for his defence.<sup>126</sup> The ECtHR indicates 3 factors that should be taken into account<sup>127</sup>:

- The seriousness of the offence and the severity of the potential sentence,
- The complexity of the case, and
- The social and personal situation of the defendant.

The right to legal aid exists whenever the deprivation of liberty is at stake<sup>128</sup>, which narrows down the definition of 'interests of justice'. Denying legal aid for a period during which procedural acts, including questioning of the applicants and their medical examinations, are carried out is unacceptable according to the ECtHR.<sup>129</sup> The Court however confirmed that the right to choose a lawyer can be subject to limitations, in particular in cases where the state pays for the legal assistance.<sup>130</sup> Although the ECHR does not explicitly require that suspects be informed of the right to legal assistance, it follows from *Padolov* and *Panovits* that the judicial authorities must actively and adequately inform suspects thereof enabling them to receive legal representation.<sup>131</sup>

The ECtHR allows ECHR Contracting Parties a certain margin of appreciation in choosing a system to make free legal advice available. There is however no specific jurisprudence of the ECtHR on the following issues that are of significance for the effectiveness of the right to free legal advice. Existing research shows that the provision of legal aid is the *Achilles heel* in many criminal law systems of the EU. In only a small majority of the EU Member States is there a merits test and there is a considerable variation as to the content and meaning of the means test which, in many

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126 ECtHR 25 April 1983, *Pakelli v. Italy*, no. 8398/78.

127 ECtHR 24 May 1991, *Quaranta v. Switzerland*, no. 12744/87.

128 ECtHR 10 June 1996, *Benham v. UK*, no. 19380/92.

129 ECtHR 20 June 2002, *Berlinski v. Poland*, no. 27715/95 and 30209/96.

130 ECtHR 14 January 2003, *Lagerblom v. Sweden*, no. 26891/95, § 54.

131 ECtHR 10 August 2006, *Padolov v. Bulgaria*, no. 54784/00, § 53-55 and ECtHR 11 December 2008, *Panovits v. Cyprus*, no. 4268/04 § 64.

States, do not exist in a standardised form. Procedures to apply for free legal aid are vague and often it is not clear how the authorities who have to decide on the request for free legal assistance come to their decisions. Half of the EU Member States do not have legal time limits for deciding on requests for legal aid and many States do not allow choice where a lawyer is provided to indigent persons.<sup>132</sup> The study *Effective Criminal Defence in Europe* also reveals that in most of the jurisdictions considered legal aid provisions are inadequate.<sup>133</sup>

### 3.2.7. The right to private consultation with a lawyer

An essential condition for effective legal assistance is the confidentiality of the lawyer-client relationship that includes the right to confidential communication and unrestricted access. This means that there must be guarantees that the lawyer is allowed to visit and speak with his client in confidence, without third parties being able to take note of what is communicated.<sup>134</sup> The ECtHR has dealt with the protection of professional privilege under Article 6 as well as Article 8 ECHR. The landmark decision is the *Niemietz* case in which the ECtHR states in general terms that 'where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by art. 6 of the Convention'.<sup>135</sup> In other decisions the Court refers to rights as guaranteed by Article 6 ECHR such as the right to seek advice pending criminal proceedings. In *Schönenberger and Durmaz* correspondence between the lawyer and his detained client was stopped because the authorities had learned from its contents that Mr. Durmaz (lawyer) had given his client advice to make use of his right to silence. The ECtHR found a violation reaffirming the right to remain silent being a right enshrined in Article 6 and that thus the interference was not in accordance with Article 8 § 2 ECHR because it was not necessary in a democratic society.<sup>136</sup> The ECtHR held in *S v. Switzerland*<sup>137</sup> that Article 6 § 3c ECHR should be interpreted so as to guarantee that lawyer/client communications are confidential. Intercepting such communications violates 'one of the basic requirements of a fair trial in a democratic society'.<sup>138</sup> Recently the Court confirmed that correspondence with lawyers, whatever its purpose, is always privileged and that intercepting mail is only permissible in exceptional circumstances such as a reasonable believe that the privilege is being abused, meaning that the correspondence would endanger prison security or the safety of others or otherwise be

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132 Spronken, Vermeulen, De Vocht & Van Puyenbroek 2009, § 3.2. and see also R. Bowles and A. Perry, *International comparison of publicly funded legal services and Justice systems*, Ministry of Justice Research Series 14/09 October 2009, [www.justice.gov.uk/publications/research.htm](http://www.justice.gov.uk/publications/research.htm).

133 Cape, Namoradze, Smith & Spronken 2010, p. 606.

134 ECtHR 27 November 2007, *Zagaria v. Italy*, no. 58295/00, § 30.

135 ECtHR 16 December 1992, *Niemietz v. Germany*, A 251-B, § 37.

136 ECtHR 20 June 1988, *Schönenberger and Durmaz v. Switzerland*, no.11368/85

137 ECtHR 28 November 1991, *S. v. Switzerland*, no. 12629/87; 13965/88.

138 ECtHR 12 May 2005, *Öcalan v. Turkey*, no. 46221/99.

of a criminal nature.<sup>139</sup> Accordingly, the surveillance of contacts based on the risk of collusion cannot serve as a justification as this was the very reason for detention.<sup>140</sup>

### 3.2.8. The right to silence including the prohibition of self-incrimination

The second frequently mentioned right in the surveyed Letters of Rights and similar documents is the right to silence or the right to refrain from making statements during questioning. The right to remain silent is not explicitly mentioned in Article 6 ECHR. It is however settled case law of the ECtHR that the right to silence and the right not to incriminate oneself are fundamental features of the concept of fair trial as they are 'generally recognised international standards which lie at the heart of the notion of a fair procedure' under Article 6 ECHR.<sup>141</sup> Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6 ECHR.<sup>142</sup> The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused.<sup>143</sup>

It is important to note that according to the ECtHR's case law, Article 6 ECHR and the privilege against self-incrimination come into play as soon as a person is 'charged' with a criminal offence which is taken to mean when 'the situation of the [person] has been substantially affected'.<sup>144</sup> In *Zaichenko* the ECtHR considered that, on the facts of the case, police suspicion of theft should have been aroused at the time that the applicant was stopped at a road check and was not able to produce proof that he had purchase the diesel found in his car. Although he was not accused at that moment, the ECtHR found that it was incumbent on the police to inform the applicant of the privilege against self-incrimination and the right to remain silent before asking him for further 'explanation'. By subsequently using the statement made to the police as evidence for a conviction, without him being informed of those rights, constituted a violation of Article 6 ECHR.<sup>145</sup>

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139 ECtHR 9 October 2008, *Moiseyev v. Russia*, no. 62936/00, § 210. See also, ECtHR, 25 March 1992, *Campbell v. UK*, no.13590/88, § 48.

140 ECtHR 31 January 2002, *Lanz v. Austria*, no. 24430/94, § 52.

141 In *Funke* the Court held for the first time that the right to silence and the *nemo tenetur* principle are part of the fair trial concept of Art. 6 § 1 ECHR, ECtHR 25 February 1993, *Funke v. France*, no.10828/84, paragraph 41-44. See also: ECtHR 17 December 1996, *Saunders v UK*, no. 19187/91 § 68; ECtHR 8 February 1996, *John Murray v. UK*, no. 18731/91, § 45; ECtHR 21 December 2000, *Heaney and McGuinness v. Ireland*, no. 34720/97, § 40, confirmed in ECtHR 22 July 2008, *Getiren v. Turkey*, no. 10301/03, § 123.

142 ECtHR, Grand Chamber, 27 November 2008, *Salduz v. Turkey*, no. 36391/02, § 54-55.

143 See, *inter alia*, ECtHR 17 December 1996, *Saunders v. UK*, no. 19187/91, § 68; ECtHR 21 December 2000, *Heaney and McGuinness v. Ireland*, no. 34720/97, § 40; ECtHR 3 May 2001, *J.B. v. Switzerland*, no. 31827/96, § 64; ECtHR 5 November 2002, *Allan v. UK*, no. 48539/99, § 44.

144 ECtHR 17 December 1996, *Saunders v. UK*, no. 19187/91 § 67 and 74 and ECtHR 19 February 2009, *Shabelnik v. Ukraine*, no. 16404/03, § 57

145 ECtHR 18 February 2010, *Zaichenko v. Russia*, no. 39660/02, § 42 and § 52-60.

The ECtHR also held that the privilege is linked with the right to have access to a lawyer and explicitly stated that 'early access to a lawyer is part of the procedural safeguards to which the court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination'.<sup>146</sup>

Despite its fundamental nature, the right to remain silent can be restricted provided that the authorities can invoke good cause.<sup>147</sup> The ECtHR adopts a rather strict approach towards permissible justifications. If the very essence of the right to remain silent is circumvented, there will be a violation.<sup>148</sup>

It follows from the jurisprudence that a distinction can be made between an attempt to compel the defendant to give certain evidence (*Funke*<sup>149</sup>) and the drawing of inferences from a person's silence (*Murray*).<sup>150</sup> In both situations all circumstances of the case must be taken into account in order to determine whether the right to remain silent has been breached.<sup>151</sup> Factors to which the Court will have regard in determining whether there has been a violation include the nature and degree of compulsion; existence of any relevant safeguards; and the use of the material so obtained in subsequent proceedings.<sup>152</sup>

With regard to the application of the right to remain silent and the prohibition of self incrimination, it is not necessary that the allegedly incriminating evidence obtained by coercion or in violation of the right to silence or self incrimination is actually used in criminal proceedings, before the right not to incriminate oneself applies. A violation of the right not to incriminate oneself can be found even though no underlying proceedings were brought or when the person is subsequently acquitted.<sup>153</sup>

In conclusion, based on the ECtHR's case law, it can be determined that the right to silence is a fundamental feature of the right to a fair trial and that a suspect should be cautioned of this right as soon as a person is 'charged' with a criminal offence which is taken to mean, in the autonomous interpretation of the ECtHR, when 'the situation of the [person] has been substantially affected'.<sup>154</sup>

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146 ECtHR 24 September 2009, *Pishchalnikov v. Russia*, no. 7025/04, § 69.

147 ECtHR 8 February 1996, *John Murray*, no. 18731/91, § 47; ECtHR 21 December 2000, *Heany and McGuinness v. Ireland*, no. 34720/97, § 47.

148 ECtHR 21 December 2000, *Heany and McGuinness v. Ireland*, § 57-58; ECtHR 10 March 2009, *Bykov v. Russia*, no. 4378/02, § 93.

149 ECtHR 25 February 1993, *Funke v. France*, no. 10828/84, § 41-44.

150 ECtHR 8 February 1996, *John Murray v. UK*, no. 18731/91, § 45; see also ECtHR 29 June 2007, *O'Halloran and Francis v. UK*, nos. 15809/02 and 25624/02, § 45-46.

151 ECtHR 29 June 2007, *O'Halloran and Francis v. the UK*, nos. 15809/02 and 25624/02, § 53; ECtHR 2 May 2000, *Condrón v. UK*, no. 35718/97, § 59-63.

152 ECtHR 5 November 2002, *Allan v. UK*, no. 48539/99, § 44. See also ECtHR 21 December 2000, *Heany and McGuinness v. Ireland*, § 55; ECtHR 11 July 2006, *Jalloh v. Germany*, no. 54810/00, § 112-123.

153 ECtHR 21 April 2009, *Marttinen v Finland*, no. 19235/03, § 64.

154 See § 1.4.1.

### 3.2.9. Interpretation and translation

A defendant who does not speak or understand the language of the proceedings is clearly at a disadvantage.<sup>155</sup> In order to remedy this vulnerable situation, Article 6 § 3e ECHR provides for the right to free interpretation.<sup>156</sup> In *Luedicke, Belkacem and Koç v. Germany* the Court made clear that the term 'free' implies a 'once and for all exemption or exoneration'.<sup>157</sup> Consequently, defendants may not be ordered to pay the costs of an interpreter.<sup>158</sup> Articles 5 § 2 and 6 § 3a ECHR require, in more general terms, that everyone who is arrested or charged with a criminal offence shall be informed promptly, *in a language which he understands*, of the reasons for arrest and of the nature and cause of the charge against him. The interpretation must enable the defendant to understand the case against him and to defend himself, in particular by being able to put his version of events before the court.<sup>159</sup> Therefore, the scope of this right is not limited to oral statements made at the trial hearing but also covers documentary material, and pre-trial proceedings.<sup>160</sup> Accordingly, the right to interpretation implies a right to translation of necessary documents. In *Kamasinski* the Court specified that not every document requires translation in written form. Oral interpretation provided by an interpreter or by the defence lawyer will be sufficient as long as the defendant understands the relevant document and their consequences. For example, the fact that the verdict is not translated is not in itself incompatible with Article 6 ECHR as long as the defendant sufficiently understands the verdict and the reasoning thereof.<sup>161</sup>

Following from the decision in *Cuscani* an active attitude is required from the judicial authorities since they should verify the accused's need for interpretation, even though the conduct of the defence is essentially a matter between the defendant and his lawyer, and the defendant did not explicitly request interpretation.<sup>162</sup>

It should be noted that existing research as well as the existing Letters of Rights and written information reveal that national rules on what documents are to be translated vary considerably among the Member States, as does the right to interpretation. In

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155 ECtHR 19 December 1989, *Kamasinski v. Austria*, no. 9783/82, § 79 and ECtHR 18 October 2006, *Hermi v. Italy*, no.18114/02, § 68.

156 This is also expressed in art. 14.3.a & f ICCPR.

157 ECtHR 28 November 1978, *Luedicke, Belkacem and Koç v. Germany*, nos. 6210/73, 6877/75, 7132/75, § 40.

158 ECtHR 28 November 1978, *Luedicke, Belkacem and Koç v. Germany*, nos. 6210/73, 6877/75, 7132/75, § 46.

159 ECtHR 18 October 2006, *Hermi v. Italy*, No.18114/02, § 70.

160 ECtHR 28 November 1978, *Luedicke, Belkacem and Koç v. Germany*, nos. 6210/73, 6877/75, 7132/75, § 48, ECtHR 19 December 1989, *Kamasinski v. Austria*, No. 9783/82, § 74 and ECtHR 18 October 2006, *Hermi v. Italy*, no. 18114/02, § 69.

161 ECtHR 19 December 1989, *Kamasinski v. Austria*, no. 9783/82, § 85.

162 ECtHR 24 September 2002, *Cuscani v. UK*, no. 32771, § 38 and 39. In this case, the defendant suffered from a hearing impairment.

some Member States there is no provision for interpretation during lawyer/client consultations.<sup>163</sup>

### **3.2.10. The Directive on the rights to interpretation and translations in criminal proceedings**

On 16 June 2010 the European Parliament adopted the Directive on the rights to interpretation and to translation in criminal proceedings, also named Measure A in the Roadmap.<sup>164</sup> Although at the time of finalising this report (July 2010) the directive is awaiting Council decision and the legislative proceedings have not yet come to an end, its content will be taken into account, especially the aspects that are relevant for a model EU-wide Letter of Rights. As described above, practice on interpretation and translation differ widely in EU Member States and the proposed Directive aims to set common minimum standards. Relevant for the Letter of Rights is that according to the proposed Directive the right to interpretation applies to any person from the time that person is made aware that he is suspected or accused of having committed a criminal offence. The right also applies during police questioning and if necessary during communication between the suspect and his legal counsel in direct connection with any questioning. In addition the proposed Directive provides for a written translation of essential documents, including at least decisions depriving a person of his liberty, the charge/ indictment and any judgment. And finally the proposed Directive obliges Member States to ensure that interpreters and translators will be required to observe confidentiality regarding interpretation and translation provided.

### **3.2.11. Medical care**

The majority of the Letters of Rights provide for the right to medical care. This is a right not explicitly guaranteed in the ECHR. Nevertheless there is jurisprudence on the conditions of detention and the treatment of detainees in relation to Article 3 ECHR. In *Enea*, the ECtHR confirmed its established case law that, in particular when persons are deprived of their liberty, Article 3 ECHR imposes a positive obligation on the State to ensure that a person's health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.<sup>165</sup> Hence, a lack of appropriate medical care and, more generally, the detention in inappropriate

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163 See Spronken, Vermeulen, De Vocht & Van Puyenbroeck 2009, p. 84 (online version p. 90).

164 See § 1.2 and COD/2010/0801, after the Presidency on 17/18 May 2010 reached a provisional agreement with the European Parliament and with the Commission on the text of the draft Directive, Council of the European Union, Report from the Presidency to COREPER, nr. 2010/0801 (COD) 10013/10, and COD/2010/0050.

165 ECtHR 17 September 2009, *Enea v. Italy*, no. 74912/01, § 57 and 58; ECtHR 26 October 2000, *Kudła v. Poland*, no. 30210/96, § 94; ECtHR 11 July 2006, *Rivière v. France*, no. 33834/03, § 62.

conditions of a person who is ill may in principle amount to treatment contrary to Article 3 ECHR.<sup>166</sup>

### **3.2.12. Remedy to challenge the legality of the detention**

Several Letters of Rights and written information provide information on the duration of the detention and the right to judicial remedy. With this regard Article 5 § 4 ECHR is of relevance for the initial stages of police custody. This is the *Habeas Corpus* provision of the ECHR and provides:

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

This provision is a detainee’s right to ‘actively [...] seek a prompt judicial review of his detention and its access to the judge may not be dependent on the good will of the detaining authority.’<sup>167</sup> The principles established by the ECtHR’s case law with regard to this provision are that a detainee must be able to seek review as soon as he is detained and the decision must be taken ‘speedily’ thereafter. Article 5 § 4 ECHR<sup>168</sup> is a fully independent provision that comes into play before Article 5 § 3 which in any case only applies to detention based on Article 5 § 1c ECHR.<sup>169</sup> This means that the right to seek judicial review is applicable as soon as a person is deprived of his liberty, regardless of the formal provision. From this case law it can be concluded that each person deprived of his liberty has the immediate right to have his detention reviewed by a judicial authority. As set out under § 3.2.3. in addition essential information in the case-file necessary for the assessment of the lawfulness of a detention should be made available in an appropriate manner at least to the suspect’s lawyer.<sup>170</sup> Although the ECtHR clearly sets out these principles we have not found decisions that say that the person deprived of his liberty should also be informed of these rights.

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166 ECtHR 27 June 2000, *İlhan v. Turkey*, no. 22277/93, § 87 and ECtHR 10 February 2004, *Naumenko v. Ukraine*, no. 42023/98, § 112.

167 ECtHR 23 October 2003, *Rakevich v. Russia*, no. 58973/00, § 46.

168 Providing: 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 accordance with a procedure prescribed by law: [...] the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

169 See for a recapitulation of general principles ECtHR 15 November 2005, *Reinprecht v. Austria*, no. 67175/01, § 31.

170 ECtHR, 13 February 2001, *Garcia Alva v. Germany*, no. 23541/94, § 41-42; ECtHR 9 July 2009, *Mooren v. Germany*, no. 11364/03, § 121-124.

### 3.2.13. Vulnerable suspects

Many Member States have special provisions for vulnerable suspects and this is also reflected in the various Letters of Rights. The rationale is that vulnerable suspects require proper protection as far as procedural safeguards are concerned, to offset their disadvantages. To establish what are vulnerable suspects in general terms for legislation on the EU level however presents two substantial difficulties: first, how to define vulnerable groups and second, it is difficult to establishing uniform mechanisms for offering the appropriate protection.

According to the European Commission's Green Paper on procedural rights<sup>171</sup> potentially vulnerable groups are for instance (but not exclusively):

- Foreign nationals, who are vulnerable by virtue of their nationality, linguistic disadvantage and other factors.
- Children, defined as all persons under 18.<sup>172</sup>
- Mentally or physically handicapped persons.
- Persons who have children or dependants (such as pregnant women and single parents of young children).
- Persons who cannot read or write.
- Persons with a refugee status under the 1951 Refugee Convention, other beneficiaries of international protection and asylum seekers.
- Persons addicted to alcohol or drugs.

The ECHR does not provide standards for the special assistance to be given to vulnerable suspects. The ECtHR has stressed however in its case law that the right of an accused to effective participation in his or her trial includes not only the right to be present, but also to hear and follow the proceedings.<sup>173</sup> In the case of a child, according to the ECtHR, it is essential that he be dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings, including conducting the hearing in such a way as to reduce as far as possible feelings of intimidation and inhibition.<sup>174</sup> If an accused is so intellectually impaired as to fail to understand the proceedings, the nature of the charges against him, and of what is consequently at stake, Article 6 § 1 ECHR is violated. The accused must have a broad understanding of the nature of the trial including of the penalty which may be imposed. According to the ECtHR, this implies that if necessary he or she must be assisted by an interpreter, lawyer, social worker or friend.<sup>175</sup> This jurisprudence focuses on the treatment of a juvenile in the trial phase, but in the *Panovits* case the ECtHR stressed that 'the right of an accused minor to effective

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171 COM(2003) 75 final.

172 Art. 1 UN Convention of the Rights of the Child.

173 ECtHR 23 February 1994, *Stanford v. UK*, 16757/90.

174 ECtHR 16 December 1999, *T v. UK*, no. 24724/94.

175 ECtHR 5 June 2004, *S.C. v. UK*, no. 60958/00.

participation in his or her criminal trial requires that he be dealt with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police' and that 'The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition [...] and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him or her, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent.' According to the ECtHR this means that a juvenile, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said by the arresting officer and during his questioning by the police. Although the ECtHR stresses the importance of adequate treatment of juveniles and that there is a positive obligation on the Contracting Parties, and therefore on the Member States, to take appropriate measures to inform the juvenile of his rights, it leaves a considerable margin of appreciation to the Member State as how to ensure these rights.

### **3.3. The International Covenant on Civil and Political Rights**

In contrast to the ECHR, the text of the International Covenant on Civil and Political Rights (ICCPR) and its *travaux préparatoires*, do mention the importance of information on rights. In particular, the ICCPR guarantees not only what is reiterated in the ECHR in Articles 6 § 3a and 5 § 2 by virtue of Article 14 § 3a respectively 9 § 2 ICCPR, but article 14(3)(d) reads that:

d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

The parts in the *travaux préparatoires* concerned with the above article, say:

'it was argued that the statement in article 14, paragraphs 2 (c) [now 3(d)], that the accused had not only the right to defend himself in person or through legal assistance of his own choosing [...], but also the right, if he did not have legal assistance, to be informed of that right, was self evident [...] and, because of its unsatisfactory formulation, illusory, since it conferred no worthwhile substantive right on an accused person [...]. On the other hand, the view was expressed that in many countries the right of an accused person to be informed that he could defend himself or be represented by counsel was a valuable procedural right, if not a substantive right, and constituted a surer

guarantee for safeguarding of other rights connected with criminal proceedings.<sup>176</sup>

### 3.4. CPT-Standards

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has over its years of activity in the field developed standards relating to the treatment of persons deprived of their liberty. These standards have been published in the brochure "The CPT standards". These CPT standards stress that persons taken into custody have to be '*expressly informed without delay*'<sup>177</sup> of their three basic rights:

- the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate);
- the right of access to a lawyer; and
- the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities).

These rights are considered to be 'the three fundamental safeguards against ill-treatment of detained persons'.<sup>178</sup> The importance of not only possessing these rights but being expressly informed upon them without delay was emphasised in the 2<sup>nd</sup> General Report<sup>179</sup> of the CPT in 1992. It stated, and reiterated on many occasions throughout the years in the ensuing General Reports that in order to ensure that a person is expressly informed without delay of these fundamental rights:

the CPT considers that a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.<sup>180</sup>

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176 Extract of Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Capt. VI, §84, emphasis added.

177 The CPT-Standards, "Substantive" sections of the CPT's General Reports' Extract from the 2nd General Report [CPT/Inf (92) 3], §. 37.

178 The CPT-Standards, "Substantive" sections of the CPT's General Reports' Extract from the 2nd General Report [CPT/Inf (92) 3], §. 36.

179 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, CPT/Inf (92) 3.

180 The CPT-Standards, "Substantive" sections of the CPT's General Reports' Extract from the 6th General Report [CPT/Inf (96) 21], §. 16, emphasis added.

See also: extract from the 12th General Report [CPT/Inf (2002) 15], § 44, Extract from the 7th General Report [CPT/Inf (97) 10], § 30, regarding immigration detainees. Extract from the 19th General Report [CPT/Inf (2009) 27], § 84.

The Report goes on to state that '[t]his document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter'.<sup>181</sup>

From the above it becomes clear that the CPT advocates that information be provided to suspects and detainees by way of a Letter of Rights which is available in a language the suspect understands. With regards to the time when the information should be provided, the CPT stresses that this should be done immediately, at the very outset of their custody. In addition the CPT argues that a Letter of Rights should also contain a provision on the right to notify a third person of the arrest and the right to request a medical examination.

### **3.5. European Prison rules**

The most recent version of the European Prison Rules were enacted within the Council of Europe by the Committee of Ministers in 2006 as a recommendation to the Member States as how to treat prisoners. Rule 15.2 and Rule 30 are of particular importance for our research because they require written information to be provided to the prisoner at admission. They read:

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

Information

30.1 At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.

30.2 Prisoners shall be allowed to keep in their possession a written version of the information they are given.

30.3 Prisoners shall be informed about any legal proceedings in which they are involved and, if they are sentenced, the time to be served and the possibilities of early release.

### **3.6. Recommendation (2006)13 CoM COE, 27 September 2006**

On 27 September 2006, the Committee of Ministers of the Council of Europe adopted 'the recommendation on the use of remand in custody, the conditions in which it takes

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181 The CPT-Standards, "Substantive" sections of the CPT's General Reports' Extract from the 7th General Report [CPT/Inf (97) 10], § 30.

place and the provision of safeguards against abuse'. This Recommendation reveals rights granted to the person in remand, but only refers to informing that person of a right in one occasion. Article 18 refers to informing any person in remanded custody of the right of appeal. If this be in writing or orally is not explained further. The only other mention of supplying the remanded person with information is laid down in Article 21 which reads:

21.[1] Every ruling by a judicial authority to remand someone in custody, to continue such remand or to impose alternative measures shall be reasoned and the person affected shall be provided with a copy of the reasons.'

In short, the Recommendation does provide a basis for informing the person remanded of certain rights (i.e. the right of appeal) and for providing the suspect with a copy of the reasons for remand in custody.

### **3.7. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The Committee against Torture (CAT) is part of the Office of the United Nations High Commissioner for Human Rights and is tasked with monitoring the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CAT pays considerable attention to the duty of police officers towards persons deprived of their liberty to provide them with information. The CAT has, in its country reports, developed four basic rights of persons taken into police custody. These four essential safeguards aim to protect persons detained against abuses in police stations and include: the right to consult a lawyer; the right to inform a second and third party; the right to be examined by a doctor; and the right to information as to his/her rights, both orally and in writing.<sup>182</sup> In addition, the CAT has stressed the importance for suspects/arrested persons of being informed of these rights before interrogation.<sup>183</sup>

### **3.8. UN Standard Minimum Rules for the Treatment of Prisoners**

The United Nations already in 1955 adopted Standard Minimum Rules for the Treatment of Prisoners, which were approved in 1957 and 1977.<sup>184</sup> Although not legally binding, the Standards provide guidelines for international and domestic law as

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182 CAT/C/SR.191, 14 November 1994, § 46 ; CAT/C/SR.203, 22 November 1994, § 37; CAT/C/SR.245, 11 June 1996, § 20.

183 CAT/C/SR.247, 29 May 1996, § 37.

184 Adopted on 30 August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977.

regards persons held in prisons and other forms of custody. They set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of penal institutions. Under the heading 'Information to and complaints by prisoners' Article 35 explicitly mentions that prisoners should be informed in writing and in Articles 92 and 93 the rights that untried prisoners should be informed of:

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

[...]

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

### **3.9. Consular assistance**

Many Letters of Rights contain the right to consular assistance. The legal basis can be found in Article 36 of the Vienna Convention on Consular Relations<sup>185</sup> according to which a foreign national who is deprived of his liberty has the right to inform his embassy or consular authority of his detention and have free communication and access to consular officers. All EU Member States are party to this Convention. Article 36 however does not stipulate that States are obliged to inform foreign persons deprived of their liberty of the right to consular assistance.

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185 Vienna Convention on Consular Relations done at Vienna on 24 April 1963. Entered into force on 19 March 1967. United Nations, Treaty Series, vol. 596, p. 261

### 3.10. Conclusion

#### 3.10.1. What rights and which minimum standards?

Most rights at the initial stage of the criminal investigation that commonly appear in existing Letters of Rights of EU Member States are rooted in the ECtHR jurisprudence. For the right to consular assistance, applicable when a foreign suspect is deprived of his liberty, the legal basis is established in the Vienna Convention on Consular Relations.

The analysis in this chapter reveals that immediately upon arrest or deprivation of liberty the suspect must be informed about the nature and cause of the accusation.<sup>186</sup> The right to silence comes into play as soon as somebody is questioned as a suspect and can even be applicable before a suspect is arrested or formally charged.<sup>187</sup> Since the *Salduz* judgment<sup>188</sup> there is clarity that the right to legal assistance arises as from the first questioning of a suspect by the police, and even before that moment because there is consistent case law indicating that there should be an opportunity to consult a lawyer before the first police interrogation.<sup>189</sup> These consultations should be in private.<sup>190</sup> The possibility of having free legal assistance for indigent suspects arises at the same moment.<sup>191</sup> Articles 5 § 2 and 6 § 3a ECHR require, in more general terms, that everyone who is arrested or charged with a criminal offence shall be informed promptly, in a language which he understands, of the reasons for arrest and of the nature and cause of the charge against him. Article 6 § 3e ECHR provides for the right to free interpretation in general. This right is not limited to oral statements made at the trial hearing but also covers pre-trial proceedings and documentary material, although oral interpretation provided by an interpreter or by the defence lawyer will be sufficient as long as the defendant understand the relevant document(s) and their consequences.<sup>192</sup> The proposed Directive on the rights to interpretation and to translation in criminal proceedings states that the right to interpretation arises in the phase of police questioning and also applies to lawyer-client communications. In addition the proposed directive guarantees observance of confidentiality by interpreters and translators and sets rules for translation of documents providing that the suspect should receive written translations of at least decisions depriving a person of his liberty, the charge/ indictment and any judgment.<sup>193</sup> Persons deprived of their liberty have a right to medical care<sup>194</sup> and every person deprived of his liberty has an immediate right to have the lawfulness of his detention reviewed by a judicial

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186 See § 3.2.1.

187 See § 3.2.8.

188 See § 3.2.5.

189 See § 3.2.5.

190 See § 3.2.7.

191 See § 3.2.6.

192 See § 3.2.3. and § 3.2.12.

193 See § 3.2.12 and § 3.6.

194 See § 3.2.11.

authority.<sup>195</sup> According to ECtHR jurisprudence the prosecution is obliged to disclose to the accused all material evidence for or against them for the purpose of preparing the defence (access to the file).<sup>196</sup> Although there is no case law specifying the moment at which this should be done, because the right to review of pre-trial detention according to Article 5 § 4 ECHR arises immediately upon deprivation of liberty, as a consequence documents that are essential to challenge the lawfulness of pre-trial detention should be disclosed for this purpose at the same time.

With regard to vulnerable suspects it is harder to establish in general terms what protection should be afforded. Although the ECtHR has stressed the importance of adequate treatment of juveniles, for example that they must be assisted by an interpreter, lawyer, social worker or friend especially during arrest and questioning by the police, it leaves a considerable margin of appreciation to the Member States as how to ensure this.

The CPT-standards stress that persons taken into custody should next to having access to a lawyer and medical examination also have the right to have the fact of his detention notified to a third party (family member, friend or consulate).<sup>197</sup> The right of a detained person to inform a second and third party is also endorsed by the CAT.<sup>198</sup>

### **3.10.2. Information of rights**

Although the ECHR does not explicitly provide for the right to be informed on defence rights, as is the case in Article 14 § 3d ICCPR with regard to the right to legal assistance, there is case law of the ECtHR clearly indicating that the authorities are required to actively inform the suspect about the right to a lawyer including the right to legal aid and to caution the suspect of the right to silence before questioning.<sup>199</sup> In addition the ECtHR has ruled in more general terms that authorities have to take all reasonable steps to ensure that a suspect is fully aware of his rights of defence.<sup>200</sup>

### **3.10.3. Information in writing**

With regards to the way in which the suspect should be informed there is no case law specifically indicating what means should be used or how the information should be given, orally or in writing. The ECtHR above all assesses whether the information in the individual case was timely given and sufficient for the suspect to really understand

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195 See § 3.2.12.

196 See § 3.2.3.

197 See § 3.4.

198 See § 3.7.

199 See § 3.2.8.

200 See § 3.2.2. and § 3.2.6.

what is at stake. Oral warnings for example of the right to silence were not considered to enable suspects that are in custody to sufficiently comprehend the nature of their rights.<sup>201</sup> If necessary, authorities should take additional steps in order to ensure that the suspect has understood the information.<sup>202</sup> An important consideration which lies at the heart of the Court's interpretation of the ECHR is the need to ensure 'not rights that are theoretically or illusory but rights that are practical and effective' and that it is the responsibility of the Member States to realise this aim.<sup>203</sup> Given the substantial requirement for Member States that undeniably can be found in Strasbourg case law to inform suspects of their rights, information provided through a Letter of Rights can be seen as an important tool to make suspects aware of their rights, providing that the information is understandable, provided in time, in a language the suspect understands and supported by the authorities. This is especially important at the very initial stages of the deprivation of liberty in case the suspect does not have a lawyer yet to assist and inform him, because if an accused has no lawyer, he has less chance of being informed of his rights and, as a consequence, there is less chance that they will be respected. The importance of providing written information next to oral explanations is supported by Article 14 § 3a ICCPR and the *travaux préparatoires* to this article and has been repeatedly emphasised in the reports of the CAT based on the UN Convention against Torture, the CPT-standards, and is also mentioned in the European and UN standard minimum rules for prisoners.<sup>204</sup>

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201 See ECtHR 11 December 2008, *Panovits v. Cyprus*, no. 4268/04, § 74.

202 See § 3.1.3. and especially ECtHR 24 September 2009, *Pishchalnikov v. Russia*, no. 7025/04 § 78-79.

203 See Harris, O'Boyle & Warbrick 2009, p. 15.

204 See § 3.3. – 3.8.

## **Chapter 4 A model for an EU- wide Letter of Rights in Criminal Proceedings**

### **4.1. Basic assumptions**

The findings of the research and a provisional model for an EU-wide Letter of Rights were presented to the Advisory Board on 27 April 2010. During this meeting it was upheld that only those rights that are applicable at the first contact of the suspect with the police in relation to a criminal investigation and that have clear a basis in case law of the ECtHR or international treaties by which the Member States are bound and/or common practice within the EU should be mentioned in a model for an EU-wide Letter of Rights.<sup>205</sup> In addition common practice in the EU Member States arising from the gathered Letters of Rights and written information that reflects consensus should be taken into account.

The reason not to concentrate on information relating to rights that arise in a later stage in the criminal proceedings is twofold: first an EU wide Letter of Rights could not possibly deal with the divergent ways in which rights evolve during the course of proceedings in each criminal law system of the EU in order to cover all options and all stages and, second, once the suspect has instructed a lawyer (a right the person will be made aware of in the Letter of Rights if not before), that lawyer will be in a position to advise on the rights.

