

2017

# Accessible Letters of Rights in Europe – Comparative study



Hungarian Helsinki Committee

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Justice Program



**Contributors:**



**Bulgarian Helsinki Committee**

The Bulgarian Helsinki Committee was established on 14 July 1992 as an independent non-governmental organization for the protection of human rights.

The objectives of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularize and make widely available human rights instruments.

**Fair Trials Europe [FTE]**

Fair Trials works for fair trials in Europe according to internationally recognized standards of justice. Our vision is a world where every person's right to a fair trial is respected. Fair Trials helps people to understand and defend their fair trial rights; addresses the root causes of injustice through its legal and policy work; and undertakes targeted training and networking activities to support lawyers and other human rights defenders in their work to protect fair trial rights.

Fair Trials coordinates the Legal Experts Advisory Panel ("LEAP") which is a pan-EU network of criminal justice and human rights experts, currently bringing together over 190 defense practitioners, NGOs and academics from 28 EU Member States. LEAP is guided by its Advisory Board, consisting of 28 Members from 26 Member States. LEAP meets regularly to discuss criminal justice issues, identify common concerns, share examples of best practice and identify priorities for reform of law and practice. Fair Trials and the LEAP have been at the forefront of supporting the development and implementation of EU Directives of the rights on suspects and accused persons.

### **Human Rights Monitoring Institute, Lithuania [HRMI]**

Human Rights Monitoring Institute (HRMI) is a non-governmental, not-for-profit public advocacy organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are real and effective in practice.

The team of HRMI lawyers and public policy experts carries out research, drafts legal and policy briefings, compiles reports to international human rights bodies, undertakes strategic cases before domestic and international courts, provides expert consultations and legal services, engages in various national and international projects, delivers conventional and distance trainings to law enforcement officers and other professionals.

### **Hungarian Helsinki Committee [HHC]**

The HHC is one of the leading non-governmental human rights organizations in Hungary and Central Europe. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defense to victims of human rights abuses by state authorities and informs the public about rights violations.

The HHC's main areas of activities are centered on protecting the rights of asylum-seekers, stateless persons and other foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention, anti-discrimination and the effective enforcement of the right to defense and equality before the law.

The HHC is a member of the European Council on Refugees and Exiles (ECRE) and is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR).

### **Rights International Spain [RIS]**

RIS is a non-governmental and independent organization composed by lawyers specialized in international law.

The organization's mission is the promotion and defense of human rights and civil liberties. RIS identifies violations of civil rights and liberties and work so that the authorities address such violations, in order to secure full enjoyment of human rights for all. Likewise, RIS seeks a better understanding and application of international human rights law.



Hungarian Helsinki Committee

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## 1. Introduction

In 2012, the European Parliament and the Council adopted *Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings* (hereafter: Directive 2012/13/EU), which recognizes the importance of providing suspects and accused persons with information on their rights as well as information on the accusation and access to the materials of the case against them. The rights protected by Directive 2012/13/EU are inferred from and build on pre-existing minimum standards set out by Articles 5 and 6 of the *European Convention Human on Rights* (hereafter: ECHR), the related case law of the European Court of Human Rights (hereafter: ECtHR) and by Articles 6, 47 and 48 of the *Charter of Fundamental Rights of the European Union* (hereafter: Charter).

The right to information is a crucial building block of the right to a fair trial, and without it other rights which exist in law are, in practice, illusory. For example, if a defendant does not know that he/she has a right to remain silent he/she is unlikely to exercise that right. This is particularly true for defendants without prior experience regarding the criminal justice system.

If a defendant does not know that he/she has the right to confidential communication with a lawyer (and to have a lawyer present during the questioning), he/she is less likely to ask for a lawyer, although EU law (*Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty*, hereafter: Directive 2013/48/EU) recognises the importance of the right of access to a lawyer. Where countries provide a right to free legal representation, failure to inform defendants of this possibility could prevent them from requesting free legal advice.

For defendants who do not understand the local language, access to translation and interpretation is crucial, and the right to these is now provided for by *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings* (hereafter: Directive 2010/64/EU). If defendants are not informed of this right, they are unlikely to ask for an interpreter or for the translation of key documents.

Despite a clear right to information existing under the ECHR and the related case law, a major 2010 study, “An EU-wide Letter of Rights: Towards Best Practice” highlighted a high degree of variation across Europe in the level and accessibility of the information provided to defendants about their rights, and showed that inaccessible, technical language was used in many “Letters of Rights” provided to detained defendants. To address this problem, Directive 2012/13/EU specifically requires both information on procedural rights and also Letters of Rights designed for detained defendants to be provided in “simple and accessible language”.

There are however challenges to be considered. Providing a Letter of Rights might not be appropriate in every context; in countries which face significant challenges regarding linguistic diversity or where providing printed copies is not feasible, emphasis shall be put on other safeguards of the criminal procedure.

The present report has been produced in the framework of Project “Accessible letters of rights in Europe” (hereafter: Project) which was launched to contribute to the correct implementation of Directive 2012/13/EU by:

- Increasing available knowledge on the status of implementation of the Directive across Europe;
- Examining what the requirement for “simple and accessible” language for a letter of rights means in practice;
- Identifying examples of good practice which are transferrable to other countries;
- Producing reform proposals and model letters of rights to assist Member States and EU institutions; and
- Raising public and professional awareness locally and at EU level about gaps in transposition.

The project was led by the Hungarian Helsinki Committee and implemented with the contribution of the following NGOS:

- Bulgarian Helsinki Committee;
- Fair Trials Europe;
- Human Rights Monitoring Institute; and
- Rights International Spain.

The project started with an **initial research**. Throughout the first phase FTE and HHC reviewed academic research and case law on the provision of letters of rights to defendants to identify examples of good practice to inform the project and provide an up-to-date assessment of existing human rights standards. FTE also undertook a survey



of the Legal Experts Advisory Panel (or LEAP) members to provide insight into the transposition of the letter of rights obligations in a wide range of EU member states. (The LEAP is an EU-wide network of experts in criminal justice and human rights which works to promote fair and effective judicial cooperation within Europe. There are currently over 200 members, made up of lawyers, NGOs, and academics, covering all 28 EU Member States. Through Fair Trials' coordination, LEAP is able to offer an expert view on a broad range of EU criminal justice topics, while also boosting cooperation between human rights defenders in cross-border work. LEAP's importance has been acknowledged by the EU, which has recognized the network's contribution to EU Justice. LEAP works to inform the EU's work on criminal justice and supports local NGOs in tackling systemic fair trial abuses in their own countries.)

The initial research was followed by an **empirical research on letters of rights in Hungary**. The HHC conducted a sociolinguistic survey to test whether the official Hungarian letter of rights is "simple and accessible" for non-lawyers. The goal of the research was to measure the understanding of the information as currently provided in the Hungarian criminal procedure, detect the weak points, modify the phrasing, and afterwards measure the understanding of the modified version. Working with experts of law and sociology, HHC developed a series of control questions to assess the extent to which people have understood the letter of rights, and performed a survey with 400 persons. In the first wave of the survey the HHC tested the currently applied Letter of Rights (to be fully accurate: the "test Letter of Rights" created from the combination of the text read out before the interrogation and the text that is provided to detained defendants after their interrogation) on 100 persons (whose compound was equivalent to the compound of the defendants according to their gender, age and highest level of education), for whom the researchers read out the Letter of Rights and then they were asked detailed questions about the information the text contained. Also in the first wave there were another 100 people who could read the "test Letter of Rights" on their own, and after reading it they had to answer the questions the researcher asked from them concerning the information the text contained.

Based on the results of this survey, the HHC and the plain language and legal experts involved in the project changed the phrasing of the LoR and completed it with information that is required to be included in it according to Directive 2012/13/EU. In the second wave of the research, the HHC tested the accessibility of the new text with the same methodology as in the first wave (on 2x100 persons, with the same methods and same design) and with the same questionnaire, so the results of the two waves are comparable.

The HHC also produced a report on key lessons from the survey that are applicable in other countries.

The project partners in Spain, Bulgaria, Lithuania and France **undertook desk-research on the legal framework on information on rights in their country**. Also some of them developed an alternative letter of rights with an acknowledged independent legal expert. Each partner (including HHC) also interviewed key stakeholders (police officers, prosecutors and judges) by means of in-depth interviews on:

- What information is being provided in practice;
- Whether they understand and appreciate the obligations of the Directive and the reasons for providing suspects with information on their rights;
- Whether they believe that the existing “letter of rights” is accessible;
- Their views on the comprehensibility and legal accuracy of the alternative letter of rights.

All national partners conducted an **analysis on the practice** on the basis of national legal literature and jurisprudence, recommendations and case law concerning their countries respectively. Furthermore all partners collected data through an empirical study, specifically conducted for the purposes of this research - interviews with different stakeholders and other participants of the criminal procedure. The partners identified the scope of the interviewees based on the national characteristics while all used a standardized questionnaire, developed in the framework of the project.

In **Bulgaria** the BHC conducted 23 interviews in detention facilities with male inmates in three different prisons across the country and three interviews with accused persons, detained in one investigative detention facility. Furthermore the BHC conducted an online survey among 256 defense lawyers, and received nine responses on how the requirement for simple and accessible language for a letter of rights is met in practice.

In **Lithuania** the assessment of practice, was done by conducting anonymous interviews of criminal justice practitioners – police officers and defense lawyers who are involved in day-to-day work with suspects and accused, from the outset of their inclusion in the proceedings, and have a first-hand experience of how the letter of rights is handled. 22 police officers and 22 defense lawyers from different parts of Lithuania and of varied experience (ranging from a year to well over 20 years) participated in the survey.