It has also been discussed at the Advisory Board meeting whether there should be a separate Letter of Rights for those who are in police custody and those who are not. This is related with the question *when* the Letter of Rights should be given to the suspect and whether one should differentiate in time on what information is given. The suspect may not necessarily require information on rights such as 'access to medical care' and 'notification of the embassy' (let alone how these are exercised) when the suspect is deprived of his or her liberty for a very short time or not at all. On the other hand, nobody knows in advance how long a suspect will be kept for questioning at the police station or for how long a suspect will be deprived of his liberty with or without formally being charged, indeed, it could be 'only' a few hours, but it could also amount to days, if not longer. Therefore it was agreed that, while the various rights mentioned in a Letter of Rights might not always apply, the suspect is nevertheless entitled to the information before the first police interview starts and at the latest at the moment of deprivation of liberty. It would be confusing to have different Letters of Rights, applying to different situations; the aim is to cover these different situations in one model. A fragmented approach should be avoided and a uniform one adopted.

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205 See for a summary what was discussed at the first Advisory Board Meeting in September 2009: § 2.6.2.

Finally, one general comment should be made. Although the rights that are addressed in the Model Letter of Rights have a firm basis either in the ECHR and its case law, other human rights treaties or common national standards of Member States, nearly all rights can be subject to restrictions if there are compelling reasons that justify exceptions. In general the ECtHR demands that restrictions should be clearly circumscribed and limited in time and may not affect the essence of the fundamental right concerned. This being so should not prevent Member States from informing suspects of their rights that *as a rule* apply upon arrest. Suspects should be aware when their rights are restricted in order to be able to seek for remedies and authorities should be obliged to motivate why rights are restricted. Therefore in the formulation of the rights in the model for an EU-wide Letter of Rights the concerned rights are formulated as simple and straightforward as possible, but with some flexibility in order to cover as much as possible the general denominator based on the normative framework in Chapter 3 applicable in all criminal law systems of the EU and taking into account situations where authorities have a margin of appreciation with regard to responding to a suspect's requests based upon the Letter of Rights.

#### **4.2. Selection of rights and additional information**

Departing from these general assumptions the Model EU-wide Letter of Rights that is presented below includes the right to be informed about the nature and cause of the accusation, the right to silence, the right to a lawyer, the right to an interpreter, the right to notify a third person of the deprivation of liberty, the right to consular assistance, information on the length of detention<sup>206</sup> and the right to medical care.

#### **4.3. Terminology/language and format**

As was confirmed by the practitioners that were interviewed in the course of the research<sup>207</sup> and can be observed by reviewing the existing Letters of Rights and written information in Annexures 1 and 2, the language and format of a Letter of Rights is crucial for meeting the purposes of a Letter of Rights. The language should be easily understandable for the suspect and legal terms should be avoided. The Letter of Rights should not be too long and should be written in a style that would not discourage suspects to make use of their rights. Although simple language is desirable, some level of detail is needed as to what these rights encompass. The language used should also maintain a certain degree of flexibility because the interpretation of rights varies within the EU Member States. In the model below it is attempted to meet these

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206 Including related information on the right to request to be released from custody, access to the case file inside the Letter of Rights.

207 See § 2.5.4.

requirements. As for the language and lay out, the Letter of Rights of England and Wales has served as a model.

#### **4.4. Practical requirements for implementation of a Letter of Rights**

It can be said in general that for rights and guarantees to be effective there must not only be a statutory framework in place that is sufficiently precise and practical, but this should also be underpinned by professional culture of all participants in the criminal process to make the guarantees work in real terms.<sup>208</sup> The same applies to the effectiveness of a Letter of Rights. From the research and interviews with practitioners it can be concluded that apart from the language and the format of the Letter of Rights four other elements are important for the provided information to be useful in practice: the attitude of the investigative authorities<sup>209</sup>, the moment at which the Letter of Rights is given<sup>210</sup>, whether the suspect can keep the provided Letter of Rights in his possession<sup>211</sup> and whether the Letter of Rights is available in a language he understands.<sup>212</sup> Except for mentioning in a Letter of Rights that the suspect can keep the letter in his possession, these aspects cannot be dealt with within a Letter of Rights but should be addressed in enforcement mechanisms on the national level to ensure that the Letter of Rights requirements are complied with. In addition information contained in a Letter of Rights should also be provided orally.

The European Commission has adequately pointed out in the proposal for a Directive on the right to information in criminal proceedings of 20 July 2010 ('proposed Directive')<sup>213</sup> what regulations should be adopted to make the right to information effective in practice. Article 4 of the proposed Directive stipulates that the arrested suspect shall be promptly provided with information about his procedural rights in writing (Letter of Rights) and shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the time he is deprived of his liberty. In addition, Article 4 of the proposed Directive provides that the Letter of Rights shall be drafted in simple language the suspect understands. It also prescribes that Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or cannot read and where the suspected or accused person is a child, the information contained in the Letter of Rights shall also be provided orally in a manner adapted to the child's age, level of maturity and intellectual and emotional capacities. The proposed Article 8 obliges member States to ensure that a procedure is in place to ascertain whether a suspected or accused person has received all relevant information and that a suspected or accused person has an effective remedy in instances where he does not

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208 See Cape, Namoradze, Smith & Spronken 2010, Chapter 13.

209 See § 2.5.2.

210 See § 2.5.5.

211 See § 2.5.3.

212 See § 2.5.6.

213 See Annex 6.

receive this information. It also provides that if notification of rights is made orally it shall be recorded in such a manner as to allow verification of the content of the notification. And finally also the attitude of the investigative authorities is addressed by prescribing in proposed Article 9 that Member States shall ensure that relevant officials in police and judicial authorities receive appropriate training and that relevant officials have sufficient knowledge of the rights of suspected and accused persons in order to safeguard appropriate transmission of information on these rights.

Our research provides evidence for the necessity of the measures in the proposed Directive on the right to information in criminal proceedings that should accompany the provision of a Letter of Rights. The mere enactment of a law requiring a Letter of Rights proves clearly insufficient to ensure an effective use thereof. Not only should the police be given adequate instructions as to how to make the Letter of Rights available to the person deprived of his liberty, prosecutors, defence counsel and judges should monitor the use of the Letter of Rights and act appropriately in the event the investigative authorities fail to make it available in time.

#### **4.5. The Model for an EU-wide Letter of Rights**

The model for an EU-wide Letter of Rights that has been developed within this study addresses the situation where a person is deprived of his liberty because he is suspected of having committed a criminal offence. The model contains the core basic rights that are applicable at the first contact of the suspect with the police in relation to a criminal investigation based on the findings of the research that has been conducted into existing practice in Chapter 2 and the norms that derive from the ECHR and its jurisprudence and other international treaties as has been analysed in Chapter 3. It has to be borne in mind that the core rights applicable in this stage of criminal investigation are subject to a dynamic and evolutive interpretation by the ECtHR. This model reflects the current status quo and might need to be updated when developments within the Strasbourg case law or on the EU level so require.

The idea is that Member States that have a statutory obligation to mention other rights that are not part of the EU version of a Model Letter of Rights could add a national supplement to the EU Letter of Rights with country specific measures or can complete the model accordingly. This approach would ensure EU-wide consistency in the way information is given to the suspects regarding the identified core rights, which countries can further supplement with their national legislation. Accordingly the Model Letter of Rights does not mention any consequences of not providing the information on rights mentioned therein, because this might have different legal consequences, if at all, in the Member States.

It was decided to draft only one model for adult suspects deprived of their liberty because this is the most common situation in which there is a clear basis as to what

rights apply in the case law of the ECtHR or international treaties by which the Member States are bound. A second consideration for concentrating on the moment of arrest is that at that moment the need for a Letter of Rights is most pressing. Of course the model could also serve as an example for other situations and other addressees and be amended and expanded according to the specific circumstances, such as for persons arrested on the Basis of a European Arrest Warrant as proposed in the Directive on the right to information in criminal proceedings<sup>214</sup> or providing additional information for juvenile suspects.

Below the Model for an EU-wide Letter of Rights is presented in the format we suggest to be used, followed by an explanatory memorandum in which a comparison will be made with the indicative Model Letter of Rights in Annex 1 of the proposed Directive on the right to information in criminal proceedings as presented by the European Commission on 20 July 2010.

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214 See Annex 6.



## **Model EU-Letter of Rights for suspects and defendants in criminal proceedings**

**You are entitled to keep this letter of rights with you during your detention**

**If you are deprived of your liberty by the police because you are suspected of having committed an offence you have the following rights:**

- A. to be informed of what offence you are suspected**
- B. not to answer the police's questions or to give any statements to the police**
- C. to assistance of a lawyer**
- D. to an interpreter and translation of documents, if you do not understand the language**
- E. to notify somebody of your deprivation of liberty**
- F. to inform your embassy if you are a foreigner**
- G. to know for how long you can be detained**
- H. to see a doctor if you feel ill or need medicine**

**You can find more details of these rights inside**

## **A. Information on the suspicion**

- **You have the right to know what offence you are suspected of immediately after deprivation of liberty, even if the police do not question you.**

## **B. Right to remain silent**

- **You do not have to answer the police's questions nor give any statements to the police**
- **A lawyer can help and advise you on the law and help you to take decisions on whether or not to answer questions.**
- **If you want a lawyer, the police are not allowed to start questioning you before you have had the opportunity to talk with a lawyer.**

## **C. Help of a lawyer**

- **You have the right to talk to a lawyer before the police start questioning you.**
- **If you ask to speak to a lawyer, it does not make you look like you have done anything wrong.**
- **The police must help you to get in touch with a lawyer.**
- **If you are not able to pay for a lawyer, the police have to provide you with information how to get free legal assistance.**
- **If you want to talk to a lawyer but do not know one, or cannot get in touch with your own lawyer, the**

**police must take care of arranging that a lawyer is appointed for you in case you have a right to free legal assistance.**

- **The lawyer is independent from the police and will not reveal any information you give to him or her without your consent.**
- **You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.**
- **You can ask your lawyer to be present during the interrogation by the police.**

#### **D. Help of an interpreter**

- **If you do not speak or understand the language, the police will arrange for an interpreter.**
- **The interpreter is independent from the police and will not reveal any information you give him without your consent.**
- **You can also ask for an interpreter to help you to talk to your lawyer.**
- **The help of an interpreter is free of charge.**
- **You have the right to receive a translation of any order or decision concerning your detention.**
- **You have the right to have documents of the investigation translated that are important for a request for release (see under G).**

## **E. Telling somebody that you are detained**

- **Tell the police if you want someone, for example a family member or your employer, to be told that you are detained.**

## **F. For foreigners: how to contact your embassy**

- **If you are a foreigner, you can tell the police to inform your embassy or consular authority that you are detained and where you are being held.**
- **The police must help you if you want to talk to officials of your embassy or consular authority.**
- **You have the right to write to your embassy or consular authority. If you do not know the address the police must help you.**
- **The embassy or consular authority can help you with finding a lawyer.**

## **G. How long can you be deprived of your liberty?**

- **You have the right to ask a judge for your release at any time. Your lawyer can advise you on how to proceed.**
- **You or your lawyer can ask to see the parts of the case-file relating to the suspicion and detention or be informed about their content in detail.**
- **If you are not released, you must be brought before a judge within \* hours after you have been deprived of your liberty.**
- **The judge must then hear you and can decide whether you are to be released or to be kept in custody.**

- **You have the right to receive (a translation) of the judge's decision if he decides that you will remain in custody.**

## **H. Medical care**

- **If you feel ill or need medicine, ask the police to see a doctor.**
- **You have the right to be examined by a doctor in private.**
- **You can ask for a male or a female doctor.**

## 4.6. Explanatory Memorandum

### 4.6.1. The first page

The first page of the Model EU-wide Letter of Rights for Suspects and Defendants in Criminal Proceedings ('Model') lists the rights the suspect has upon deprivation of liberty in a survey-able way and in simple and short sentences. More detailed explanations are given in the next pages of the Letter of Rights.

Instead of the term 'arrest', that is used in the proposed Directive on the right to information in criminal proceedings<sup>215</sup> ('proposed Directive'), in our Model the term 'deprivation of liberty' is used, pointing at the factual situation, to avoid discussions on the legal meaning of the term 'arrest' in various jurisdictions and to circumvent legal definitions that are not necessarily equal in all EU systems.

The most striking difference between the Model and the proposed Directive is that the proposed Directive does not address the right to silence. This is incomprehensible regarding the fact that this right is considered to be one of the fundamental features of the concept of fair trial by the ECtHR and applicable immediately at arrest or before the first questioning of a suspect. The fact that inferences can be drawn from silence, as is the case in England and Wales, or that there might be certain restrictions to the right in situations where a person is not yet suspected of an offence, does not imply according to ECtHR case law that the very essence of the right to remain silent may be circumvented.<sup>216</sup> It is therefore crystal clear that a Letter of Rights should contain information on the right to silence.<sup>217</sup>

Other differences between the proposed Directive and our Model are that the rights to notify somebody of the deprivation of liberty, the right to consular assistance and the right to medical care are left out in the proposed Directive.

We argue that for all rights mentioned in the Model there is either a clear legal basis and/or convincing arguments to be found in the recommendations of the CPT and the CAT as described in Chapter 3 and/or in common practice found in the existing Letters of Rights and written information analysed in Chapter 2.

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215 Presented on 20 July 2010, COM(2010) 392/3, included in Annex 6 to this report.

216 See § 3.1.9.

217 Most Member States that provide a Letter of Rights or written information deal with the right to silence, see § 2.3 and § 2.3.4.

#### **4.6.2. Ad A. Information on the suspicion**

The information provided under this heading has clear basis in ECtHR case law with regard to Articles 5 § 2, 6 § 1, 6 § 3a and 6 § 3b ECHR.<sup>218</sup>

#### **4.6.3. Ad B. Right to remain silent**

As pointed out above in § 4.6.1. the right to silence – or as phrased in the Model ‘the right not to answer the police’s questions or to give any statements to the police’ – is one of the fundamental features of a fair trial and it is settled case law of the ECtHR that the suspect should be cautioned on this right before he is questioned. Under heading B. of the Model it is however acknowledged that there are situations in which keeping silent is not the best option, and might even have very detrimental consequences. Therefore the information supplied under ‘Help of a Lawyer’ includes the sentence ‘A lawyer can help and advise you on the law and help you make decisions whether or not to answer questions of the police’ ensuring that the suspect will be able to make an informed decision on whether or not to exercise the right.

The sentence ‘If you want a lawyer, the police are not allowed to start questioning you before you have had the opportunity to talk with a lawyer’ reflects the *Salduz* case law of the ECtHR according to which a suspect may not be subject to (further) interrogation by the authorities until legal counsel has been made available.<sup>219</sup>

#### **4.6.4. Ad C. Help of a lawyer**

Many suspects will need to know what legal assistance encompasses and when it applies. All information that is given under this heading has a clear legal basis in ECtHR case law.<sup>220</sup> Only the question whether the lawyer has the right to be present during police interrogation and what the implications of the *Salduz* judgment are is still an issue under debate in those Member States where this right does not exist (The Netherlands, Belgium, France and Scotland). In the majority of the Member States under consideration however the suspect has the right to have his lawyer present during interrogation. The proposed Directive does not mention the right to have a lawyer present during questioning. In the Model a formulation that allows some flexibility by using the sentence ‘You can ask your lawyer to be present during the interrogation by the police’ is chosen, which is not absolute.

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218 See § 3.1.2.

219 See § 3.1.6. especially ECtHR 24 September 2009, *Pishchalnikov v. Russia*, § 78-79.

220 See § 3.1.6 with regard to the moment at which the right to legal assistance arises, § 3.1.7 regarding the rights of indigent suspects and § 3.1.8. with regard to the right to privileged communication.

#### **4.6.5. Ad D. Help of an interpreter**

With regard to the rights mentioned under this heading settled case law of the ECtHR exists, which are elaborated more in detail in the proposed Directive on the rights to interpretation and to translation in criminal proceedings.<sup>221</sup>

#### **4.6.6. Ad E. Telling somebody that you are detained**

Although the right to inform relatives or other third parties of the deprivation of liberty does not find its legal basis in the ECtHR, it is common practice to provide this opportunity in the majority of the Member States that have a Letter of Rights or provide written information. In the CPT – standards it is considered a fundamental safeguard to prevent ill treatment.<sup>222</sup> Also the CAT considers the right to inform a second and third party of the arrest an essential safeguard.<sup>223</sup> Finally the UN Standard Minimum Rules for the Treatment of Prisoners provides that an untried prisoner shall be allowed to inform immediately his family of his detention.<sup>224</sup>

#### **4.6.7. Ad F. For Foreigners: how to contact your embassy/consular authority**

The information under this heading reflects the obligations of Member States under the Vienna Convention on Consular Relations.<sup>225</sup>

#### **4.6.8. Ad G. How long can you be deprived of your liberty?**

The heading expresses the need of suspects who are detained to know how long this can last and what remedies are available to ask for release. Therefore the information under this heading starts with the right to *Habeas Corpus* that arises immediately upon arrest and the right to have access to those documents in the case-file that are necessary for the assessment of the lawfulness of the detention.<sup>226</sup> As there is great diversity among Member States as to how long a person can be detained before being brought before a judicial authority the sentence under the second bullet point has to be completed by the Member States according to their applicable time limits. Again the information provided is based on settled ECtHR case law. The right 'to receive a (translation of) the judge's decision if he decides that you will remain in custody' is based on the proposed Directive on the rights to interpretation and to translation in

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221 See § 3.1.11.

222 See § 3.3.

223 See § 3.6.

224 See § 3.7.

225 Vienna Convention on Consular Relations done at Vienna on 24 April 1963. Entered into force on 19 March 1967. See also § 3.8. United Nations, Treaty Series, vol. 596, p. 261.

226 See § 3.1.2, § 3.1.5 and 3.1.13.

criminal proceedings.<sup>227</sup> If a foreigner has the right to a translated version of this decision, the right should also be available for suspects that do speak and understand the language. This is also endorsed by Recommendation (2006)13 CoM COE, 27 September 2006.<sup>228</sup>

#### **4.6.9. Ad H. Medical care**

The right to medical care can be derived from ECtHR case law relating to Article 3 ECHR as described in § 3.2.11 and endorsed by the CPT-standards.<sup>229</sup>

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227 See § 3.2.10.

228 See § 3.6.

229 See § 3.4.

# Annex 1

## Letters of Rights per country

This annex provides the Letters of Rights received from Austria, Czech Republic, England and Wales, Germany, Italy, Latvia, Luxembourg, Poland, Slovak Republic, Spain, the Netherlands and Sweden. The Letters of Rights in the Czech Republic, Italy, and Poland are published only in the respective Member State's language and therefore required translation into English.

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# AUSTRIA

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## **INFORMATION SHEET FOR DETAINEES**

You have been detained by law enforcement personnel on suspicion of having committed a punishable criminal offence. This fact sheet is aimed at informing you about your rights and your present situation. You have already been told what offence you have been charged with and on what grounds you have been arrested. Within 24 hours of arrest a court order authorising your detention or, alternatively, a written justification from the CID must be handed over to you.

### **1. Duration of detention**

The duration of detention is subject to a maximum, determined by Statute. Within 48 hours of arrest you must either be released from custody or, if the Public Prosecutor seeks to have you placed in detention awaiting trial or if you were arrested on the basis of a court warrant or an order of the prosecuting authority that was authorised by a court, be taken to the penal institution of that court or, in case of illness, to a hospital.

The CID is obligated to keep your detention as short as possible. The duration of your detention will depend on if and how soon evidence can be gathered indicating that the grounds for detention are no longer met or exonerating you of the charges at all.

### **2. Notification of a person of trust and of a defending counsel**

You have the right to notify or have notified a person of your trust (i.e. a relative, a friend or your probation officer) of your arrest.

If the person of trust can be reached by telephone, you will be allowed to notify him or her personally. An officer will establish the telephone link on the basis of your indications and will then hand over the receiver to you. A police officer will be present while you are speaking. In your telephone conversation you must stick to the essentials, that is the fact that you have been arrested, the place where you are detained and the offence you have been charged with. If you wish to speak to a counsel, but do not yet know any specific person, you may ask the person of trust to contact one on your behalf. Furthermore, you may inform the person of trust of particularly urgent personal matters that absolutely need to be settled in your absence. However, you must not comment on the circumstances of your arrest, otherwise the officer will interrupt the conversation.

If the person to be contacted does not speak German and the conversation needs, therefore, to be held in another language, you are requested to mention this beforehand. If the officer in charge does not understand this foreign language, he will call in an interpreter. Should you use a foreign language without any prior notice, the officer will hang up.

**In certain cases, however, an officer will take care of contacting the person you named to him. He may postpone the notification until the necessary inquiries in relation to your arrest have been completed (e.g. co-defendants have been arrested).**

**For juveniles:**

If you have not reached the age of 18 yet and are not immediately released again, your detention must be notified to a person having parental custody or a cohabiting relative, to the youth welfare office and, where applicable, to the probation officer assigned to you. You cannot refuse these notifications unless you can produce convincing (and justified) reasons.

**3. Representation by the counsel**

You have the right to contact a counsel and you may appoint him/her to represent you. Information as to whether there is a permanent legal counselling centre in the vicinity of the place of your detention can be obtained from the personnel in charge of your detention.

Police officers may monitor your contact with the counsel and may restrict it to giving the counsel the power of representation and to obtaining legal advice of a general nature, if they consider this appropriate in order to ensure that the collection of evidence and further investigative steps are not jeopardised.

You may request that the law court dealing with the case appoint a counsel for the defence to represent you free of costs. However, you will have to bear all costs relating to the legal counselling until the court has granted legal aid in your case.

**4. Interrogation and presence of a counsel**

You have the right to refuse to give information and to answer questions in respect of the charges that have been preferred against you. You should, however, consider that your statement might help to clarify your position and to dispel the suspicions against you. When you refuse to give evidence you deprive yourself of the possibility to provide your version of the facts and to identify possible errors or false allegations. Should your statement contribute to establishing the truth, this will be considered an extenuating circumstance in the judicial proceedings.

You have the right to have a counsel present during your interrogation, but the counsel must not intervene. In view of the a/m tight deadlines police may begin your interrogation even before the counsel is present, but the latter has the right to ask you additional questions at the end of the interrogation. While being interrogated you must not consult the counsel about how to answer the questions that you have been asked. The presence of a counsel may be refused, if it would compromise the ongoing investigations and the collection of evidence. That is the case if there are circumstances to suggest that the presence of the counsel would jeopardise further investigative steps.

**For juveniles and young adults:** If you have not attained the age of 21 yet and are not represented by a counsel, you may request that a person of trust be present during your interrogation. This may be your legal representative, a person having parental custody, a family member, a teacher, a tutor a representative of the youth welfare service, a guardian ad litem, or a probation officer.

If your counsel or a person of trust is called on your request, the interrogation must not start before the arrival of the counsel or person of trust unless there is an urgent need to interrogate you immediately with a view not to disproportionately prolong the duration of your detention or to obtain a statement that is crucial for determining if immediate action is required to confirm or negate the grounds for suspicion of criminal conduct.

### **5. Communication assistance**

If you are not in a position to follow the instructions about the judicial remedies available or to provide evidence owing to physical disablement or an inadequate command of German, you have the right to request the assistance of an interpreter or any other person who is familiar with your means of communication.

### **6. Consular representation**

If you are a foreign national, you have the right to request a consular representation of your home country to be notified of your arrest.

### **7. Medical care**

Should you regard it necessary you will be subjected to a medical examination on the condition that it does not considerably delay the criminal investigations. You may call in a medical practitioner of your choice, but you will have to bear the costs. Should you urgently need to take a medicine (e.g. an anti-diabetic medicine), make sure you ask the officers for it in time.

**8. Judicial remedies** You have the right to request to be released from custody at any time and to appeal against the judicial authorisation of your arrest. Time and manner of appealing are specified in the written judicial authorisation. If the CID arrested you without prior authorisation from the prosecuting authority or the law court, you may challenge the lawfulness of your arrest, if you hold the view that it was contrary to law. Such a challenge must be submitted to the Public Prosecutor and must contain reference to the charges brought against you and the grounds for your arrest given in the written justification from the CID as well as to the circumstances that you consider contrary to law. The Public Prosecutor or the law court will subsequently decide on your request to be released, your appeal, or your challenge.

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## **CZECH REPUBLIC**

- Report on the questioning of the charged person
  - Advice of the accused (suspect) (Foreign national)
-

**DRAFT**

POLICE OF THE CZECH REPUBLIC

The name of the district is not set

Ref no .....

*Courtesy translation*

**Report on the questioning of the charged person**

In ..... (Place), on ..... (Day) at ..... (Time) commenced the questioning of the charged person

Name, surname:

Previous name:

Place of birth, district, region:

Date of birth:

Identity card:

Citizenship:

Nationality:

Personal status:

Permanent residence:

tel.:

Staying at:

tel.:

Address for the purpose of service:

tel.

Address of the employer:

Employed as and the position:

Location of employment:

Number of employment in last 2 years:

Military status:

Education:

Property owned:

Net income per month:

Father:

Mother:

Spouse (cohabite):

Siblings:

Children:

In the past questioned for a criminal offence:.....number of times.....

Prior sentences:

The resolution on the commencement of the criminal prosecution for a criminal offence according to the Section.... of the Criminal Code was served to the charged person on....

*Advice of the charged person:*

*According to Section 33 Para 1 of the Code of Criminal Procedure you have a right to express your opinion to all the facts that you are charged with and of the evidence thereof, but you are not obliged to testify. You may specify circumstances and evidence serving for your defence, lodge motions and lodge applications and legal remedies. You have a right to choose a defence counsel and consult him/her even during the acts performed by the authority competent for criminal proceedings. However, you cannot consult the defence counsel during questioning about how to answer already laid question. You may request to be questioned in the presence of your defence counsel and you may request the presence of the defence counsel during other acts within the pre-trial stage (Section 165 of the Code of Criminal Proceedings). If you are in the custody or serving a term of imprisonment, you may speak with the defence counsel without presence of a third person.*

*According to Section 92 Para 2 of the Code of Criminal Procedure you have the possibility to express yourself in detail to the charge, especially you can continuously describe the facts which are subject of the charge, state the circumstances which weaken or disprove the charge or offer the evidence.*

*According to Section 92 Para 3 of the Code of Criminal Procedure you may be asked questions to supplement the testimony or to remove the ambiguity, unclarity and contradictions. Questions must be posed clearly and without pretence of deceiving and false circumstances; it may not be indicated in these questions how to answer them.*

*According to Section 93 Para 1 of the Code of Criminal Procedure it may be allowed to you, before answering a question, to have a look at the written notes, which you must, if the person conducting the questioning requests so, submit to inspection to his or her.*

*According to Section 33 Para 2 of the Code of Criminal Procedure, if you attest to have not money enough to pay the defence costs, the presiding judge and in pre-trial stage the judge shall determine that you are entitled to free defence or defence for reduced fee. According to Section 33 Para 3 of the Code of Criminal Procedure you lodge a motion for decision on free defence or defence for reduced fee, including the attachments proving its justification, through the public prosecutor in pre-trial stage and through the court carrying out the first instance proceedings in trial-stage.*

*According to Section 55 Para 1 point. c) of the Code of Criminal Procedure you have the obligation to give an address for the purpose of service of documents addressed to you.*

*According to Section 65 Para 1 of the Code of Criminal Procedure you have a right to inspect the files, make extracts and notes and make copies of the files and any part thereof on your own costs. According to Section 65 Para 2 of the Code of Criminal Procedure the police authority may deny you this right based on the serious grounds; if you request so, the ground for the denial will be reviewed by the public prosecutor.*

*According to Section 157a Para 1 of the Code of Criminal Procedure you have a right at any time during the pre-trial stage to ask the public prosecutor to eliminate the delays in the proceedings or deficiencies in the procedure of the police authority.*

*According to Section 165 Para 1 of the Code of Criminal Procedure you may with the consent of the police authority participate in the investigative acts and pose questions to the witnesses being questioned.*

*According to Section 95 Para 2 of the Code of Criminal Procedure you have the right that the report is submitted to you after the questioning for reading, or should you have asked, that the report is read. You have the right to ask that the report is supplemented or corrected in consistency with your testimony. According to Section 95 Para 3 of the Code of Criminal Procedure the report on the questioning, which was undertaken without the court reporter, it must be submitted for reading or must be read in presence of non-participating person before it is signed. In case you have objections regarding its contents, it is necessary to deal with them in presence of other participant joining the proceedings and the result must be recorded in the report.*

*According to Section 66 Para 1 of the Code of Criminal Procedure I further advise you that who disturbs the proceedings despite prior warning or who behaves abusively towards the court, public prosecutor or police authority or fails to obey the warning notified to that person according to the Code of Criminal Procedure, can be punished with a fine of up to 50 000 CZK awarded by public prosecutor or police authority in the pre-trial proceedings.*

*According to the Section 345 Para 1 of the Criminal Code it is a criminal offence if you falsely accuse somebody from committing an offence, according to the Section 345 Para 2 of the Code of Criminal Procedure it is a criminal offences if you falsely accuse somebody from committing an offence with the intention to bring on criminal prosecution upon that person.*

*According to Section 307 Para 1 of the Code of Criminal Procedure in proceedings conducted for a delict, which is a crime committed with a negligence, or an intentional crime for which the law sets the term of imprisonment the upper limit of which does not exceed five years, the court with the consent of the charged person and the public prosecutor in pre-trial proceedings may conditionally terminate the criminal prosecution, if the charged person has pleaded guilty to the crime, has compensated the damage if caused by the crime or the charged person and the injured person have concluded an agreement on the compensation of the damage, or the*

*charged person has taken any other measures necessary to compensate the damage, and such a decision may be considered sufficient with regard to the person of the charged person, taking into consideration his/her life up to now and the circumstances of the case.*

*According to Section 309 Para 1 of the Code of the Criminal Procedure in proceedings conducted for a delict, which is a crime committed with a negligence, or an intentional crime for which the law sets the term of imprisonment the upper limit of which does not exceed five years, the court with the consent of the charged person and the injured person and the public prosecutor in pre-trial proceedings may decide to approve settlement and terminate the prosecution if the charged person pleads guilty before the court as a response to the charges for which he is being prosecuted, and there is no doubt that his statement was made as free act and deed, pays the damages caused by the delict to the injured person, or takes the necessary steps to pay them, or compensates the damages caused by the delict in any other way, and he deposits a sum of money at the court's account addressed to a specific beneficiary to be used for public benefit, provided that the redress is clearly not disproportional to the seriousness of the delict, and the court may consider such way of settlement is sufficient with regard to the nature and seriousness of the delict committed, to the extent the delict was damaging to the public interest, to the personality of the charged person, his private life and financial status.*

*According to Section 2 Para 14 of the Code of Criminal Procedure you have the right to use your native language or a language you declare to speak.*

*According to Section 28 Para 1 of the Code of the Criminal Procedure if you do not indicate a language which you speak, or if you indicate a language or a dialect which is not a language of your nationality or an official language of the state of which you are a national and there is no person registered for such language in the register of interpreters, the authority responsible for the prosecution will set an interpreter of language of your nationality or an official language of the state of which you are a national.*

*According to Section 36 .... Letter ... of the Code of the Criminal Procedure you must have a defence counsel. In case you will not choose the defence counsel until ... o'clock dated....., or in case the defence counsel will not be chosen even by your direct relative, sibling, adoptive child, adoptive parent, spouse, partner, cohabite or a participating person (section 37, 38 of the Code of the Criminal Procedure), the defence counsel will be appointed on your behalf according to section 39 of the Code of the Criminal Procedure. According to Section 37 paragraph 2 of the Code or Criminal Procedure in case you will choose two or more defence counsels, in case you will not communicate to the authority responsible for the prosecution which one of these defence counsels is authorized to receive the written instrument and to be informed of the acts carried out in criminal proceedings, the presiding judge or the public prosecutor in pre-trial proceedings will appoint him.*

Defence counsels were informed of the date and place of the questioning ... (CHOICE by the controller)

Statement of the charged person to the advice of right:

Before the commencement of the questioning I was advised by the questioning officer of my rights, I fully understood the contents of the advice.

Particularly I was advised on the right under to the Section 33 Para 1 of the Code of the Criminal Procedure that I may remain silent on the matter, for this advice I declare that I will use – not use this right and I do not want to and will not testify – I want and will testify (2x CHOICE – CONTROLLER)

Furthermore I was particularly advised on the consequences of false accusation according to the Section 345 of the Criminal Code, I take cognizance of this advice and I am aware of the possible consequences.

My defence counsel ..... (CHOICE by the controller) takes part in my questioning since its commencement.

**Statement of the charged person to the person:**

**Statement of the charged person to the case:**

**I agree – disagree**

with the procedure according to the Section 307 Para 1 and Section 309 Para 1 of the Code of Criminal Procedure

This is all I wanted to express, the report was dictated to me aloud and it is in conformity with my testimony, after the recording I had the opportunity to read it again carefully, I agree with its contents, I do not claim any changes or supplements and as a right person I am undersigning on ..... at .... o'clock.

Standard user

Charged person

## Advice of the accused (suspect) (Foreign national)

*According to Section 28 Para 1 of the Code of Criminal Procedure, if the accused (suspect) does not state the language which he/she commands, or if he/she states the language or the dialect which is not a language of his/her nationality or the official language of the state whose citizen he/she is, and no person is enlisted in the list of the interpreters for such as language or dialect, the body in charge of the criminal proceedings appoints the interpreter for the language of his/her nationality or the official language of the state whose citizen he/she is.*

*According to Section 28 Para 2 of the Code of Criminal Procedure, if a criminal proceedings is conducted against the accused (criminal proceedings against the suspect) who states that he/she does not command the Czech language, it is necessary to translate to the accused (suspect) into his/her mother tongue, which he/she commands according to his/her statement:*

- resolution on the commencement of the criminal prosecution,
- resolution on the provisional detention,
- indictment,
- motion for punishment,
- judgment,
- criminal order,
- decision on appeal,
- decision on conditional discontinuance of criminal prosecution.

*This does not apply if the accused (suspect) after the advice declares that he/she does not request acquisition of the translation of such decision.*

*According to Vienna Convention on Consular Relations from 1969, contained in the regulation of the Ministry of Foreign Affairs published in the Collection of Laws, chapter 32/1969 Coll., as a Foreign national you have according to Article 36 these rights:*

- request so that your embassy or consular authority in the Czech Republic is informed about your detention (taking into provisional detention),
- send, by way stipulated for persons investigated while being in provisional detention, messages to your embassy,
- request your embassy for legal representation,
- talk to the officials of your embassy,

*raise objection against a visit requested by your embassy, against sending of correspondence from the embassy and against their prospective efforts to secure you legal representation.*

I declare that I have understood the advice and that I have taken note of it, expressly declare that ..... written translation of **decisions referred to in Section 28 Para 2 of the Code of Criminal Procedure**. Notification of the embassy .....

Advice made by:  
Normal User

Interpreter:

Accused (suspect):

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# ENGLAND & WALES

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**The following rights and entitlements are guaranteed to you under the law in England and Wales and comply with the European Convention on Human Rights.**

## **Remember your rights:**

- 1. Tell the police if you want a solicitor to help you while you are at the police station. It is free.**
- 2. Tell the police if you want someone to be told that you are at the police station. It is free.**
- 3. Tell the police if you want to look at their rule-book called the Codes of Practice.**

**You will find more details about these rights inside**

*Criminal  
Defence Service*



**The Law Society**

# More information for people arrested by the police

Please keep this information and read it as soon as possible. It will help you to make decisions while you are at the police station.

If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.

## 1. Getting a solicitor to help you

- A solicitor can help and advise you about the law.
- If you want a solicitor, tell the police custody officer. The police will help you get in touch with a solicitor for you.
- The police must let you talk to a solicitor at any time, day or night, when you are at a police station. It is free.
- If you do not know of a solicitor in the area or you cannot get in touch with your own solicitor, you can speak to the duty solicitor. It is free. The police will help you contact him or her for you. The duty solicitor is nothing to do with the police.
- You are entitled to a private consultation with your Solicitor on the telephone or they may decide to come and see you at the Police Station.
- Usually, the police are not allowed to ask you questions until you have had the chance to talk to a solicitor. When the police ask you questions you can ask for a solicitor to be in the room with you.
- If you ask to speak to a solicitor it does not make it look like you have done anything wrong.
- If a solicitor does not turn up, or you need to talk to a solicitor again, ask the police to contact him or her again.
- If you tell the police that you don't want to speak to a solicitor but then you change your mind, tell the police custody officer. The police will then help you contact a solicitor for you.

*Please turn over*

## 2. Telling someone that you are at the police station

- You can ask the police to contact someone to inform them that you are at the police station. It is free. They will contact someone for you as soon as they can.

## 3. Looking at the Codes of Practice

- The Codes of Practice is a book that tells you what the police can and cannot do while you are at the police station.
- The police will let you read the Codes of Practice but you cannot read it for so long that it holds up the police finding out if you have broken the law.
- If you want to read the Codes of Practice, tell the police custody officer.

## Getting details of your time at the police station

- Everything that happens to you when you are at the police station is put on paper and is called the custody record.
- When you leave the police station, you, your solicitor or your appropriate adult can ask for a copy of the custody record. The police have to give you a copy of the custody record as soon as they can.
- You can ask the police for a copy of the custody record up to 12 months after you leave the police station.

## How you should be cared for

These are short notes about what you can expect while you are kept at the police station. To find out more, ask to see the book called the Codes of Practice. Inside its back cover you will find a list of where to find more information about each of these things. Ask the police custody officer if you have any questions.

## Keeping in touch

As well as talking to a solicitor and having a person told about your arrest you will usually be allowed to make one phone call. Ask the police if you would like to make a phone call. You can also ask for a pen and paper. You may be able to have visitors but the custody officer can refuse to allow that.

## Your Cell

If possible you should be kept in a cell on your own. It should be clean, warm and lit. Your bedding should be clean and in good order. You must be allowed to use a toilet and have a wash.

## Clothes

If your own clothes are taken from you, then the police must provide you with an alternative form of clothing.

## Food and drink

You must be offered 3 meals a day with drinks. You can also have drinks between meals.

## Exercise

If possible you should be allowed outside each day for fresh air.

## If you are unwell

Ask to see a doctor if you feel ill or need medicine. The police will call a doctor for you and it is free. You can ask to see another doctor but you may have to pay for this. You may be allowed to take your own medicine but the police will have to check with a doctor first. A nurse may see you first, but they will send for a doctor if you need one.

## How long can you be detained?

You can normally be detained for up to 24 hours without being charged. This can be longer but only if a Police Superintendent allows it to happen. After 36 hours only a court can allow more time without you being charged. Every so often a senior police officer has to look into your case to see if you should still be kept here. This is called a review. You have the right to have your say about this decision, unless you are not in a fit state.

## When the police question you

- The room should be clean, warm and lit.
- You should not have to stand up.
- The police officers should tell you their name and their rank.
- You should have a break at normal meal times and a break for a drink after about two hours.
- You should be allowed at least 8 hours rest in any 24 hours you are in custody.

## People who need help

- If you are under 17, or you have learning problems or a mental problem then you should have someone with you when the police do certain things. This person is called your “appropriate adult”.
- Your appropriate adult must be with you when the police tell you about your rights and tell you why you are being kept at the police station. He or she must also be with you when the police read the police caution to you. He or she must also be with you if you are interviewed.
- The police might also need to do one of the things listed below while you are at the police station. Your appropriate adult should be with you for the whole time if the police do any of these things:
  - Interview you or ask you to sign a written statement or police notes.
  - Review your case.
  - Remove more than your outer clothes.
  - Carry out anything about an identification parade.
  - Charge you with an offence.

You can speak to your solicitor without your appropriate adult in the room if you want to.

## Getting an interpreter to help you

If you do not speak or understand English the police will arrange for someone who speaks your language to help you.

If you are deaf or have difficulty speaking the police will arrange for a British Sign Language / English interpreter to help you.

When the police ask you questions the interpreter will make a record of the questions and your answers in your own language. You will be able to check this before you sign it as an accurate record.

If you make a statement to the police, the interpreter will make a copy of that statement in your own language for you to check and sign as correct.

## People who are not British

If you are not British, you can tell the police that you want to contact your High Commission, Embassy or Consulate to tell them where you are and why you are in the police station. They can also visit you in private or arrange for a solicitor to see you.

## Special Times

### Getting a solicitor to help you

There are some special times when the police can ask you questions before you have talked to a solicitor. Information about these special times is given in the Codes of Practice. This is the book that sets out what the police can and cannot do while you are at the police station. If you want to look up the details, they are in paragraph 6.6 of Code C of the Codes of Practice.

There is one special time when the police will not let you speak to the solicitor that you have chosen. When this happens the police must let you talk to another solicitor. If you want to look up the details, it is in Annex B of Code C of the Codes of Practice.

### Telling someone that you are at the police station

There are some special times when the police will not allow you to contact anyone. Information about these special times is given in the Codes of Practice. If you want to look up the details, it is in Annex B of Code C of the Codes of Practice.

## Breath tests

If you are under arrest because of a drink drive offence, you have the right to speak to a solicitor. That right does not mean you can refuse to give the police samples of breath, blood or urine even if you have not yet spoken to the solicitor.

## Independent Custody Visitors

There are members of the community who are allowed access to police stations unannounced. They are known as independent custody visitors and work on a voluntary basis to make sure that detained people are being treated properly and have access to rights. You do not have a right to see an independent custody Visitor and cannot request that an independent custody visitor visit you. If an independent custody visitor does visit you while you are in custody they will be acting independently of the police to check that your welfare and rights have been protected. However, you do not have to speak to them if you do not wish to.

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# GERMANY

- Information for persons arrested on the basis of a committal order
  - Information for persons arrested on the basis of an arrest warrant
  - Information for persons not suspected of any offence who are apprehended to establish their identity
  - Information for persons suspected of an offence who are apprehended to establish their identity
  - Information for provisionally arrested persons
-

**Information for persons arrested on the basis of a committal order**

(committal order pursuant to sections 126a, 275a (5) and 453c in conjunction with section 463 (1) of the German Code of Criminal Procedure)

Office and file number: \_\_\_\_\_

Surname, first name of the accused: \_\_\_\_\_

Date and place of birth of the accused: \_\_\_\_\_

**You have been arrested on the basis of a committal order. You have the following rights:**

- 1.) Without delay, at the latest on the day after your arrest, you must be brought before a judge who has to question you and decide on the continuation of your deprivation of liberty.
- 2.) You can make a statement about the charges against you or refrain from making statements about the case.
- 3.) You can apply for individual items of evidence to be taken in your defence.
- 4.) You can consult a defence counsel of your own choosing at any time, even before any questioning has taken place.
- 5.) You can request to be examined by a male or a female doctor of your choice.
- 6.) You can notify a relative or another person you trust of the arrest, provided that such notification does not conflict with the purpose of the investigation.

If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.

If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.

-----  
**I have received the preceding information (one page) today.  
(...) In addition, I have been informed of my rights orally.  
(...) I have understood the information.**

-----  
(place, date, time)

-----  
(signature of the person arrested, and, where necessary, also of his/her statutory representative)

( ) The person concerned has refused to sign.

-----  
(surname, rank of official)

-----  
(signature of official)

**Information for persons arrested on the basis of an arrest warrant**

(arrest warrant pursuant to sections 112 et seqq., 230 (2), 236, 329 (4), 412 and 453c of the German Code of Criminal Procedure)

Office and file number: \_\_\_\_\_

Surname, first name of the accused: \_\_\_\_\_

Date and place of birth of the accused: \_\_\_\_\_

**You have been arrested on the basis of an arrest warrant. You have the following rights:**

- 1.) Without delay, at the latest on the day after your arrest, you must be brought before a judge who has to question you and decide on the continuation of your deprivation of liberty.
- 2.) You can make a statement about the charges against you or refrain from making statements about the case.
- 3.) You can apply for individual items of evidence to be taken in your defence.
- 4.) You can consult a defence counsel of your own choosing at any time, even before any questioning has taken place.
- 5.) You can request to be examined by a male or a female doctor of your choice.
- 6.) You can notify a relative or another person you trust of your arrest, provided that such notification does not conflict with the purpose of the investigation.

If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.

If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.

-----

**I have received the preceding information (one page) today.**

**(...) In addition, I have been informed of my rights orally.**

**(...) I have understood the information.**

-----  
(place, date, time)

-----  
(signature of the arrested person)

( ) The person concerned has refused to sign.

-----  
(surname, rank of official)

-----  
(signature of official)

Belehrung von aufgrund eines Haftbefehls festgenommenen Personen nach §§ 112 ff. u.a. StPO – **Englisch**

**Information for persons not suspected of any offence who are apprehended to establish their identity**

(Apprehension of persons not suspected of any offence, pursuant to sections 163b (2) and 163c of the German Code of Criminal Procedure)

Office and file number: \_\_\_\_\_

Surname, first name of the person concerned: \_\_\_\_\_

Date and place of birth of the person concerned: \_\_\_\_\_

**You have been apprehended for the purpose of establishing your identity.**

The deprivation of liberty for the purpose of establishing your identity must not exceed a total period of twelve hours.

**You have the following rights:**

- 1.) You must be brought without delay before a judge for the purpose of deciding on the admissibility and continuation of the deprivation of liberty, unless it would presumably take longer to obtain a judicial decision than would be necessary to establish your identity.
- 2.) You can consult a lawyer of your own choosing at any time.
- 3.) You can request to be examined by a male or a female doctor of your choice.
- 4.) You can notify a relative or another person you trust of your deprivation of liberty, provided that such notification does not conflict with the purpose of the investigation.

If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.

If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.

-----  
**I have received the preceding information (one page) today.**

**(...) In addition, I have been informed of my rights orally.**

**(...) I have understood the information.**

-----  
(place, date, time)  
person)

-----  
(signature of the apprehended

( ) The person concerned has  
refused to sign.

-----  
(surname, rank of official)

-----  
(signature of official)

**Information for persons suspected of an offence who are apprehended to establish their identity**

(Apprehension of persons suspected of an offence pursuant to sections 163b (1) and 163c of the German Code of Criminal Procedure)

Office and file number: \_\_\_\_\_

Surname, first name of the suspect: \_\_\_\_\_

Date and place of birth of the suspect: \_\_\_\_\_

**You have been apprehended as a suspect for the purpose of establishing your identity.**

The deprivation of liberty for the purpose of establishing your identity must not exceed a total period of twelve hours.

**You have the following rights:**

- 1.) You must be brought without delay before a judge for the purpose of deciding on the admissibility and continuation of the deprivation of liberty, unless it would presumably take longer to obtain a judicial decision than would be necessary to establish your identity.
- 2.) You can make a statement about the charges against you or refrain from making statements about the case.
- 3.) You can apply for individual items of evidence to be taken in your defence.
- 4.) You can consult a defence counsel of your own choosing at any time, even before any questioning has taken place.
- 5.) You can request to be examined by a male or a female doctor of your choice.
- 6.) You can notify a relative or another person you trust of your deprivation of liberty, provided that such notification does not conflict with the purpose of the investigation.

If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.

If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.

-----  
**I have received the preceding information (one page) today.**

**(...) In addition, I have been informed of my rights orally.**

**(...) I have understood the information.**

-----  
(place, date, time)  
person)

-----  
(signature of the apprehended

( ) The person concerned has  
refused to sign.

-----  
(surname, rank of official)

-----  
(signature of official)

Belehrung von zur Identitätsfeststellung festgehaltenen Verdächtigen gemäß §§ 163b I, 163c StPO – **Englisch**

## Information for provisionally arrested persons

(provisional arrest pursuant to sections 127 and 127b of the German Code of Criminal Procedure)

Office and file number: \_\_\_\_\_

Surname, first name of the accused: \_\_\_\_\_

Date and place of birth of the accused: \_\_\_\_\_

### **You have been provisionally arrested. You have the following rights:**

1. Without delay, at the latest on the day after your arrest, you must be brought before a judge who has to question you and decide on the continuation of your deprivation of liberty, unless you are released earlier.
2. You can make a statement about the charges against you or refrain from making statements about the case.
3. You can apply for individual items of evidence to be taken in your defence.
4. You can consult a defence counsel of your own choosing at any time, even before any questioning has taken place.
5. You can request to be examined by a male or a female doctor of your choice.
6. You can notify a relative or another person you trust of the arrest, provided that such notification does not conflict with the purpose of the investigation.

If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.

If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.

-----  
**I have received the preceding information (one page) today.**

**(...) In addition, I have been informed of my rights orally.**

**(...) I have understood the information.**

-----  
(place, date, time)

-----  
(signature of the arrested person)

( ) The person concerned has refused to sign

-----  
(surname, rank of official)

-----  
(signature of official)

Belehrung von vorläufig festgenommenen Personen nach §§ 127, 127b StPO – **Englisch**

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# ITALY

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**PUBLIC PROSECUTOR'S OFFICE**  
**At the Court of Modena**

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**COMMUNICATION OF THE BEGINNING OF INVESTIGATION AND OF THE RIGHT OF DEFENSE**  
**-Articles 369 and 369 bis of the Code of Criminal Procedure**

**Proceedings No. .... or No. .... of Crime Reports Register**

the public prosecutor, Mr or Ms. .... given the acts of the criminal proceedings against:  
[name], born [PERSONAL DETAILS].

defended by \_\_\_\_\_, of the Bar of Modena, with office in .... [address]  
phone \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Appointed by this Act,

Under investigation for the crime under Article 609 quarter of the criminal code, committed in Savignano sul Panaro in 2003.

**INFORMS**

*the person subject to investigation that this office is conducting investigations against him for the crime committed above and that:*

- a. in criminal procedures, a defence lawyer is mandatory, that the person subject to investigations has all the rights and privileges accorded by the Code of Criminal Procedure; in particular, he/she may appoint a counsel of his/her own, may submit written statements and comments in writing, or may appear before the prosecutor spontaneously in order to make statements,*
- b. the state defence lawyer, appointed by this Act, is the lawyer indicated above.*
- c. he/she can appoint a defence lawyer of his/her own choosing with the warning that, failing this, he/she will be assisted by the defence lawyer appointed ex officio*
- d. It is mandatory to pay the state defence lawyer unless the conditions for legal aid paid by the state are fulfilled, or in case of insolvency, the enforcement proceedings will be initiated*
- e. The conditions for admission to legal aid paid by state are stated in art. 3 of Law No 217/90.*

*Sends to the Secretariat for the execution of the necessary formalities in particular for the notification of this document to the person subject to investigations and the defence lawyer mentioned above.*

Modena [DATE]

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# LATVIA

- Section 66 - Rights of the suspect
  - Section 63 - Rights of the detainees
-

## LETTER OF RIGHTS

### An extract of CRIMINAL PROCEDURE LAW OF THE REPUBLIC OF LATVIA

#### **Rights of a Suspect**

From the moment when a person is notified that he or she is recognised as a suspect, such person shall have the following rights:

1) to receive a copy of the decision with which such person has been recognised as a suspect, as well as written information regarding the rights and duties of a detained person;

2) to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A suspected person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge;

3) to submit a request regarding the payment of the assistance of a counsel from State resources;

4) in the cases provided for by the Law, to request the participation of an advocate for the ensuring of a defence in a separate procedural action, if an agreement regarding assistance of a defence counsel has not yet been entered into with a concrete advocate, or if such defence counsel has not been able to arrive;

5) to meet in the place of detention with a defence counsel in conditions ensuring confidentiality of negotiations without special permission of a person directing the proceedings and without time restrictions;

6) to familiarise him or herself with a Criminal Proceedings Register not later than within a term of three days after the submission of an application;

7) to submit a recusation for officials entered in the Register;

8) to submit applications regarding the performance of investigative actions and participation in such operations;

9) to participate in investigative actions that are performed on the basis of an application of such person or the counsel thereof, if such participation does not hinder the performance of investigative actions or does not infringe upon the rights of another person;

10) to receive a motivated decision if the suspect has been refused participation in the investigative actions that are performed on the basis of his or her request or a request of the counsel thereof;

11) to familiarise him or herself with a decision regarding the determination of an expert-examination before the transferral thereof for execution, if the expert-examination applies to such person, and to request the raising of additional questions regarding which the expert must give a conclusion, except for cases where an expert-examination has been determined during another investigative action;

12) to submit complaints, in accordance with the procedures specified by Law, regarding the actions of officials authorised for the performance of criminal proceedings;

13) to appeal procedural decision in accordance with the cases, term, and procedures specified in the Law;

14) to express his or her attitude toward expressed suspicions orally or in writing;

15) to testify or refuse to provide testimony;

16) to request that measures for the regulation of criminal legal relations be performed with the consent thereof, as well as that moral, physical, and material damage be compensated;

17) to settle with the victim;

18) to submit an application regarding the termination of criminal proceedings, if the term for the completion of pre-trial proceedings specified in the Law is violated;

19) to participate with the investigating judge in the examination of his or her own complaints and the complaints of the defence counsel thereof, as well as a proposal of a person directing the proceedings, if the Law does not prescribe other procedures for examination;

20) to express a wish to co-operate with the officials who are performing the criminal proceedings;

(2) An image of a suspect recorded as a photograph, video, or by other types of technical means shall not be published in the mass media during procedural actions without the consent of such suspect if such publication is not necessary for the disclosure of a criminal offence.

(3) The failure to provide testimony shall not be assessed as a hindrance to the ascertaining of the truth in a case or an evasion of the pre-trial investigation process.

### **Section 63. Rights of a Detained Person**

(1) A detained person has the right:

1) to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A detained person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge;

2) to request that a relative, educational institution, or employer close to him or her is notified regarding the detention;

3) to familiarise him or herself with a copy of the detention protocol and receive written information regarding the rights and duties of a detained person;

4) to meet with a defence counsel in conditions ensuring confidentiality of negotiations without special permission of a person directing the proceedings and without time restrictions;

5) to express orally or in writing his or her attitude in relation to the justification for detention;

6) to testify or refuse to provide testimony;

7) to submit a recusation;

8) to submit complaints regarding the actions of officials;

9) to submit requests regarding the emergency performance of investigative actions as a result of which evidence may be acquired for confirming the invalidity of suspicions;

10) to receive legal assistance from a defence counsel during the conducting of procedural actions.

(2) An image of a detained person recorded as a photograph, video, or by other types of technical means shall not be published in the mass media during procedural actions without the consent of such detained person if such publication is not necessary for the disclosure of a criminal offence.

(3) A detained foreign national has the right to request that the diplomatic or consular representation office of his or her state be informed.

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# LUXEMBOURG

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Circonscription Régionale:  
Unité / Nom du Service

, le à heures.

**RECEIPT in accordance with the provisions of Article 39 of the Criminal Code**

Appendix to statement no..... dated .....

I, the undersigned, .....  
certify herewith that I have been informed of the following rights:

- To notify a person of my choice (except if the circumstances of the enquiry make this impossible) and to have use of a telephone for this purpose.

I have made use of this right :  yes  
 no

- To be immediately examined by a doctor.

I have made use of this right :  yes  
 no

- To receive legal counsel from a registered lawyer.

I have made use of this right :  yes  
 no

(Signature as confirmation of receipt)

Signature of the police officer and any observations, particularly in the case of

- refusal or absence of signature
- failure or refusal to complete all or part of the form
- an officially recorded impediment to the implementation of the provisions contained in the aforementioned Article 39.

.....  
 .....  
 .....  
 .....

(Signature of the police officer)

---

# THE NETHERLANDS

- Letter of Rights adults
  - Letter of Rights juveniles
-



# You have been arrested and taken to the police station. What are your rights?

*You are suspected of having committed an offence. The police have arrested you and taken you to the police station where they will question you. It is important that you know your rights.*

## Know your rights

The police have the right to ask you questions. This is called police questioning. You have the right

- to not answer if you do not want to; to remain silent;
- to talk to a lawyer before the questioning.

It is essential that you know with which situation you are dealing. After you have finished reading this leaflet, you must make a choice, except when it concerns a very serious offence. Read this leaflet therefore well.

## Know your situation

- If you are suspected of a very serious offence, it is standard procedure that the police will engage a lawyer. This lawyer will come to the police station to talk to you before the police will question you for the first time. This will not cost you anything.
- If you are suspected of a serious offence, you may choose whether or not you want to talk to a lawyer before the questioning. This will not cost you anything.

- If you are suspected of an other type of punishable offence, you may choose whether or not you want to talk to a lawyer. If you want to talk to a lawyer, you yourself must pay the costs of this interview with the lawyer.

Always ask the police therefore the following:

- if you will automatically be assigned a lawyer, or if you may choose whether you want to engage a lawyer or not;
- in the case where you may choose whether you want to engage a lawyer or not: whether the costs for the interview with the lawyer must be paid by you.

## What does the lawyer do before the questioning

A lawyer will only stand up for your interests. A lawyer may do the following for you before the questioning:

- talk with you about the offence of which you are suspected;
- tell you how a police questioning proceeds;
- tell you which rights and duties you have during the questioning.

This is important, for everything you say to the police during the questioning will be written in a report. This is called an official report. Will your case be sent to the Public Prosecutor and after that perhaps to court? In that case, they will read what has been written in the official report.

The police will not listen when you are talking to your lawyer. The lawyer is not allowed to talk to others about what he has heard from you, also not to the police.

## What happens further?

If the police engage a lawyer for you, this lawyer will come to the police station within 2 hours. You will be allowed to talk to the lawyer for a maximum of 30 minutes. You must wait for the lawyer at the police station. If you personally know a lawyer to whom you want to talk, this is also possible. Inform the police of this.

If you want to engage a lawyer at your own expenses, the police will call this lawyer for you. The lawyer may give you advice by telephone, or you may agree with the lawyer that he will come to the police station to talk to you.

## If you yourself may choose

If you may choose whether or not you want to engage a lawyer, consider your situation well. If you choose to engage a lawyer, this does not mean that you are guilty. Inform the police of your decision.

## Questions

Do you still have questions? Do not hesitate to put them to the police.



This is a publication of:  
Ministry for the Interior and Kingdom  
Relations

Ministry of Justice  
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# You have been arrested and taken to the police station.

## What are your rights?

*You are between 12 and 18 years of age and you are suspected of having committed an offence. The police have arrested you and taken you to the police station where they will question you. It is important that you know your rights. Therefore read this leaflet well.*

### Know your rights

The police will ask you some questions. This is called police questioning.

- You do not have to answer if you do not want to: you have the right to remain silent.
- You may first talk to a lawyer before the questioning. If you ask for a lawyer, this does not mean that you are guilty.
- A lawyer or person of trust may be present during the questioning. It is not permitted for both to be present. An explanation of what a lawyer and a person of trust may do for you will be given further below in this leaflet.

#### **Always ask the police the following:**

what the police suspect you of;

- if you will automatically be assigned a lawyer or if you may choose whether or not you want a lawyer to help you;
- if you yourself may choose a lawyer, whether or not you have to pay the costs of the lawyer yourself;
- if you may invite a person of trust to be present during the questioning.

## Before the questioning

### Your situation before the questioning

- Do the police suspect you of a *very serious* offence? In that case, there will always be a lawyer present. This lawyer will talk to you before the police start the questioning. This will not cost you anything.
- Are you aged between 12 and 15 years old and do the police suspect you of a *serious* offence? In that case, there will always be a lawyer present. This will not cost you anything.
- Are you 16 or 17 years of age and do the police suspect you of a *serious* offence? In that case, you may choose whether you want to talk to a lawyer or not.
- Do the police suspect you of an *other* type of punishable offence? In that case, you may choose whether you want to talk to a lawyer or not. If you want a lawyer, the police will arrange a lawyer for you. You will have to pay for this lawyer yourself, though.

The various possibilities are shown in the following diagram.

You are 12, 13, 14, or 15 years of age	Very serious offence	Lawyer is mandatory
	Serious offence	Lawyer is mandatory
	Other offence	You are free to choose a lawyer or not
You are 16 or 17 years of age	You are 16 or 17 years of age	Lawyer is mandatory
	Serious offence	You are free to choose a lawyer or not
	Other offence	You are free to choose a lawyer or not

### What does the lawyer do before the questioning

A lawyer will only stand up for your interests. A lawyer may do the following for you before the questioning:

- talk with you about the offence of which you are suspected;
- tell you how a police questioning proceeds;
- tell you which rights and duties you have during the questioning.

This is important, for everything you say to the police during the questioning will be written in a report. This is called an official report. Will your case be sent to the Public Prosecutor and after that perhaps to court? In that case, they will read what has been written in the official report.

The police will not listen when you are talking to your lawyer. The lawyer is not allowed to talk to others about what he has heard from you, also not to the police.

N.B. If you did not want to talk to a lawyer before the questioning, you can no longer choose to have a lawyer present during the questioning. In that case you may still choose to have a person of trust attend the questioning.

## During the questioning

### **Your situation during the questioning**

You may choose whether you want to have a lawyer or a person of trust attend the questioning. You are not allowed to have both.

### **What will the lawyer do during the questioning**

If there is a lawyer present during your questioning, he or she will listen and ask you whether you understand what is being said. He will see to it that you say everything of your own free will.

### **What will a person of trust do during the questioning**

A person of trust may, for example, be either of your parents, a brother or sister, or somebody else who is important to you. A person of trust may only listen. This person must, however, be 18 years of age or older and may not have anything to do with the offence of which you are suspected. This person may have less knowledge of the procedure of questioning than a lawyer. Consider this well before you make your choice.

## What happens further?

If a lawyer is required, the police will arrange this.

The lawyer must be at the police station within 2 hours from the call to this end. You must wait for the lawyer at the police station. You will then have 30 minutes to talk to the lawyer.



If you personally know a lawyer to whom you want to talk, this is also possible. You must discuss this with the police.

Do you want a person of trust to be present during the questioning? In that case, you must tell the person's name and telephone number to the police. The person of trust must also be at the police station within 2 hours.

## Make a good choice

You now know whether you will automatically be assigned a lawyer, or if you may choose whether or not you want a lawyer to help you. If you may choose, there are three possibilities:

- You want a lawyer to help you; or
- you want a person of trust to be present during the questioning; or
- you do not want any help.

Consider your choice well. Tell your choice to the police.

## Questions

Do you still have questions? Do not hesitate to put them to the police.

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Relations

Ministry of Justice

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# POLAND

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## **CAUTION**

### **Regarding the rights and obligations of the suspect**

1. The suspect shall have a right to:
  - make statements, not to make statements, or not to reply to any questions posed without giving any reason (Criminal Procedure Code [“CPC”] art. 175 § 1);
  - put a motion to commence the acts of the inquiry or investigation, participate at the evidence collection (CPC art. 315 § 1 and 2 as well as art. 317 § 1 and 2 and art. 325a § 2). The suspect who is present at the evidence collection has the right to provide explanations concerning each evidence (CPC art. 175 § 2);
  - have a defense counsel (CPC art. 77 and art. 78);
  - demand to be questioned in the presence of appointed defense counsel, whose absence does not stop the hearing (CPC art. 301).
  - use the services of an interpreter free of charge if his command of Polish language is insufficient (CPC art. 72 § 1);
  - put an application for the case to be submitted for conciliatory proceedings by trustworthy person or institution, or agree for such, subject to injured party’s approval (CPC art. 23a § 1);
  - demand, before he is given notice of the date on which he can examine the files of the inquiry or investigation, that he should be given an oral presentation of the grounds for charges as well as reasons for them prepared in writing. The reasons for the decision on the charges are served upon the suspect and his defence counsel within 14 days (CPC art. 313 § 3 and art. 325a § 2);
  - final examination (upon the motion) of the materials of inquiry or investigation under the presence of defense counsel and examination of the files at the earlier date. Inexcusable failure to appear by the suspect or his counsel shall not stop further proceedings (CPC art. 321 § 1, 3 and 4, and art. 325a § 2).
  
2. The suspect is under no obligation to prove his innocence or to submit evidence in his disfavour (CPC art. 74 § 1). However, the suspect is obliged to submit to:
  - an external examination of his body and to other examinations not involving any invasion of bodily integrity; in particular, the fingerprints of the accused may be taken; he may be photographed and presented to other persons, in order to establish his identity,
  - the psychological and psychiatric examinations and to examinations involving certain tests to be conducted upon his body, except surgical procedures, provided that they are executed by an authorised health professional, according to medical directions, and that do not constitute a challenge to the health of the suspect, if such examinations are

indispensable; in particular, the accused shall be under an obligation, in conformity with the above conditions, to submit blood, hair and excretory samples (CPC art. 74 § 2 point 2)

- the taking by a Police officer of a swab of buccal mucosa, if this is indispensable and there is no justifiable concern that this would constitute a challenge to the health of the accused or other persons (CPC art. 72 § 2)

3. The suspect that has not been detained:

- is obliged to appear on demand during the criminal proceedings, and to notify the authority in charge of such proceedings about any change of the place of residence, or stay exceeding seven days; in case of inexcusable failure to appear, the suspect may be brought by force (CPC art. 75 § 1 and 2);
- if the suspect stays abroad, he is obliged to designate an addressee for the service of documents in Poland; in case of failing to do so, the letter sent to the last known address in Poland, or if there is no such address – enclosed to the case files, will be deemed to be duly served (CPC art. 138);
- if the suspect changes his/her place of residence failing to provide the new address, or does not stay under the address provided, the letters sent at such address will be deemed to be duly served (CPC art. 139).

**I hereby confirm the receipt of the caution regarding the rights and duties of the suspect before the first interview.**

Warsaw, on this day of: .....

.....

Signature of the suspect

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# SLOVAK REPUBLIC

- Instruction of a person as to the right of the policeman to ask for explanation
  - Instruction of a person as to the policeman's right to turn in a person
  - Instruction of a person to the policeman's right to require a demonstration of identity
  - Instruction of a person as to the policeman's right to detain a person
  - Instruction of a person when exercising the right to detain the accused
  - Instruction of person when exercising the right to restrict personal freedom of a suspect
  - Instruction of a person when exercising the right to turn in the accused
  - Instruction of a person when exercising the right to turn in a witness
  - Instruction of a person when exercising the right to detain a foreigner
-

**Instruction of a person  
as to the right of the policeman to ask for explanation under § 17 of the Slovak Republic  
National Council Law No. 171/1993 Coll. on the Police Force in the wording of later  
regulations**

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**Under § 17 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations, the policeman is entitled to ask for a necessary explanation from a person that can contribute to the clarification of facts important for the detection of a misdemeanor or an administrative delict and the identification of the perpetrator, and also for the search of wanted and missing persons and things. If necessary, the policeman is entitled to call upon the person to come immediately or within a set deadline to the Police Force Division in order to prepare minutes of explanation or if this applies to the clarification of a misdemeanor to incorporate a record or minutes into a report on the result of the clarification of the misdemeanor. If the person does not comply with the call without sufficient excuse or serious reasons the policeman can turn the person in to the Police Force Division in order for the person to provide explanation.**

In connection with the use of provisions of § 17 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations against you I instruct you that:

- a) you are entitled to require the minutes of your explanation to be prepared immediately after you are turned in to the Police Force Division,
- b) if you do not speak the language of the proceedings you are entitled to an interpreter and translator,
- c) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- d) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- e) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- f) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of a person  
as to the policeman's right to turn in a person based on a request under § 17b of the  
Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the  
wording of later regulations**

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**Under § 17b of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations the policeman is entitled to turn the person in based on a request of a court, a law-enforcement agency, an administrative body or other body under special regulations (e.g. the Criminal Procedure Code, Civil Court Order, Administrative Order). The policeman will prepare an official record in which he will state personal data of the person turned in, reason for being turned in, provision of a special registration, based on which the person was turned in, and the time of the restriction of personal freedom of the person being turned in.**

In connection with the use of provisions of § 17 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations against you I instruct you that:

- a) you are entitled to be immediately given over to the requesting body, which asked for you to be turned in,
- b) if you do not speak the language of the proceedings you are entitled to an interpreter and translator,
- c) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- d) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- e) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- f) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of a person  
as to the policeman's right to require a demonstration of identity under § 18 of the  
Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the  
wording of later regulations**

---

**Under § 18 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulation the policeman is entitled to call upon a person, if it is necessary to fulfill the tasks under the Police Force Law, to demonstrate his/her identity using an identity document. If the person, which is being called upon, refuse to demonstrate his/her identity, if he/she cannot demonstrate his/her identity, or if he/she cannot credibly demonstrate his/her name, surname, date of birth, and residence address, the policeman is entitled to turn this person in to the Police Force Division in order to ascertain his/her identity.**

In connection with the use of § 18 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations against you I instruct you that:

- a) if you do not know the language of the proceedings you are entitled to an interpreter and translator,
- b) you are entitled to be immediately released if there are no reasons to turn you in to the law-enforcement agencies, other competent body or a competent facility,
- c) you are entitled to be released not later than 24 hours after being turned in,
- d) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- e) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- f) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- g) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of a person  
as to the policeman's right to detain a person under § 19 of the Slovak Republic National  
Council Law No. 171/1993 Coll. on the Police Force under the wording of later  
regulations**

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**Under § 19 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations the policeman is entitled to detain a person:**

- a) who's action directly threatens his/her life or health of life and health of other persons or property,**
- b) caught when committing a misdemeanor if there is a well-founded concern that he/she will continue in his/her committing of the misdemeanor or if it is necessary to properly check or clarify the matter,**
- c) who tried to escape when being turned in under § 17 (in order to provide explanation) or § 18 (in order to ascertain identity) of the Police Force Law and a well-founded concern of his/her escape continues,**
- d) who, at the Police Force Division, is insulting the policeman or other person or if the person behaves otherwise aggressively.**

In connection with the use of § 19 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations against you I instruct you that:

- a) if you do not speak the language of the proceedings you are entitled to an interpreter and translator,
- b) you are entitled to obtain, without any delay, a decree on your detention from the Police Force Division,
- c) you are entitled to be immediately released unless, after carrying out acts, there are reasons that would substantiate your turning in to the law-enforcement agencies or other competent body,
- d) you are entitled to be released not later than 24 hours after your personal freedom was restricted,
- e) at your request, you are entitled, without unnecessary delay, to inform your close relative on your detention,
- f) at your request, you are entitled, without unnecessary delay, to ask an attorney to provide you with legal assistance,
- g) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- h) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- i) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- j) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of a person  
when exercising the right to detain the accused under § 73 of the Criminal Procedure  
Code**

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**If, under § 73 of the Criminal Procedure Code, there is a reason for detention and the accused cannot be summoned, turned in or detained and to provide for him/her to be present in interrogation or other act, the chairman of senate will issue and within the preparation proceedings the preparation proceedings judge, at the prosecutor's proposal, an order to take the accused into custody. Based on the warrant the apprehension is carried out by the members of the Police Force, the Railway Police, the Military Police, and customs officers.**

In connection with the use of § 73 of the Criminal Procedure Code against you I instruct you that:

- a) if you do not speak the language of the proceedings you are entitled to interpreter and translator,
- b) you are entitled, not later than 24 hours from the moment of your apprehension, to be handed over to a court, otherwise you must be released,
- c) you are entitled to be informed on the reason of apprehension,
- d) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- e) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- f) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- g) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of person  
when exercising the right to restrict personal freedom of a suspect under § 85, section 2  
of the Criminal Procedure Code**

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**Under § 85, section 2 of the Criminal Procedure Code, the freedom of a suspect, who was caught committing a crime or immediately after the crime, can be restricted by anybody if it is necessary to ascertain his/her identity, to prevent him/her from escaping or to secure evidence.**

In connection with the use of provisions of § 85, section 2 of the Criminal Procedure Code against you I instruct you that:

- a) if you do not speak the language of the proceedings you are entitled to an interpreter and translator,
- b) you are entitled to be immediately informed on the reason based on which your personal freedom is restricted,
- c) under the Criminal Procedure Code you will be immediately handed over to the Police Force Division; if you cannot be handed over to the abovementioned division immediately, the division will be informed on the restriction of your personal freedom without delay,
- d) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- e) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- f) if you reject to submit to the restriction of personal freedom, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- g) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of a person  
when exercising the right to turn in the accused under § 120 of the Criminal Procedure  
Code**

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**§ 120 of the Criminal Procedure Code states that if the accused, who was properly and timely summoned for interrogation or other act, does not come without sufficient excuse, he can be turned in for this act. The accused can also be turned in without previous subpoena if it is necessary for a successful execution of the act, especially if he/she is hiding, does not have a permanent residence, if it is impossible to deliver the subpoena to the address that he/she stated.**

In connection with provision of § 120 of the Criminal Procedure Code against you I instruct you that:

- a) if you do not speak the language of the proceedings you are entitled to interpreter and translator,
- b) you are entitled to be informed on the reason of apprehension,
- c) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- d) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- e) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- f) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

**Instruction of a person  
when exercising the right to turn in a witness under § 128 of the Criminal Procedure  
Code**

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**Under § 128 of the Criminal Procedure Code the witness, who was properly summoned and who will not come without sufficient excuse, can be turned in. Within the court proceedings, based on the court's ruling, the witness can be secured in a way stated in § 88 of the Criminal Procedure Code (security of the witness) if the conditions for such a procedure are met.**

In connection with the use of provision of § 128 of the Criminal Procedure Code against you I instruct you that:

- a) if you do not speak the language of the proceedings you are entitled to interpreter and translator,
- b) you are entitled to be informed on the reason why you were turned in,
- c) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- d) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- e) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- f) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

### **Instruction of a person**

**when exercising the right to detain a foreigner under § 62 of Law No. 48/2002 Coll. on the Stay of Foreigners and on amendment and supplement to some laws in the wording of later regulations**

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**Under § 62 of Law No. 48/2002 Coll. on the Stay of Foreigners and on amendment and supplement of some laws, the policeman is entitled to detain a foreigner who illegally enters the territory of the Slovak Republic or who is illegally staying in the territory of the Slovak Republic, or if it is necessary to carry out his administrative deportation or to start his/her deportation sentence, or who, after illegally leaving a country, was returned by the neighboring country's bodies, or who tried to illegally enter the territory of other country from the territory of the Slovak Republic, or who made declaration under special law after he was sentenced to be deported or if it was decided on his/her administrative deportation, or if it is necessary to execute his/her transportation under special regulation for a necessary time period, however, not more than 180 days. The Police Division will, without delay, provide the foreigner with a ruling of detention and will place the foreigner in a facility. The detained foreigner can submit a remedy against the ruling of detention to the court within 15 days of delivery of the ruling of detention. Submission of the remedy has no dilatory effect.**

In connection with the use of provision of § 62 of Law No. 48/2002 Coll. on the Stay of Foreigners and on amendment and supplement of some laws against you I instruct you that:

- a) you are entitled to be instructed on your rights immediately after your detention in a language that you understand,
- b) you are entitled to inform one of your close relatives on your detention,
- c) you are entitled to inform your attorney,
- d) if you do not speak the language of the proceedings you are entitled to interpreter and translator,
- e) you are entitled to be informed on the reason of your detention,
- f) you are entitled to request, for the whole period of your detention, whether the reasons for detention still exist,
- g) you are obligated to undergo a strip-search and search of your personal belongings that you have with you,
- h) you are obligated to tolerate the policeman's right to make sure that you do not have a gun,
- i) you are obligated to undergo a scanning of identification marks,
- j) you are obligated to undergo a medical examination, professional examination, vaccination, and other measures specified by a health protection body,
- k) you are obligated to obey the policeman's call, instruction, order or requirement and to tolerate the execution of his entitlements under provision of § 17 to 32 of the Slovak Republic National Council Law no.171/1993 Coll. on the Police Force in the wording of later regulations, otherwise you are committing a misdemeanor for which you can be fined up to SKK 1,000.00,
- l) if you reject to be turned in, it is possible to use coercive instruments against you under § 50 of the Slovak Republic National Council Law No. 171/1993 Coll. on the Police Force in the wording of later regulations,
- m) if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment.