In **France** FTE conducted stakeholder interviews with and questionnaires submitted to a cross-section of the criminal justice community in France, including judges, prosecutors, police, lawyers, and former suspects in criminal proceedings. All 22 stakeholders from a cross section of the French criminal justice system were

approached; 2 public officials from the Ministry of Justice, 2 police officers, 1 police officer of judicial police, 5 judges, 2 prosecutors, 7 lawyers and 3 detainees.

In **Spain**, the RIS conducted 32 interviews. It has taken into account the following factors when designing the sample of interviewees: firstly, that the regional High Courts have jurisdiction to adopt forms of letters of rights used in court in the respective Autonomous Regions and, secondly, that some Autonomous Regions have their own police forces. Considering that both factors can have an effect on the existence of divergences in how information on rights is provided to arrested persons, a territorial criterion was used in selecting the sample. As a result, interviews were carried out in the Region of Madrid, the Basque Country and Catalonia. Via electronic survey the RIS has interviewed seven practicing lawyers, six interpreters working exclusively in the criminal justice system. Furthermore RIS interviewed in person five investigating judges, two court clerks in two investigating courts in Granollers, eight police officers (two from the Ertzaintza, two from the Mossos d'Esquadra, two National Police officers and two members of the Badalona Urban Police Force) and four persons arrested in 2016.

In **Hungary** 79 lawyers from different regions of the country responded to the HHC's online survey. Furthermore – based on the consultation and approval of the Office of the National Judiciary and the National Police 11 interviews were conducted with judges and police officers in different regions of Hungary.

Using the template prepared by the HHC and FTE, the project partners produced a **country report**, highlighting the key findings of the local research. The country reports inform the comparative study, and will be finalized once the present study has been completed so that they can highlight comparative data and best practice examples identified elsewhere in the project. Partners also organize an event for the launch of the country reports in their own countries.

The present study is the final product of the project, its primary aim is to produce a major report on the transposition of the Directive in the countries surveyed, highlighting common themes and significant differences. In the present study we highlight examples of good practice and provide recommendations as well. The present study was launched at the European Parliament on 29th May 2017. The event was attended by MEPs, Commission officials and Member State representatives.

## 1.1. International and regional standards

There are a number of commonalities among the international human rights documents reviewed within the framework of the initial research. All guarantee that suspects and accused persons will be provided with information on the charges against them and the reasons for their arrest. Except for the *United Nations Convention on the Rights of the Child*, all of the treaties also guarantee notification of the right to legal representation. Certain international and regional documents go beyond these basic standards, however. For instance:

- the ECHR has been interpreted by the ECtHR to guarantee that notification of rights must be conveyed in a language and manner that clearly inform defendants of the rights and the consequences of not exercising them;
- Article 60 of the *Rome Statute of the International Criminal Court* uniquely requires the Court's pre-trial chamber to assess that notifications were provided lawfully; and
- the *Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa* (hereafter: Luanda Guidelines) provide for a comprehensive list of rights that the suspect or accused person deprived of liberty must be informed of orally and in writing.

While most of the treaties are silent on the details of the notification beyond providing the content that must be notified, certain treaties do provide some noteworthy practice. For example, the Convention on the Rights of the Child prescribes that written notification to children will not always be sufficient and that oral notification may sometimes be required. In addition, the notification must be translated not only into the language the child understands, but in terms that are sufficiently accessible for the child's level of development and comprehension. Some of the international treaties give more definition to what is meant by "prompt" or "timely" notification. The Convention on the Rights of the Child requires notification at the moment the prosecutor or judge takes the first procedural step in an investigation (i.e. potentially before arrest). The ECHR requires notification upon arrest. The Rome Statute requires notification prior to interrogation and the Luanda Guidelines require notification when in police custody and prior to interrogation.

## **1.2. Non-EU country standards**

In most of the 30 non-EU countries reviewed notifications are required related to the rights to legal representation and to remain silent. Several countries require notification of additional rights, such as the right to contact a relative or another third person, or to contact the consulate in case of foreign defendants. There are some interesting practices on notification of rights that can be of use within the EU. Countries such as Canada, Australia and Turkey require the provision of written notifications of rights and have somewhat developed practice for doing so. In Hong Kong, each interview room at the police station must feature a notice board informing suspects and accused person of their rights in writing, additionally to the individual notification of rights they must receive. In Malawi, a pilot project has begun through which a pre-recorded message in a number of languages will be played in the police station informing suspects and accused persons of their rights.

## **1.3. EU Member States – lessons learnt through the LEAP network**

A survey conducted by the Fair Trials Europe through its LEAP network on the transposition and implementation of the Directive 2012/13/EU disseminated to their network of defence practitioners showed that while the Directive has been transposed into law in most Member States, in practice many suspects and accused persons are still not made effectively aware of their rights and are thus often not able to effectively exercise them.

Almost all Member States amended their Criminal Procedural Codes in order to transpose the Directive. Five Member States (BE, BG, CY, HU, PT) did not transpose the Directive with regards to the notifications or letter of rights, as they were already providing written letters of rights prior to the adoption of the Directive. Germany, Lithuania and the UK already provided written letters of rights prior to the Directive, but amended their Criminal Procedural Codes to comply fully with the Directive. The legal provisions and the practice concerning notifications and letters of rights provided in Bulgaria and Cyprus fall substantially short of the requirements of the Directive on different accounts, and in order to ensure that suspects and accused persons in these countries are in fact provided with the opportunity to exercise their defense rights, comprehensive transposition is required. Belgium is currently in the process of

reforming its Criminal Procedural Code and the respondents expect that this process will include comprehensive transposition of the Directive.

The most common complaint is that Letters of Rights are drafted in **inaccessible** language, often **simply copied** from the underlying legal provisions. In some countries suspects and accused persons are actively **dissuaded** from exercising their defence rights by the police, or provided with Letters of Rights that are **confusing**. Moreover, Letters of Rights are not always translated for non-native speakers. The survey showed that, for a number of reasons, a failure to provide an accessible Letter of Rights is **unlikely to be remedied**. For example, proving a failure could be difficult in certain circumstances; courts may not consider it a sufficiently important breach of procedural rights, or remedies for such violations do not exist in national law.

## **2. The law and practice of the notification of rights – with special focus on Bulgaria, France, Hungary, Lithuania and Spain**

In the framework of the Project each project partner conducted a research and compiled a national report based on template designed by the Fair Trials Europe (FTE) and the Hungarian Helsinki Committee (HHC). The project partners were the following:

- Rights International Spain (RIS)
- Human Rights Monitoring Institute, Lithuania (HRMI)
- Bulgarian Helsinki Committee (BHC)

The HHC covered Hungary and FTE researched France.

The objective of the research reports was to perform a thorough mapping of the national state of play in five member states in relation to the implementation of Directive 2012/13/EU, with primary focus on providing information on rights. The research reports which are annexed to this publication are intended to raise awareness about the importance of informing defendants of their rights in a simple and accessible manner and to share examples of good practices in this area.

In the following sections we summarize the key issues regarding the notification of rights and will introduce good practices from the countries examined as well as from the international. Verbatim quotes from the interviewees are written with italic, good practices are included with yellow background.

### **2.1. Not providing information on rights**

The scope of Directive 2012/13/EU covers “suspects” and “accused persons”, i.e. persons who are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence.

Under the Directive, Member States shall ensure that these suspects or accused persons are provided with information concerning at least the following procedural rights:

- the right of access to a lawyer;

- any entitlement to free legal advice and the conditions for obtaining such advice;
- the right to be informed of the accusation;
- the right to interpretation and translation;
- the right to remain silent.

In addition to the above, suspects or accused persons who are arrested or detained are to be provided information on the following rights as well:

- the right of access to the materials of the case;
- the right to have consular authorities and one person informed;
- the right of access to urgent medical assistance;
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority;
- and shall be provided information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

**A major issue** identified in the national researches is whether the **information on all required rights** is provided to **all suspects and accused persons** as prescribed by Directive 2012/13/EU. The problem has three main aspects:

- whether all the persons who should fall under the scope of the Directive are covered by the domestic legislation prescribing the obligation to provide the information;
- whether all the rights about which suspects and accused persons must be informed under the EU acquis appear adequately in the respective national letters of rights; and finally
- whether the domestic norms prescribing the provision of information are complied with in practice.

Our detailed country research has shown that most countries fail in at least one of these areas.

In **Bulgaria**, the main problem stems from the fact that Bulgarian law does not recognise the status of a “suspect”. A person who is suspected of having committed a criminal offence will formally become an accused person once he/she is officially notified of the accusation by being served the “act” that identifies the charges against them (this “act” is either the so-called charge sheet that is issued by the prosecutor or the minutes of the first procedural act of the criminal proceedings that is carried out against them – e.g. the minutes of their first interrogation). The Bulgarian Code of



Criminal Procedure of 2005 (hereafter: BCCP)<sup>1</sup> stipulates the specific rights of accused persons and also the obligation that these rights must be expressly indicated in the “act” constituting a person as an accused party.

However, authorities may take action – including the deprivation of liberty – against persons who are suspected of having criminal offences even before they formally become an accused person in a criminal procedure. In terms of the Ministry of Internal Affairs Act of 2014 (hereafter: MoIAA),<sup>2</sup> **the police may detain a person suspected of having committed an offence for up to 24 hours** in premises under the control and supervision of the Ministry of Internal Affairs, however, this police detention is considered to be of administrative in nature, falling outside the scope of criminal proceedings. Although persons in this type of detention have certain rights, and they are provided with a special letter of rights,<sup>3</sup> **the procedural safeguards envisaged for persons held in police custody are limited in number and provide a lower level of protection than those granted to accused persons: most importantly, they do not cover the right to silence and non-self-incrimination.**

Although statements, including confessions made during questioning in police detention, do not have evidential value and cannot be directly used for determination of criminal charges, testimonies of the police officers who have questioned the concerned person are considered as legally admissible evidence before the court.<sup>4</sup> Furthermore, as a rule, any written testimonies made by the persons in police detention are also included in the court case file and remain there for the whole duration of the criminal proceedings.<sup>5</sup> Failure on the side of the police officers to inform the detained suspect on his/ her rights is not considered to affect the state of fairness of the criminal proceedings.