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# SPAIN

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As accused or defendant, you have the following rights:

- a. To keep silence not declaring if you do not wish to, to not answer the questions asked.
- b. Not to make self-incriminating statements; not to plead yourself guilty.
- c. To designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should you not designate a lawyer, a State-appointed lawyer shall be designated.
- d. If arrested, right to inform any relative or person you decide of the arrest and the custody place where you are at any time. Foreigners are entitled to inform the consular services of his/her country.
- e. To have the free assistance of an interpreter if you are a foreigner and do not understand nor speak Spanish.
- f. If arrested, right to be examined by the forensic doctor or his/her substitute and, otherwise, by the forensic doctor of the Institution you are in or any other State-appointed forensic doctor (or appointed by another Public Administration).
- g. To request an habeas corpus procedure in order to ensure the immediate handing over to the judicial authorities.

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# SWEDEN

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## **Information for Those Suspected of a Crime and Subsequently Detained**

Public Prosecutor's Office

National Police Board

You have the right to

- know what it is you are suspected of and why you are being detained
- receive the aid of a defence attorney who under certain conditions can be paid by the state
- receive the assistance of an interpreter during interrogations, as needed
- receive food and rest as needed
- receive health and medical care as needed or by your own request be examined by a doctor, unless it is apparent that a medical examination is unnecessary
- receive assistance in notifying any of your close relatives or someone else particularly close to you about where you are as soon as this can be done without compromising the investigation.

If you are not a Swedish citizen, you have the right to demand that your own country's consulate or equivalent institution be notified of your detention and that messages from you be forwarded there.

### **What is going to happen?**

- An interrogation will be held with you as soon as possible.
- If you are not taken into custody, you are normally obligated to remain for interrogation for a maximum of six hours. In exceptional cases, you may be obligated to remain for a further six hours.
- As soon as possible after the interrogation, you will be released unless the prosecutor decides that you should be taken into custody.
- If the prosecutor takes you into custody then the prosecutor is obligated to verify continuously that there are grounds for your continued detention.
- If you are not released, the prosecutor must, as soon as possible and no later than at noon on the third day following the decision to take you into custody, request that a court try whether you are to remain in detention. If the prosecutor decided to take you into custody prior to you being detained, the time is then measured from when you were detained instead.
- If the prosecutor requests a court trial, you will be notified of this at once.
- The court must examine the matter of your detention as soon as possible and no later than 96 hours following you having been arrested or otherwise detained.

If you are detained due to a request from another country, other rules may apply for the court's examination of your detention.

**If anything is unclear regarding this information, you can contact the police.**

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# TURKEY

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**LETTER OF RIGHTS**  
(TRANSLATION)

1. You have to provide accurate information regarding your identity. Withholding information regarding your identity or giving incorrect information concerning it, will constitute a crime.
2. You have the right not to give any explanation concerning the charges against you and to remain silent.
3. You have the right to inform your relatives of your detention. Your relative or the person you have determined or, if you do not object in writing, your Consulate/Embassy will be informed about your detention immediately.
4. You have the right to put forward issues in your favor to clear the charges against you.
5. You have the right to appoint an attorney. If you cannot appoint an attorney, you may use the services of an attorney appointed by the Bar. You have the right to see and talk to your attorney. Your attorney may be present during your interrogation.
6. You may apply to the judge of peace to ask to be released immediately following your arrest, detention or the prosecutor's written order of extension of the detention period.

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# **UNITED STATES OF AMERICA**

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**IN MUNICIPAL COURT, CITY OF FARGO, STATE OF NORTH DAKOTA**  
**NOTIFICATION OF RIGHTS AND ACKNOWLEDGMENT – CRIMINAL OFFENSE**

City of Fargo vs. \_\_\_\_\_

Complaint No. \_\_\_\_\_

**Maximum Penalty: Class B Misdemeanor - 30 days imprisonment and a \$1,000 fine.**  
**Infraction - \$500.00 fine**

**YOU HAVE THE FOLLOWING RIGHTS:**

1. To be informed of the nature of the charge against you.
2. To be informed of the maximum and minimum penalties that may be imposed if you are convicted or if you plead guilty to the offense.
3. Against self-incrimination, which means that you have the right to remain silent, and to know that any statement made by you may be used against you in a criminal prosecution. At trial, you may testify or not testify as you choose.
4. If the offense charged is one for which appointed counsel is required, you have the right to have legal services provided at public expense to the extent that you are unable to pay for your own defense without undue hardship. **(Appointed counsel is not available if the offense is an infraction.)**
5. To be admitted to bail pursuant to the provisions of N.D.Crim.P. 46. (Conditions which reasonably assure your appearance at all court proceedings).
6. To enter a plea of either guilty or not guilty and to persist in a plea of not guilty.
7. To be presumed innocent. You may be convicted only if the city proves beyond a reasonable doubt that you have committed each and every element of the offense.
8. To confront and cross-examine in court the witnesses against you. To present witnesses to testify on your behalf and to use this court's subpoena power to have witnesses appear at trial on your behalf.
9. To have a trial by a jury in district court if you make a **written request for jury trial within 28 days following a plea of not guilty**. If your case remains in municipal court and you are found guilty by a judge you may appeal to the district court for a new trial before a judge. **(A jury is not available for the trial of an infraction).**

**If you plead guilty, there will be no trial of any kind. By pleading guilty, you give up your right to a trial, to confront the witnesses against you, and your privilege against self-incrimination.**

**NOTE:** If you fail to appear for a scheduled court date, your bond will be forfeited, a conviction (where authorized by statute) may be entered against you on the pending charge pursuant to Section 39-06-30, North Dakota Century Code, and a warrant may issue for your arrest.

I HAVE READ THIS NOTIFICATION OF RIGHTS AND UNDERSTAND EACH OF THE RIGHTS.

\_\_\_\_\_  
Defendant's signature

\_\_\_\_\_  
Date

**IN MUNICIPAL COURT, CITY OF FARGO, STATE OF NORTH DAKOTA**  
**ENTRY OF PLEA**

City of Fargo vs. \_\_\_\_\_

Complaint No. \_\_\_\_\_

**GUILTY PLEA:**

I plead guilty and waive all my rights listed and acknowledged by me on the Notification of Rights. My plea is freely and voluntarily made without threat or the result of force, and without any promises except for any plea agreement made between the prosecuting attorney and myself or my attorney.

My guilty plea (**circle one**)      **IS**      or      **IS NOT**      the result of a plea agreement.

The attorney representing me is \_\_\_\_\_. If I am not represented by an attorney, I waive my right to consult with an attorney of my choosing and any right I may have to have an attorney appointed to represent me.

**I have read and understand each of my legal rights listed in the Notification of Rights on the reverse side of this plea. The judge accepting this plea has answered all of my questions.**

\_\_\_\_\_  
Defendant's signature

\_\_\_\_\_  
Date

**ACCEPTANCE OF GUILTY PLEA:**

Having established a factual basis for the guilty plea by:

\_\_\_\_\_ the defendant's statement,

\_\_\_\_\_ the prosecution's statement, or

\_\_\_\_\_ other (describe) \_\_\_\_\_,

I hereby accept the defendant's plea of guilty.

\_\_\_\_\_  
Municipal Judge

\_\_\_\_\_  
Date

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**NOT GUILTY PLEA:**

I plead not guilty, and make the following choice concerning court appointed counsel:

**I (circle one)      DO      or      DO NOT      request that I be provided with a court appointed attorney.** If I do not request an appointed attorney I will either retain an attorney to represent me or **I waive** my right to be represented by an attorney.

**NOTE: TO REQUEST A COURT APPOINTED ATTORNEY,** you must complete an application providing financial information **prior to your appearance today** and submit it to the court **(an appointed attorney is not provided on the trial of an infraction).**

**I understand that if I do not make a written demand for a jury trial of a class B misdemeanor within 28 days from today, I will have waived my right to a jury trial and my case will be tried before a municipal court judge without a jury.**

\_\_\_\_\_  
Defendant's signature

\_\_\_\_\_  
Date

## Annex 2

### Written information per country

This annex provides an overview of the written information received from Belgium, Estonia, Hungary, Ireland, Italy, The Netherlands and Portugal. The written information in Italy, and the Slovak Republic are published only in the respective Member State's language and therefore required translation into English.

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# BELGIUM

- Administrative arrest
-

# ADMINISTRATIVE ARREST

## **Within the context of an administrative arrest, your rights are the following:**

- √ No one can be deprived of his freedom apart from the cases provided by the law.
- √ The loss of liberty decided by the Police may not exceed 12 hours.

## **There are 3 exceptions, that is to say:**

- Time limit of 24 hours maximum in case of an administrative arrest in Eurostar control areas.
  - Time limit of 24 hours maximum in case of non-respect of the rules relative to the access to the territory (ex. no identity document, false or falsified passport,...).
  - Time limit of 6 hours maximum for the one who makes a scene in a public place or is a danger for others or himself/herself because he or she is obviously under the influence of drugs or similar products.
- √ Resorting to force by a police officer will be well-thought-out and limited to the bare essentials.
  - √ The loss of liberty must be as DISCREET as required. The arrested people may not be seen by the public.
  - √ **The person deprived of his freedom:**
    - has the right to RESPECT;
    - food as meal times, adequate water and access to toilet facilities;
    - receive medical attention and additionally has the right to a medical examination by a doctor of their choice;
    - will be allowed to INFORM A PERSON of his own choosing except if it goes against the investigation.



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# ESTONIA

- Minutes on detention of suspect
  - Minutes on interrogation of suspect
-



**PÕHJA PREFEKTUUR**  
**PÕHJA PREFECTURE**

**KAHTLUSTATAVANA KINNIPIDAMISE PROTOKOLL**  
**MINUTES ON DETENTION OF SUSPECT**

kriminaalasjas nr .....  
in the criminal matter No.

“ ..... ” ..... 200.....  
[kinnipidamise koht - place of detention] [kellaaeg - time]

.....  
[menetleja ametniku ametinimetus ja nimi - name and professional status of the body conducting the proceeding]  
juhindudes KrMS §-dest 217, 218 ja 146 pidas kahtlustatavana kinni:  
guided by sections 217, 218 and 146 of the Code of Criminal Procedure, detained as suspect:

**1. Kahtlustatava andmed:**

Suspect's personal data:

a. Nimi: .....  
Name: [ees- ja perekonnanimi - given names & surname]

b. Isikukood või sünniaeg: .....  
Personal identification code or date of birth: [isikukoodi puudumisel sünniaeg  
date of birth if the personal identification code is missing]

c. Kodakondsus: .....  
Citizenship: [Eesti või muu - Estonian or other]

d. Haridus: .....  
Education: [alg-, põhi-, kesk-, keskeri-, kõrgem haridus - elementary, basic, high, vocational, higher]

e. Emakeel: .....  
Native tongue: [eesti või muu - Estonian or other]

f. Elu- või asukoht ja aadress: .....  
Residence or location: [aadress - address]

g. Töökoht või õppeasutus: .....  
Place of work or educational institution: [nimetus - name]

h. Kontaktandmed: .....  
Contact information: [sidevahendi number või e-posti aadress - telephone number or e-mail address]

i. Isikusamasus tuvastatud ..... abil.  
Identity established by: [dokumendi nimetus vms - name and No. of document]

## KrMS § 34. Kahtlustatava õigused ja kohustused

Kahtlustataval on õigus: teada kahtlustuse sisu ja anda selle kohta ütlusi või keelduda ütluste andmisest; teada, et tema ütlusi võidakse kasutada süüdistuseks tema vastu; kaitsja abile; kohtuda kaitsjaga teiste isikute juuresolekuta; kaitsja juuresolekul olla üle kuulatud, osaleda vastastamisel, ütluste seostamisel olustikuga ja tema äratundmiseks esitamisel; osaleda vahistamistaoitluse arutamisel kohtus; esitada tõendeid; esitada taotlusi ja kaebusi; tutvuda menetlustoimingu protokolliga ning teha menetlustoimingu tingimuste, käigu ja tulemuste ning protokolliga kohta avaldusi, mis protokollitakse; anda nõusolek kokkuleppemenetluse kohaldamiseks, osaleda kokkuleppemenetluse läbirääkimistel, teha ettepanekuid kohaldamisele kuuluva karistusliigi ja -määra kohta ning sõlmida või sõlmimata jätta kokkuleppemenetluse kokkulepe.

Kahtlustatav on kohustatud: ilmuma uurimisasutuse, prokuratuuri või kohtu kutsel; osalema menetlustoimingu ning alluma uurimisasutuse, prokuratuuri ja kohtu korraldustele.

### § 34. Rights and obligations of suspects

A suspect has the right to: know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion; know that his or her testimony may be used in order to bring charges against him or her; the assistance of a counsel; confer with the counsel without the presence of other persons; be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel; participate in the hearing of an application for an arrest warrant in court; submit evidence; submit requests and complaints; examine the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements; give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings. A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour. A suspect is required to appear when summoned by an investigative body, Prosecutor's Office or court; participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

## 2. Kahtlustatavale on tutvustatud tema õigusi ja kohustusi ning selgitatud nende sisu.

The contents of rights and obligations have been explained to suspect.

\_\_\_\_\_  
*(kahtlustatava allkiri - suspect's signature)*

## 3. Menetlustoimingu osaleb tõlk: .....

Procedural act is attended by interpreter *[nimi ja kontaktaadress - given names, surname and contact address]*,

keda on hoiatatud, et oma ülesannete täitmisest alusetu keeldumise ja teadvalt valesti tõlkimise eest vastutab ta KarS §-de 318 ja 321 järgi.

who has been warned of the liability for the unjustified refusal to perform his or her duties and for the provision of a knowingly false interpretation pursuant to sections 318, 321 of the Penal Code.

\_\_\_\_\_  
*(tõlgi allkiri - interpreter's signature)*

## 4. Menetlustoimingu osaleb: .....

Procedural act is attended by: .....

*[protokollija või kaitsja, nende nimi ja kontaktaadress  
minutes secretary or counsel, their names and contact addresses]*

## 5. Kasutatud tehnikavahendid: .....

Technical devices used: .....

*[tehnikavahendi liik ja mark - type and model of technical device]*

## 6. Kuritegu: ..... *[nimi - name]*

Classification of crime:

kahtlustatakse KarS § ..... *[nr]* järgi kvalifitseeritava  
is suspected in perpetration of crime pursuant to section [No.] ..... of the Penal Code concerning the fact that  
kuriteo toimepanemises, mis seisnes selles, et .....

.....  
.....  
.....  
.....  
.....

.....  
.....  
*[kahtlustuse sisu – contents of suspicion]*

7. Kahtlustatavana kinnipidamise alus: .....

Basis for detention as suspect: .....

[märgitakse § 217 lõige 2 või 3 vastav punkt: lõige (2) Isik peetakse kahtlustatavana kinni, kui: 1) ta on tabatud kuriteo toimepanemiselt või vahetult pärast seda; 2) kuriteo pealtnägija või kannatanu osutab temale kui kuriteo toimepanijale; 3) kuriteojäljed viitavad temale kui kuriteo toimepannud isikule. Lõige (3) Kuriteole viitavate muude andmete põhjal võib isiku kahtlustatavana kinni pidada, kui: 1) ta püüab põgeneda; 2) ei ole tuvastatud tema isikut; 3) ta võib jätkuvalt toime panna kuritegusid; 4) ta võib kriminaalmenetlusest kõrvale hoiduda või seda muul viisil takistada. corresponding clause of subsection 2 or 3 of section 217 shall be marked: subsection (2) A person shall be detained as a suspect if 1) he or she is apprehended in the act of committing a criminal offence or immediately thereafter; 2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence; 3) the evidentiary traces of a criminal offence indicate that he or she is the person who committed the criminal offence. Subsection (3) A suspect may be detained on the basis of other information referring to a criminal offence if 1) he or she attempts to escape; 2) he or she has not been identified; 3) he or she may continue to commit criminal offences; 4) he or she may abscond criminal proceedings or impede the criminal proceedings in any other manner.]

8. Kinnipeetu riietuse ja tervisekahjustuste kirjeldus: .....

Description of clothes of the detained and physical harm caused to him/her: .....

.....  
.....  
*[märgitakse kirjeldus - description]*

9. Kinnipidamisel äravõetud objektid: .....

Objects expropriated at detention: .....

.....  
.....  
*[objektide nimetused ja tunnused - names and features of objects]*

10. Kinnipeetu avaldused ja taotlused: .....

Petitions and requests: .....

.....  
.....  
*[avalduste sisu - contents of petitions]*

11. Protokollide lisad: .....

Enclosures to the minutes: .....

.....  
*[uurimistoimingu käigus protokollide juurde võetud objektide nimetused  
- names of objects enclosed to the minutes during the investigative proceeding]*

12. Märkused protokollide kohta: .....

Notes on minutes: .....

.....  
*[märgitakse märkuste sisu või nende puudumine; protokoll loetud läbi isiklikult või loetud ette  
- contents or absence of notes, minutes of hearing are read personally or read out]*

13. Protokoll saadetakse viivitamatult prokuratuurile.

Minutes shall be forwarded to the Prosecutor's Office immediately.

14. Menetlustoimingus osalejaile on selgitatud, et vastavalt KrMS § 214 võib kohtueelse menetluse andmeid avaldada üksnes prokuratuuri loal ja tema määratud ulatuses.

Participants of procedural act have been explained that pursuant to section 214 of the Code of Criminal Procedure information concerning the pre-trial proceedings shall be disclosed only with the permission of and to the extent specified by the Prosecutor's Office.

.....  
[menetleja ametniku nimi  
- name of person conducting the proceeding]

.....  
[kahtlustatava nimi  
- suspect's name]

.....  
[protokollija nimi  
- name of interpreter]

.....  
[tõlgi nimi  
- name of minutes secretary]

15. Menetlustoimingust osa võtnud

.....  
Person participating in the procedural act [menetlusseisund ja nimi - status in the proceeding and name]  
keeldus protokollile alla kirjutamast, sest .....  
refused to sign the minutes for the following reason

.....  
[märgitakse keeldumise põhjus - reason for refusal is marked]

.....  
[menetleja ametniku nimi  
- name of person conducting the proceeding]



**PÕHJA PREFEKTUUR**  
**PÕHJA PREFECTURE**

**KAHTLUSTATAVA ÜLEKUULAMISE PROTOKOLL**  
**MINUTES ON INTERROGATION OF SUSPECT**

kriminaalasjas nr .....  
in the criminal matter No.

“ ..... ” .....200...  
[uurimistoimingu koht - place of investigative proceeding]

Uurimistoimingu algus: .....  
Investigative proceeding started at: [kellaaeg - time]

.....  
[Menetleja ametniku ametinimetus ja nimi - name and professional status of the official conducting the proceeding],  
juhindudes KrMS §-dest 34, 75, 76 ja 146 kuulab üle kahtlustatava:  
guided by sections 34, 75, 76 and 146 of the Code of Criminal Procedure, questioned as suspect:

1. Kahtlustatava andmed:  
Suspect's personal data:

a. Nimi: .....  
Name: [ees- ja perekonnanimi - given name(s) & surname]

b. Isikukood või sünniaeg: .....  
Personal identification code or date of birth: [isikukoodi puudumisel sünniaeg  
- date of birth if the personal identification code is missing]

c. Perekonnaseis: .....  
Marital or family status: [perekonnaseis - marital status]

d. Kodakondsus: .....  
Citizenship: [Eesti või muu- Estonian or other]

e. Haridus: .....  
Education: [alg-, põhi-, kesk-, keskeri-, kõrgem haridus - elementary, basic, high, vocational, higher]

f. Emakeel: .....  
Native tongue: [eesti või muu - Estonian or other]

g. Elu- või asukoht: .....  
Residence or location: [aadress - address]

h. Töökoht või õppeasutus: .....  
Place of work or educational institution: [nimetus - name]

i. Kontaktandmed: .....  
Contact information: [sidevahendi number või e-posti aadress - telephone number or e-mail address]

j. Isikusamasus tuvastatud ..... abil.  
Identity established by: [dokumendi nimetus vms - name and No. of document]

## KrMS § 34. Kahtlustatava õigused ja kohustused

Kahtlustataval on õigus: teada kahtlustuse sisu ja anda selle kohta ütlusi või keelduda ütluste andmisest; teada, et tema ütlusi võidakse kasutada süüdistuseks tema vastu; kaitsja abile; kohtuda kaitsjaga teiste isikute juuresolekuta; kaitsja juuresolekul olla üle kuulatud, osaleda vastastamisel, ütluste seostamisel olustikuga ja tema äratundmiseks esitamisel; osaleda vahistamisaotluse arutamisel kohtus; esitada tõendeid; esitada taotlusi ja kaebusi; tutvuda menetlustoimingu protokolliga ning teha menetlustoimingu tingimuste, käigu ja tulemuste ning protokolliga kohta avaldusi, mis protokollitakse; anda nõusolek kokkuleppemenetluse kohaldamiseks, osaleda kokkuleppemenetluse läbirääkimistel, teha ettepanekuid kohaldamisele kuuluva karistusliigi ja -määra kohta ning sõlmida või sõlmimata jätta kokkuleppemenetluse kokkulepe.

Kahtlustatav on kohustatud: ilmuma uurimisasutuse, prokuratuuri või kohtu kutsel; osalema menetlustoimingu ning alluma uurimisasutuse, prokuratuuri ja kohtu korraldustele.

### § 34. Rights and obligations of suspects

A suspect has the right to: know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion; know that his or her testimony may be used in order to bring charges against him or her; the assistance of a counsel; confer with the counsel without the presence of other persons; be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel; participate in the hearing of an application for an arrest warrant in court; submit evidence; submit requests and complaints; examine the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements; give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings. A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

A suspect is required to appear when summoned by an investigative body, Prosecutor's Office or court; participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

## 2. Kahtlustatavale on tutvustatud tema õigusi ja kohustusi ning selgitatud nende sisu.

The contents of rights and obligations have been explained to suspect.

\_\_\_\_\_  
(kahtlustatava allkiri - suspect's signature)

## 3. Uurimistoimingu osaleb tõlk.....

Investigative proceeding is attended by interpreter [*nimi ja kontaktaadress - given names, surname and contact address*], keda on hoiatatud, et oma ülesannete täitmisest alusetu keeldumise ja teadvalt valesti tõlkimise eest vastutab ta KarS §-de 318 ja 321 järgi.

who has been warned of the liability for the unjustified refusal to perform his or her duties and for the provision of a knowingly false interpretation pursuant to sections 318, 321 of the Penal Code.

\_\_\_\_\_  
(tõlgi allkiri - interpreter's signature)

## 4. Ülekuulamisel osaleb.....

Hearing is attended by: .....

[*protokollija või kaitsja, nende nimi ja kontaktaadress  
- minutes secretary or counsel, their names and contact addresses*]

## 5. Kasutatud tehnikavahendid .....

Technical devices used: .....

[*tehnikavahendi liik ja mark - type and model of technical device*]

\_\_\_\_\_  
(kahtlustatava allkiri - suspect's signature)

## 6. Kvalifikatsioon - .....

Classification: [*nimi - name*]

kahtlustatakse KarS § ..... järgi kvalifitseeritava

is suspected in perpetration of crime pursuant to section [*nr - No*] of the Penal Code concerning the fact that

kuriteo toimepanemises, mis seisnes selles, et .....

.....





8. Protokollis lisad: .....

Enclosures to the minutes: .....

*[koostatud skeem, joonis ning muu näitlik materjal; uurimistoimingu käigus protokollis juurde võetud objektide nimetused - for example, a scheme, figure or other descriptive material; names of objects enclosed to the minutes during the investigative proceeding]*

9. Märkused protokollis kohta: .....

Notes on minutes: .....

*[märgitakse märkuste sisu või nende puudumine; protokoll loetud läbi isiklikult või loetud ette - contents or absence of notes, minutes of hearing are read personally or read out]*

10. Uurimistoimingus osalejaile (välja arvatud kahtlustatavale ja süüdistatavale) on selgitatud, et vastavalt KrMS § 214 võib kohtueelse menetluse andmeid avaldada üksnes prokuratuuri loal ja tema määratud ulatuses.

Participants of the investigative proceeding (except the suspect and the accused) have been explained that pursuant to section 214 of the Code of Criminal Procedure information concerning the pre-trial proceedings shall be disclosed only with the permission of and to the extent specified by the Prosecutor's Office.

Uurimistoimingu lõpp: ..... *[kellaaeg - time]*

Investigation proceeding finished at:

.....  
*[menetleja ametniku nimi ja allkiri  
name and signature of official conducting the proceeding]*

.....  
*[kahtlustatava nimi ja allkiri  
name and signature of the suspect]*

.....  
*[tõlgi nimi ja allkiri  
name and signature of interpreter]*

.....  
*[protokollisja nimi ja allkiri  
name and signature of minutes secretary]*

.....  
*[kaitsja nimi ja allkiri  
counsel's name and signature]*

11. Uurimistoimingust osa võtnud .....

Person participating in the investigative proceeding

*[menetlusseisund ja nimi  
status in the proceeding and name]*

keeldus protokollis alla kirjutamast, sest .....

refused to sign the minutes for the following reason

.....  
*[märgitakse keeldumise põhjus - reason for refusal is marked]*

.....  
*[menetleja ametniku nimi ja allkiri  
- name and signature of official conducting the proceeding]*

---

# HUNGARY

- Report of hearing of a suspect
-

Case No.:

**RECORD  
of hearing of a suspect**

Done at the Police Headquarters of ..... County at ..... at the official room No. .... on the occasion of hearing the suspect *XY* within the frames of the procedure in progress against an unknown perpetrator for the well-founded suspicion of the offence/misdemeanour of ..... conflicting with Article ... (1) of the Criminal Code and qualified in accordance with Article .... (..).

**PERSONS PRESENT**

For the investigating authority	Participants of the procedure and their legal status
<i>KJ</i> police sergeant	<i>XY</i> suspect
	<i>ZX</i> interpreter
	<i>MP</i> defending counsel

**Data of the suspect:**

*Name:* XY  
*Place and date of birth:*  
*Mother's name:*  
*Citizenship:*  
*Residence:*

*I hereby inform you that you have the right to use your mother tongue both in verbal and written communication.*

The services of an interpreter has been utilised for preparing the report.

**Data of the interpreter:**

*Name:* ZX  
*Language of interpreting:*

*I hereby warn you that pursuant to Article 238 (1) of the Criminal Code – subject to Section (2) b) – a witness providing false evidence to or withholding the truth from the court or other authority in connection with a essential aspect of the case commits perjury.*

I have understood the warning concerning the consequences of false interpreting and concerning the reasons for exclusion set forth in Article 103 (1) of CPA.

.....  
interpreter

*I hereby inform you that pursuant to Article 179 (1) of CPA I am hearing you as a suspect, since according to the information available to me: There are well-founded grounds to suspect you of having committed.....*

*I inform you that pursuant to Article 196 of CPA you have the right to lay a complaint for being suspected.*

**Verbatim answer of the suspect:**

.....

I have understood the suspicion, and I wish / do not wish to lay a complaint:  
I committed / did not commit the offence/crime.

.....  
suspect

*Pursuant to Article 117 (2) of CPA I hereby warn you that you are not obliged to make a confession; you can refuse to make a confession or answer a given question any time during the hearing, however, you can decide to make a statement any time, even if previously you have refused to make a confession. I hereby warn you that everything you say or make available may be used as evidence.*

*Pursuant to Article 117 (4) of CPA I hereby warn you that if you refuse to make a confession that will not prevent the procedure from being conducted. Refusing to make a confession does not have any effect whatsoever on your right to ask, make remarks or proposals. I hereby warn you that if you make a confession and falsely accuse another person of the perpetration of a crime, you commit false accusation.*

*Pursuant to Article 179 (3) of CPA I hereby inform you that you are entitled to choose a defending counsel or request the appointment of a defending counsel by the authorities. I hereby warn you that the participation of a defending counsel is compulsory in this procedure, and if you do not authorize a defending counsel within three days, I will appoint one to your case.*

*Pursuant to Article 43 (2) of CPA during the criminal procedure you are entitled to be informed about the suspicion, the subject of accusation, and the changes in these, to be present at the hearing of the experts, at the visit to the scene, at the attempt to take evidence, at the presentation for recognition, as well as to look into the documents concerning you. You are entitled to the time necessary and the opportunity to prepare for the defence, you are entitled to present the facts to your defence in any phase of the procedure, to make proposals*

*and remarks, to seek legal remedy, to request information from the court, the prosecutor or the investigating authority in connection with your rights and obligations during the criminal procedure.*

*You are entitled to contact your defending counsel – and if you are a foreign citizen to contact the consular representative of your state – and to communicate with him/her in writing or verbally without control, and – prior to issuing the indictment based on the decision of the prosecutor, subsequently based on the decision of the court – to communicate with members of your family or other persons verbally under personal supervision, and in writing under control.*

*Pursuant to Article 43 (5) of CPA I hereby warn you that you are obliged to report within three working days reckoned from moving any changes in your place of residence or domicile and your new address to the court or investigating authority that is conducting the criminal procedure against you. Failure to do so may be punished by a disciplinary penalty – if no other legal consequences are prescribed by the CPA – and you may be obliged to reimburse the costs incurred.*

*Pursuant to Article 70/B (2) of CPA I hereby inform you that until the end of the investigation you are entitled to receive copies of expert opinions and other documents about investigation events, at which you are entitled to participate pursuant to the CPA; and also to receive copies of other documents if that does not interfere with the interests of the investigation. Pursuant to paragraph (5) subsequent to the ending of the investigation you are entitled to receive copies of the investigation documents that you are entitled to become acquainted with pursuant to Article 193 (1); issuing of such documents is free of charge for the first time.*

**Verbatim answer of the suspect:**

.....

I have understood the information and warnings concerning my rights, and I hereby declare that I wish / do not wish to make a confession.

.....  
suspect

I accept the appointment of defending counsel *MP*.

.....  
suspect

**Other data of the suspect:**

*Occupation:*

*Workplace:*

*Address of workplace:*

*Telephone of workplace:*

*Mother tongue:*

*Language spoken:*

*Education level:*

*Marital status (name of spouse):*

*Number of children under 18:*

*Are you a guardian?*

*Are you under guardianship?*

*Monthly net income: HUF*

*a) Amount of wage or salary: HUF*

*b) Other benefits/allowance/income (bonus payment, commission, part-time jobs): HUF*

*c) Unemployment (regular social aid/benefit): HUF*

*d) Annual gross amount of income after which tax is paid: HUF*

*In case of young persons and people not having their own income, the occupation and income of the supporting person:*

*a) Number of wage/salary-earners and pensioners living in the same household with the suspect:*

*Their monthly income (altogether): HUF*

*b) Number of dependants living in the same household with the suspect:*

*c) Based on points a) and b) the monthly average income per person: HUF/person*

*Financial standing – if suspect is a dependant, then that of his/her supporter – (movable property, real property, securities, deposits in savings banks, current account, business shares etc.)*

*Debts (loans from financial institutions, maintenance, other payment obligations based on decisions of authorities):*

*Former punishments (suspended punishments, putting on trial if the probation is not yet over):*

*Date of last release from penal institution, name of the institution:*

*Is there any criminal procedure against the suspect at other authorities?: If yes, where?:*

*Type of permits possessed (gun-licence, driving licence, etc.):*

*Travel documents:*

*Positions held at state organisations, municipalities, civil organisations, co-operations and in interest representing organisations, etc.:*

*Has the suspect been in the army? Is suspect in the army at the moment? His/her rank:*

*Honours (civilian, military):*

### **Other biographical data:**

*I hereby inform you that pursuant to Article 6 of Act XLV of 2009 on criminal records, the recording of judgements of the courts of the Member States of the European Union against Hungarian citizens, and on the recording of biometrical data for criminal and law enforcement purposes, subsequent to your hearing a photograph will be taken of you, and subsequent to Articles 44 and 46 of the above mentioned Act your fingerprints and palm prints will be taken. Pursuant to Articles 59 and 61 a DNA sample will be taken. The aim of the taking the DNA sample (wipe from the mucous membrane of the mouth) is to analyse the DNA.*

*You cannot lay a complaint against being included in the records; you are obliged to tolerate the photographs and the samples being taken. In case the person obliged to provide the samples should resist, physical force can be employed.*

I have understood and acknowledged the above information.

.....  
suspect

**Confession of the suspect:**

I am reporting that....

*I hereby inform you that pursuant to Article 221/A (3) of CPA you are entitled to propose the suspension of the procedure and transferring your case to an intermediary procedure, if the legal conditions are met.*

I cannot and do not wish to say anything else about the case. The record taken includes correctly what I have said, and after it has been read and translated by the interpreter I sign this record as being in accordance with what I have said.

Record closed at ....

.....  
*KJ* police sergeant  
for the investigating authority

.....  
*XY*  
suspect

.....  
*ZX*  
interpreter

.....  
*MP*  
defending counsel

participants of the procedure

---

# IRELAND

- Information for persons in custody
-

## **GARDA SIOCHANA**

### **Information for persons in custody**

#### **Reason for arrest**

You will have been informed of the offence or offences for which you have been arrested.

#### **Notification to other persons**

If you are seventeen or over, you may on request have a person named by you notified that you are in Custody. If you are under seventeen, your Parent or guardian (or, if you are married, your spouse) will be notified and asked to attend at the station without delay. If the person nominated cannot be contacted, you may nominate another person.

#### **Legal advice**

You may communicate privately with a solicitor either in writing or by telephone or consult with the solicitor in the station.

#### **Visits, telephone calls, etc.**

You may, if you wish, (a) receive a visit from a relative, friend or other person with an interest in your welfare and (b) make a telephone call or send a letter, provided that the member in charge is satisfied that it will not hinder or delay the investigation of crime and that it is practicable for the visit or telephone call to be adequately supervised.

#### **Searches**

If you are to be searched, the reason for this search will be explained to you.

#### **Fingerprints, palmprints, photographs and tests**

If you have been arrested under section 30 of the Offences Against the State Act 1939 or detained under section 4 of the Criminal Justice Act 1984, a member of the Garda Siochana, when authorised by an officer not below the rank of superintendent, may take your fingerprints, palmprints or photograph. A member may also make tests to see if you have been in contact with a firearm or explosive substance and for that purpose may take swabs from your skin or samples of your hair. In any other case, a member may take your fingerprints, etc. or make such tests with your written consent.

#### **Meals**

There is no charge for meals supplied unless you wish to have a meal of your own choice. This will be supplied, if practicable, at your own expense.

#### **Member In charge**

The member in charge of the station is responsible for overseeing the application of the statutory regulations for the treatment of persons in custody and for that purpose will visit you from time to time. Any matters relating to your treatment should be brought to the attention of the member in charge.

**Identification parades**

If you take part in an identification parade

- (a) you will be placed among a number of other persons who are, as far as practicable, of similar height, age, general appearance, dress and position in life;
- (b) you may have a solicitor or friend present at the parade;
- (c) you may take up any position you wish in the parade and, after a witness has left, change your position in the parade, if you wish, before the next witness is called;
- (d) you may object to the member conducting the parade regarding any of the persons, on the parade or the arrangements for it.

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## ITALY

- Communication of the beginning of investigation and call for appearance of person subject to investigation
  - Notice of conclusion of preliminary investigation
  - Report of summary information given by the person against whom investigations are conducted pursuant to Article 350 § 1 of the Italian Code of Criminal Procedure
-

Public Prosecutor's Office  
AT THE COURT OF [PLACE]

N. 713/03 RNR

**COMMUNICATION OF THE BEGINNING OF INVESTIGATION AND CALL FOR APPEARANCE OF PERSON SUBJECT TO INVESTIGATION**

**(Art. 375-369-369 bis of the Code of Criminal Procedure)**

The public prosecutor [personal details]

Given the acts of the criminal proceedings indicated in the heading regarding the following:  
[PERSON]

Defended by \_\_\_\_\_ of the Bar of [PLACE];

under investigation for the following crime:

*In [PLACE], committed at a time earlier than and around [DATE].*

**INVITES**

**TO APPEAR FOR INTERROGATION**

**[NAME], mentioned above, on [DATE] 10.30 before this prosecutor in [PRECINCT]**

*This Act shall apply in respect of those under investigation also as communication of the beginning of investigation and of the right of defense under Art. 369 and 369 bis of the code of criminal procedure which therefore informs the person under investigation that this office is conducting investigations against him for the crimes mentioned above and that,*

- 1. in criminal procedures, a defence lawyer is mandatory*
- 2. he/she can appoint no more than two counsels of his/her own;*
- 3. The person under investigation can remove effects, with an express declaration to the contrary, to the acts of the counsel before there has been a decision of the court in respect of the act itself;*
- 4. The person under investigation is entitled to appoint technical experts, no more than two;*
- 5. The conditions for legal aid paid by the state are provided in Art. 3 of Law no. 217/9- and subsequent amendments*
- 6. The person under investigation is entitled to appear before the prosecutor to make statements;*
- 7. The person under investigation is entitled to present written submissions and requests to the prosecutor and the court having jurisdiction*
- 8. the guarantees of the accused person extend to the person under investigation and to him/her all other provisions relating to the accused person apply, except as otherwise provided (Article 61 co. I and II of the code of criminal procedure)*

**SENDS**

*to the Secretariat for the execution of the necessary formalities, delegating the Chamber of [PLACE] for the notifications, with the option of sub-delegation.*

[PLACE]

**DEPUTY PUBLIC PROSECUTOR**

[ NAME]

## UNOFFICIAL TRANSLATION

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<p style="text-align: center;"><b>NOTICE OF CONCLUSION OF PRELIMINARY INVESTIGATION</b> art. 415 bis -</p>
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The public prosecutor \_\_\_\_\_, Dep. prosecutor at the Court of Modena  
having read the procedural documents referred to in the heading regarding the following:

PERSONAL ADDRESS ETC

Defended by \_\_\_\_\_ of the Bar of \_\_\_\_\_

under investigation for the following crime:

- a) Pursuant to Art. 609 bis of the Criminal Code, because, with violence, forced [NAME], born in \_\_\_\_\_ on ----, to suffer sexual acts consisted of repeated sudden touches of the genitals of the child;  
At [place], at a time earlier than and around August 2003;
- b) pursuant to art. 81 and 609 quater of the Criminal Code, because, with repeated actions of a single criminal resolution, performed with [NAME], born in \_\_\_\_\_ on \_\_\_\_\_, minor of 14 years of age, sexual acts consisting in touching the genitals of the child.  
At place, at a time earlier than and around August 2003;

### WARNS

The suspect that preliminary investigations have been concluded for the facts mentioned above, with the added caveat that:

- The records of completed investigations of the prosecutor are filed with the secretariat of the public prosecutor and the suspect and his counsel have the right to inspect this file and make copies;
- The suspect may, within twenty days after this notice has been served, submit pleadings, produce documents, file documents relating to the investigation of the defence, ask the prosecutor to carry out acts of investigation, make statements or ask to be subjected to interrogation;

## INFORMS

The suspect SUED EX ART. A CPP 269, that:

- in criminal procedures, a defence lawyer is mandatory and that he/she may appoint no more than two counsels of hi/her own (who are also allowed to carry out defensive investigations also through deputies and licensed private investigators);
- He/she may request the submission of the documents of the preliminary investigation to another office of the prosecutor which he/she deems competent ;
- May appoint his/her own expert witnesses;
- Has the right to submit statements or written requests;
- In case of no knowledge of Italian, he/she has the right to be assisted by an interpreter free of charge;
- Has the right to be represented or assisted by a person of trust during the searches ;
- he will be able to can claim things seized to be returned to him/her;
- May appear spontaneously to the Public Ministry in order to make statements;
- May request the investigating judge to collected evidence out of the proceedings, in the cases provided by Art. 392 of the code of criminal procedure;
- he/she request the conclusion of the proceedings, where the conditions for this request are fulfilled, with the abbreviated proceedings or with the plea agreement;
- He/she may request copies of documents in accordance with Art. 116 of the code of criminal procedure with permission of the public prosecutor or the court;
- In the case of interrogation, the suspect is, at the start thereof, entitled:
  - To receive ,in a clear and precise way, an account of the facts that are attributed to him;
  - To be informed of the existing evidence against him, and in case it can cause no harm to the investigation, also of their sources;
  - Expose what he/she deems useful to his defense;
- The rights and guarantees of the accused person extend to the person under investigation and *to him/her all other provisions relating to the accused person apply, except as otherwise provided;*
- May apply for legal aid, and the conditions thereof are provided for in art. 74 et seq. DPR 115/02.

This Act also qualifies as communication of the beginning of investigation, pursuant to Article. 369 of the code of criminal procedure, vis-à-vis the persons under investigation. The latter are invited, if they have not already done so, to exercise the right to appoint a counsel of their own in the prescribed manner and to state or chose a domicile in the prescribed manner, and are warned that they have an obligation to communicate any change of stated or chosen domicile and that, should the declaration or choice of domicile be absent insufficient or unsuitable, subsequent notifications will be made at the place where this document was notified.

**Notification is given, by the judicial officers - UNEP Modena - to suspects, and the defenders above.**

Sends to the Secretariat for the execution of the necessary formalities..

Modena [DATE]

**UNOFFICIAL TRANSLATION**

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Header office

SUBJECT: Report of summary information given by the person against whom investigations are conducted pursuant to Article 350 § 1 of the Italian Code of Criminal Procedure.

On \_\_\_\_\_ (day / month / year), at \_\_\_\_\_, in \_\_\_\_\_ (insert the place where the summary information was collected), before the undersigned officer of CID \_\_\_\_\_ (name, surname, qualification or degree) assisted by 'Agent CID \_\_\_\_\_, both employed by the office named in the heading appeared Mr/Ms. \_\_\_\_\_ (name and surname of the suspect), as a person under investigation for the crime of \_\_\_\_\_, committed \_\_\_\_\_ (indicate time and place of offense).

It is recognised that Mr/Ms. \_\_\_\_\_ was identified by way of the attached written report \_\_\_\_\_ OR that the suspect, asked to declare his or her personal information, prior to the warning of the legal consequences arising from a refusal to give information or from providing false information, declared: I certify that I am \_\_\_\_\_ (name, surname, alias/ nickname) born in \_\_\_\_\_ with the \_\_\_\_\_ nationality \_\_\_\_\_ place of residence \_\_\_\_\_ address \_\_\_\_\_ marital status \_\_\_\_\_ profession/ occupation \_\_\_\_\_, (indicate the details of the document of identification or other means with which the identification was performed).

Under Article 350 § 2, the suspect is asked to appoint a defence lawyer and is made aware that, if no defence lawyer is appointed, he or she will be assisted by an appointed lawyer appointed pursuant to Article 97 § 3 of the Italian Code of Criminal Procedure; he or she is also informed of the regulations on legal aid at state expense and the obligation to pay the appointed lawyer unless the conditions for admission to this benefit are met.

The report states: I nominate as my defence lawyer \_\_\_\_\_ member of the state bar of \_\_\_\_\_ with the office located at \_\_\_\_\_ and phone number \_\_\_\_\_ OR having failed to appoint a defence lawyer, the suspect is assisted by Mr/Ms. \_\_\_\_\_, lawyer appointed pursuant to Article 97 § 3 of the Italian Code of Criminal Procedure, who will be present.

OR

If the defence lawyer has not been found or if no defence lawyer has been appointed, another appointed lawyer is appointed pursuant to Article 97 § 4

of the Italian Code of Criminal Procedure, Mr/Ms. \_\_\_\_ and will be present on the occasion.

It is recognised that Mr/Ms. \_\_\_\_\_ (full name of the suspect), invited to state or elect domicile in accordance with Article 161 of the Italian Code of Criminal Procedure, with the warning that it is required to communicate any change of elected or declared address, and that, in the absence of such notification or in case of refusal to state or elect domicile, the domicile notifications will be made by delivery to the defence lawyer, states as his or her own domicile \_\_\_\_\_ (ex: relatives house) OR elects domicile in \_\_\_\_\_ (ex: the place where he or she normally works).

Mr/Ms. \_\_\_\_\_ (full name of the suspect), having been informed that he or she will be questioned as a person subject to the investigation with regard to the offense of \_\_\_\_\_, is warned, pursuant to Article 64 § 2 of the Italian Code of Criminal Procedure, that his or her statements can always be used against him or her; that, with the exception of information about his or her identity, he or she may choose not to answer any questions, but the proceedings continue; that if he or she makes statements about facts that relate to the responsibilities of others, he or she will assume the quality of witness with regard to these facts, except for the incompatibilities laid down in Article 197 and the guarantees of Article 197 of the Italian Code of Criminal Procedure.

Informed of this, Mr/Ms. \_\_\_\_\_ declares: "I use the right to silence" (in this case the report must be closed).

This response being noted down, the report is closed at \_\_\_\_\_.

OR

Having been informed of this, Mr/Ms. \_\_\_\_\_ declares: "I intend to respond".

The following questions are posed to the person being examined:

Question

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Answer

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Having noted the responses and the further statements spontaneously given by the suspect, the report is closed at \_\_\_\_\_.

The report, drawn up in two copies, one of which is immediately forwarded to the Public prosecutor (or to the Prosecutor General's Office of Republic) Mr. \_\_\_\_\_ at \_\_\_\_\_ and the other copy is kept in this office, after

having been read and confirmed, is signed by the police officer, the person subject to the investigations and the defence lawyer.

Signature of  
the police officer  
the suspect  
and defence lawyer

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# NETHERLANDS

- Information on reverse of the summons to appear before court
-

## General information on the procedure

### *1. Representation by a Lawyer*

If you are to be tried for a minor or criminal offence, you can have yourself represented in court by a lawyer whom you will have to authorize expressly. Before the subdistrict court you may also have yourself represented by a person who is not a lawyer. However, you will have to give this person a written power of attorney to show to the court.

### *2. Assignment of a lawyer*

If you do not yet have a lawyer, you may request for a lawyer to be assigned to you. If you have been incarcerated at the order of the court, then you will have to address your request to the president of the court. In all other cases - also if you are in police custody - you will have to apply to the legal aid office.

### *3. Proposal to prevent criminal prosecution*

If there is no principal punishment other than a pecuniary penalty for the offence you have been charged with you may still ask the public prosecutor to make a settlement proposal. This means that the prosecutor will set conditions you will have to comply with to prevent criminal prosecution. He/she cannot refuse your request if you are prepared to pay the maximum of the pecuniary penalty within the set time limit and you are also willing to comply with the other conditions to be set. If you timely and fully comply with the settlement proposal, then the notice of summons and accusation will become void and the case will not be tried in court.

### *4. Settlement proposal of the public prosecutor*

It is possible that the public prosecutor him/herself will as yet decide to make a settlement proposal for the offence you have been charged with. You are not obliged to accept this. In that event you will have to appear in court. If you timely and fully comply with the settlement proposal, then the notice of summons and accusation will become void and the case will not be tried in court.

### *5. Notice of objection against notice of summons and accusation*

Within eight days of the service of this notice of summons and accusation, but before the start of the trial, you may file a notice of objection against this notice of summons and accusation. This does not apply to cases tried before the subdistrict court. You yourself will have to deliver your notice of objection at the court registry. Your lawyer or a person whom you have given special power of attorney by means of a written authorization may also do this. You will not be allowed to file a notice of objection if you have already received a notice of further prosecution for the same offence.

### *6. Postponement of your case. Presence at court session*

If you have requested the court to postpone dealing with your case, you yourself will have to check whether this postponement has been granted. In principle you are not obliged to appear at the court session. With the court's permission the defence may be conducted by your lawyer in your absence. If the court deems it to be necessary, it may order your presence at the court session and to this effect order the police to bring you before the court. If at the time of the offence you were younger than 18 years, you will be obliged to appear. If you do not comply with this obligation the court may order you to be brought before the court by the police. Should your representative or your authorized lawyer appear and you yourself not, then it will be assumed for the remainder of the procedure that you were present in person. If you are younger than 16 years of age and have a lawyer, this lawyer will also have a number of powers a defendant has.

### *7. Summoning witnesses and/or experts by the public prosecutor*

If you wish the public prosecutor to summon witnesses and/or experts or call them in writing, you will have to request this at least three days before the court session. This can be done in person at the district public prosecutor's office or by registered letter addressed to the public prosecutor (correspondence address at the front of this page). You must list the names, occupations and the addresses or abodes of the witnesses or experts. If you do not know them, you will have to describe these persons as accurately as possible. For a written request the rule applies that the day the letter is received at the public prosecutor's office is deemed to be the date of the request.

### *8. Summoning witnesses and/ or experts by you yourself*

You yourself have the right to have witnesses and experts summoned, called in writing or to bring them to court with you. You can also communicate that you will need an interpreter at the court session. After any adjournment of the hearing of your case you have the right to have new witnesses and experts who have not yet been interviewed summoned, called in writing or to bring them to court with you.

The costs of this summoning or calling by yourself and the costs in connection with witnesses and experts appearing in court will be at your own expense.

#### *9. Notice of the judgement*

In those cases where this notice of summons and accusation was delivered to you in person or to a person authorized by you in writing, or if you appeared in court yourself or appeared at a further hearing. You will in general not receive any notice of the judgment of the court. This also applies when you were represented in court by another person or authorized your lawyer to conduct your defence.

#### *10. Term of the judgment and for instituting legal remedy*

The judgment will be irrevocable after a lapse of 14 days if this notice of summons and accusation was delivered to you in person or a person authorized by you in writing, or if you yourself were present or someone was present at the hearing on your behalf. This is also the case if there was a circumstance due to which you could know in advance when the date of the hearing was. This means that after those 14 days you will be unable to institute any legal remedy (objection, appeal or appeal in cassation) against that judgment.

It is therefore advisable that within 14 days after the court's judgment you inquire at the court registry about the content of the judgment. In most cases the court will pass judgment immediately after the hearing of the case. In respect of a trial before the three judge criminal section this will generally be done after 14 days. The court registry can inform you what legal remedy will be open to you against the judgement and can also give you other information. You can institute the legal remedy open to you against the judgment by making a statement to that effect at the court registry. You can do this yourself or your lawyer or another person whom you authorized by special power of attorney.

#### *Alternative sanctions*

It is possible that the court wishes to impose a term of imprisonment. In its stead the court may impose a community service sentence (unpaid work for the good of the community), but this will only be possible if you yourself make this offer at the hearing. Personal details of defendants against whom criminal proceedings are instituted will be included in the Criminal Law Enforcement Reference Index of Persons. The purpose of this registration is to support the judicial organisations which carry out tasks within the scope of criminal law. The Minister of Justice is the keeper of this register. For further information you may apply to the district public prosecutor's office.

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# PORTUGAL

- Being held a defendant
  - Rights and duties of detainees in the Portuguese constitution
-



S. R.  
MINISTÉRIO DA JUSTIÇA  
**POLÍCIA JUDICIÁRIA**  
Escolha o Departamento

**NUIPC:**  
*Inquiry no.*  
**Secção/Brigada:** 6 / 2ª  
*Division/Squad*  
**Inspector:**  
*Officer*

**CONSTITUIÇÃO DE ARGUIDO**

(Direitos e deveres previstos no art. 61.º do CPP e na Lei n.º 34/2004, de 29/07)

**BEING HELD A DEFENDANT**

*(Procedural Rights and Duties set forth in Section 61 of the Code of Criminal Procedure and Act no. 34/2004, of July 29, 2004)*

Arguido(a):  
*Defendant:*  
Data da constituição: 24/08/2008  
*Date he was held a defendant: 24/08/2008*  
Defensor(a):  
*Defence Counsel:*

**Direitos processuais:**

- Estar presente aos actos processuais que directamente lhe disserem respeito;
- Ser ouvido pelo tribunal ou pelo juiz de instrução sempre que eles devam tomar qualquer decisão que pessoalmente o afecte;
- Ser informado dos factos que lhe são imputados antes de prestar declarações perante qualquer entidade;
- Não responder a perguntas feitas, por qualquer entidade, sobre os factos que lhe forem imputados e sobre o conteúdo das declarações que acerca deles prestar;
- Constituir advogado ou solicitar a nomeação de um defensor;
- Ser assistido por defensor em todos os actos processuais em que participar e, quando detido, comunicar, mesmo em privado, com ele;
- Intervir no inquérito e na instrução, oferecendo provas e requerendo as diligências que se lhe afigurarem necessárias;
- Ser informado, pela autoridade judiciária ou pelo órgão de polícia criminal perante os quais seja obrigado a comparecer, dos direitos que lhe assistem;
- Recorrer, nos termos da lei, das decisões que lhe forem desfavoráveis.
- Requerer apoio judiciário nos serviços de atendimento público de segurança social.

**Procedural rights**

- *To attend those acts in the proceedings directly concerning him;*
- *To be heard by the court or the investigative judge whenever they must take a decision affecting him personally;*
- *To be informed about the facts he is charged with, prior to giving evidence before any entity;*
- *Not to answer the questions asked by any entity about the facts he is charged with and about the contents of his statements concerning them;*
- *To appoint a lawyer or ask for the assignment of a defence counsel;*
- *To have a defence counsel acting on his behalf in every act of the proceedings he participates in and to communicate with him, even in private, when remanded in custody;*
- *To intervene in the inquiry, giving evidence and requesting the investigations he deems as necessary;*
- *To be informed of his rights by the judicial or prosecuting authority or by the criminal police body before which he is compelled to appear;*



S. R.  
MINISTÉRIO DA JUSTIÇA  
POLÍCIA JUDICIÁRIA

- *To appeal from unfavourable decisions taken against him, as provided by law.  
To request legal aid at the social security customer services.*

**Deveres processuais:**

- Comparecer perante o juiz, o Ministério Público ou os órgãos de polícia criminal sempre que a lei o exigir e para tal tiver sido devidamente convocado;
- Responder com verdade às perguntas feitas por entidade competente sobre a sua identidade e, quando a lei o impuser, sobre os seus antecedentes criminais;
- Prestar termo de identidade e residência logo que assuma a qualidade de arguido;
- Sujeitar-se a diligências de prova e a medidas de coacção e garantia patrimonial especificadas na lei e ordenadas e efectuadas por entidade competente.

**Procedural duties**

- *Appear before the judge, the Public Prosecution Service or the criminal police bodies whenever required by law and having been duly summoned for that purpose;*
- *To tell the truth regarding the questions asked by a competent authority about his identity and, whenever required by law, about his criminal record;*
- *To provide a statement of identity and residence immediately after being held a defendant;*
- *To submit himself to investigations for the gathering of evidence and, as provided by law, to coercive measures and a guarantee in property, ordered and performed by a competent authority.*

**Advertência – art. 39.º da Lei 34/2004, de 29/07.**

- Foi advertido de que, não constituindo defensor nem requerendo a concessão de apoio judiciário, ou no caso de este não lhe ser concedido, pode ser responsável pelo pagamento dos honorários do defensor, bem como das despesas em que este incorrer com a sua defesa.

**Warning – Section 39 of Act no. 34/2004, of July 29, 2004**

- *The defendant was informed that when neither choosing a defence counsel, nor requesting legal aid, or in case this legal aid is not granted, he may be liable for the payment of the defence counsel's fees, as well as for the expenses he incurred with his defence.*

E de como recebeu vai comigo, inspector, assinar:

*Having received it, he signs with me, officer*

O(A) Arguido(a)

*The defendant* \_\_\_\_\_

O(A) Inspector(a)

*The officer* \_\_\_\_\_



## IMMEDIATE INFORMATION

(Article 4 of Decision no. 12786/2009, dated 29 May 2009 (*Diário da República*, 2<sup>nd</sup> series – no. 104)

# Rights and Duties of Detainees

## I.

### Rights and duties of detainees in the Portuguese constitution

#### Article 27

##### Right to liberty and security

1. Everyone has the right to liberty and security.
2. No person may be either wholly or partially deprived of his liberty, except when found guilty and sentenced by a court for the commission of an act punishable by law with imprisonment, or in case of a court-imposed security measure.
3. The following cases of deprivation of liberty for such time and under such conditions as the law may determine shall be exceptions to this principle:
  - a) arrest *in flagrante delicto*;
  - b) arrest or remand in custody where there is strong evidence of the intentional commission of a criminal offence punishable with imprisonment for a maximum term in excess of three years;
  - c) imprisonment, arrest or any other coercive measure subject to judicial control imposed on a person who illegally entered or resides in Portugal, or who is currently the object of extradition or deportation proceedings;
  - d) disciplinary arrest imposed on military personnel, subject to appeal to the competent court;
  - e) application of measures intended to protect, assist or educate a minor in a suitable establishment, where ordered by the competent court of law;
  - f) arrest under a court order for non-compliance with a court ruling or to ensure appearance before a competent judicial authority;
  - g) arrest of suspects for identification purposes, in such cases and for such time as may be strictly necessary;
  - h) admission of a person suffering from a mental disorder into an appropriate therapeutic establishment, when ordered or confirmed by a competent judicial authority.
4. Any person deprived of his liberty shall be promptly and clearly informed of the reasons for his arrest or remand in custody, and of the rights he is entitled to.
5. Deprivation of liberty contrary to the provisions of the constitution and the law shall require the State to pay damages to the injured party as provided for by the law.

#### Article 28

##### Remand in custody

1. Within a maximum period of forty-eight hours, the arrest shall be submitted to judicial scrutiny with a view to either the detainee's release or the imposition of an appropriate coercive measure; the judge shall

- hear the reasons for the arrest and inform the detainee thereof, examining him and offering him the opportunity to present a defence.
2. Remand in custody shall be exceptional in nature and shall not be ordered or maintained whenever it is possible to grant bail or apply another, more favourable measure provided for by the law.
3. Notice of any court ruling ordering or maintaining a measure involving deprivation of liberty shall be promptly served upon such relative or other person of trust as the detainee may appoint.
4. Remand in custody shall be subject to the time limits provided for by the law.

#### Article 29

##### Application of criminal law

1. No one shall be sentenced under the criminal law unless the act or omission in question is punishable under the terms of a pre-existing law, nor shall any person be the object of a security measure unless the prerequisites are laid down in a pre-existing law.
2. The provisions of paragraph 1 shall not preclude punishment up to the limits provided for by internal Portuguese law with regard to an act or omission deemed criminal under the general principles of commonly recognized international law at the moment of commission.
3. No sentence or security measure shall apply unless it is expressly provided for in a pre-existing law.
4. No one shall be the object of a sentence or security measure that is more severe than those provided for when the conduct in question occurred, or when the prerequisites for the application of such a measure were fulfilled; criminal laws with a more favourable content for the defendant shall apply retroactively.
5. No one shall be tried more than once for the same criminal offence.
6. Unjustly convicted citizens shall be entitled to the right to have their sentences reviewed and to receive damages under the terms provided for by the law.

#### Article 30

##### Limits on sentences and security measures

1. No liberty depriving or restricting sentence or security measure shall be perpetual in nature nor have unlimited or undetermined duration.
2. In cases of danger based on a serious mental disorder for which treatment in an open environment is not possible, liberty depriving or restricting security measures may be successively extended for such time as the mental state in question is maintained, though always subject to a court ruling.
3. Criminal liability shall not be transferable.
4. No sentence shall automatically result in the loss of any civil, professional or political rights.
5. Convicted persons undergoing a liberty depriving sentence or security measure shall retain their fundamental rights, subject to such limitations as are imposed by the nature of the penalty and by the specific requirements of execution.

#### Article 31

##### Habeas corpus

1. *Habeas corpus* shall be available to counter the misuse of power in the form of an illegal arrest, remand in custody or imprisonment; applications for *habeas corpus* shall be made to the competent court.
2. The application for a *habeas corpus* order may be made by the person in question, or by any citizen exercising his political rights.
3. Within eight days of an application for *habeas corpus*, the judge shall rule thereon in an adversary hearing.

#### Article 32

##### Safeguards in criminal proceedings

1. Criminal proceedings shall ensure all necessary safeguards for the

defence, including the right to appeal.

2. Every defendant shall be presumed innocent until his sentence is *res judicata*, and shall be brought to trial as early as is compatible with the safeguards of defence.
3. The defendant shall have the right to choose defence counsel and to be assisted by him at any stage of the proceedings; the cases and stages of the proceedings in which assistance by a lawyer is mandatory are set out in the law.
4. Preliminary investigations shall be conducted entirely under the responsibility of a judge, who may, subject to the terms of the law, delegate to other persons or bodies the performance of such investigative actions as do not directly concern fundamental rights.
5. Criminal proceedings have an accusatory structure, and trial hearings and such preliminary investigative acts as the law may require shall be subject to the principle of adversary argument.
6. The law shall set out the cases in which, subject to safeguarding the rights of the defence, the attendance of the defendant or accused at any stage of the proceedings, including trial hearings, may be dispensed with.
7. Victims shall have the right to take part in proceedings as provided for by the law.
8. All evidence obtained by torture or coercion, by injuring a person's physical or moral integrity, by intrusion into another person's private life, home, correspondence or telecommunications shall be deemed null and void.
9. No case shall be transferred from a court having jurisdiction under an earlier law.
10. Defendants in regulatory proceedings or in any proceedings in which penalties may be imposed shall have the right to be heard and to defence.

#### Article 33

##### Deportation, extradition and right of asylum

1. No Portuguese citizen shall be deported from Portuguese territory.
2. Deportation of anyone who legally entered or resides in Portugal, has been granted a residence permit, or has submitted a request for asylum that has not been refused may only be ordered by a judicial authority; the law shall ensure expedite forms of ruling in such cases.
3. Extradition of Portuguese citizens from Portuguese territory shall only be allowed where an international agreement has established reciprocal extradition arrangements, or in cases of terrorism or international organized crime, and on the condition that the requesting state's legal system enshrines guarantees of a fair and just trial.
4. Extradition for crimes that are punishable under the requesting state's law in perpetuity or for an undefined period by a liberty depriving or restricting sentence or security measure, shall only be allowed in the event that the requesting state is a party to an international agreement which is binding for Portugal, and offers guarantees that such a sentence or security measure will not be applied or executed.
5. The provisions of the previous paragraphs shall not prejudice the application of such rules governing judicial cooperation in criminal matters as laid down in the framework of the European Union.
6. No one shall be extradited or handed over on any ground whatsoever for political reasons or for crimes which are under the requesting state's law punishable by death or by any other sentence resulting in irreversible damage to a person's physical integrity.
7. Extradition shall only be ordered by a judicial authority.
8. The right to asylum shall be guaranteed to foreigners and stateless persons who are the object or are under serious threat of persecution as a result of their activities for democracy, social and national liberation, peace among peoples, freedom, and the rights of the human person.
9. The law shall define the status of political refugee.

**II.**  
**Rights and duties of detainees**  
**in the Code of Criminal Procedure**

**Section 61**  
**Procedural rights and duties**

1. The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights:

- a) To attend any stage of the proceedings that concerns him directly;
  - b) To be heard before the court or investigating magistrate where they must make a decision affecting the defendant personally;
  - c) To be informed of the charges against him before making any statement to an official body;
  - d) Not to answer questions asked by any official body about the facts he is charged with nor about any statements he made in respect thereof;
  - e) To nominate a lawyer or to request the court to assign defence counsel;
  - f) To let defence counsel act on his behalf in every stage of the proceedings he participates in and to communicate with defence counsel, even in private, when in custody;
  - g) To intervene in the inquiries conducted by the prosecutor and the investigating magistrate, by giving evidence and requesting any action deemed necessary;
  - h) To be informed by the judicial authority or criminal police body before whom he is compelled to appear of the rights he is entitled to;
  - i) To appeal from unfavourable decisions, as provided for by the law.
2. The private communication mentioned in subsection (1)(f) shall take place in sight where required for security reasons, although under conditions to prevent it from being overheard by the guard.
3. The defendant has the following specific duties:
- a) To appear before the judge, the Prosecution Service or criminal police bodies where required by the law and having been duly summoned to attend;
  - b) To tell the truth regarding questions asked by any competent body about his identity and, where required by the law, about his criminal record;
  - c) To provide a statement regarding his personal details and residence as soon as he is charged as a defendant;
  - d) To submit to evidence gathering investigations, as well as to coercive and property preservation measures provided for by the law and ordered and applied by a competent body.

**Section 192**  
**General conditions for application**

2. No coercive or property preservation measure shall be applied whenever there are reasonable grounds to believe in the existence of grounds for exemption from liability or for termination of criminal proceedings.

**Section 194**  
**Order for application and notice thereof**

8. In case of remand in custody, notice of the order shall be promptly served upon defence counsel, and whenever so requested by the defendant, upon a relative or upon a person of trust.

**Section 250**  
**Identification of a suspect and request for information**

1. The criminal police bodies may identify any person found in a public place, or in a place open to the public or subject to police surveillance,

**III.**  
**Rights and duties of detainees under Decision no.**  
**12786/2009, dated 29 May 2009**

**Article 3**  
**Fundamental rules and principles**

1. Anyone who is deprived of his liberty shall be promptly and clearly informed of the reasons for his arrest and of his rights, which he may exercise from the moment he is actually deprived of liberty.

2. Deprivation of liberty contrary to the provisions of the Constitution of the Portuguese Republic and the law shall require the State to pay damages to the injured party.

**Article 4**  
**Immediate information**

1. Information on the rights and duties of detainees must be clearly and visibly posted up in the places of detention, and include a full transcription of articles 27 to 33 of the Constitution of the Portuguese Republic, as well as of sections 61, 250, 192(2), 194(8) of the Code of Criminal Procedure, which are applicable by virtue of section 260 of the same Code.