In Bulgaria, **there are also other forms of detention preceding the formal launching of the criminal procedure** (which triggers the obligations set forth by the Directive), and **some of these do not entail any obligation to inform the detained person of his/her rights in a written form.**

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<sup>1</sup> Code of Criminal Procedure (*Наказателно-процесуален кодекс, ВССР*), available in Bulgarian at: <http://lex.bg/laws/ldoc/2135512224>, Article 55

<sup>2</sup> Ministry of Internal Affairs Act (*Закон за министерството на вътрешните работи, МоИАА*), Article 72(1)(1), available in Bulgarian at: <http://www.lex.bg/laws/ldoc/2136243824>.

<sup>3</sup> Under Article 15(2) of Instruction No. 8121z-78 for the order for execution of detention, the equipment of the premises for detainees in the Ministry of Interior structures and the order in them as of 24 January 2015 (hereafter: the Instruction) (*Инструкция № 8121з-78 от 24 януари 2015 г. за реда за осъществяване на задържане, оборудването на помещенията за настаняване на задържани лица и реда в тях в Министерството на вътрешните работи*).

<sup>4</sup> Supreme Court of Cassation, Decision No. 30 from 30 March 2010 on criminal case No. 566/2009; Supreme Court of Cassation, Decision No. 486 from 10 March 2015 on criminal case No. 1406/2014.

<sup>5</sup> Grozev, Yonko, Chapter 3 Bulgaria. In Cape, Ed and Nomoradze, Zaza (Eds), *Effective Criminal Defense in Eastern Europe*, p. 104.

For instance, under the **Military Police Act**, military police could arrest and detain certain categories of suspects of crimes against the national defence and armed forces. The scope and nature of the rights of the detainees are to a great extent identical to those of the persons held in police custody, however, the Military Police Act does not formulate any obligation for the provision of oral or written information on rights to the detainees.

According to Article 11 of the **Combatting of Terrorism Act**, military officers are authorised to arrest persons who are suspected of preparing or having executed terrorist acts. Military officers are under an obligation to immediately inform the police on the act of the arrest and transfer the arrestee to the police. Suspects do not have the right to receive a document stating grounds or reasons for their arrest, and there is no legal obligation for the provision of information about the rights of the arrestees.

In Bulgaria, **the practice of the authorities further aggravates the problems arising from the restrictive interpretation of the scope of the Directive**. In many cases, not even the incomplete letter of right (not including the right to silence) envisaged for those in police custody is provided to the detained individuals, and even those who actually receive information about their rights in writing, do not receive it from the outset of their deprivation of liberty, but later, following the first interrogation or even at the very end of the detention period.

Six out of 26 detainees interviewed in declare they have not received a letter of rights during police detention, two interviewees could not recall receiving such document and 15 persons reported they had received one. More than half of the lawyers asked in the online survey hold the opinion that a letter of rights is very rarely or never provided to the detained suspects. With regard to detention on remand, six persons interviewed responded that they had not received a letter of rights, nine could not recall having received one and six persons confirm they had been given letters of rights.

Finally, mention must be made of the police practice of not formally detaining persons, but obliging them to remain at the police station for a “conversation”. Such persons will also not receive any letter of rights.

In **France**, the **problems around suspects attending the so-called “voluntary interview” raise doubts about compliance with the Directive**. A suspect can arrive at a police station and be questioned related to an alleged offense after being arrested and placed in custody; summoned as a suspect to attend what is described as a “voluntary interview” (*Audition libre*); or summoned as a witness to attend a Voluntary Interview, later incriminating him/herself.

While arrested suspects are provided with a letter of rights that contains most of the information required by the Directive (see below), suspects summoned for a “voluntary interview” are not seen as falling under the scope of Article 4 on the basis that in principle, they have the right to leave the interview and the police premises at any time under the *Code de Procédure Pénale* (hereafter: CPP).<sup>6</sup>

However, the interview is not truly voluntary: persons summoned by a police officer are obliged to appear, and what is more: police are able to detain a summoned person under duress for up to four hours if it is strictly necessary for the interview, and may place a person in the voluntary interview into Garde à Vue (custody) if it is considered necessary to do so with a view to guaranteeing his/her presence during an investigation. As a result, police have the ability under the CPP to detain for up to four hours and/or place into Garde à Vue any suspect in a voluntary interview who decides that they want to terminate the interview and leave. (Similar rules apply to so-called assisted, i.e. persons suspected by a witness or against whom there is evidence which makes it likely that they may have participated, as perpetrator or accomplice, in the commission of the offences that the judge is investigating.)

Despite the possibility of detaining a suspect in a voluntary interview for up to four hours, only the suspect in Garde à Vue is entitled to be notified *in writing* of the full rights contained in the Directive. In other words, it is possible for a suspect to be interviewed by the police under the threat of being placed formally in Garde à Vue or while actually detained before being fully notified of their rights in accordance with the Directive.

In France, another gap in implementation was revealed by the research concerning the **scope of rights that the letter of rights contains**: Article 803-6 of the CPP (which was added by the law transposing the Directive, and which contains a list of rights that “any suspect or accused person subject to a measure of deprivation of liberty pursuant to a provision of this Code” shall be given in writing) **fails to require information to be provided regarding the right to legal aid and the procedure for requesting it**. (Interestingly, information on legal aid is provided in the summons that suspects summoned for a voluntary interview are served with, although the scope of information which summons are required to contain is much more limited than the scope of information to be provided in the letter of rights served to suspects taken into custody).

Criticism concerning the **practice of providing information to suspects** was also heard in the French research: **the failure to provide suspects with Letters of Rights was**

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<sup>6</sup> Loi n°2014-535 du 27 Mai 2014 (CPP), Article 61-1

**consistently mentioned as a problem during the interviews with stakeholders.** One interviewed detainee did not believe that he ever was provided with a Letter of Rights and the general feedback from the detainees was that there is a huge problem in *Garde à Vue* "in which the basic information on rights is often concealed, with the focus being on obtaining confessions." Two lawyers also referred to instances in which suspects were not informed of their rights at all, although one of the lawyers believed that this was because the police were disorganised rather than acting intentionally.

In **Hungary**, "police custody" based on the Police Act<sup>7</sup> may precede forms of detention based on the Code of Criminal Procedure (hereafter: HCCP).<sup>8</sup> The police officer *shall* arrest and present to the competent authority a person who is caught in the act of committing a criminal offence and *may* arrest a person who is suspected of having committed an offence. The police may maintain the deprivation of liberty until it is absolutely necessary, but for not longer than twelve hours.<sup>9</sup> **Persons taken into police custody** are not regarded as suspects, since the suspicion has not been formally communicated to them. (At the beginning of the first interrogation, the questioned person is informed about the charges against him/her. This is the so-called "communication of the suspicion", when the concerned person formally becomes a suspect.) **Consequently, the provision of a letter of rights is not mandatory in their case, although they are detained on the suspicion of a criminal offence**, and the time spent in police custody shall be counted in if the suspect is then taken into a **72-hour detention** on the basis of the CCP (This is the temporary deprivation of the suspect's liberty without a judicial decision. It may last up to 72 hours, after which – unless the court orders his/her pre-trial detention – the suspect shall be released.<sup>10</sup>) While informal talks with persons in police custody (described in the police jargon as "calling a person to account") and channelling the results of these into the case material used to be widespread practice, this is much less frequent nowadays.

**In the Hungarian system, information on rights is first provided at the beginning of the questioning orally (see below), and written information is given only after the interrogation is over** (as part of the minutes of the interrogation), and then further letters of rights are provided to the suspect in the police jail (where 72-hour detention is carried out, and exceptionally pre-trial detention for a maximum of 60 days) and/or in the penitentiary institution, where he/she is placed as a pre-trial detainee. **None of these three documents** (the standard part of the minutes with the rights, and the letters of rights provided in the police jail and the penitentiary) **cover in full the rights prescribed by Articles 3 and 4 of the Directive.**

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<sup>7</sup> Act XXXIV of 1994 on the Police, Article 33.

<sup>8</sup> Act XIX of 1998 on the Code of Criminal Procedure (HCCP).

<sup>9</sup> Police Act, Article 33(3)

<sup>10</sup> Hungarian CCP, Article 126

The standard part of the minutes of the interrogation fail to mention:

- any entitlement to free legal advice and the conditions for obtaining such advice,
- the right to interpretation and translation.

The letter of rights provided in police jails<sup>11</sup> does not cover the following rights:

- any entitlement to free legal advice and the conditions for obtaining such advice,
- the right to be informed of the accusation,
- the right to remain silent,
- the right to have one person informed,
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority and
- does not contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

The letter of rights provided in penitentiary institutions<sup>12</sup> fails to provide information on the following:

- the right to have one person informed,
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority, and
- basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

It must be noted that some of the rights not covered in the letters of rights are included in other documents received by the defendants. For example, the decision on the pre-trial detention shall include the terms of challenging the decision (to which authority an appeal is to be submitted, what the deadline of the submission is, etc.).

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<sup>11</sup> Annex 11 of Order 3/2015. (II. 20.) ORFK of the National Police Headquarters on the Regulation of the Order of Police Cells

<sup>12</sup> Annex 2/A of the sample house rule for penitentiary institutions, issued by the National Penitentiary Headquarters

**Lithuania** offers a good practice in this regard: **a written letter of rights must be served to all suspects, not only those who have been arrested**,<sup>13</sup> thus under the Lithuanian Code of Criminal Procedure (LCCP), the right to receive a letter of rights is wider than under the Directive. In addition, **the list of rights provided by the Lithuanian letter of rights is essentially equivalent to the rights of which a suspect or accused must be informed under the Directive, and no reports of systemic failure by the authorities to serve the letter of rights have been heard either**. In fact, all but one of the surveyed police officers claimed that the letter of rights is provided to suspects in all cases. Similarly, two thirds of defence lawyers responded that the letter of rights is served in all cases, while the other third stated that it is provided in most cases. This is further confirmed by the Human Rights Monitoring Institute's earlier research, where it was also found that the letter of rights is indeed provided to suspects in practice.