2. Such information must be given on a leaflet available in several languages, and include a short information on the rights and duties of the detainee, to be delivered by the responsible officers of the Polícia Judiciária, courts or prosecution services, as appropriate, to anyone who finds himself in such a situation.

3. Supplying information on the rights of the detainee to appoint a lawyer and communicate with a relative, a person of trust, an embassy or a consulate, as well as delivery of the information leaflet referred to in the above paragraph must be documented by means of a delivery notice to be signed by the detainee. Any refusal in signing the delivery notice must be stated therein.

4. The information referred to in the above paragraph shall be provided in a language spoken by the detainee, and the presence of an interpreter requested where necessary.

**Article 5**  
**Urgent contacts**

1. Any detainee has the right to contact a lawyer or a defence counsel without further delay.

2. Any detainee has the right to inform a relative or a person of trust of his situation, without further delay.

3. Any foreign detainee has the right to contact the consular authorities of his country without further delay.

4. In exercising the rights referred to in the above paragraphs, the detainee shall be allowed to use a telephone of the services responsible for his arrest, in case there is no public telephone.

**Article 6**  
**Urgent assistance**

1. After his arrest, the detainee shall be assisted in solving, as far as possible, urgent personal matters, namely the ones related to the care and custody of children or elderly people dependent on him and left unattended in result of his detention.

2. The assistance referred to in the above paragraph shall be delivered in due time by the services responsible for the detainee's arrest, without prejudice to his obligation to request any further required assistance from the competent authorities.

whenever there are reasonable grounds to suspect that the person in question has committed a criminal offence, that extradition or deportation proceedings against him are pending, that he has illegally entered or resides in Portugal or that an arrest warrant was issued against him.

2. Before starting the identification procedure, the criminal police officers must identify themselves, inform the suspect of the grounds for mandatory identification and indicate the means by which the suspect may identify himself.

3. The suspect may identify himself by producing one of the following documents:

- a) Identity card or passport, in case he is a Portuguese citizen;
- b) Residence permit, identity card, passport or a document replacing it, in case he is a foreign citizen.

4. If production of one of the documents mentioned under subsection (3) above is impossible, the suspect may identify himself by producing an original document or a certified copy thereof containing his complete name, signature and photograph.

5. If the suspect does not hold any document of identification, he may identify himself by one of the following means:

- a) Communicating with a person who will produce his documents of identification;
- b) Going to the place where his identification documents can be found escorted by the criminal police officers;
- c) Acknowledgement of identity by a person identified as provided for in subsection (3) or (4), who will ensure the veracity of the personal data provided by the person to be identified.

6. If identification as provided for in subsections (3), (4) and (5) is impossible, the criminal police officers may take the suspect to the nearest police station and compel him to stay there for the time strictly needed for identification, never exceeding six hours; if necessary, fingerprints, photographs or similar evidence shall be gathered; furthermore, the person to be identified shall be invited to state the address where he can be found and receive notice.

7. Any identification obtained under subsection (6) above shall be recorded in writing and the evidence of identification destroyed in the presence of the person to be identified, at his request, if the suspicion is not confirmed.

8. With regard to the suspect and to any other persons who may be able to provide useful information, the criminal police officers may ask and gather information concerning a crime, namely information that may lead to the discovery of truth and safeguarding of evidence that could be lost before intervention by the judicial authority, without prejudice to the provisions of section 59 concerning the suspect.

9. The person to be identified shall always be offered the possibility of contacting someone of trust.

**Section 260**  
**General conditions for actual application**

The provisions of sections 192(2) and 194(4) shall apply accordingly to the arrest of any person.

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## **SLOVAK REPUBLIC**

- Confirmation of instruction suspect
-

The accused has been informed of the court's ruling to initiate criminal proceedings and the court's ruling to press charges for the offence of smuggling committed in conspiracy under § 20 of the Criminal Code of the Slovak Republic to § 355 Section 2(a) of this Act, delivered to him/her on 24th November 2007, prior to the questioning of the accused..

**Instruction:**

The instructions specified in § 121 Section 2 have been read to the accused in accordance with § 122 Section 1 of the Criminal Procedure Code. As the accused, you have a right to testify or refuse to testify. You cannot be forced to plead guilty. You have right to choose a defense counsel. If you can not afford a lawyer, you have right to request that one be appointed for you. You have a right to request that defense counsel will be present during the interrogation and the right to refuse to give testimony without his/her presence.

I have been adequately informed of these instructions and understood them.

Signature of the accused

**As the accused, you are instructed:**

In accordance with § 34 Section 1 of the Criminal Procedure Code, you have the right to right to comment on all facts attributed to you, and on the evidence thereto as of the beginning of the proceedings. However, you also have the right to refuse to testify. You may mention facts, propose, submit and provide evidence in your favor, file motions and submit an applications and legal remedies. You have the right to choose your defense counsel and to consult him/her, even while evidence is being collected by the investigator. However, you cannot deliberate with your defense counsel during interrogation with respect to answering a question posed to you. You may request to be questioned in the presence of your defense counsel and for him/her to be present during all actions taken during the preliminary proceedings. If you are detained, taken into custody or you are serving a prison sentence, you may speak with your defense counsel without the presence of a third person. **During court proceedings, you are entitled to question persons who have been summoned as witnesses on your proposal or who, with your consent, were proposed by your defense counsel, and to question them. You may exercise your rights on your own or by way of your defense attorney.**

According to § 34 Section 3 of the Criminal Procedure Code, if you can not afford to pay the expenses of defense costs, you have the right to free defense or defense counsel at a reduced fee. You must demonstrate your entitlement to free defense or defense at a reduced fee during the decision on paying for the costs incurred by the criminal proceedings at the latest..

**In accordance with § 34 Section 4 of the Criminal Procedure Code, I instruct you that pleading guilty and regretting the commission of the offence is significant with respect to mitigating circumstances in imposing punishment (§ 36 a of the Criminal Code).**

In accordance with § 34 Section 5, if you change your address which you have stated for the delivery of the documents or change the form of delivery, you are obliged to inform the law enforcement agencies accordingly.

In accordance with § 65 Section 3 of the Criminal Procedure Code, if you are not available at the time of delivery, although you still stay at the place stated for delivering, the document will be delivered to another adult residing at the same domicile who is present at the time of delivery, or to a person who is employed at the same workplace, if he/she will be willing to accept the delivery and to ensure its delivery. If such a person cannot be found, the document will be kept by the law enforcement agency which is responsible for delivering of the letter and you will be properly informed of the place and date of its collection. The document is deemed to have been delivered as of the day of its receipt, even though you might not be aware of it.

In accordance with § 66 Section 2 and 3 of the Criminal Procedure Code, the post office shall deliver a certified letter, or it will deliver the letter to a person demonstrating his/her identity with an approved authorization not older than 6 months, or with an authorization issued by the post office for receiving of such mail on behalf of the recipient. If you are not present at the time of the delivery at the address which you have stated for this purpose, the letter will be kept by the authority responsible for delivering of the consignment and you shall notify the competent authority of the date and time of day for the letter to be redelivered. If this attempt fails, a document will be deposited at the local post office or local state authority and you shall notify them of another suitable place and date to collect a letter. If you do not collect the letter within period of 3 work days as of its deposition, the last day of this period is considered to be the day of delivery, even though you may not have been informed of it.

In accordance with § 67 Section 2 of the Criminal Procedure Code, if you refuse to receive a letter and the person who sent it acknowledged that its receipt was refused for no reason, the document will be considered to be delivered as of the day upon which its receipt/acceptance was refused.

In accordance with § 70 of the Criminal Procedure Code if, in spite of prior reprimand, you interfere proceedings, or if you are in contempt of the court, prosecutor, or police officer, or if you disobey an order without sufficient apology, or you not allow a formal notice or an appeal according to the Criminal Procedure Code, such action will be punished by disciplinary penalty under § 70 of the Criminal Procedure Code.

In accordance with § 345 of the Criminal Code, making it is punishable to make false accusations of crimes against other persons with intent to initiate criminal proceedings against them.

As the accused, you are instructed that you are entitled to refer to your notes before giving an answer in accordance with § 123 Section 1 of the Criminal Procedure Code.

As the accused, you are instructed in accordance with § 155 Section 1 of the Criminal Procedure Code that every person is obliged to undergo a body search if it is necessary to detect any signs or injuries resulting from the commission of a crime on his/her body. If a blood test or other similar action is needed to give evidence, the person concerned is obliged to undergo medical examination involving the taking of blood samples or other medical action, as long as doing so will not endanger his/her health. If the identity of a person who was present at scene of the crime is needed to establish for evidence, said person shall be obliged to undergo actions necessary for collecting evidence. Should you fail to comply with this obligation, a disciplinary penalty pursuant to § 70 of the Criminal Procedure Code may be imposed upon you

In accordance with § 122 Section 1 of the Criminal Procedure Code, you are informed of an act which has been laid to your charge and with its legal qualification.

As the accused, you are instructed in accordance with § 122 Section 1 of the Criminal Procedure Code that interrogation of the accused is performed by a law enforcement agency or by the court in order to determine substantial facts which are important in the criminal proceedings. No unlawful means may be used to force you to testify or to make a confession and your personal rights must be respected during interrogation procedure.

In accordance with § 121 Section 2 of the Criminal Procedure Code, I also would like to instruct you regarding your accusation that you have the right to testify or to refuse to give testimony. Nobody can force you to give a confession. You have the right to choose your defense counsel. If you can not afford to pay defense counsel, you have the right to request that one be appointed by the state. You have the right to request that your defense counsel will be present during the interrogation and the right to refuse to give testimony without his/her presence.

As the accused, you are instructed in accordance with § 121 Section 2 of the Criminal Procedure Code of the possibility and conditions of a conditional stay of criminal prosecution, making a damage settlement agreement and stay of criminal prosecution, plea bargaining procedure of regarding guilt and punishment, as well as the conditions of imposing the punishment of forfeiture of property, if charges of committing one of the crimes stated under § 58 Section 2 are pressed.

As the accused, you are instructed in accordance with § 208 Section 1 of the Criminal Procedure Code that if police a officer considers the investigation or summary investigation to be complete and its findings to be sufficient for filing a prosecution motion or motion regarding other decision, he/she enables the accused, defense counsel, the aggrieved party, its authorized representative or guardian to right to read the files within adequate time and to file motions requesting additional investigation, so that said persons may explicitly waive these rights.

I have read the instructions, they have been adequately explained to me and I have understood them fully, as I confirm with my signature.

**To the instruction:**

**I have been specifically informed of my rights in the position of the accused under the Criminal Procedure Code No 301/2005, in legal effect as of 1 January 2006; the instructions have been properly explained by the police force investigator, and I have understood them in full.** I have been specially instructed in terms of § 34 of the Criminal Procedure Code of the right to comment on all facts which have been presented in the charges against me, evidences concerning such facts, as well as of the right to refuse to give testimony. I am fully aware of this and am not requesting any explanation or supplementary information.

I have been informed of the conditions of conditional stay of criminal proceedings under § 216 of the Criminal Procedure Code, conditional stay of criminal proceedings of collaborate of the accused under § 218 of the Criminal Procedure Code, conditions for making a damage settlement agreement under § 220 of the Criminal Procedure Code, **as well as of the plea**

**bargaining procedure of the guilt and punishment under § 232** of the Criminal Procedure Code, that if the results of the investigation yield reasonable grounds to conclude that the act constitutes a criminal offence and that it was committed by the accused who confessed to having committed it, confessed guilt, and the evidence supports the truthfulness of his confession, the prosecutor may initiate a plea bargaining procedure of the guilt and punishment at the motion of the accused or without it.

I have been also instructed in accordance with § 208 of the Criminal Procedure Code of the right to read the files within adequate time and to file motions requesting additional investigation, which I have understood in full and am hereby stating that **I am explicitly waiving this right.**

**I am not lodging a complaint challenging the resolution of the investigator. Currently, I am not choosing any defense counsel.** In case of making such decision to choose one, power of attorney will be immediately delivered to the investigator of the Police Force, or to other law enforcement agency. I am fully aware of this as well and I am not requesting any explanation or supplementary information.

**I am carrying food with me, I am not hungry, neither thirsty, I have been repeatedly asked if the police shall provide for some food for me. Since I have enough food, I refused this assistance.**

As to person: physically I am completely healthy, I do not take any pills, I have not been treated for any mental diseases, I am a smoker, I am not taking drugs or any addictive substances, I have a driving license, I do not have gun permit. I am free to testify at this time.

As to matter: **I am not exercising the right to refuse to give testimony in accordance with § 34 of the of the Criminal Procedure Code; I am going to give testimony.**

## **Annex 3**

### **Overview of rights listed in Letters of Rights per Member State**

This annex provides an overview of the rights and information in the Letters of Rights received from Austria, Czech Republic, England and Wales, Germany, Italy, Latvia, Luxembourg, Poland, Slovak Republic, Spain, the Netherlands and Sweden. The Letters of Rights in the Czech Republic, Italy, and Poland are published only in the respective Member State's language and therefore required translation into English.

#### **1 Austria**

The Austrian Letter of Rights lists:

- information on the duration of the detention
- the right to notify a trusted person
- the right to notify a lawyer
- the right to legal aid
- the right of representation by a lawyer
- the right to have a lawyer present during questioning
- the right to remain silent
- the right to interpretation
- the right to request consular representation
- the right to medical care
- the right to judicial remedies such as the right to be released from custody and the right to appeal.

In addition, the Letter of Rights contains specific guarantees for juveniles and young adults. These include:

- the obligatory notification of the detention to a person having parental custody, or a cohabiting relative or the youth welfare office (only in case of juveniles)
- the right to have a trusted person present during questioning.

By way of a separate sheet, the suspect is informed about the 'Stand-by Legal Counselling Service'. This service was established in order to effectuate the suspect's right to contact a defence lawyer. As a result, the suspect has the right to have a telephone call or, upon request, a private consultation with a lawyer and, if necessary, legal assistance during the interrogation. This first call and first telephone consultation is free of charge.

#### **2 Czech Republic**

The Czech Letter of Rights lists:

- the right to explain yourself regarding the charge and the evidence

- the right of representation by a lawyer (mandatory representation)
- the right to have private communication with a lawyer
- the right to have a lawyer present during questioning
- the right to have a lawyer present during other procedural acts
- the right to inspect the written notes
- the right to legal aid
- the right to access the file
- the right to make copies of the file
- the right to ask the prosecutor to eliminate delays or deficiencies in the proceedings
- the right to read and correct the report of the questioning
- the right to participate in the investigative acts
- the right to pose questions to witnesses
- the possibility of a guilty plea
- the right to use your native language or the language you declare to speak
- the right to interpretation
- the right to silence

An additional Letter of Rights is given to a foreign suspect who does not have the command of Czech language and lists:

- the right to interpretation and translation
- at the request of the suspect, the following documents can be translated:
  - the resolution on the commencement of the criminal prosecution and on the provisional detention
  - the indictment
  - the motion for punishment
  - the judgment, the criminal order
  - the decision on appeal
  - the decision on conditional discontinuance of criminal prosecution
- the right to notify and communicate with the relevant consular authority
- the right to consular representation.

It must be noted that this summary is based on the Letters of Rights that entered into force with the new Criminal Code on 1 January 2010.

Lastly, we received the text of these Letters of Rights in Czech. According to our contact person at the Ministry, an English translation is not available in the Czech Republic. Consequently, this summary is based on a translation of the Czech version.<sup>1</sup>

### **3 England and Wales**

The Letter of Rights form England and Wales, called Notice of Entitlements and available in 44 languages, lists:

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<sup>1</sup> Translation provided by Tekst.nl.

- the right to instruct a solicitor
- the right to notify a trusted person
- the right to look at the police rule-book called the Codes of Practice
- the right to silence
- the right to private communication with the solicitor
- the right to have a lawyer present during questioning
- the right to get a copy of the custody report
- the right to keep in touch with the solicitor and trusted person
- the right to have a clean cell
- the right to toilet facilities
- the right to clothing
- the right to food and drinks
- the right to go outside for fresh air
- the right to medical care
- the duration of detention
- the right to be heard about the decision to extend the detention
- the right to rest
- the rights of vulnerable suspects (under 17, learning or mental problems)
- the right to interpretation
- the right to check the report of the interpreter
- the right to contact a consulate if the suspect is not British, and receive visits

## 4 Germany

The German Letter of Rights entered into force on 1 January 2010 and is available in 48 languages. There are 5 versions of the Letter of Rights depending on the reasons for arrest/apprehension. These categories include: information for provisionally arrested persons; information for persons arrested on the basis of an arrest warrant; information for persons arrested on the basis of a committal order, information for persons suspected of an offence who are apprehended to establish their identity and; lastly, information for persons not suspected of an offence who are apprehended to establish their identity.

The Letter of Rights provides information lists:

- the right to be brought before a judge
- the right to make statements regarding to charge
- the right to silence
- the right to provide evidence *a décharge*
- the right to consult a defence lawyer, even before questioning.
- the right to medical care
- the right to notify a trusted person
- the right to notify the relevant consular authorities
- the right to interpretation

## 5 Italy

The Italian Letter of Rights lists:

- the right to appoint a lawyer
- the right to submit written statements
- the right to legal aid

## 6 Latvia

The Latvian Letter of Rights, provided for by the Latvian Criminal Procedure Law, exists in two versions.

Section 63 - The Rights of a Detained Person, which lists:

- the right to a defence lawyer and to call one, free of charge
- the right to legal aid
- the right to receive a list of advocates practising in the relevant court region
- the right to request that a trusted person (relative, educational institution or employer close to him/her) is notified
- the right to familiarise him/herself with a copy of the detention protocol and receive written information regarding the rights and duties of a detained person
- the right to meet the defence counsel in confidentiality and without time restrictions
- to express orally or in writing his or her attitude in relation to the justification for detention
- the right to testify or to refuse to testify (right to silence)
- to submit a recusation [RECUSAL??] 
- the right to submit complaints regarding actions of officials
- to submit requests regarding the emergency performance of investigative actions as a result of which evidence may be acquired for confirming the invalidity of suspicions
- to receive legal assistance from a defence counsel during the conducting of procedural actions
- the right for a detained foreign national to request that the diplomatic or consular representation office of his or her state be informed

Section 66 - The Rights of a Suspect, which lists:

- the right to receive a copy of the decision indicating the person as a suspect
- the right to a defence lawyer and to call one, free of charge
- the right to legal aid
- the right to meet the defence counsel in confidentiality and without time restrictions
- the right to familiarise him/herself with the Criminal Proceedings Register
- the right to initiate investigative actions
- the right to participate in investigative actions
- the right to be informed on an expert examination
- the right to submit complaints regarding actions of officials
- the right to appeal procedural decisions

- the right to make submissions regarding the charge
- the right to testify or to refuse to testify (right to silence)
- the right to settle with the victim
- the right to request the termination of the proceedings if the pre trial terms are violated

## 7 Luxembourg

The Luxembourg Letter of Rights, available in several languages, lists:

- the right to notify a person
- the right to be immediately examined by a doctor
- the right to a defence lawyer

## 8 The Netherlands

The Dutch Letter of Rights entered into force on 1 April 2010 and lists:

- the right to remain silent
- the right to consult a lawyer before the questioning
- the right to a defence lawyer
- the right to legal aid
- information on the procedure with the lawyer (appointment, tasks and privileges)
- the right to private consultation with the lawyer

An additional Letter of Rights is available for juveniles. It adds the following rights:

- the right to have a lawyer or trusted person present during questioning
- the right to ask the police about the charge

## 9 Poland

The Polish Letter of Rights lists:

- the right to make statements
- the right to remain silent
- the right to initiate investigative acts
- the right to participate in the evidence collection
- the right to make statements regarding the evidence
- the right to a defence lawyer
- the right to have the lawyer present during questioning
- the right to interpretation
- the right to ask for conciliatory proceedings (settlement proceedings with victim)
- the right to access the file
- the right to be informed on the grounds and reasons of the charge
- the right to a final examination of the material of the investigation

In addition to these rights, the Letter of Rights also lists certain obligations, including an external body examination and a psychological and psychiatric examination.

If the suspect does not understand the Polish language, an interpreter free of charge is provided. The Letter of Rights is interpreted orally to the suspect.

## 10 Slovak Republic

There are 9 versions of the Slovakian Letter of Rights. The particular circumstance a suspect find himself in determines which Letter of Rights is applicable. The 9 categories are respectively:

1. Instruction of a person as to the right of the policeman to ask for explanation
2. Instruction of a person as to the policeman's right to turn in a person
3. Instruction of a person as to the policeman's right to require a demonstration of identity
4. Instruction of a person as to the policeman's right to detain a person
5. Instruction of a person when exercising the right to detain the accused
6. Instruction of person when exercising the right to restrict personal freedom of a suspect
7. Instruction of a person when exercising the right to turn in the accused
8. Instruction of a person when exercising the right to turn in a witness
9. Instruction of a person when exercising the right to detain a foreigner

Collectively, these documents list:

- the right to require the minutes of your explanation to be prepared immediately after you are turned in to the Police Force Division
- the right to an interpreter and translator if the person does not speak the language of the proceedings
- the right to be instructed on your rights immediately after the detention in a language that one understands
- the right to first aid and medical treatment
- the right to be immediately given over to the requesting body, which asked for the person to be turned in
- the right to, not later than 24 hours from the moment of the accused's apprehension, be handed over to a court, otherwise he must be released
- the right to be released: not later than 24 hours after the personal freedom was restricted / not later than 24 hours after being turned in
- the right to be released immediately if there are no reasons to turn the person in to the law-enforcement agencies / unless, after carrying out acts, there are reasons that would substantiate the person's turning in to the law-enforcement agencies or other competent body
- the right to obtain, without any delay, a decree on the person's detention from the Police Force Division
- the right, without unnecessary delay, to inform your close relative on your detention
- that upon request, the person is entitled, without unnecessary delay, to ask an attorney to provide them with legal assistance

- the right to inform the person's attorney
- the right to be informed on the reason of apprehension / why you were turned in / based on which your personal freedom is restricted / of the detention
- can submit a remedy against the ruling of detention
- the right to request, for the whole period of the detention, whether the reasons for detention still exist

## 11 Spain

The Spanish Letter of Rights lists:

- the right to remain silent
- the right not to incriminate oneself
- the right to appoint a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up.
- the right to a State-appointed lawyer
- that if arrested, the right to inform any relative or person you decide of the arrest and the custody place where you are at any time
- the right to inform the relevant consular services
- the right to an interpreter, free of charge
- the right to be examined by the forensic doctor if arrested
- the right to request a habeas corpus procedure in order to ensure the immediate handing over to the judicial authorities.

## 12 Sweden

The Swedish Letter of Rights, translated into 42 languages, lists:

- the right to be informed on the charge
- the right to have legal assistance (under certain conditions free of charge)
- the right to interpretation
- the right to food
- the right to rest
- the right to medical care
- the right to notify a trusted person
- the right to notify the consulate and communication
- detailed information on the duration and proceeding of the detention

If the suspect does not have command of the Swedish language, an interpreter will be provided. The suspect is informed about his right to translation orally, if necessary with the aid of an interpreter.

## **Annex 4**

### **Overview of rights mentioned in written information**

This Annex provides a summary overview of the EU Member States which have indicated that they inform suspects in writing and not by a Letter of Rights. Information in writing is however a broad term and it is not instantly clear what it refers to. For this reason, the different Ministries of Justice, with the exception of those Member States that indicated they have a Letter of Rights, were contacted with the request to send this written information in order to assess and categorise it. Replies were received from each of these Member States, except from Bulgaria, Denmark, Finland, France, Greece and Lithuania.

#### **1 Belgium**

In case of an administrative arrest, the suspect is provided with an information sheet, translated into 46 languages. This document lists:

- the duration of detention
- the right to respect
- the right to medical care
- the right to medical examination by a doctor of choice
- the right to food and drinks
- the right to access toilet facilities
- the right to notify trusted person

#### **2 Bulgaria**

No answer received.

#### **3 Cyprus**

An example of a Bill of Indictment and 'the Law about the Rights of Persons who are arrested and are under detention', was received.

#### **4 Denmark**

No answer received.

#### **5 Estonia**

The written information in Estonia is comprised of 2 documents: the minutes of interrogation of the suspect and the minutes on detention of suspect. They both include

article 34 of the Code of Criminal Procedure regarding the rights and obligations of suspects. This article lists:

- the right to know the content of the suspicion
- the right to give testimony with regard to the content of the suspicion
- the right to refuse to give testimony with regard to the content of the suspicion
- the right to know that his or her testimony may be used in order to bring charges against him or her
- the right to the assistance of a counsel
- the right to confer with the counsel without the presence of other persons
- the right to be interrogated and participate in a line up , comparison of testimony to circumstances and presentation for identification in the presence of a counsel
- participation in the hearing of an application for an arrest warrant in court
- submission of evidence
- submission requests and complaints
- examination of the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements
- consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings

It must be noted that with respect to the English version, the signature of the interpreter is required.

## **6 Finland**

The information given to suspects is mostly provided orally. It can be done in writing but there no obligation to do so. A standardised form of the written information does not exist.

## **7 France**

No answer received.

## **8 Greece**

No answer received.

## 9 Hungary

The received written information in Hungary comprises a sample record of a suspect's hearing and mentions:

- the right to use your mother tongue both in verbal and written communication
- the right to lay a complaint for being suspected
- the right not to make a confession, to refuse to make a confession or to give answer
- the right to choose a defence counsel or to request an appointed counsel
- the right to be informed about the suspicion, the subject of accusation
- the right to be present at the hearing of experts, at the visit to the scene, at the attempt to take evidence, at the presentation for recognition
- the right to examine documents that concern the suspect
- the right to have the time necessary an opportunity to prepare defence
- the right to present facts to your defence
- the right to make proposals and remarks
- the right to seek legal remedy
- the right to request information from the court, prosecutor or investigating authority in connection with your rights and obligations
- the right to contact your defence lawyer and to communicate with him/her without control
- the right to contact the consular representative and to communicate with him/her without control
- the right to communicate with trusted persons
- the right to receive copies of expert opinions and other documents about the investigation events, or copies of other documents if that does not interfere with the interests of the investigation

It is clear from the report that in the event that the suspect does not understand Hungarian, an interpreter will be instructed to prepare the report.

## 10 Ireland

The written information, named 'Information for persons in custody', lists:

- the right to be informed of the offence
- the right to notify a trusted person that you are in custody
- in case you are under 17, your custodian will be notified and asked to attend the police station without delay
- the right to private communications with a solicitor, either in writing or by telephone
- the right to consult the solicitor in the station

- the right to receive a visit from a trusted person and to contact that person (by telephone call or letter)
- the right to have the reasons of searches explained (if you are being searched)
- the right to have a meal

## 11 Italy

The first written document is an invitation to appear for interrogation and lists:

- the right to appoint a lawyer
- the right to appoint a technical expert
- the right to legal aid
- the right to appear before the prosecutor
- the right to submit written statements

The second written document is given after the conclusion of the preliminary investigation and lists:

- the right to inspect the file and make copies
- the right to submit pleadings, produce and file documents
- the right to appoint lawyers (max. 2) of own choosing
- the right to appoint expert witnesses
- the right to submit statements or written requests
- the right to be assisted by an interpreter free of charge
- the right to be represented or assisted by a person of trust during searches
- the right to reclaim seized objects
- the right to make spontaneous statements
- the right to request the investigating judge to collect evidence
- the right to request the conclusion of the proceedings or abbreviated proceedings or plea agreement
- the right to request copies of documents
- in case of interrogation the suspect is entitled to receive an account of the facts; to be informed of the existing evidence and its source; to expose what he/she deems useful for his defence
- the right to apply for legal aid

The third source of written information, made up by the police, is a report of summary information given to the person against whom investigations are conducted and contains the following information:

- the right to appoint a defence lawyer
- the right to legal aid
- the right to have the lawyer present in proceedings

- the right to know that his or her statement can always be used against him or her
- the right to choose not to answer any questions/the right to remain silent

## **12 Lithuania**

No answer received.

## **13 The Netherlands**

In the Netherlands, the reverse of the summons lists:

- the right, in certain circumstances, not to appear before court
- the right to be assisted by a lawyer during trial (in certain circumstances this is even an obligation)
- the right to a defence lawyer
- the right to legal aid
- the right to request, in certain circumstances, settlement proceedings
- the right to object to the summons
- the right to ask for deferment of the proceedings
- the right to access to the file and copies thereof
- the right to call witnesses and experts
- the right to appeal

Other written information comprises of brochures called 'on trial' and 'if you are suspected of a criminal offence' in these brochures the following information is given. It is explicitly mentioned on the back of the brochures that these are for information purposes only. No rights may be derived or inferred from their contents.

The brochure 'if you are suspected of a criminal offence' informs about the following issues:

- detailed information about the duration of the detention
- policy custody
- the procedure to be brought before a (examining) judge
- the assistance of a lawyer
- conditions of detainment such as, fresh air, food
- access to the file
- the entitlement to inform the consulate, only upon request, and to receive a visit
- the right to appeal

The brochure 'On trial' refers to the reverse of the summons and explains how to exercise these rights. It further contains information regarding:

- the summons
- objection to the summons
- legal representation
- the victim
- your dossier
- witnesses
- deferment
- attendance at court
- failure to appear
- open session procedure
- procedures (witness statements; file; cross-examination; prosecution statement; defence statement; verdict and sentencing; timing of the verdict)
- appeal
- costs

## 14 Portugal

The written information in Portugal, called 'Constituição de arguido' lists:

- the right to be present at the procedural acts which directly affect him
- the right to be heard by the court or by the judge every time they take a decision that may personally affect him
- the right to be informed of the alleged facts that exist against him before making statements to any entity
- the right not to answer any questions asked by any authority about the facts of which he is accused or about the contents of his statements
- the right to appoint a lawyer or ask for the assignment of a defence counsel
- the right to be assisted by legal counsel in all acts of the case and, when remanded in custody, to communicate in private with him
- the right to participate in the investigation and inquiry, presenting evidence and requesting the steps that may be necessary
- the right to be informed by the judicial authority or criminal police about his rights
- the right to appeal, under the law, against unfavorable decisions
- the right to request legal aid

In addition to the 'Constituição de arguido' there is also a written document called 'Rights and Duties of Detainees', although it is unclear when this is given to the suspect (/detainee). This document is comprised of articles from: first, the Portuguese Constitution, second, the Code of Criminal Procedure and lastly Decision no. 12786/2009, dated 29 May 2009. According to the latter all rights and duties

mentioned in the following three laws must be clearly and visibly posted in the place of detention. In addition, a leaflet encompassing the same rights and duties must be available in several languages.

The articles of the Constitution mention:

- the right to all necessary safeguards for the defence, including the right to appeal
- the right to be presumed innocent
- the right to choose defence counsel
- the right to be assisted by defence counsel at any stage of the proceedings

The articles of the Code of Criminal Procedure mention:

- the right to attend any stage of the proceedings that concerns him directly
- the right to be heard before the court or investigating magistrate where they must make a decision affecting the defendant personally
- the right to be informed of the charges against him before making any statement to an official body
- the right to not to answer questions asked by any official body about the facts he is charged with nor about any statements he made in respect thereof
- the right to nominate a lawyer or to request the court to assign defence counsel
- the right to let defence counsel act on his behalf in every stage of the proceedings he participates in
- the right to communicate with defence counsel, even in private, when in custody
- the right to intervene in the inquiries conducted by the prosecutor and the investigating magistrate, by giving evidence and requesting any action deemed necessary
- the right to be informed by the judicial authority or criminal police body before whom he is compelled to appear of the rights he is entitled to
- the right to appeal from unfavourable decisions, as provided for by the law

Decision no. 12786/2009, dated 29 May 2009 lists:

- the right to be promptly and clearly informed of the reasons for his arrest and of his rights, which he may exercise from the moment he is actually deprived of liberty
- the right to contact a lawyer or a defence counsel without further delay
- the right to inform a relative or a person of trust of his situation, without further delay.
- the right to contact the consular authorities of his country without further delay
- the right to be provided with an interpreter if requested and necessary

- the right to be allowed to use a telephone of the services responsible for his arrest, in case there is no public telephone, in exercising the rights referred to in the above paragraphs

## **15 Romania**

In contrast to the answers in the questionnaire of the Procedural Safeguards 2008 update project, the information is provided for orally and not in writing. No documents were therefore received.

## **16 Slovak Republic**

The Slovak written information informs the accused of the following rights:

- the right to testify or refuse to testify
- the right to choose a defence counsel
- the right to request appointed lawyer if the accused cannot afford one
- the right to request that defence counsel will be present during the interrogation
- the right to refuse to give a testimony without the lawyer's presence
- the right to comment on all facts attributed to the accused, on the evidence
- the right to submit evidence
- the right to legal remedies
- the right to consult the defence counsel
- the right to talk to the defence counsel without presence of a third person if you are detained, in the custody, or you are serving a prison sentence
- the right to, during the court proceedings, interrogate and question witnesses
- the right to read the files within adequate time and to file motions requesting additional investigations

## **17 Slovenia**

In Slovenia, a suspect is entitled to a written version of the indictment, detention order, reasons for detention, parts of the case file and items of evidence. All this written information is usually provided for upon request of the suspect and not automatically. The only document which is *translated* in written form is the charge.