The only problem revealed in this regard by the **Lithuanian** research was that **neither the LCCP, nor sub-statutory acts provide for a special letter of rights to be served in European Arrest Warrant cases**.

Similarly, no serious problems regarding the types of suspects or the authorities' willingness to actually provide the letters of rights have been reported from **Spain**, however, it was found there that many of the letters of rights used by the different regional criminal justice authorities omit information on certain rights, such as suspects' right to have a consultation with their lawyer before making a statement to police (which is an important element of the access to a lawyer). Neither do the letters inspected in the framework of the research contain specific information on the requirements for applying for and obtaining free legal advice.<sup>14</sup> The requirements and procedures for bringing a plea of "Habeas Corpus" were not included in the examined letters either.

*The LEAP survey found that although the contents of Letter of Rights do in most Member States comply with the requirements of Articles 3(1) and 4(2) of the Directive, there are problems in other jurisdictions as well: Cyprus fails to include the complete list of rights in their Letter of Rights in violation of the Directive. The Greek Letter of Rights does not provide information on how long the suspect or accused person may be detained before being brought before a judicial authority, although Article 4(3) of the Directive requires this information to be included. The Slovakian Letter of Rights too, apparently fails to inform the suspect or accused*

<sup>13</sup> Code of Criminal Procedure of Lithuania (LCCP), Article 187

<sup>14</sup> The only exception was the letter of information on the rights of investigated persons at Violence against Women Court No. 1 in Barcelona, which includes an express reference to the conditions of and requirements for obtaining free legal advice.

*person deprived of liberty of all their rights included in Article 4 of the Directive. The Maltese Letter of Rights informs suspects and accused persons wrongly of their rights and the implications that exercising their right to a lawyer may have and does not inform that this might undermine their right to remain silent.*

*According to the Guide on Article 6 of the European Convention on Human Rights (hereafter: Guide) the concept of a “criminal charge” has an “autonomous” meaning, independent of the categorisations employed by the national legal systems of the member States. Decriminalised offences classified as “regulatory” may come under the autonomous notion of a “criminal” offence, the discretion to exclude these offences cannot be left at the States as that might lead to results incompatible with the object and purpose of the Convention. According to the Guide: “The starting-point for the assessment of the applicability of the criminal aspect of Article 6 of the Convention is based on the [following] criteria [...]:*

- 1. classification in domestic law;*
- 2. nature of the offence;*
- 3. severity of the penalty that the person concerned risks incurring.”*

## **Recommendations**

- Information on the rights shall be provided to all suspects falling under the category of suspects as prescribed by the Directive 2012/13/EU.
- It is to be ensured that relevant domestic laws meet the ECHR standards.
- Member States shall ensure that the Letters of Rights cover all rights included in the Directive 2012/13/EU.

### **2.2. When the information on rights is provided**

Under Articles 3 and 4 of Directive 2012/13, Member States shall ensure that suspects or accused persons are provided **promptly** with information concerning their rights. As Paragraph (19) of the Preamble stipulates: “The competent authorities should inform suspects or accused persons **promptly** of those rights, as they apply under national law, which are essential to safeguarding the fairness of the proceedings, either orally or in writing, as provided for by this Directive. In order **to allow the practical and effective exercise of those rights**, the information should be provided promptly in the course of the proceedings and **at the latest before the first official interview of the suspect or accused person** by the police or by another competent authority” [emphasis added].

*Generally, the suspect or accused person should be informed “promptly” of their rights under the respective international treaties or regional laws. Some of the international treaties give more definition to what is meant by “prompt” notification. The Convention on the Rights of the Child, as interpreted by the Committee on the Rights of the Child, requires notification at the moment the prosecutor or judge takes the first procedural step in an investigation (i.e. potentially before arrest). The European Convention on Human Rights, as interpreted by the European Court of Human Rights, requires notification upon arrest. The Rome Statute requires notification prior to interrogation and the Luanda Guidelines require notification when in police custody and prior to interrogation.*

*In most non-EU countries studied in the framework of the international research (e.g. US, Canada, Chile, Ecuador, Mexico, Paraguay, Eritrea, India, Indonesia, Thailand, Switzerland and New Zealand) the suspect or accused person must be notified of their rights at the time of arrest or, if not arrested, prior to any interrogation. In Gambia the arrested suspect must be informed of their rights within three hours of their arrest. Other countries use less specific provisions such as “without delay” (Brazil), “timely” (Hong Kong) or “quickly” (Yemen).*

*According to the research conducted based on the responses of the members of the LEAP Network most respondents confirmed that suspects and accused people are notified of the rights in compliance with Articles 3(1) and 4(1) of the Directive, either before any interrogation (BE, FR, LT, PL, PT) or immediately after their arrest (AT, ES, EL, IT, NL). In Poland respondents noted, suspects or accused persons will not have enough time to read the Letter of Rights in detail before an interrogation. Suspects or accused persons in Greece should be informed of the rights at the moment of arrest but will often be provided with a Letter of Rights only prior to their interrogation. In Belgium, any invitation to a police interrogation will be accompanied with a Letter of Rights, often reminding the suspect or accused person to contact a lawyer for advice before attending any police questioning.*

*Several respondents of the LEAP survey were concerned that the provision of a Letter of Rights for arrested or detained suspects is provided in practice very shortly before any interrogation, leaving the suspect or accused person insufficient time to read the Letter of Rights in detail and effectively understand their rights (BE, EL). In Slovakia, the Letter of Rights as part of an interrogation might in some cases not be provided to the suspect or accused person until after the interrogation.*



It is of utmost importance **whether information is provided in due time** to make it possible for them to prepare their defence and to understand their rights before answering the questions of the investigative authority. While this seems self-explanatory, and the Directive's provisions also make an express reference to the requirement of promptness, the research has found problems not only at the level of the practice, but at the level of the legislation as well.

In **Hungary**, detained **suspects do not receive the letter of rights prior to the first questioning**. Suspects – detained and non-detained alike – are informed about their rights **at the beginning of their interrogation** in a way that the warnings about rights generated by “RobotZsaru NEO” (“RoboCop NEO”), the integrated data processing, case management and electronic document management system of the police, are read out to them. These warnings constitute a part of the *template for the minutes of interrogations* to be found in the central stock of templates of RoboCop NEO, the application of the template being obligatory for police officers conducting interrogations.

Accordingly, these warnings are included in the minutes of the suspect's interrogation in every case. The suspect and the defence counsel may request a copy of the minutes (the first copy being free of charge), and if they do, the suspect will have a written list of his/her rights (a *de facto* letter of rights), but only upon request and only after the questioning has taken place and the minutes have been closed.

Actual letters of rights are only provided to detained defendants once they have been placed in a police jail as suspects under a 72-hour detention or in a penitentiary institution as pre-trial detainees. To be placed in these institutions they must be formally charged suspects, so the letters of rights provided by police jails and penitentiaries are inevitably given them after the first interrogation at which the communication of suspicion has already taken place.

In **Bulgaria**, the specific rights of accused persons as stipulated by the BCCP must be expressly indicated in the “act” constituting a person as an accused party – the charge sheet issued by the prosecutor or the minutes of the first investigative action against the accused. A copy of the act is served to the accused against signature. Before continuing with the investigation against the accused persons, including their questioning, the officials are under an obligation to allow the accused persons and their lawyers, if present, to get familiar with the listed procedural rights and nature of the charges.

The “acts”, however, do not contain information on the specific rights of detained persons. Such rights are – as in Hungary – provided upon allocation to a detention

facility based on the prosecutor's decree for detention of the accused for a period up to 72 hours, or the courts' decision, imposing detention as a remand measure. In such instances, accused persons receive on their rights written information that bears certain similarities to a letter of rights (*декларация*). A template of the letter of rights is adopted by the Directorate General for the Execution of Sentences and is available at all investigative detention facilities across the country.

The **Lithuanian** law is clear about the issue of timing: the letter of rights must be served before the first questioning of the suspect.

In **Spain** suspects are required to be **informed about their rights three times**:

1. Information on rights is first given by the police officers immediately upon arrest. While according to the law, information on the rights should be exhaustive already at this moment, in practice, this does not always seem to be the case. Some interviewed persons denied that they had been informed of their rights at the time of arrest, while others claimed that the information received had been superficial: *"at the time of arrest, in the car, they told me 'you have the right to a lawyer', they told me I could imagine what it was about (...) and that was all, I don't think they told me the offence"; "I find it a bit hard to remember, but I don't think so. They told us that we had been arrested and that we were entitled to a lawyer and a couple of other things, but very brief, it wasn't like later at the station"*.

2. When the arrested person arrives at the station, the officers again inform him/her of the reasons for the arrest and of his/her rights, with the information procedure being formalised by the reading of the letter of rights, which is signed by the arrested person. As one of the interviewed officers explained, this can even take place before arrival at the station, *"in the police car itself, or at the residence, if that is where the arrest took place, the letter is filled in by hand"*.

3. Finally, in the presence of a lawyer and before an official interview is held, suspects are once again informed of the reasons for the arrest and of their rights. Some officers interviewed by RIS state that this third information procedure is comprehensive, with the arrested person being read each of his/her rights, while others admit that on certain occasions the full information is not repeated, and they refer them to the earlier reading. This latter was also confirmed by the arrested persons interviewed: *"[in the presence of the lawyer] he did not read them to me, he said 'you have been told this already, haven't you?'"*

In **Belgium**, in practice – as the LEAP study indicates - if a suspect or accused person is **summoned** to an interrogation through a written invitation, the Letter of Rights will be attached therewith. In the respondents' experience, the Letter is written in accessible language and is useful for most suspects or accused persons. Suspects and accused persons who are not arrested or detained will effectively be reminded through the Letter of Rights that they should consider contacting a lawyer before their interrogation.

There are cases, when not providing the information is the interest of the suspect. In **France**, as a general rule, **rights are not read to the suspect** immediately if he or she is **under the influence of drugs or alcohol** on arrival in custody to such an extent that the suspect is not capable of understanding the rights. In this case, the reading of the rights must be postponed until the suspect can understand. Meanwhile, suspects must be instead placed in a room to let the effects of the drugs or alcohol wear-off (the level of drugs or alcohol can be tested if necessary). The time spent in this room is included in the time spent in custody.

See also the 'Evans case' and the Canadian good practice in this regard under Section 2.6.

### *Recommendations*

- Written information on the rights is to be provided before the first interrogation or at the moment the detention is ordered.
- Authorities must ensure the suspects and accused are in a condition which makes them possible to understand the information provided on their rights. If not, the reading of the rights must be postponed.

## 2.3. How the information is provided

### 2.3.1. Whether the information is provided orally or in writing, and the authority's obligation to explain rights

According to Article 3 of Directive 2012/13/EU, information on rights shall be given to suspects and accused orally or in writing, whereas Article 4 prescribes that suspects or accused persons who are arrested or detained are to be provided with a written Letter of Rights.

*According to the desk research conducted by FTE, most international treaties and regional laws remain silent on the way the information is to be provided to the suspects and accused. The Luanda Guidelines however require the notification of rights to be provided orally and in writing.*

*The method of notification is not prescribed in the majority of non-EU jurisdictions studied. In those studied that require written notification, Australia and Hong Kong require notifications in writing and orally, Iran and Turkey require written notification of rights (in Turkey oral notification is only sufficient only in exceptional cases), while in Singapore a written notification of rights must be provided in some situations. Hong Kong is notable for requiring that each interview room at the police station must also feature a notice board informing suspects and accused person of their rights in writing. In the USA, the State of California has a similar requirement within police stations (see later in this Section). Finally, research also indicates that, as a pilot project, some police stations and detention facilities in Malawi will play an announcement which delivers information about defendants' rights automatically in different languages for suspects and accused persons who are waiting for a questioning*

The 5-country research has shown that there is no unified practice as to whether suspects or accused persons shall be informed of their rights **orally or in writing**. It varies country by country and may also depend on the nature and stage of the procedure.

An interesting observation of the empirical research conducted by the HHC was that **whereas the preliminary hypothesis was that the way of conveying the information** (i.e. whether it is read out the respondent or whether he/she can read it himself/herself) **would have a significant impact on the level of comprehension, this was not the case.**

Out of the 46 questions, in the first wave (examining the accessibility of the existing letter of rights), there were altogether six questions in relation to which there was a statistically significant difference between the proportion of right answers depending on the way of communicating the information. In five of these six cases, the proportion of good answers was higher when the respondents were provided with a written text that they could read themselves.

In the second wave (examining the alternative letter of rights compiled by the HHC's experts), there were only four questions with regard to which the way of conveying the information had a statistically significant impact: in three cases the text read out to the respondents was more comprehensible, and in the case of one question, a higher proportion of respondents gave a correct answer when they could read the letter of rights for themselves.

A possible explanation for the results is the lower level of education of the respondents, and the problems in literacy this may entail. If the suspects have problems understanding what they are reading, then there may not be a big difference between the level of comprehension when the text is read out to them or when they read it themselves, especially when the text is formulated in an accessible manner, which was the case with the alternative letter of rights. When on the other hand the text is highly technical, then the possibility to read it, and go back to it when something is unclear, seems to help to a certain extent, however, when this is the case, the overall level of comprehension will be very low either way.

The HHC's eventual conclusion was that **information on rights is to be provided also in writing**. Our survey attempted to model to the possible extent the first interrogation (the respondents had to comprehend the text within a short period of time and apply the knowledge right away), however, in a criminal procedure, the information on rights can and must be reapplied on multiple occasions (subsequent interrogations, and other investigative actions, the court phase, etc., and additionally the suspect has the right to refuse to testify and only agree to an interrogation after he/she has studied the information provided to him/her), so having the rights in a written format, which the defendant can keep with himself/herself and revisit whenever necessary, is very important for the ability to fully exercise one's rights.

**Providing information in writing and explaining it orally seems the best solution**

according to the national researches. For example, the arrested persons interviewed in the Spanish research agreed that proper verbal explanation of the letter's contents was crucial for them, stating that they understood their rights better *“when explained to me by [their lawyer], the letter is hard to understand”*; *“I didn't understand much, but I think when they were explained to me by [the lawyers] because you don't trust anyone and you're pissed off, you're not really in a frame of mind to understand much”*. The interviewed interpreters also agree that, in the absence of explanations, reading the information on rights does not facilitate understanding: *“sometimes they are simply given the sheet of paper, and nothing more, and it is the interpreter who has to translate it on the go, ask that they sign it and, of course, they often have doubts. I have often got the impression that they don't really understand the scope of the act”*.

Therefore, we looked into not only whether the respective national laws prescribe written or oral notification, but also examined whether the authorities' obligation to facilitate the understanding and exercising of suspect's rights (e.g. by providing explanations) is prescribed and if it is, how that obligation is implemented in practice.

As explained above, in **Spain**, information on rights is provided on a number of occasions: at some orally, at some in writing. Upon arrest, the information on the rights of the arrested person is given verbally at the time of arrest,<sup>15</sup> and is formalised in writing, by giving him/her a letter of rights on arrival at the place of detention. Subsequently, in the presence of a lawyer and prior to an official interview with the police, the information on rights is reiterated. When the arrested person is brought before the judge, he/she is again informed by the court clerk before making a statement to the court. In the case of suspects or accused persons who are not arrested, the information on rights is given before the first official interview with the investigating judge, performed by the court clerk.<sup>16</sup>

According to the results of the interviews with officers and arrested persons, standard practice when giving information on rights at the police station is that the officers read the letter to the arrested persons and then give them time to read it for themselves before signing it. Only one officer stated that he does not read the letter to the arrested persons, but gives it to them directly to read it themselves and then asks them if they have understood it or need any kind of clarification.

While there does not seem to be an express legal provision posing the obligation of the facilitation of the exercising of rights on the authorities, the interviews suggest that

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<sup>15</sup> Article 520.2 LECrim.

<sup>16</sup> Article 775 LECrim.

this is done in practice at least by some officers: some of the interviewees add that they tend to include explanations when reading the letter, using a more everyday language than that of the official document, which helps the arrested persons understand it *“because we explain it to them in words they understand: ‘your fingerprints were found at the scene of the robbery’; that is easier to understand than ‘by dactyloscopy’*”.

In **Lithuania**, suspects must be provided with this information in writing, in addition to any other form, together with a written notification of suspicion against them. When criminal proceedings reach the trial stage, and the suspect becomes an accused person, his/her procedural rights must also be explained to them orally by the judge at the beginning of the court proceedings. Written documents on the rights of the accused are not provided in court.

Under the Lithuanian criminal procedure, every participant of the proceedings, including suspects and accused, must be informed about their procedural rights, and members of the authorities are under the obligation to explain the suspects’ procedural rights to them, and ensure that they are possible to exercise.<sup>17</sup>

As to the practice, the Lithuanian research report’s conclusion was that police officers’ active role in ascertaining whether the suspected person actually understands the rights he or she has, could go a long way towards ensuring that this requirement is more than a mere formality. Surveyed Lithuanian police officers were asked whether they provide additional verbal explanations along with the letter of rights. Half of the officers indicated that they provide such explanations most or all of the time. Others provided additional explanations only on occasional basis.

As one interviewed defence lawyer said: *“This important task goes to the persons conducting the criminal investigation – officers, prosecutor. So until their attitudes are overly formal, the letter of rights will also remain that way. If the officer, prosecutor realises the importance of this task [...] and will carry out this procedural action not formally but genuinely, I believe, the letter will have a real purpose, will allow the suspects to realise their rights and exercise them.”*

In **Bulgaria**, as mentioned above, a copy of the “act” constituting someone as an accused person (and also containing a list of rights) is served to him/her. Before continuing with the investigation against the thus accused person, the officials are under an obligation to allow him/her to get familiar with their procedural rights and nature of the charges and to give additional explanations to the parties orally, if necessary. The basis for this obligation is Article 15 (2) of the BCCP, which stipulates a general obligation on the court, the prosecutor and the investigative bodies to explain

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<sup>17</sup> Code of Criminal Procedure, Article 45

to the accused persons their rights as an integral part of the right to defense. As a specific manifestation of this obligation, Article 219(4) formulates a requirement to the investigative body, serving the act for bringing charges against the accused, if necessary, to further explain the content of the act and the charges to the accused person verbally.

Practice however seems different: some of the interviewed detainees shared that the declaration of rights they were given to sign was first read to them by a police officer. The individuals themselves, however, do not consider this as true assistance. Other than that, none of the interviewees reported any kind of assistance or effort made by the police authorities to verify whether they have understood the information provided to them.

In **France**, Article 63-1 of the CPP requires a person placed in Garde à Vue to be notified in simple and accessible terms and in a language the person understands of information on procedural rights. This provision is understood to mean that the rights must be read orally to the suspect.

The law transposing the Directive added an additional provision stating that “[p]ursuant to Article 803-6, a document setting out these rights shall be given to the person upon notification of his detention.” Article 803-6, which was also added by the law transposing the Directive, provides that “any suspect or accused person subject to a measure of deprivation of liberty pursuant to a provision of this Code” shall be given a written declaration of rights setting out in simple and accessible terms on their rights specified by the law.