## Annex 5

### Formulations of rights listed in Letters of Rights and written information

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#### 1 Defence lawyer

	LETTERS OF RIGHTS
<b>Austria</b>	<i>You have the right to contact a counsel and you may appoint him/her to represent you.</i>
	<i>You have the right to have a counsel present during your interrogation, but the counsel must not intervene.</i>
	<i>You may request that the law court dealing with the case appoint a counsel for the defence to represent you free of costs.</i>
<b>Czech Republic</b>	<i>You have the right to choose a defence counsellor and consult him/her even during the acts, performed by the competent authority for criminal proceedings.</i>
	<i>You may request to be questioned in the presence of your defence counsellor and you may request the presence of the defence counsellor during other acts within the pre-trial stage (Section 165 of the Code of Criminal Proceedings)</i>
	<i>If you are in the custody or serving a term of imprisonment, you may speak with the defence counsellor without presence of a third person.</i>
	<i>According to the Section 33 Paragraph 2 of the Code of Criminal Procedure, if you attest to have not enough money to pay the defence costs, the presiding judge and in pre-trial stage the judge shall determine that you are entitled to free defence or defence at a reduced fee.</i>
<b>England &amp; Wales</b>	<i>Tell the police if you want a solicitor to help you while you are at the police station. It is free.</i>
	<i>You are entitled to a private consultation with your Solicitor on the telephone or</i>

	<i>they may decide to come and see you at the Police Station.</i>
	<i>When the police ask you questions you can ask for a solicitor to be in the room with you.</i>
<b>Germany</b>	<i>You can consult a defence counsel of your own choosing at any time, even before any questioning has taken place.</i>
<b>Italy</b>	<i>in criminal procedures, a defence lawyer is mandatory, that the person subject to investigations has all the rights and privileges accorded by the Code of Criminal Procedure; in particular, he/she may appoint a counsel of his/her own, (...)</i>
	<i>It is mandatory to pay the state defence lawyer unless the conditions for legal aid paid by the state are fulfilled, or in case of insolvency, the enforcement proceedings will be initiated</i>
<b>Latvia</b>	<i>to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A suspected person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge</i>
	<i>to submit a request regarding the payment of the assistance of a counsel from State resources</i>
	<i>to meet in the place of detention with a defence counsel in conditions ensuring confidentiality of negotiations without special permission of a person directing the proceedings and without time restrictions</i>
<b>Luxembourg</b>	<i>To receive legal counsel from a registered lawyer. I have made use of this right: yes/no.</i>
<b>Netherlands</b>	<i>You have the right to talk to a lawyer before the questioning.</i>
	<p><i>Know your situation</i></p> <ul style="list-style-type: none"> <li>• <i>If you are suspected of a very serious offence, it is standard procedure that the police will engage a lawyer. This lawyer will come to the police station to talk to you before the police will question you for the first time. This will not cost you anything.</i></li> <li>• <i>If you are suspected of a serious offence, you may choose whether or not you want to talk to a lawyer before the questioning. This will not cost you anything.</i></li> <li>• <i>If you are suspected of an other type of punishable offence, you may choose whether or not you want to talk to a lawyer. If you want to talk to a lawyer, you yourself must pay the costs of this interview with the lawyer.</i></li> </ul>
	<i>The police will not listen when you are talking to your lawyer. The lawyer is not allowed to talk to others about what he has heard from you, also not to the police.</i>
	<i>You may first talk to a lawyer before the questioning. If you ask for a lawyer, this does not mean that you are guilty. (Formulation juveniles)</i>
<b>Poland</b>	<i>The suspect shall have a right to: have a defense counsel (CPC art. 77 and art. 78)</i>
	<i>The suspect shall have a right to: demand to be questioned in the presence of appointed defense counsel, whose absence does not stop the hearing (CPC art.</i>

	301).
<b>Slovak Republic</b>	<i>at your request, you are entitled, without unnecessary delay, to ask an attorney to provide you with legal assistance</i>
	<i>you are entitled to inform you attorney</i>
<b>Spain</b>	<i>you have the following rights: To designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should you not designate a lawyer, a State-appointed lawyer shall be designated.</i>
<b>Sweden</b>	<i>You have the right to receive the aid of a defence attorney who under certain conditions can be paid by the state</i>
	<b>WRITTEN INFORMATION</b>
<b>Estonia</b>	<i>A suspect has the right to: the assistance of a counsel</i>
	<i>A suspect has the right to: confer with the counsel without the presence of other persons</i>
	<i>A suspect has the right to: be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel</i>
<b>Hungary</b>	<i>Pursuant to Article 179 (3) of CPA I hereby inform you that you are entitled to choose a defending counsel or request the appointment of a defending counsel by the authorities.</i>
	<i>You are entitled to contact your defending counsel (...) and to communicate with him/her in writing or verbally without control (...)</i>
<b>Italy</b>	<i>INFORMS The suspect SUED EX ART. A CPP 269, that: in criminal procedures, a defence lawyer is mandatory and that he/she may appoint no more than two counsels of his/her own (who are also allowed to carry out defensive investigations also through deputies and licensed private investigators);</i>
	<i>The suspect (...)May apply for legal aid, and the conditions thereof are provided for in art. 74 et seq. DPR 115/02.</i>
	<i>Under Article 350 § 2, the suspect is asked to appoint a defence lawyer and is made aware that, if no defence lawyer is appointed, he or she will be assisted by an appointed lawyer appointed pursuant to Article 97 § 3 of the Italian Code of Criminal Procedure; he or she is also informed of the regulations on legal aid at state expense and the obligation to pay the appointed lawyer unless the conditions for admission to this benefit are met.</i>
	<i>If the defence lawyer has not been found or if no defence lawyer has been appointed, another appointed lawyer is appointed pursuant to Article 97 § 4 of the Italian Code of Criminal Procedure, Mr/Ms. ___ and will be present on the occasion.</i>
<b>Netherlands</b>	<i>1. Representation by a Lawyer If you are to be tried for a minor or criminal offence, you can have yourself represented in court by a lawyer whom you will have to authorize expressly. Before the subdistrict court you may also have yourself represented by a person who is not a lawyer. However, you will have to give this person a written power of attorney to show to the court.</i>
	<i>2. Assignment of a lawyer If you do not yet have a lawyer, you may request for a lawyer to be assigned to</i>

	<i>you. If you have been incarcerated at the order of the court, then you will have to address your request to the president of the court. In all other cases - also if you are in police custody - you will have to apply to the legal aid office.</i>
<b>Portugal</b>	<i>To appoint a lawyer or ask for the assignment of a defence counsel</i>
	<i>To have a defence counsel acting on his behalf in every act of the proceedings he participates in and to communicate with him, even in private, when remanded in custody</i>
	<i>To request legal aid at the social security customer services</i>
	<i>The defendant shall have the right to choose defence counsel and to be assisted by him at any stage of the proceedings; the cases and stages of the proceedings in which assistance by a lawyer is mandatory are set out in the law.</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To nominate a lawyer or to request the court to assign defence counsel;</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To let defence counsel act on his behalf in every stage of the proceedings he participates in and to communicate with defence counsel, even in private, when in custody;</i>
	<i>Any detainee has the right to contact a lawyer or a defence counsel without further delay.</i>
<b>Slovak Republic</b>	<i>You have right to choose a defense counsel.</i>
	<i>If you can not afford a lawyer, you have right to request that one will be appointed for you.</i>
	<i>According to § 34 Section 3 of the Criminal Procedure Code, if you can not afford to pay the expenses of defense costs, you have the right to free defense or defense counsel at a reduced fee.</i>
	<i>You have a right to request that defense counsel will be present during the interrogation and the right to refuse to give testimony without his/her presence.</i>
	<i>You have the right to choose your defense counsel and to consult him/her, even while evidence is being collected by the investigator.</i>
	<i>If you are detained, taken into custody or you are serving a prison sentence, you may speak with your defense counsel without the presence of a third person.</i>

## 2 Nemo tenetur - Right to silence

	LETTERS OF RIGHTS
<b>Austria</b>	<i>You have the right to refuse to give information and to answer questions in respect of the charges that have been preferred against you.</i>
<b>Czech Republic</b>	<i>According to the Section 33 Paragraph 1 of the Code of Criminal Procedure, you have a right to express your opinion to all the facts that you are charged with, and of the evidence thereof, but you are not obliged to testify.</i>
	<i>According to the Section 93 Paragraph 1 of the Code of Criminal Procedure, it may be allowed to you, before answering a question, to have a look at the written notes, which you must, if the person conducting the questioning requests so, submit to inspection by him or her.</i>

<b>England &amp; Wales</b>	<i>If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.</i>
<b>Germany</b>	<i>You can make a statement about the charges against you or refrain from making statements about the case.</i>
<b>Latvia</b>	<i>to testify or refuse to provide testimony</i>
<b>Netherlands</b>	<i>You have the right to not answer if you do not want to; to remain silent</i>
	<i>You do not have to answer if you do not want to: you have the right to remain silent. (Formulation juveniles)</i>
<b>Poland</b>	<i>The suspect shall have a right to: make statements, not to make statements, or not to reply to any questions posed without giving any reason (Criminal Procedure Code [“CPC”] art. 175 § 1)</i>
<b>Spain</b>	<i>you have the following rights: To keep silence not declaring if you do not wish to, to not answer the questions asked</i>
	<i>you have the following rights: not to make self-incriminating statements; not to plead yourself guilty</i>
	<b>WRITTEN INFORMATION</b>
<b>Estonia</b>	<i>A suspect has the right to: know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion</i>
	<i>A suspect has the right to: know that his or her testimony may be used in order to bring charges against him or her</i>
<b>Hungary</b>	<i>Pursuant to Article 117 (2) of CPA I hereby warn you that you are not obliged to make a confession; you can refuse to make a confession or answer a given question any time during the hearing, however, you can decide to make a statement any time, even if previously you have refused to make a confession. I hereby warn you that everything you say or make available may be used as evidence.</i>
	<i>Refusing to make a confession does not have any effect whatsoever on your right to ask, make remarks or proposals.</i>
<b>Italy</b>	<i>Mr/Ms. _____ (full name of the suspect), having been informed that he or she will be questioned as a person subject to the investigation with regard to the offense of _____, is warned, pursuant to Article 64 § 2 of the Italian Code of Criminal Procedure, that his or her statements can always be used against him or her; that, with the exception of information about his or her identity, he or she may choose not to answer any questions, but the proceedings continue;</i>
<b>Portugal</b>	<i>Not to answer the questions asked by any entity about the facts he is charged with and about the contents of his statements concerning them</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: Not to answer questions asked by any official body about the facts he is charged with nor about any statements he made in respect thereof;</i>
<b>Slovak Republic</b>	<i>You have a right to request that defense counsel will be present during the interrogation and the right to refuse to give testimony without his/her presence.</i>
	<i>As the accused, you have a right to testify or refuse to testify.</i>

### 3 Contact with trusted person

	LETTERS OF RIGHTS
<b>Austria</b>	<i>You have the right to notify or have notified a person of your trust (i.e. a relative, a friend or your probation officer) of your arrest.</i>
<b>England &amp; Wales</b>	<i>Tell the police if you want someone to be told that you are at the police station. It is free.</i>
<b>Germany</b>	<i>You can notify a relative or another person you trust of the arrest, provided that such notification does not conflict with the purpose of the investigation.</i>
<b>Latvia</b>	<i>A detained person has the right to request that a relative, educational institution, or employer close to him or her is notified regarding the detention.</i>
<b>Luxembourg</b>	<i>To notify a person of my choice (except if the circumstances make this impossible) and to have use of a telephone for this purpose. I have made use of this right yes/no</i>
<b>Slovak Republic</b>	<i>at your request, you are entitled, without unnecessary delay, to inform your close relative on your detention</i>
<b>Spain</b>	<i>you have the following rights: If arrested, right to inform any relative or person you decide of the arrest and the custody place where you are at any time.</i>
<b>Sweden</b>	<i>receive assistance in notifying any of your close relatives or someone else particularly close to you about where you are as soon as this can be done without compromising the investigation.</i>
	WRITTEN INFORMATION
<b>Belgium</b>	<i>The person deprived of his freedom: will be allowed to INFORM A PERSON of his own choosing except if it goes against the investigation.</i>
<b>Hungary</b>	<i>You are (...) to communicate with members of your family or other persons verbally under personal supervision, and in writing under control.</i>
<b>Portugal</b>	<i>Any detainee has the right to inform a relative or a person of trust of his situation, without further delay.</i>

### 4 Interpretation - translation

	LETTERS OF RIGHTS
<b>Austria</b>	<i>If you are not in a position to follow the instructions about the judicial remedies available or to provide evidence owing to physical disablement or an inadequate command of German, you have the right to request the assistance of an interpreter or any other person who is familiar with your means of communication.</i>
<b>Czech Republic</b>	<i>According to the Section 2 Paragraph 14 of the Code of Criminal Procedure, you have the right to use your native language or a language you declare to speak.</i>
	<i>According to the Section 28 Paragraph 1 of the Code of the Criminal Procedure, should you not indicate a language, which you speak, or if you indicate a language or a dialect which is not a language of your nationality or an official language of the state of which you are a national and there is no person registered for such language in the register of interpreters, the authority responsible for the prosecution will set an interpreter of language of your nationality or an official language of the state of which you are a national.</i>
	<i>According to Section 28 Paragraph 2 of the Code of Criminal Procedure, if a criminal proceedings is conducted against the accused (criminal proceedings against the</i>

	<p>suspect), which states that he/she does not command the Czech language, it is necessary to provide translation to the accused (suspect) into his/her mother tongue, which he/she commands according to his/her statement:</p> <ul style="list-style-type: none"> <li>- resolution on the commencement of the criminal prosecution,</li> <li>- resolution on the provisional detention,</li> <li>- indictment,</li> <li>- motion for punishment,</li> <li>- judgment,</li> <li>- criminal order,</li> <li>- decision on appeal,</li> <li>- decision on conditional discontinuance of criminal prosecution.</li> </ul>
<b>England &amp; Wales</b>	If you do not speak or understand English the police will arrange for someone who speaks your language to help you.
	When the police ask you questions the interpreter will make a record of the questions and your answers in your own language. You will be able to check this before you sign it as an accurate record.
<b>Germany</b>	If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.
<b>Poland</b>	The suspect shall have a right to: use the services of an interpreter free of charge if his command of Polish language is insufficient (CPC art. 72 § 1)
<b>Slovak Republic</b>	if you do not speak the language of the proceedings you are entitled to an interpreter and translator,
	you are entitled to be instructed on your rights immediately after your detention in a language that you understand,
<b>Spain</b>	you have the following rights: To have the free assistance of an interpreter if you are a foreigner and do not understand nor speak Spanish.
<b>Sweden</b>	You have the right to receive the assistance of an interpreter during interrogations, as needed
	<b>WRITTEN INFORMATION</b>
<b>Hungary</b>	I hereby inform you that you have the right to use your mother tongue both in verbal and written communication.
<b>Italy</b>	In case of no knowledge of Italian, he/she has the right to be assisted by an interpreter free of charge;

## 5 Medical care

	LETTERS OF RIGHTS
<b>Austria</b>	Should you regard it necessary you will be subjected to a medical examination on the condition that it does not considerably delay the criminal investigations. You may call in a medical practitioner of your choice, but you will have to bear the costs.
<b>England &amp; Wales</b>	Ask to see a doctor if you feel ill or need medicine. The police will call a doctor for you and it is free.
<b>Germany</b>	You can request to be examined by a male or a female doctor of your choice.
<b>Luxembourg</b>	To be immediately examined by a doctor. I have made use of this right: yes/no

<b>Slovak Republic</b>	<i>if, during the use of coercive instruments, you suffer injury you are entitled to the first aid and medical treatment</i>
<b>Spain</b>	<i>If arrested, right to be examined by the forensic doctor or his/her substitute and, otherwise, by the forensic doctor of the Institution you are in or any other State-appointed forensic doctor (or appointed by another Public Administration).</i>
<b>Sweden</b>	<i>You have the right to receive health and medical care as needed or by your own request be examined by a doctor, unless it is apparent that a medical examination is unnecessary</i>
	<b>WRITTEN INFORMATION</b>
<b>Belgium</b>	<i>The person deprived of his freedom: receive medical attention and additionally has the right to a medical examination by a doctor of their choice</i>

## 6 Consulate

	<b>LETTERS OF RIGHTS</b>
<b>Austria</b>	<i>If you are a foreign national, you have the right to request a consular representation of your home country to be notified of your arrest.</i>
<b>Czech Republic</b>	<p><i>According to Vienna Convention on Consular Relations from 1969, contained in the regulation of the Ministry of Foreign Affairs, published in the Collection of Laws, Chapter 32/1969 of the Colection., as a Foreign national you have according to Article 36 the following rights:</i></p> <ul style="list-style-type: none"> <li><i>- request so that your embassy or consular authority in the Czech Republic is informed about your detention (taking into provisional detention),</i></li> <li><i>- send, by way stipulated for persons investigated while being in provisional detention, messages to your embassy,</i></li> <li><i>- request your embassy for legal representation,</i></li> <li><i>- talk to the officials of your embassy,</i></li> </ul> <p><i>raise objection against a visit requested by your embassy, against sending of correspondence from the embassy and against their prospective efforts to secure you legal representation.</i></p>
<b>England &amp; Wales</b>	<i>If you are not British, you can tell the police that you want to contact your High Commission, Embassy or Consulate to tell them where you are and why you are in the police station. They can also visit you in private or arrange for a solicitor to see you.</i>
<b>Germany</b>	<i>If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.</i>
<b>Latvia</b>	<i>A detained foreign national has the right to request that the diplomatic or consular representation office of his or her state be informed.</i>
<b>Spain</b>	<i>you have the following rights: Foreigners are entitled to inform the consular services of his/her country.</i>
<b>Sweden</b>	<i>If you are not a Swedish citizen, you have the right to demand that your own country's consulate or equivalent institution be notified of your detainment and that messages from you be forwarded there.</i>
	<b>WRITTEN INFORMATION</b>
<b>Hungary</b>	<i>You are entitled (...) if you are a foreign citizen to contact the consular</i>

	<i>representative of your state – and to communicate with him/her in writing or verbally without control (...)</i>
<b>Portugal</b>	<i>Any foreign detainee has the right to contact the consular authorities of his country without further delay.</i>

## 7 File

	<b>LETTERS OF RIGHTS</b>
<b>Czech Republic</b>	<i>According to the Section 65 Paragraph 1 of the Code of Criminal Procedure, you have the right to inspect the files, make extracts and notes and make copies of the files and any part thereof on your own costs.</i>
	<i>According to the Section 95 Paragraph 2 of the Code of Criminal Procedure, you have the right that the report is submitted to you after the questioning for reading, or should you have asked, that the report is read. You have the right to ask that the report is supplemented or corrected in consistency with your testimony.</i>
	<i>According to the Section 95 Paragraph 3 of the Code of Criminal Procedure, the report on the questioning, which was undertaken without the court reporter, it must be submitted for reading or must be read in presence of non-participating person before it is signed. In case you have objections regarding its contents, it is necessary to deal with them in presence of other participant joining the proceedings and the result must be recorded in the report.</i>
<b>England &amp; Wales</b>	<i>When you leave the police station, you, your solicitor or your appropriate adult can ask for a copy of the custody record. The police have to give you a copy of the custody record as soon as they can.</i>
<b>Latvia</b>	<i>to receive a copy of the decision with which such person has been recognised as a suspect, as well as written information regarding the rights and duties of a detained person</i>
	<i>to familiarise him or herself with a decision regarding the determination of an expert-examination before the transferral thereof for execution, if the expert-examination applies to such person (...)</i>
<b>Poland</b>	<i>The suspect shall have a right to: demand, before he is given notice of the date on which he can examine the files of the inquiry or investigation, that he should be given an oral presentation of the grounds for charges as well as reasons for them prepared in writing. (...) (CPC art. 313 § 3 and art. 325a § 2)</i>
	<i>The suspect shall have a right to: final examination (upon the motion) of the materials of inquiry or investigation under the presence of defense counsel and examination of the files at the earlier date. Inexcusable failure to appear by the suspect or his counsel shall not stop further proceedings (CPC art. 321 § 1, 3 and 4, and art. 325a § 2).</i>
<b>Slovak Republic</b>	<i>you are entitled to require the minutes of your explanation to be prepared immediately after you are turned in to the Police Force Division,</i>
	<i>you are entitled to obtain, without any delay, a decree on your detention from the Police Force Division</i>
	<b>WRITTEN INFORMATION</b>
<b>Estonia</b>	<i>A suspect has the right to: examine the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements</i>

<b>Hungary</b>	<i>Pursuant to Article 43 (2) of CPA during the criminal procedure you are entitled (...) to look into the documents concerning you.</i>
	<i>Pursuant to Article 70/B (2) of CPA I hereby inform you that until the end of the investigation you are entitled to receive copies of expert opinions and other documents about investigation events, at which you are entitled to participate pursuant to the CPA; and also to receive copies of other documents if that does not interfere with the interests of the investigation.</i>
<b>Italy</b>	<i>The records of completed investigations of the prosecutor are filed with the secretariat of the public prosecutor and the suspect and his counsel have the right to inspect this file and make copies;</i>
	<i>He/she may request copies of documents in accordance with Art. 116 of the code of criminal procedure with permission of the public prosecutor or the court;</i>
<b>Slovak Republic</b>	<i>As the accused, you are instructed in accordance with § 208 Section 1 of the Criminal Procedure Code that if police a officer considers the investigation or summary investigation to be complete and its findings to be sufficient for filing a prosecution motion or motion regarding other decision, he/she enables the accused, defense counsel, the aggrieved party, its authorized representative or guardian to right to read the files within adequate time and to file motions requesting additional investigation, so that said persons may explicitly waive these rights.</i>

## 8 Charge - suspicion

	<b>LETTERS OF RIGHTS</b>
<b>Poland</b>	<i>The reasons for the decision on the charges are served upon the suspect and his defence counsel within 14 days (CPC art. 313 § 3 and art. 325a § 2)</i>
	<i>The suspect shall have a right to: demand, before he is given notice of the date on which he can examine the files of the inquiry or investigation, that he should be given an oral presentation of the grounds for charges as well as reasons for them prepared in writing.</i>
<b>Slovak Republic</b>	<i>you are entitled to be informed on the reason of apprehension</i>
	<i>you are entitled to be immediately informed on the reason based on which your personal freedom is restricted</i>
	<i>you are entitled to be informed on the reason why you were turned in</i>
	<i>you are entitled to be informed on the reason of your detention</i>
<b>Sweden</b>	<i>You have the right to know what it is you are suspected of and why you are being detained</i>
	<b>WRITTEN INFORMATION</b>
<b>Estonia</b>	<i>A suspect has the right to: know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion</i>
<b>Hungary</b>	<i>Pursuant to Article 43 (2) of CPA during the criminal procedure you are entitled to be informed about the suspicion, the subject of accusation, and the changes in these (...)</i>
<b>Italy</b>	<i>In the case of interrogation, the suspect is, at the start thereof, entitled:</i> <ul style="list-style-type: none"> <li>• <i>To receive ,in a clear and precise way, an account of the facts that are attributed to him;</i></li> </ul>

	<ul style="list-style-type: none"> <li>To be informed of the existing evidence against him, and in case it can cause no harm to the investigation, also of their sources;</li> </ul>
<b>Portugal</b>	To be informed about the facts he is charged with, prior to giving evidence before any entity
	The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To be informed of the charges against him before making any statement to an official body;
	Anyone who is deprived of his liberty shall be promptly and clearly informed of the reasons for his arrest and of his rights, which he may exercise from the moment he is actually deprived of liberty.

## 9 Detention - release from custody

	LETTERS OF RIGHTS
<b>Austria</b>	You have the right to request to be released from custody at any time and to appeal against the judicial authorisation of your arrest
	The duration of detention is subject to a maximum, determined by Statute. Within 48 hours of arrest you must either be released from custody or, if the Public Prosecutor seeks to have you placed in detention awaiting trial or if you were arrested on the basis of a court warrant or an order of the prosecuting authority that was authorised by a court, be taken to the penal institution of that court or, in case of illness, to a hospital. The CID is obligated to keep your detention as short as possible. The duration of your detention will depend on if and how soon evidence can be gathered indicating that the grounds for detention are no longer met or exonerating you of the charges at all.
<b>England &amp; Wales</b>	How long can you be detained? You can normally be detained for up to 24 hours without being charged. This can be longer but only if a Police Superintendent allows it to happen. After 36 hours only a court can allow more time without you being charged. Every so often a senior police officer has to look into your case to see if you should still be kept here. This is called a review. You have the right to have your say about this decision, unless you are not in a fit state.
<b>Germany</b>	Without delay, at the latest on the day after your arrest, you must be brought before a judge who has to question you and decide on the continuation of your deprivation of liberty, unless you are released earlier.
<b>Latvia</b>	A detained person has the right to express orally or in writing his or her attitude in relation to the justification for detention.
<b>Slovak Republic</b>	you are entitled to be immediately given over to the requesting body, which asked for you to be turned in,
	you are entitled, not later than 24 hours from the moment of your apprehension, to be handed over to a court, otherwise you must be released,
	you are entitled to be immediately released if there are no reasons to turn you in to the law-enforcement agencies, other competent body or a competent facility
	you are entitled to be immediately released unless, after carrying out acts, there are reasons that would substantiate your turning in to the law-enforcement agencies or other competent body,

	<i>you are entitled to be released not later than 24 hours after being turned in,</i>
	<i>you are entitled to be released not later than 24 hours after your personal freedom was restricted</i>
	<i>The detained foreigner can submit a remedy against the ruling of detention to the court within 15 days of delivery of the ruling of detention. Submission of the remedy has no dilatory effect.</i>
	<i>you are entitled to request, for the whole period of your detention, whether the reasons for detention still exist</i>
<b>Spain</b>	<i>you have the following rights: To request an habeas corpus procedure in order to ensure the immediate handing over to the judicial authorities</i>
<b>Sweden</b>	<p><i>What is going to happen?</i></p> <ul style="list-style-type: none"> <li><i>· If you are not taken into custody, you are normally obligated to remain for interrogation for a maximum of six hours. In exceptional cases, you may be obligated to remain for a further six hours.</i></li> <li><i>· As soon as possible after the interrogation, you will be released unless the prosecutor decides that you should be taken into custody.</i></li> <li><i>· If the prosecutor takes you into custody then the prosecutor is obligated to verify continuously that there are grounds for your continued detention.</i></li> <li><i>· If you are not released, the prosecutor must, as soon as possible and no later than at noon on the third day following the decision to take you into custody, request that a court try whether you are to remain in detention. If the prosecutor decided to take you into custody prior to you being detained, the time is then measured from when you were detained instead.</i></li> <li><i>· The court must examine the matter of your detention as soon as possible and no later than 96 hours following you having been arrested or otherwise detained. If you are detained due to a request from</i></li> </ul>
	<b>WRITTEN INFORMATION</b>
<b>Belgium</b>	<p><i>The loss of liberty decided by the Police may not exceed 12 hours.</i></p> <p><i>There are 3 exceptions, that is to say:</i></p> <ul style="list-style-type: none"> <li><i>· Time limit of 24 hours maximum in case of an administrative arrest in Eurostar control areas.</i></li> <li><i>· Time limit of 24 hours maximum in case of non-respect of the rules relative to the access to the territory (ex. no identity document, false or falsified passport,...).</i></li> <li><i>· Time limit of 6 hours maximum for the one who makes a scene in a public place or is a danger for others or himself/herself because he or she is obviously under the influence of drugs or similar products.</i></li> </ul>

## 10 Vulnerable suspects

	<b>LETTERS OF RIGHTS</b>
<b>Austria</b>	<i>If you have not attained the age of 21 yet and are not represented by a counsel, you may request that a person of trust be present during your interrogation.</i>
	<i>If you have not reached the age of 18 yet and are not immediately released again, your detention must be notified to a person having parental custody or a cohabiting relative, to the youth welfare office and, where applicable, to the probation officer assigned to you.</i>
<b>England &amp;</b>	<i>If you are under 17, or you have learning problems or a mental problem then you</i>

<b>Wales</b>	<p>should have someone with you when the police do certain things. This person is called your “appropriate adult”.</p> <p>Your appropriate adult must be with you when the police tell you about your rights and tell you why you are being kept at the police station. He or she must also be with you when the police read the police caution to you. He or she must also be with you if you are interviewed.</p> <p>The police might also need to do one of the things listed below while you are at the police station. Your appropriate adult should be with you for the whole time if the police do any of these things:</p> <ul style="list-style-type: none"> <li>• Interview you or ask you to sign a written statement or police notes.</li> <li>• Review your case.</li> <li>• Remove more than your outer clothes.</li> <li>• Carry out anything about an identification parade.</li> <li>• Charge you with an offence.</li> </ul>
<b>Netherlands</b>	<p>A lawyer or person of trust may be present during the questioning. It is not permitted for both to be present. An explanation of what a lawyer and a person of trust may do for you will be given further below in this leaflet.</p>
	<p><b>Your situation before the questioning</b></p> <ul style="list-style-type: none"> <li>• Do the police suspect you of a very serious offence? In that case, there will always be a lawyer present. This lawyer will talk to you before the police start the questioning. This will not cost you anything.</li> <li>• Are you aged between 12 and 15 years old and do the police suspect you of a serious offence? In that case, there will always be a lawyer present. This will not cost you anything.</li> <li>• Are you 16 or 17 years of age and do the police suspect you of a serious offence? In that case, you may choose whether you want to talk to a lawyer or not.</li> <li>• Do the police suspect you of an other type of punishable offence? In that case, you may choose whether you want to talk to a lawyer or not. If you want a lawyer, the police will arrange a lawyer for you. You will have to pay for this lawyer yourself, though.</li> </ul>
	<p><b>Your situation during the questioning</b></p> <p>You may choose whether you want to have a lawyer or a person of trust attend the questioning. You are not allowed to have both.</p>

## 11 Conditions of detention

	LETTERS OF RIGHTS
<b>England &amp; Wales</b>	<p>If possible you should be kept in a cell on your own. It should be clean, warm and lit. Your bedding should be clean and in good order. You must be allowed to use a toilet and have a wash.</p>
	<p>If your own clothes are taken from you, then the police must provide you with an alternative form of clothing.</p>
	<p>You must be offered 3 meals a day with drinks. You can also have drinks between meals.</p>
	<p>If possible you should be allowed outside each day for fresh air.</p>
	<p>You should have a break at normal meal times and a break for a drink after about two hours.</p>

	<i>You should be allowed at least 8 hours rest in any 24 hours you are in custody.</i>
<b>Sweden</b>	<i>You have the right to receive food and rest as needed</i>
	<b>WRITTEN INFORMATION</b>
<b>Belgium</b>	<i>The person deprived of his freedom: food as meal times, adequate water and access to toilet facilities</i>

## 12 Participate in proceedings

	<b>LETTERS OF RIGHTS</b>
<b>Czech Republic</b>	<i>According to the Section 165 Paragraph 1 of the Code of Criminal Procedure, you may with the consent of the police authority participate in the investigative acts and pose questions to the witnesses being questioned.</i>
<b>Germany</b>	<i>You can apply for individual items of evidence to be taken in your defence.</i>
<b>Latvia</b>	<i>A detained person has the right to submit requests regarding the emergency performance of investigative actions as a result of which evidence may be acquired for confirming the invalidity of suspicions.</i>
	<i>to submit applications regarding the performance of investigative actions and participation in such operations</i>
	<i>to participate in investigative actions that are performed on the basis of an application of such person or the counsel thereof, if such participation does not hinder the performance of investigative actions or does not infringe upon the rights of another person</i>
	<i>(...) and to request the raising of additional questions regarding which the expert must give a conclusion, except for cases where an expert-examination has been determined during another investigative action</i>
	<i>to appeal procedural decision in accordance with the cases, term, and procedures specified in the Law</i>
<b>Poland</b>	<i>The suspect shall have a right to: put a motion to commence the acts of the inquiry or investigation, participate at the evidence collection (CPC art. 315 § 1 and 2 as well as art. 317 § 1 and 2 and art. 325a § 2).</i>
	<i>The suspect shall have a right to: (...) participate at the evidence collection (CPC art. 315 § 1 and 2 as well as art. 317 § 1 and 2 and art. 325a § 2). The suspect who is present at the evidence collection has the right to provide explanations concerning each evidence (CPC art. 175 § 2);</i>
	<b>WRITTEN INFORMATION</b>
<b>Estonia</b>	<i>A suspect has the right to: participate in the hearing of an application for an arrest warrant in court</i>
	<i>A suspect has the right to: submit requests and complaints</i>
	<i>A suspect has the right to: submit evidence</i>
<b>Hungary</b>	<i>I inform you that pursuant to Article 196 of CPA you have the right to lay a complaint for being suspected.</i>
	<i>You are entitled to the time necessary and the opportunity to prepare for the defence, you are entitled to present the facts to your defence in any phase of the procedure, to make proposals and remarks, to seek legal remedy, to request information from the court, the prosecutor or the investigating authority in connection with your rights and obligations during the criminal procedure.</i>
	<i>Pursuant to Article 43 (2) of CPA during the criminal procedure you are entitled</i>

	<i>(...) to be present at the hearing of the experts, at the visit to the scene, at the attempt to take evidence, at the presentation for recognition (...)</i>
<b>Italy</b>	<i>The person under investigation is entitled to appoint technical experts, no more than two;</i>
	<i>The suspect (...)May appoint his/her own expert witnesses;</i>
	<i>The person under investigation is entitled to present written submissions and requests to the prosecutor and the court having jurisdiction</i>
	<i>The suspect (...)Has the right to submit statements or written requests;</i>
	<i>The suspect may, within twenty days after this notice has been served, submit pleadings, produce documents, file documents relating to the investigation of the defence, ask the prosecutor to carry out acts of investigation, make statements or ask to be subjected to interrogation;</i>
	<i>The suspect (...)Has the right to be represented or assisted by a person of trust during the searches;</i>
	<i>The person under investigation is entitled to appear before the prosecutor to make statements;</i>
<b>Netherlands</b>	<i>If there is no principal punishment other than a pecuniary penalty for the offence you have been charged with you may still ask the public prosecutor to make a settlement proposal.</i>
	<i>If you wish the public prosecutor to summon witnesses and/or experts or call them in writing, you will have to request this at least three days before the court session.</i>
	<i>You yourself have the right to have witnesses and experts summoned, called in writing or to bring them to court with you.</i>
	<i>Within eight days of the service of this notice of summons and accusation, but before the start of the trial, you may file a notice of objection against this notice of summons and accusation.</i>
<b>Portugal</b>	<i>To attend those acts in the proceedings directly concerning him</i>
	<i>To be heard by the court or the investigative judge whenever they must take a decision affecting him personally</i>
	<i>To intervene in the inquiry, giving evidence and requesting the investigations he deems as necessary</i>
	<i>To appeal from unfavourable decisions taken against him, as provided by law.</i>
	<i>Criminal proceedings shall ensure all necessary safeguards for the defence, including the right to appeal.</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To attend any stage of the proceedings that concerns him directly</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To be heard before the court or investigating magistrate where they must make a decision affecting the defendant personally</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To intervene in the inquiries conducted by the prosecutor and the investigating magistrate, by giving evidence and requesting any action deemed necessary;</i>

	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To appeal from unfavourable decisions, as provided for by the law.</i>
<b>Slovak Republic</b>	<i>In accordance with § 34 Section 1 of the Criminal Procedure Code, you have the right to right to comment on all facts attributed to you, and on the evidence thereto as of the beginning of the proceedings.</i>
	<i>You may mention facts, propose, submit and provide evidence in your favor, file motions and submit an applications and legal remedies.</i>
	<i>During court proceedings, you are entitled to question persons who have been summoned as witnesses on your proposal or who, with your consent, were proposed by your defense counsel, and to question them. You may exercise your rights on your own or by way of your defense attorney.</i>

### 13 Other rights

	<b>LETTERS OF RIGHTS</b>
<b>Czech Republic</b>	<i>According to the Section 157a Paragraph 1 of the Code of Criminal Procedure, you have the right at any time during the pre-trial stage to ask the public prosecutor to eliminate the delays in the proceedings or deficiencies in the procedure of the police authority.</i>
	<i>According to the Section 307 Paragraph 1 of the Code of Criminal Procedure, during proceedings conducted for delict, which is a crime committed with a negligence, or an intentional crime for which the law sets the term of imprisonment the upper limit of which does not exceed five years, the court with the consent of the charged person and the public prosecutor in pre-trial proceedings may conditionally terminate the criminal prosecution, if the charged person has pleaded guilty to the crime, has compensated the damage, if caused by the crime or the charged person and the injured person have concluded an agreement on the compensation of the damage, or the charged person has taken any other measures necessary to compensate the damage, and such decision may be considered sufficient with regard to the charged person, taking into consideration his/her life up to now and the circumstances of the case.</i>
<b>England &amp; Wales</b>	<i>Tell the police if you want to look at their rule-book called the Codes of Practice.</i>
	<i>As well as talking to a solicitor and having a person told about your arrest you will usually be allowed to make one phone call. Ask the police if you would like to make a phone call. You can also ask for a pen and paper. You may be able to have visitors but the custody officer can refuse to allow that.</i>
<b>Latvia</b>	<i>to familiarise him or herself with a Criminal Proceedings Register not later than within a term of three days after the submission of an application</i>
	<i>to submit an application regarding the termination of criminal proceedings, if the term for the completion of pre-trial proceedings specified in the Law is violated</i>
	<i>to submit complaints, in accordance with the procedures specified by Law, regarding the actions of officials authorised for the performance of criminal proceedings</i>
	<i>to settle with the victim</i>
<b>Poland</b>	<i>The suspect shall have a right to: put an application for the case to be submitted for</i>

	<i>conciliatory proceedings by trustworthy person or institution, or agree for such, subject to injured party's approval (CPC art. 23a § 1)</i>
	<b>WRITTEN INFORMATION</b>
<b>Belgium</b>	<i>The person deprived of his freedom: has the right to RESPECT</i>
<b>Estonia</b>	<i>A suspect has the right to: give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings.</i>
<b>Hungary</b>	<i>You are entitled to the time necessary and the opportunity to prepare for the defence, you are entitled to present the facts to your defence in any phase of the procedure, to make proposals and remarks, to seek legal remedy, to request information from the court, the prosecutor or the investigating authority in connection with your rights and obligations during the criminal procedure.</i>
<b>Italy</b>	<i>he/she request the conclusion of the proceedings, where the conditions for this request are fulfilled, with the abbreviated proceedings or with the plea agreement;</i>
<b>Portugal</b>	<i>To be informed of his rights by the judicial or prosecuting authority or by the criminal police body before which he is compelled to appear</i>
	<i>Every defendant shall be presumed innocent until his sentence is res judicata, and shall be brought to trial as early as is compatible with the safeguards of defence.</i>
	<i>The defendant is at any stage of the proceedings and with the exceptions provided for by the law specifically entitled to the following rights: To be informed by the judicial authority or criminal police body before whom he is compelled to appear of the rights he is entitled to;</i>
	<i>In exercising the rights referred to in the above paragraphs, the detainee shall be allowed to use a telephone of the services responsible for his arrest, in case there is no public telephone.</i>
<b>Slovak Republic</b>	<i>As the accused, you are instructed in accordance with § 121 Section 2 of the Criminal Procedure Code of the possibility and conditions of a conditional stay of criminal prosecution, making a damage settlement agreement and stay of criminal prosecution, plea bargaining procedure of regarding guilt and punishment, as well as the conditions of imposing the punishment of forfeiture of property, if charges of committing one of the crimes stated under § 58 Section 2 are pressed.</i>

## **Annex 6**

# **Proposal of the European Commission for a Directive on the right to information in criminal proceedings 20 July 2010**

On 20 July 2010 the Commission presented a proposal for a Directive on the right to information in criminal proceedings that is included in this Annex. Annex 1 to the Directive contains an indicative model Letter of Rights for suspected and accused persons on arrest that is based on the model that has been developed within this research.