There is no notification requirement for non-suspects summoned to a voluntary interview and a letter of rights is not required to be given to suspects summoned to such an interview. However, CPP Article 61-1 provides that suspects summoned to a Voluntary Interview must be notified of limited information on the charges as well as certain defence rights. CPP Article 61-1 further provides that, if the investigation allows, when a written summons is sent to the person for the interview, the summons should indicate the alleged offence, the right to be assisted by a lawyer and the conditions for access to legal aid, the procedure for appointing a lawyer, and the place where legal advice can be obtained before the interview.

Although the Criminal Chamber of the Court of Cassation stated on several occasions that the delivery of the letter of rights template to the defendant is not in itself sufficient to ensure that the defendant is fully aware of his/her rights, in practice, it has been noticed that police officers often refrain from orally notifying the suspects, only a written template is provided to them.



In Hungary, the suspects are primarily informed about their rights orally: at the beginning of the interrogation. They receive the written version at the end of the questioning as part of the minutes of the interrogation (if they request so), and/or after being detained in the police jail or the penitentiary institution.

The HCCP expressly stipulates the authorities' obligation to facilitate the exercise of rights through providing information on them: the defendant has the right to receive information about his/her procedural rights and obligations from the court, the prosecution and the investigating authority.<sup>18</sup> Article 62 of the HCCP sets out that the court, the prosecutor and the investigation authority "shall, prior to conducting the procedural action, inform the person affected by the procedural act about his/her rights and shall advise him/her of his/her obligations". Furthermore, Article 62/A (2) of the CCP sets out that the court, the prosecutor and the investigation authority shall ascertain in the course of their oral communication that the person concerned has understood what was said, and if not, they shall explain the information provided or the warning said.

The practice can be described as diverse: some officers find it important to explain the rights, a number of them because they believe that providing the information about rights at the beginning of the interrogation is a good possibility to start to engage in a discussion with the suspect, and it may be an excellent opportunity to build trust and rapport with him/her. However, one of the interviewees took an opposite position, explicitly welcoming the fact that the text of the information to be provided is of an official and legal character, and stated that this "*helps to keep the distance between the defendant and the police officer*". Another officer emphasized that when communicating the accusation, he deliberately uses the name of the criminal offences as included in the Criminal Code (e.g. "misappropriation"), and does not attach any further explanation to it "*due to interrogation technique reasons*".

The **State of California** can be cited as a good practice. 851.5 of the California Penal Code provides that any police facility or place where arrestees are detained must post a sign in a conspicuous place, in **bold block letters**, notifying an arrestee of his/her right to free local telephone calls (or paid calls outside the local area) to: (1) an attorney of his or her choice, or a public defender or other attorney assigned by the court, whose telephone number shall be posted; (2) a bail bondsman; and (3) a relative or other person.

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<sup>18</sup> HCCP, 43(2)

This statute further provides that the **arresting or booking officer must inquire, as soon as it is practicable** and no later than three hours after arrest, into whether the arrested person is a custodial parent with responsibility for a minor child. If so, the arresting or booking officer must notify the arrested person that they are entitled to make two additional telephone calls to a relative or other person for the purpose of arranging for the care of the minor child or children in the parent's absence. In addition, the facility must display a sign, conspicuously and in bold block letters, describing the custodial parent's right to two additional phone calls. The written signs must include notifications in English and in any other language spoken by a substantial number of the public who are served by the police facility.

### 2.3.2. Providing information on rights in a unified manner

The national research exercises have shown that **not having a unified Letter of Rights** and more importantly **not ensuring minimum standards of the practice** is a widespread issue in the countries examined.

In **Spain**, there is no single model of the letter of rights that is common to all police forces, nor is there a single model of the letter used in all courts. **Each police force uses its own information letter**, although they do apply some common criteria established by the National Coordination Commission of the Judicial Police. As for the letters with information on rights used at the investigating courts, the Ministry of Justice has prepared a standard form that can be adapted by each court. In the Autonomous Regions with devolved powers in the area of justice, the Justice Departments vest the respective Regional Courts of Justice with the task, and these create "form commissions" responsible for drafting the letters of rights to be adapted by each court.

In **Hungary**, the form of providing information is determined by internal norms or policies (such as the RoboCop NEO, the pertaining police instruction and the sample house rules issued by the National Penitentiary Administration), therefore consistency is ensured within individual authorities, while there are differences based on the place of the detention (the letter of rights provided to defendants placed in police jails will be somewhat different from the list of rights handed over in prisons) and based on the investigating authority (the prosecution service's template is different from that of the RoboCop NEO).

Similarly, in **Bulgaria**, the different authorities also standardize their own letters of rights, but no unity exists across the different authorities. E.g. the Directorate General

for the Execution of Sentences has adopted a template for the declaration of rights to be provided in investigation detention facilities (where formally accused persons are held), and the Instruction issued concerning police detention also sets forth a unified template on the rights of persons in police custody (including not formally charged suspects).

In **Lithuania**, suspects must be served with the “Annex to the suspect’s rights clarification protocol”, which is a standard form approved by the Prosecutor General. This document serves as the Lithuanian equivalent of the letter of rights under the Directive on right to information, and must be provided to all arrested and detained persons.

While, the lack of unity (necessarily entailing different levels of detail and accessibility) may cause problems, **having different letters of rights, tailor-made to specific groups** of defendants might be considered as a good practice.

**France**, for example, has adopted a different approach than seen in other jurisdictions, creating twelve different template letters of rights, keyed to different categories of person and/or proceeding in order to also provide information about the alleged offense. There are template Letters of Rights for different categories of person:

- (General form) – adults in Custody;
- adults in police custody accused of organized crime excluding drug trafficking and acts of terrorism;
- adults in police custody accused of drug trafficking;
- adults in police custody accused of acts of terrorism;
- (General form) – minors (13 to 18 years old) in police custody;
- (General form) – minors (16 to 18 years old) in police custody being an adult’s co-perpetrator;
- detained minors (10 to 13 years of age);
- persons placed in pre-trial detention during an investigation by an Instructing Judge;
- persons placed in pre-trial detention following an order by the Instructing Judge transferring the case to a trial court;
- persons placed in pre-trial detention in summary trial proceedings or court summons further to a revocation of bail;
- persons subject to a European Arrest Warrant or a warrant for provisional arrest or extradition;
- persons detained pursuant to a European Arrest Warrant or a provisional warrant for extradition or arrest with a view to extradition.

The research has also revealed that even within more or less unified normative frameworks, very much depends on how the individual officials carry out the task of conveying the required information (see in the previous Section the examples of different police approaches to providing additional explanation).

At the same time, it has also been discovered that most of the concerned authorities do not have unified policies, practices and practice directions providing their officials with guidance on how information on rights should be given to defendants, nor is there training on sensitising officials to the importance of this matter and equipping them with methods that they could resort to when they meet suspects or accused persons with special needs in this area.

In **Hungary**, for instance, it is not unified at all how the information provided to defendants in the course of the interrogation is explained to them; **every police officer has their own routine** in this regard. **No separate training** is provided, instead, rookies participate at interrogations conducted by their more experienced colleagues and develop their own ways after that. Some police officers interviewed by the HHC stated that they explain the information about rights in a lengthy manner, in a way adapted to the defendant's condition and intelligence (they are the majority), but there was also an interviewee who provides the defendants with the information about their rights in roughly the same manner, in 8-10 sentences every time irrespective of whether talking to a company director or a person who can hardly read. Some police officers were even of the opinion that informing the suspect about his/her rights is primarily the attorney's task (as one of them put it "*I will not work instead of the attorney, doing the attorney's job*").

### 2.3.3. Providing sufficient time

The requirement set forth by the Preamble of Directive 2012/13/EU, according to which rights stipulated in the norm should be ensured in a manner that guarantees the effectiveness of defence, entails the obligation of authorities to allow detained or arrested suspects and accused persons **sufficient time and an opportunity to get acquainted with, i.e. to read the Letter of Rights**.

Providing the information in writing is not sufficient *per se*, sufficient time is to be also provided to the suspects to read it. In the majority of the countries examined (e.g.

Spain, France or Lithuania), there is no regulatory provision stating that the suspect or accused person must have sufficient time to read the letter.

In **Hungary**, the CCP prescribes as a general rule<sup>19</sup> that the defendant is entitled to be granted sufficient time and opportunity to prepare his/her defence. Most police officers interviewed acknowledged that providing the suspect with sufficient time to understand the information given has importance predominantly in the course of the interrogation, since detained defendants have sufficient time to inspect the written documents at their disposal. The majority of the police officers interviewed stated that they continue to explain their rights to the defendants until the defendants understand them. At the same time, one of them added that although she strives to explain his/her rights to the defendant, but *“after a while things have to move forward”*.

Interviews in other countries also suggest that relatively short time is given to understand texts that are – as it will be demonstrated later – complex, legalistic and hard to understand for lay, often moderately literate people. For instance, in **Lithuania**, when asked how much time the suspected person is actually given to read through the letter of rights, half of the surveyed police officers, and half of the surveyed defence lawyers responded with “up to 15 minutes”. Interestingly however, both the police officers (20 out of 22) and the defence lawyers (17 out of 22) were mostly of the opinion that the time given to the suspects to read the letter of rights is sufficient.

In **Bulgaria**, it was escribed as rare that the defendants are given sufficient time to get acquainted with the letter of rights. According to the interviewed detainees, the provision of information about their rights is a formality and some of them do not even remember having been given any such information. When visiting Bulgaria, the Committee for the Prevention of Torture also observed that detainees sign the form without actually understanding their rights due to limited time for reading it.