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EUROPEAN COMMISSION

Brussels,  
COM(2010) 392/3

2010/xxxx (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the right to information in criminal proceedings**

{SEC(2010) 907}

{SEC(2010) 908}

## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION

1. This proposal for a Directive of the European Parliament and the Council aims to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union. The proposal is the second step in a series of measures in the Procedural Rights Roadmap, adopted in Council on 30 November 2009 inviting the Commission to put forward proposals on a "step by step" basis. This approach is now seen as a good way to build confidence and contribute to promoting and further enhancing mutual trust. This proposal should therefore be considered as part of a comprehensive package of legislation to be presented over the next few years which will provide a minimum set of procedural rights in criminal proceedings in the European Union.
2. The proposal seeks to improve the rights of suspects. Having common minimum standards in relation to these rights should facilitate the application of the principle of mutual recognition, thereby improving the functioning of judicial cooperation between Member States of the EU.
3. The first step, on the right to interpretation and translation, is a Directive adopted on [insert date].
4. As regards the legal basis, the proposal is based on Article 82(2) of the Treaty on the Functioning of the European Union (TFEU). That Article provides that, "[t]o the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

*They shall concern:*

*(a) mutual admissibility of evidence between Member States;*

*(b) the rights of individuals in criminal procedure;*

*(c) the rights of victims of crime;*

*(d)[...]."*

For mutual recognition to function well it is necessary to have mutual trust. A certain degree of compatibility is necessary to improve mutual trust and hence, cooperation.

5. Article 47 of the Charter of Fundamental Rights of the European Union (the Charter) provides for the right to a fair trial; Article 48 guarantees the rights of the defence and has the same meaning and scope as the rights guaranteed by Article 6(3) of the

ECHR<sup>1</sup>. As regards the European Convention on Human Rights and Fundamental Freedoms (ECHR), the right to information about rights can be inferred from the case-law of the European Court of Human Rights (ECtHR) on Article 6 ECHR, which has stated that authorities should take a proactive approach to ensuring that persons facing a criminal charge are informed of their rights. The right to information about the charge, which stems from Article 6(3)(a) ECHR, is fundamental for a person facing a criminal charge who must know the charges against him so that he is in a position to prepare his defence. Articles 9(2) and 14(3) of the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> contain very similar provisions.

6. In order to inform the proposal, the Commission carried out an Impact Assessment. The report on the Impact Assessment is available at <http://ec.europa.eu/governance...>

## 2. BACKGROUND

7. Article 6(3) of the Treaty on European Union (TEU) provides that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. Article 6(1) TEU provides that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the TFEU and TEU. The Charter applies to EU institutions and Member States when they are implementing Union law, such as in the field of judicial cooperation in criminal matters in the European Union.
8. The Presidency Conclusions of the Tampere European Council<sup>3</sup> stated that mutual recognition should become the cornerstone of judicial cooperation, but make the point that mutual recognition "...and the necessary approximation of legislation would facilitate [...] the judicial protection of individual rights"<sup>4</sup>.
9. The Commission Communication to the Council and the European Parliament of 26 July 2000 on Mutual Recognition of Final Decisions in Criminal Matters<sup>5</sup> stated that "it must [...] be ensured that the treatment of suspects and the rights of the defence would not only not suffer from the implementation of the principle [of mutual recognition] but that the safeguards would even be improved through the process".
10. This was endorsed in the Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters<sup>6</sup>, adopted by the Council and the Commission. It pointed out that "mutual recognition is very much dependent on a number of parameters which determine its effectiveness".

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<sup>1</sup> Explanation on Article 48, Explanations relating to the Charter of Fundamental Rights.

<sup>2</sup> 999 U.N.T.S. 171. The ICCPR is an international convention on civil and political rights opened for signature by resolution of the United Nations General Assembly on 16 December 1966 which has been ratified by, and is thus binding in international law on, all EU Member States.

<sup>3</sup> 15 and 16 October 1999.

<sup>4</sup> Conclusion 33.

<sup>5</sup> COM(2000) 495, 29.7.2000.

<sup>6</sup> OJ C 12, 15.1.2001, p. 10.

11. These parameters include mechanisms for safeguarding the rights of suspects (parameter 3) and the definition of common minimum standards necessary to facilitate the application of the principle of mutual recognition (parameter 4). This proposal for a Directive is an embodiment of the stated aim of enhancing the protection of individual rights.
12. In 2004, the Commission put forward a comprehensive proposal<sup>7</sup> for legislation covering the most important rights of defendants in criminal proceedings. This proposal was not adopted by Council.
13. On 30 November 2009, the Justice Council adopted a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings<sup>8</sup> calling for the adoption of five measures covering the most basic procedural rights, based on a "step-by-step" approach and inviting the Commission to present the necessary proposals to this end. The Council recognised that to date, not enough had been done at the European level to safeguard fundamental rights of individuals in criminal proceedings. The full benefit of EU legislation in this area will only be felt once all measures have been transposed into legislation. The second measure in the Roadmap, concerns the right to information.
14. The Stockholm Programme, adopted by the European Council of 10-11 December 2009<sup>9</sup>, reaffirmed the importance of the rights of the individual in criminal proceedings as a fundamental value of the Union and an essential component of mutual trust between Member States and of public confidence in the EU. Protecting individuals' fundamental rights will also remove obstacles to free movement. The Stockholm Programme refers to the Roadmap as being an integral part of the multiannual programme and calls on the Commission to present appropriate proposals for its swift implementation.

### **3. THE RIGHT TO INFORMATION AS ESTABLISHED UNDER THE CHARTER AND THE ECHR**

15. Article 6 of the Charter - Right to liberty and security – stipulates that:

*"Everyone has the right to liberty and security of person."*

*Article 47 of the Charter - Right to an effective remedy and to a fair trial – provides that:*

*"(...) Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

*(...)."*

Article 48 of the Charter - Presumption of innocence and right of defence – stipulates that:

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<sup>7</sup> COM(2004) 328, 28.4.2004.

<sup>8</sup> OJ C295, 4.12.2009, p. 1.

<sup>9</sup> European Council Conclusions, 10-11 December 2009.

"2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed."

Within its scope of application, the Charter guarantees and reflects the corresponding rights enshrined in the ECHR.

Article 5 ECHR – Right to liberty and security - stipulates that:

"(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

(...)"

And Article 6 – Right to a fair trial – stipulates that:

"(3) Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

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

[...]"

16. A number of recent studies<sup>10</sup> show that the way suspects are informed of their rights varies widely and that in the majority of cases information on rights is only provided orally, which decreases its effectiveness and makes it more difficult to monitor. The right to information is not explicitly mentioned in the ECHR. However, there is case-law that requires judicial authorities to take positive measures in order to ensure effective compliance with Article 6 ECHR such as the decisions in *Padalov*<sup>11</sup> and *Talat Tunc*<sup>12</sup> in which the ECtHR stated that authorities should adopt an active stance in informing the suspect about the right to free legal aid. In the case of *Panovits*,<sup>13</sup> the ECtHR stated that authorities have a positive obligation to provide the suspect with information on the right to legal assistance and free legal aid if the conditions for it are fulfilled. It is not sufficient that this information is given in writing, for instance by a Letter of Rights, as was done by the authorities in the *Panovits* case. The ECtHR stresses that authorities have to take all reasonable steps to ensure that a suspect is fully aware of his rights.
17. Article 5(2) and Article 6(3)(a) ECHR impose an obligation on the judicial authorities to inform a suspect of the nature and cause of the accusation so as to enable the suspect to understand the charges, to allow him to prepare his defence<sup>14</sup> and to challenge the lawfulness of his detention<sup>15</sup>. Even though both articles are specific in the information they require, they are limited to factual information about

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<sup>10</sup> T Spronken, G Vermeulen et al, *EU Procedural Rights in Criminal Proceedings*, Antwerp 2009; E Cape, Z Namoradze et al, *Effective Criminal Defence in Europe*, Antwerp 2010.

<sup>11</sup> *Padalov v Bulgaria*, judgment of 10 August 2006, application n° 54784/00.

<sup>12</sup> *Talat Tunc v. Turkey*, judgment of 27 March 2007, application n° 32432/96.

<sup>13</sup> *Panovits v. Cyprus*, judgment of 11 December 2008, application n° 4268/04 §s 72-73.

<sup>14</sup> *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 60.

<sup>15</sup> *Fox, Campbell and Hartley*, judgment of 30 August 1990, application n° A 182, § 40.

the reasons for the arrest and the nature and cause of the accusation and the respective legal basis. The amount of information to be communicated to the accused depends on the nature and complexity of the case since Article 6(3)(b) provides that the person must be provided with "*adequate time and facilities*" to prepare his defence and this will vary according to the case<sup>16</sup>. It follows that the authorities can be required to take additional steps in order to ensure that the suspect effectively understood the information<sup>17</sup>. The ECtHR case-law shows that most problems of compliance arise with regard to the positive measures that should ensure a fair trial. It is not sufficient to make the information available, in the sense that the suspect could have asked for it. The duty to inform the suspect about the nature and cause of the accusation rests on the prosecuting authority and cannot be complied with passively by making information available without bringing it to the attention of the defence<sup>18</sup>. The ECHR does not give any indication as to how the information should be given. Even though the Court decided in *Kamasinski*<sup>19</sup> that a suspect should in principle be provided with a written translation of the indictment if he does not understand the language, the Court accepted that oral explanations were sufficient in order to comply with Article 6 (3)(a).

18. In line with the mandate set out in the Procedural Rights Roadmap, this Directive lays down minimum requirements at EU level for the information of suspected and accused persons about their procedural rights and the case against them. It thus promotes the application of the Charter of Fundamental Rights, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the ECtHR.

#### **4. SPECIFIC PROVISIONS**

##### **Article 1 - Objective**

19. This Article sets out the objective of the Directive as laying down rules concerning the rights of suspected and accused persons to information about their rights and information about the charge in criminal proceedings against them.

##### **Article 2 – Scope**

20. The Directive applies from the time that a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings (including any appeal). It does not, however, apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.

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<sup>16</sup> *Pélissier and Sassi v. France*, judgment of 25 March 1999, application n°. 25444/94, § 54; *Mattoccia v. Italy*, judgment of 25 July 2000, application n°. 23969/94, § 60 and 71.

<sup>17</sup> *Brozicek v. Italy*, judgment of 19 December 1989, application n° 10964/84, §41; *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 65; *Vaudelle v. France*, judgment of 30 January 2000, application n° 35683/97, §59.

<sup>18</sup> *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 65.

<sup>19</sup> *Kamasinski v. Austria*, judgment of 19 December 1989, application n° 9783/82, § 79.

21. European Arrest Warrant<sup>20</sup> proceedings are explicitly covered. In this respect, the Directive makes applicable the procedural guarantees contained in Articles 47 and 48 of the Charter and Articles 5 and 6 ECHR to surrender proceedings based on a European Arrest Warrant.

### **Article 3 – The right to information about rights**

22. This Article lays down the general principle that all suspected and accused persons in criminal proceedings should be informed about relevant procedural rights at the earliest possible moment in the proceedings. Such information should be given in simple and accessible language, orally or in writing.
23. Paragraph 2 of this Article sets out those minimum rights and Member States' obligations arising from the Charter, the ECHR, the ICCPR and applicable EU legislation, which are considered key to safeguarding the fairness of criminal proceedings at their outset.

### **Article 4 – The right to written information about rights on arrest**

24. This Article specifies Member States' general duty to inform suspected or accused persons about their procedural rights in cases where such persons are deprived of their liberty by Member States' competent authorities in the course of the criminal proceedings on suspicion of having committed a criminal offence (e.g. through arrest by the police and being placed in pre-trial detention on the order of a judge). Member States are required to inform these persons of their relevant rights *in writing*. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has repeatedly stressed in its reports that, in its experience, the period immediately following deprivation of liberty is when the arrested person is considered to be most vulnerable in relation to risks of intimidation and physical ill-treatment. According to the CPT it is essential that a suspected or accused person is informed of his rights promptly, i.e. without delay after his arrest and in the most effective way which is by means of a form explaining the rights in a straightforward manner<sup>21</sup> (Letter of Rights). In the light of recent ECtHR jurisprudence<sup>22</sup>, Member States' competent authorities are required to ensure that the arrested person has a broad understanding of the information contained in the Letter of Rights. The arrested person must be allowed to keep the Letter of Rights throughout the time of his detention.
25. The Letter of Rights should be drafted in language which is easily understood by a lay person without any knowledge of criminal procedure and should contain the information referred to in Article 3(2). To help Member States design such a Letter of Rights and to promote consistency in the written information throughout the European Union, Annex I to the Directive contains a model of the Letter of Rights which Member States may use. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the

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<sup>20</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA).

<sup>21</sup> CPT, *The CPT standards – "Substantive" sections of the CPT's General Reports*, CPT/Inf/E (2002) 1 – Rev. 2009, pp11, 12.

<sup>22</sup> *Panovits v. Cyprus*, judgment of 11 December 2008, application n° 4268/04, § 67.

European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The content of the model does not prejudice rights that currently apply in Member States.

26. The Letter of Rights has to be provided to the suspected or accused person in a language he understands. Police authorities are expected to keep language versions for all commonly spoken languages in their locality available in electronic form that can be printed as the need arises. When a given language version is not available, the suspected or accused person should be informed of their rights orally in a language they understand and the Letter of Rights should be given to them without undue delay (i.e. as soon as it becomes available after translation into the relevant language). For persons who are partially sighted or blind, or who cannot read, Member States must have a method of transmitting the information.

#### **Article 5 – The right to written information about rights in European Arrest Warrant proceedings**

27. Different rights apply to persons subject to a European Arrest Warrant (e.g. the right to a hearing). Member States should ensure that a specific version of the Letter of Rights exists for persons subject to those proceedings. Annex II to this Directive contains a model of the Letter of Rights which Member States may use. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The content of the model does not prejudice rights that currently apply in Member States.

#### **Article 6 – The right to information about the charge**

28. Once a person has been charged with a criminal offence, he should be given sufficient information promptly, in detail and in a language he understands, to enable him to prepare his defence, and to challenge pre-trial decisions if necessary. This is a requirement under the Charter and the ECHR. This Article sets out exactly what information must be given as a minimum requirement.

#### **Article 7 - The right to access to the case-file**

29. The most effective way to provide a suspected or accused person with detailed information about the charge in order to allow him adequately to prepare his defence at trial is to give him or his lawyer access to the case-file. Recent research<sup>23</sup> shows that in the large majority of Member States access to the case-file is already granted at some point in the criminal proceedings. The ECtHR has consistently ruled that, depending on the stage of criminal proceedings, Articles 5(4) and 6(3)(b) ECHR and the principle of equality of arms between the prosecution and the defence require Member States to disclose to the defence all material evidence for or against the

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<sup>23</sup> T Spronken, G Vermeulen et al, *EU Procedural Rights in Criminal Proceedings*, Antwerp 2009; E Cape, Z Namoradze et al, *Effective Criminal Defence in Europe*, Antwerp 2010.

accused<sup>24</sup> and to provide the accused person's lawyer with access to relevant documents contained in the case-file<sup>25</sup>.

30. Paragraph 1 provides that where a suspected or accused person is arrested in the course of criminal proceedings, access to those documents contained in the case-file which are relevant to the determination of the lawfulness of the detention by the competent judicial authority should be granted. This limited access to the case-file ensures the fairness of pre-trial proceedings concerning the lawfulness of arrest and detention. In considering what documents and information access is being granted to, Member States should pay particular attention to the protection of the effectiveness of Leniency Programmes that are used in investigations under criminal law into cartel behaviour.
31. Paragraph 2 requires Member States to grant access to the case-file to *all* accused persons whether or not they are in custody, where the criminal investigation is concluded. Access to certain documents in the case-file may be excluded by a competent judicial authority where access to those documents may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings are taking place. Such limitation of access to the file is only to be used in exceptional circumstances.
32. Access to the case-file should not be limited to a one-off inspection. If the accused person or his lawyer deems it necessary, further access should be granted. If a file is particularly voluminous or where the interests of justice so require it, the accused person should be provided with an index of the documents contained in the case-file to enable him to decide to which documents he wishes to be given access.

#### **Article 8 - Verification and remedies**

33. In order to ensure that a suspected or accused person receives all the information to which he is entitled, Member States should establish a procedure to ascertain whether the person has received the information. This can for example be a form for the person to sign confirming that he has received the information or a note in the custody record.

#### **Article 9 - Training**

34. The purpose of this Article is to ensure that Member States' police officers, prosecutors and judges receive the necessary training to discharge adequately their duties arising from Articles 3 to 8 of the Directive. In particular, it is imperative that these officials have the requisite detailed knowledge of the procedural rights of suspected and accused persons in order to provide relevant and practically effective information on these rights.

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<sup>24</sup> *Edwards v. United Kingdom*, judgment of 16 December 1992, application n° 13071/87, § 36.

<sup>25</sup> *Garcia Alva v. Germany*, judgment of 13 February 2001, application n° 23541/94, § 47-55; *Schöps v. Germany*, judgment of 13 February 2001, application n° 251164/94, § 41-42; *Mooren v. Germany*, judgment of 9 July 2009, application n° 11364/03, § 121-124.

## **Article 10 - Non-regression clause**

35. The purpose of this Article is to ensure that setting common minimum standards in accordance with this Directive does not have the effect of lowering standards in certain Member States and that the standards set in the ECHR are maintained. Member States remain entirely free to set standards higher than those agreed in this Directive.

## **Article 11 – Implementation**

36. This Article requires that Member States must implement the Directive by x /xx/ 20xx and, by the same date, send the text of the provisions transposing it into national law to the Commission.

## **Article 12 – Report**

37. 36 months after publication of the Directive in the *Official Journal of the European Union*, the Commission must submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

## **Article 13 - Entry into force**

38. This Article provides that the Directive will enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

## **Annex I**

39. This Annex contains an indicative model of the Letter of Rights to be provided to a suspected or accused person on arrest pursuant to Article 4(1). The model Letter of Rights sets out an explanation in simple language of the immediately relevant minimum rights as listed in Article 3(2) of the Directive. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented Article 4 of the Directive. The model may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The content of this model does not prejudice rights that currently apply in Member States.

## **Annex II**

40. This Annex contains an indicative model of the Letter of Rights to be provided to a person arrested on the basis of a European Arrest Warrant as required by Article 5. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented Article 5 of the Directive. The model may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have been brought into effect. The content of this model does not prejudice rights that currently apply in Member States.

## **5. SUBSIDIARITY PRINCIPLE**

41. The objective of the proposal cannot be sufficiently achieved by Member States alone, since there is still significant variance in the precise way and timing of the provision of information which leads to divergence of standards across the EU. As the aim of the proposal is to promote mutual trust only action taken by the EU will allow setting consistent common minimum standards that apply throughout the whole of the European Union. The proposal will approximate Member States' substantive procedural rules in respect of the transmission of information about rights and about the charge to persons suspected or accused of having committed a criminal offence in order to build mutual trust. The proposal therefore complies with the subsidiarity principle. The Commission proposes a solution which differs slightly from the preferred option described in the Impact Assessment, but has comparable impacts. The cost of EU-mandated action is as estimated for the initially preferred option, because Member States will only incur extra costs if they choose to exercise their discretion rather than use the indicative model proposed within a Letter of Rights.

## **6. PROPORTIONALITY PRINCIPLE**

42. The proposal complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.

Proposal for a

**DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on the right to information in criminal proceedings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) enshrine the right to a fair trial. Article 48 of the Charter guarantees respect for the rights of the defence.
- (2) Article 6 of the Charter and Article 5 of the ECHR enshrine the rights to liberty and security, the limitations to which may not exceed those permitted by the ECHR in the wording of its Article 5 and inferred from the case-law of the European Court of Human Rights.
- (3) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union, since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (4) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters<sup>3</sup>. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States" and "to enhance the protection of individual rights".
- (5) Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
- (6) Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of one's partners' rules, but also trust that those rules are correctly applied.
- (7) Although Member States are parties to the ECHR and the ICCPR, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees stemming from the Charter, the ECHR and the ICCPR. In the implementation of this Directive, Member States should not in any event fall below the standards set out in the Convention and the Charter as developed by the case-law of the Court of Justice of the European Union and the European Court of Human Rights.
- (9) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.
- (10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust and to the promotion of a fundamental rights culture in the European Union. They should also remove obstacles to free movement of citizens. Such common minimum rules should apply to information in criminal proceedings.
- (11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings ("the Roadmap")<sup>4</sup>. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation, the right to information on rights and information about the charges, the right to legal advice and legal aid, the

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<sup>3</sup> OJ C 12, 15.1.2001, p. 10.

<sup>4</sup> OJ C 295, 4.12.2009, p. 1.

right to communication with relatives, employers and consular authorities, and regarding special safeguards for suspected or accused persons who are vulnerable. The Roadmap emphasises that the order of the rights is indicative only and thus implies that it may be changed according to priorities. It is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.

- (12) In the Stockholm Programme, adopted on 11 December 2009<sup>5</sup>, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further aspects of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.
- (13) The first measure on the Roadmap is a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings<sup>6</sup>.
- (14) This Directive relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the charge to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. The Directive promotes the application of the Charter, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In its Communication "Delivering an area of freedom, security and justice for Europe's citizens", the Action Plan Implementing the Stockholm Programme<sup>7</sup>, the Commission announced the presentation of a proposal on the right to information in 2010.
- (15) This Directive does not apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.
- (16) The right to information about rights (which is inferred from the case-law of the European Court of Human Rights) should be explicitly established by the Directive. This Directive thus offers protection beyond that currently provided by the ECHR. Information about the charge is a right enshrined in Articles 5 and 6 of the ECHR as interpreted by the European Court of Human Rights and Articles 9 and 14 of the ICCPR. The provisions of this Directive should facilitate the application of those rights in practice, with a view to safeguarding the right to fair proceedings.
- (17) The suspected or accused person should be able to know and understand what his rights are and be in a position to avail himself of those rights before any police questioning. He should be informed promptly and in a language he understands of the nature and cause of any accusation he faces and given information about immediately relevant rights.

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<sup>5</sup> OJ C 115, 4.5.2010.

<sup>6</sup> Directive [2010/xxx/EU](#) of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings ([add date](#)).

<sup>7</sup> COM(2010) 171, 20.4.2010.

- (18) Information about rights should be given to all suspected and accused persons promptly at the outset of criminal proceedings, be it orally or in writing. Information about rights to be given under this Directive should as a minimum requirement under this Directive include information on the right of access to a lawyer, the right to be informed of the charge and, where appropriate, to be given access to the case-file, the right to interpretation and translation for those who do not understand the language of the proceedings and the right to be brought promptly before a court if the suspected or accused person is arrested. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, the ICCPR and applicable EU legislation as interpreted by the relevant courts and tribunals.
- (19) Where a suspected or accused person is arrested, information about these immediately relevant procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to ensure that he has an actual understanding of his rights. To help Member States design such a Letter of Rights and to promote greater consistency between Member States, a model of the Letter of Rights, which Member States may use, is provided in Annex I to the Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The actual letter based on this model should also include other relevant procedural rights that apply in Member States.
- (20) A person accused of having committed a criminal offence should be given all the information on the charge necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings.
- (21) The most effective way of ensuring that a suspected or accused person has sufficient information about the charge is to allow him or his lawyer access to the case-file. This access may be restricted where it poses a serious risk to the life of another person or the internal security of the Member State.
- (22) Member States should have a mechanism to verify that the suspected or accused persons have received all the information about rights and about the charge to which they are entitled.
- (23) Adequate training on procedural rights of suspected and accused persons should be provided to the relevant officials in Member States.
- (24) In accordance with the United Nations Convention on the Rights of the Child, a child means every person below the age of 18 years. In all action relating to children, the child's best interests must be a primary consideration.
- (25) The rights provided for in this Directive should also apply, *mutatis mutandis*, to proceedings for the execution of a European Arrest Warrant according to the Council Framework 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States<sup>8</sup>. To help Member States design such a Letter of Rights and to promote greater coherence between Member States a model form of the Letter of Rights, which Member States may use, is provided in Annex 1 to

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<sup>8</sup> OJ L 190 of 18.7.2002, p.1.

the Directive. This model form is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force.

- (26) The provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.
- (27) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial, the rights of the defence and the rights of the child. It has to be implemented accordingly.
- (28) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR are implemented consistently with those of the ECHR and as developed by the relevant case-law of the European Court of Human Rights.
- (29) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally, either at national, regional or local level, and can only be achieved at Union level, the European Parliament and the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (30) [In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive] OR [without prejudice of Article 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not participate in the adoption of this Directive and will not be bound by or be subject to its application]<sup>9</sup>
- (31) In accordance with Articles 1 and 2 of Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application,

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<sup>9</sup> The final wording of this recital in the Directive will depend on the actual position of the United Kingdom and Ireland taken in accordance with the provisions of protocol (No 21).

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
**Objective**

The Directive lays down rules concerning the right of suspected and accused persons to information about their rights and about the charge in criminal proceedings against them.

*Article 2*  
**Scope**

1. This Directive applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.
2. This Directive applies to proceedings for the execution of a European Arrest Warrant.

*Article 3*  
**The right to information about rights**

1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided promptly with information on his procedural rights in simple and accessible language.
2. The information referred to in paragraph 1 shall include as a minimum:
  - the right of access to a lawyer, where necessary free of charge,
  - the right to be informed of the charge and, where appropriate, to be given access to the case-file,
  - the right to interpretation and translation,
  - the right to be brought promptly before a court if the suspected or accused person is arrested.

*Article 4*  
**The right to written information about rights on arrest**

1. Where a person is arrested by the competent authorities of a Member State in the course of criminal proceedings, he shall be promptly provided with information about his procedural rights in writing (Letter of Rights). He shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the time he is deprived of his liberty.

2. The Letter of Rights shall be drafted in simple language and shall include at least that information referred to in Article 3(2). Annex I to this Directive contains an indicative model of such a Letter.
3. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the proceedings, he receives the Letter of Rights in a language he understands. Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or cannot read. Where the suspected or accused person is a child, the information contained in the Letter of Rights shall also be provided orally in a manner adapted to the child's age, level of maturity and intellectual and emotional capacities.
4. Where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his rights orally in a language he understands. A Letter of Rights in a language he understands shall then be given to him without undue delay.

#### *Article 5*

#### **The right to written information about rights in European Arrest Warrant proceedings**

Member States shall ensure that any person subject to proceedings for the execution of a European Arrest Warrant receives an appropriate Letter of Rights setting out the rights of that person as laid down in the Framework Decision 2002/584/JHA.. Annex II to this Directive contains an indicative model of such Letter.

#### *Article 6*

#### **The right to information about the charge**

1. Member States shall ensure that a suspected or accused person is provided with sufficient information about the charge to safeguard the fairness of the criminal proceedings.
2. The information required pursuant to paragraph 1 shall be delivered promptly and in detail and in a language that the suspected or accused person understands. In the case of a child, information about the charges shall be provided in a manner adapted to his age, level of maturity and intellectual and emotional capacities.
3. The information to be given shall include:
  - (a) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the suspected or accused person and
  - (b) the nature and legal classification of the offence.

#### *Article 7*

### **The right to access to the case-file**

1. Where a suspected or accused person is arrested at any stage of the criminal proceedings, Member States shall ensure that he or his lawyer is granted access to those documents contained in the case-file which are relevant for the determination of the lawfulness of the arrest or detention.
2. Member States shall ensure that an accused person or his lawyer is granted access to the case-file once the investigation of the criminal offence is concluded. Access to certain documents contained in the case-file may be refused by a competent judicial authority where access to these documents may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings take place. Where it is in the interests of justice, the accused person or his lawyer may request an index of the documents contained in the case-file.
3. Access to the case-file shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions. It shall be provided free of charge.

#### *Article 8*

### **Verification and remedies**

1. Member States shall ensure that a procedure is in place to ascertain whether a suspected or accused person has received all information relevant to him in accordance with Articles 3 to 7.
2. Member States shall ensure that a suspected or accused person has an effective remedy in instances where he does not receive this information.
3. Where the notification of rights is made orally in accordance with Article 4(4), it shall be recorded in such a manner as to allow verification of the content of the notification.

#### *Article 9*

### **Training**

Member States shall ensure that relevant officials in police and judicial authorities receive appropriate training in relation to the obligations laid down in Articles 3 to 8. Member States shall ensure in particular that relevant officials have sufficient knowledge of the rights of suspected and accused persons as referred to in Article 3 in order to safeguard appropriate transmission of information on these rights.

#### *Article 10*

### **Non-regression clause**

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the ECHR, under the ICCPR and under

other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.

*Article 11*  
**Implementation**

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by <sup>10</sup> at the latest.
2. They shall communicate the text of those provisions and a correlation table between those provisions and this Directive to the Commission.
3. When Member States adopt these provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 12*  
**Report**

The Commission shall, by ..... <sup>11</sup> submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

*Article 13*  
**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 14*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>10</sup> 24 months after publication of this Directive in the *Official Journal*.

<sup>11</sup> 36 months after publication of this Directive in the *Official Journal*.

## ANNEX I



### **Indicative<sup>1</sup> model Letter of Rights for suspected and accused persons on arrest:**

**If you are arrested by the police you have the following rights:**

- A. to be informed of what offence you are suspected**
- B. to the assistance of a lawyer**
- C. to an interpreter and translation of documents, if you do not understand the language**
- D. to know for how long you can be detained**

You are entitled to keep this Letter of Rights with you during your detention.

#### **A. Information on the suspicion**

- You have the right to know why you are suspected of having committed a criminal offence immediately after deprivation of liberty, even if the police do not question you.
- You or your lawyer can ask to see the parts of the case-file relating to your arrest and detention or be informed about their content in detail.

#### **B. Help of a lawyer**

- You have the right to speak to a lawyer before the police start questioning you.
- If you ask to speak to a lawyer, it does not make you look like you have done anything wrong.

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<sup>1</sup> To be complemented with other relevant procedural rights applicable in Member States.

- The police must help you to get in touch with a lawyer.
- The lawyer is independent from the police and will not reveal any information you give him without your consent.
- You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.
- If you are not able to pay for a lawyer the police have to provide you with information about free or partially free legal assistance.

### **C. Help of an interpreter**

- If you do not speak or understand the language, an interpreter will be called for you. The interpreter is independent from the police and will not reveal any information you give him without your consent.
- You can also ask for an interpreter to help you to talk to your lawyer.
- The help of an interpreter is free of charge.
- You have the right to receive a translation of any order by a judge allowing your arrest or keeping you in custody. You may also ask to have other essential documents in the investigation translated.

### **D. How long can you be deprived of your liberty?**

- If you are not released, you must be brought before a judge within \*2 hours after you have been deprived of your liberty.
- The judge must then hear you and can decide whether you are to be kept in custody or released. You have the right to receive a translation of the judge's decision if he decides that you will remain in custody.
- You have the right to ask for your release at any time. Your lawyer can advise you on how to proceed.

## ANNEX II



### **Indicative<sup>1</sup> model Letter of Rights for persons arrested on the basis of a European Arrest Warrant:**

**If you are arrested by the police on the basis of a European Arrest Warrant you have the following rights:**

- A. to know why you have been arrested**
- B. to the assistance of a lawyer**
- C. to an interpreter and translation of documents, if you do not understand the language**
- D. to be informed of your right to agree to surrender**
- E. to a hearing if you do not agree to surrender**
- F. to be released once the relevant deadline has passed**

**You are entitled to keep this Letter of Rights with you during your detention.**

#### **A. Right to know what you are arrested for**

– You have a right to know why you are sought by another country.

#### **B. Help of a lawyer**

– You have the right to see a lawyer. The police must help you to get in touch with a lawyer.

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<sup>1</sup> To be complemented with other relevant procedural rights applicable in Member States.

- The lawyer is independent from the police and will not reveal any information you give him without your consent.
- You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.
- If you are not able to pay for a lawyer the police have to provide you with information about free legal assistance.

### **C. Help of an interpreter**

- If you do not speak or understand the language, an interpreter will be called for you. The interpreter is independent from the police and will not reveal any information you give him without your consent.
- You can also ask for an interpreter to help you to talk to your lawyer.
- The help of an interpreter is free of charge.
- You have the right to receive a translation of any order by a judge allowing your arrest or keeping you in custody. You may also ask to have other essential documents in the investigation translated.

### **D. Your right to agree to surrender**

- You have the right to agree to being surrendered under a European Arrest Warrant. This should speed the procedure up.
- If you agree to be surrendered, it may be difficult to change this decision at a later stage. You should speak to a lawyer before deciding whether or not to agree to surrender.

### **E. Your right to a hearing**

- If you do not consent to be sent to the Member State seeking you, you are entitled to go before a judge and to explain why you don't consent.

### **F. Right to be released once the relevant deadline has passed**

- As a general rule you have to be surrendered within 10 days of a court giving a final decision that you should be surrendered. If you have not been surrendered after 10 days, the authorities normally

have to release you. However, there are some exceptions to this rule, so you should speak to a lawyer about this.