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<sup>19</sup> HCCP, Article 43(2)

## *Recommendations*

- Minimum safeguards of the practice of the notification on the rights shall be established.
- (Additional) training should be provided to authorities on the importance of the rights being notified, sensitizing the police on why the rights are beneficial not only to the suspect but to the criminal proceedings as a whole.
- Additional amendments to the CPP that would also help guarantee the delivery and understanding of Letters of Rights include an extension of the time currently guaranteed for initial interviews with lawyers (if any).
- Law shall ensure that adequate time is provided to suspects to read the notification on their rights.

### **2.4. What information is provided**

According to the Directive 2012/13/EU Member States shall ensure that suspects or accused persons are provided with information concerning at least the following procedural rights:

- the right of access to a lawyer;
- any entitlement to free legal advice and the conditions for obtaining such advice;
- the right to be informed of the accusation;
- the right to interpretation and translation;
- the right to remain silent.

In addition to the above suspects or accused persons who are arrested or detained are to be provided information on the following rights as well:

- the right of access to the materials of the case;
- the right to have consular authorities and one person informed;
- the right of access to urgent medical assistance;
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority;
- and shall be provided information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

*According to international treaties and regional laws the most common rights that suspects and accused persons shall be informed of are the right to access a lawyer (ICCPR, Rome Statute, Luanda Guidelines; the*

*Rome Statue additionally requires notification of the rights to access legal aid); to remain silent (Rome Statute, ECtHR, Luanda Guidelines) and to effectively participate in the criminal process against them (CRC, Luanda Guidelines, Rome Statute). The Luanda Guidelines sets out the most comprehensive list of rights which must be notified, including the right to be free from torture and to humane and hygienic arrest conditions as well as a number of defence rights such as the right to challenge the lawfulness of the arrest and ask for release or bail bond.*

*The contents of Letter of Rights do in most Member States comply with the requirements of Articles 3(1) and 4(2) of the Directive. Cyprus and Bulgaria fail to include the complete list of rights in their Letter of Rights in violation of the Directive. The Greek Letter of Rights does not provide information on how long the suspect or accused person may be detained before being brought before a judicial authority, although Article 4(3) of the Directive requires this information to be included. The Slovakian Letter of Rights too, apparently fails to inform the suspect or accused person deprived of liberty of all their rights included in Article 4 of the Directive. The Maltese Letter of Rights informs suspects and accused persons wrongly of their rights and the implications that exercising their right to a lawyer may have and does not inform that this might undermine their right to remain silent.*

In most countries examined the Letters of Rights do not cover all rights included in the Directive 2012/13/EU.

The only exception is **Lithuania**, where the list of rights is essentially equivalent to the rights of which a suspect or accused must be informed under the Directive 2012/13/EU.

In **France** Article 803-6 of the CCP fails to require information to be provided regarding the **right to legal aid and the procedure for requesting it**.

In **Spain** the letters omit information that is relevant for comprehending the scope of the rights and exercise thereof. The letters used by the different police forces seen by RIS do not mention the right of arrested persons to have an interview with their lawyer before making a statement to police. On occasion, the right for the lawyer to be present or intervene in parts of the investigation other than the statement by the investigated or arrested person is not sufficiently clear. Neither do the letters contain specific information on the requirements for applying for and obtaining free legal advice. The wording of the letters does not facilitate exercise of the right to medical assistance. The requirements and procedures for bringing a plea of “Habeas Corpus” are not included in the letters either.

The situation is more complex in **Bulgaria**, due to the different standards of procedures.

**Persons, formally accused of having committed a crime** (whether detained or not) **are informed on their rights in criminal proceedings**, as listed in Article 55 of the CCP, where the scope of Article 3 of Directive 2012/2013/EU is covered by Article 55 of the CCP. In case of arrest or detention, accused persons receive some additional information on their rights. However, it **only partially covers** the **rights**, listed in Article 4 of Directive 2012/13/EU, specific to the situation of **deprivation of liberty**. Suspects, arrested and **detained by the police** receive information about some, but **not all** of the rights, listed in Article 4 of Directive. However, the same rights are provided to any detainee, regardless of the ground for detention; its prime aim is to serve as a safeguard against torture and ill-treatment and it makes no reference to procedural rights in criminal proceedings. The most essential right, excluded from the scope of information provided is **right of suspected persons to remain silent**. Suspects, arrested under the **Private Security Services Act and the combating Terrorism Act do not receive any of information** about their rights upon arrest. If later detained in the premises of the Ministry of Interior, they receive the same set information that is provided to detained suspects under the Ministry of Internal Affairs Act. According to the Military Police Act, **suspects, arrested or detained by the military police do not receive any information about their rights**, as prescribed by Article 4 of the Directive - neither upon arrest, nor during the time of detention. Persons, arrested under the **Customs Act, do not receive information on their rights immediately after arrest**. During detention in the premises of the Ministry of Internal Affairs, they receive the same information that is delivered to all detained suspects under the Ministry of Internal Affairs Act.

In **Hungary**, Article 43 (2) f) of the CCP sets out in a general manner that the defendant has the right to receive information from the court, the prosecutor and the investigation authority concerning his/her rights and obligations in the criminal procedure. In addition, Article 62 of the CCP sets out that the court, the prosecutor and the investigation authority “shall, prior to conducting the procedural action, inform the person affected by the procedural act about his/her rights and shall advise him/her of his/her obligations”. Nevertheless, the information actually provided does not cover all the rights included in the Directive. Suspects are not informed about the following rights included in Article 3 of the Directive, because these rights are not included in the template provided for defendants in the investigative phase:

- any entitlement to free legal advice and the conditions for obtaining such advice,
- the right to interpretation and translation.

In accordance with Article 4 (1) of the Directive, legal provisions set out that suspects and accused persons who are taken into 72-hour detention or are otherwise detained shall be informed about their rights in writing. With respect to persons being detained



in a police cell (being in 72-hour detention or pre-trial detention), titled “Information in Hungarian on the rights and obligations of persons detained in police facilities and on the order of detention”, serves as the Letter of Rights.

With respect to persons admitted to a penitentiary institution, Annex 2/A of the sample house rule for penitentiary institutions, issued by the National Penitentiary Headquarters („Information for pre-trial detainees”), serves as a Letter of Rights.

Annex 11 of the Regulation of the Order of Police Cells does not cover the following rights included in Articles 3 and 4 of the Directive:

- any entitlement to free legal advice and the conditions for obtaining such advice,
- the right to be informed of the accusation,
- the right to remain silent,
- the right to have one person informed,
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority and
- does not contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

The sample house rule of the National Penitentiary Headquarters does not cover the following rights included in Articles 3 and 4 of the Directive:

- the right to have one person informed,
- the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority, and
- basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

A problem might be – revealed by the **Hungarian** research - that rights not covered in the Letters of Rights **are included in other documents** received by the defendants. For example the decision on the pre-trial detention or arrest shall include the terms of challenging the decision (with which authority is it to be submitted, what is the deadline of the submission.)

## *Recommendations*

- Member States shall ensure that the Letters of Rights in all procedures falling under the scope of the Directive 2012/13/EU cover all rights included in the Directive 2012/13/EU.
- The letters of rights would be significantly improved by the provision of additional explanatory language on the right to silence and the right to access to a lawyer, including information regarding the potential consequences or risks of failing to execute them.

### **2.5. Keeping the letter of rights**

Pursuant to the Directive 2012/13/EU, Member States shall ensure that suspects or accused persons who are arrested or detained are allowed to keep the Letter of Rights in their possession throughout the time that they are deprived of liberty. **Keeping the letter of rights** during detention can contribute to understanding the rights.

*According to the LEAP survey respondents from Greece and Germany, the suspect or accused person is not allowed to keep a copy of the letter of rights and refer to it at a later stage. In Slovakia, information on the rights of the accused is provided as part of a different document, which in the view of the respondents devalues the effectiveness of the Letter of Rights.*

In **Hungary**, the letter of rights is available in each cell of the penitentiary institutions, the practice is somewhat different in the other countries.

Although the law in **Spain**, establishes that “the arrested person will always be allowed to keep the declaration of rights with him/her throughout the period of detention”, in practice, the copy of the letter cannot be kept by the arrested person, it **is left with his/her deposited personal items**. Officers interviewed by RIS explain that this is for reasons of security, arguing that they do this in order to “*protect the integrity of the arrested person*” and “*avoid self-harm or harm to others*” that might be done by using the sheet of paper on which the letter of rights is printed. They state that the arrested persons are allowed to consult the letter when they need to: “*if they ask for it, they are allowed to consult it*”. The option of keeping the copy among the arrested person’s deposited personal items does not enable them to consult the information at all times, which is precisely the aim of this requirement included in the Criminal Procedure Act.

However, of the arrested persons who were interviewed, only one said that the letter was indeed left with their personal items, while the rest stated that the letter was not deposited together with their personal items when they were returned upon their release: *“I didn’t know I was entitled to that, I didn’t have it at any time; we were allowed to read it and had to return it. My bag did not contain the letter. It was read to me (...) but I never physically had it”*; *“no, I didn’t have it in the cell, it was given to me when I was in the intelligence department and then it was taken away. It was not in the bag with my things. I am sure of it.”*

In **Bulgaria**, accused persons receive a copy of the act for bringing charges against them, stipulating their rights in criminal proceedings. Although not regulated by the law, in practice accused persons on remand can keep a copy of the document with them during the whole period of detention.

Police detention orders concerning formally not yet accused persons are issued in three copies, one of which is handed to the person detained. The suspects sign two copies of the letter of rights and one of the copies remains with them. Throughout the period of police detention, they are allowed to keep these documents in their possession. So while on the basis of the interviews it can be inferred that a considerable percentage of persons in police detention do not receive a letter of rights at all, the ones who get it, can keep it in their possession for the rest of the proceeding.

### **Recommendations**

- Member States shall ensure that suspects and accused who are arrested or detained can keep the Letter of Rights throughout their deprivation of liberty.

## **2.6. Verifying that the suspects understood the information provided**

Directive 2012/13/EU does not expressly specify that the authorities have to take steps to ensure that suspects understand the contents of the letter of rights provided to them, however, the aim of providing information to suspects and accused is to allow for those rights to be exercised effectively, so this obligation may be understood to be implicated in the Directive.

It is to be noted however that in the most countries examined **there is no unified practice in place to make sure that the suspect actually understands what is told or given to him/her**. In most countries, suspects or accused persons are required to sign copies of the documents received, but whether there is actual comprehension behind the signature is seldom monitored.

In some jurisdictions, **the law expressly vests the authorities with the task of making sure that suspects or accused persons are able to exercise their rights**. As mentioned above, in **Lithuania**, the law stipulates that the investigating officer has a general obligation to explain the suspect's procedural rights to him/her, and ensure that they can be exercised. The **Hungarian** CCP stipulates that **the authorities shall ascertain in the course of their oral communication that the person concerned has understood what was said**, and if not, they shall explain the information provided or the warning said.

Despite these legal provisions, the results of the **Lithuanian** research show that verifying whether the suspect has actually understood his/her rights is not a prevalent practice: only a very small percentage of interviewed officers stated to be doing so on a regular basis. The definite majority of surveyed officers never or rarely took additional action to ascertain that the suspect understands the letter of rights, and some of the interviewed lawyers also criticised the overly formal approach of the authorities.

In this regard it is important to note that – as also suggested by the Lithuanian research – suspects are not very likely to seek additional information about their rights from police officers primarily due to a lack of trust. Only 3 out of 22 surveyed officers indicated that they often receive questions about the contents of the letter of rights, and nearly half stated they rarely or never receive such questions. Interestingly, the results of the Lithuanian research also indicated that that suspects are barely more inquisitive with their own lawyers; over a third of surveyed defence lawyers said that they rarely or never receive questions about the contents of the letter of rights, and only four stated that they receive such questions often or always. (The research could not provide answer to the reason behind this phenomenon, however the assumption is that the lack of trust in the criminal procedure as a whole and the low standard of some attorneys' work might contribute to this. Another explanation may be something told by one of the interviewed Hungarian attorneys: *"in many instances it is 'embarrassing' for the defendant or the witness to ask [what this or that means], since [it is considered that] these things should be understood by everybody"*.)

In **Hungary**, where ascertaining that the suspect has understood the information provided is expressly prescribed by the law, most interviewed police officers stated that they observe the feedback given by the defendants, and some even ask the defendants whether they have understood the information provided, and if the answer is no, they explain it again. However, the overwhelming majority of interviewees regards it the **task of the defence counsel** to provide an explanation about their rights to the defendants if a counsel is present. One of the interviewees stated that if the suspect does not understand the information provided at all, he/she interrupts the interrogation, gives water to the defendant and gives him/her time to “pull himself/herself together”.

Hungarian police officers are not provided with methodology to ascertain comprehension, they rely solely on their instinct and communication skills. As a police officer shared with HHC, it can be duly assessed on the basis of **how the suspect looks** at the police officer and the suspect’s reactions whether he/she understands the information provided. **Literacy problems may become clear already when recording the suspect’s personal data**, e.g. it occurred that a suspect did not understand the official term used to describe unmarried women.

In the course of the interviews in **Hungary**, the HHC asked police officers to provide examples as to how they explain certain, more complex rights to suspects. Responses were very diverse, which supports the conclusion that there is no unified practice in this regard. A good example in this regard is how one of the interviewees explains the right to remain silent and the ban on false accusation: “*you may defend yourself as you wish, you may even lie, but you must not say that somebody else committed [the criminal offence] if that is not true*”. Another example provided by one of the judges interviewed goes as follows: “*You are free here, you may say whatever you want, but you must not say anything regarding someone else which is a lie.*” One of the interviewees provides the information on the ban on false accusation in the following way: “*you must not pin on someone something not committed by that person*”. Another example goes as follows: “*You will not suffer any disadvantages if you do not testify.*”

There is no express legal obligation to ascertain defendants’ comprehension in **Spain**, but some of the interviewed professionals gave account of doing so. A Spanish investigating judge said the following: “*If I am not convinced, I read them [the rights] personally and start a discussion with him until, from his replies, I am convinced that he has understood me*”. Spanish officers stated that “*there is no general guideline, it is something that is subjective and is left to the discretion of each officer*” and that “*you can tell [that the arrested person has not understood the information] when he is*

*passive, for example, unresponsive, and you ask again until you are sure that he has understood, using the most appropriate words for the intellectual capacity of that person". A court clerk in Spain explained that "I ask them, I look them in the face, I adapt the tone to the person", but concluded that "it is impossible to be sure". Other professionals also stress how the non-verbal language of the suspect or accused person can indicate a lack of understanding. Thus, one interpreter stated that "I normally realise that they don't properly understand the rights because [...] the arrested/accused persons are blunt, despite the fact that they are nodding".*

In **Canada** upon arrest, accused persons must be made aware of their right to remain silent and their right to counsel (Sections 7, 10(a)-(b) of the Canadian Charter of Rights and Freedoms). This notification is generally provided orally. The case law on these notifications has clarified that the police must inform suspects of their right to counsel in terms that they can understand. In **the Evans case**, the police were aware of the suspect's mental deficiency, but failed to make reasonable efforts to ensure that they understood when and how they were entitled to exercise their right to counsel. The Court ruled that the accused's Section 10(b) rights had been infringed and excluded certain incriminating statements they made to police.

The Supreme Court of **Canada** has nevertheless set a relatively low threshold for the purpose of determining whether accused persons or suspects have sufficient understanding to exercise or waive their right to counsel. The Supreme Court ruled that judges should apply the same test to determine whether accused persons have the mental capacity to exercise or waive any of their pretrial rights, the so-called "**Operating Mind Test.**" The Court held that the accused must possess the limited cognitive capacity that is required for fitness to stand trial. This standard does not take into account the physiological effects of a mental disorder that may impede the ability to understand one's rights. Accordingly, the Court found that even though the accused was suffering from schizophrenia and experienced auditory hallucinations that drove him to make incriminating statements to the police, he was nevertheless considered to have the "limited cognitive capacity" that is required for a making a valid waiver of the right to counsel.

## *Recommendations*

- Procedural rules are to be established to verify whether the suspect actually understands his or her rights as a routine exercise, instead of merely requiring to sign copies of the received documents, as is the current practice. Active engagement by police officers with the suspect in explaining the latter's rights could help ensuring that the procedure of informing a suspect is not merely a formality, but a real step towards ensuring fairness of the criminal procedure.
- Police officers shall understand the importance of providing information to suspects on their rights, their attitude is to be assessed and improved through trainings.
- Suspects and accused must be encouraged to ask questions from the authorities. The Letters of Rights shall contain the right to pose question.

### **2.7. Waiver of the rights**

The problem of the waiver of rights is closely connected to the issue of information on rights, as from the point of view of the validity of a waiver it is of crucial importance whether the suspect had a sufficient degree of understanding of the right he/she has waived. As the ECtHR jurisprudence puts it: “a waiver of the right, once invoked, must not only be voluntary, but must also constitute a **knowing and intelligent relinquishment of a right**” [emphasis added].

*According to the research of **international treaties** only the African Principles and Guidelines on the Right to a Fair Trial and the Rome Statute explicitly refer to waivers. Case law of the International Criminal Court and the ECtHR has further clarified standards on which waivers of a specific right can be considered lawful under their statutes. The right to waive the right to counsel in proceedings at the ICC, for example, is only lawful if the person was informed of their right to counsel prior to and during any questioning. In only a few of the **non-EU countries** examined could information on the requirements governing the validity of waivers be found despite extensive desk research, like in Kosovo and Turkey (see below). In some other countries, such as the Canada, New Zealand and US, the case law has developed similar assessment criteria.*

*In the USA any waiver of the right to silence or legal counsel must be “knowing and intelligent” and “voluntary.” To satisfy the first requirement, the state must show that the suspect generally understood their rights and the consequences of forgoing those rights. Regarding those with mental disabilities, the Supreme Court in Connelly held that a person’s mental state is only one factor in the test of determining whether a waiver is “voluntary,” and that a person’s mental state, by itself and apart from its relation to official coercion, will not dispose of the inquiry into constitutional “voluntariness.” A suspect may waive their Miranda rights even though they suffer from mental illness, as long as the illness does not interfere with their cognitive ability to understand the rights. As to the second requirement, a waiver is considered voluntary unless the defendant can show that it was the product of police misconduct and coercion that overcame their free will. If they make such a showing, the court will determine the voluntariness of waiver looking at the totality of the circumstances, focusing on personal characteristics of the accused and the specifics of the coercive police conduct. If a statement was made without the defendant being informed of their Miranda rights before, this statement will be inadmissible.*

*ECtHR jurisprudence provides clear guidance on how notification of rights must be delivered and the requirement for a defendant to comprehend their rights in order for a waiver to be valid. The ECHR has clarified that waivers of rights are only lawful and valid if the willingness to waive a certain right has been “established in an unequivocal manner and be attended by minimum safeguards [...]. A waiver of the right, once invoked, must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a right.” Further the suspect must understand what the consequences of waiving the respective right would be. When procedural rights are not effectively conveyed to the suspect, the ECtHR has found that the waiver is not lawful, as it considers that the decision to waive the right was not taken on a properly informed basis.*

*When procedural rights are not effectively conveyed to the suspect, the ECtHR finds that the waiver is not effective, as it considers that the decision to waive the right was not taken on a properly informed basis. Consequently, the reliance on statements obtained in that context then means prejudice is caused to the fairness of the proceedings as a whole. The Court has pointed to various factors, both objective and subjective, relating to the notification of rights which affect the validity of a waiver of the right of access to lawyer and to counsel:*

- *The fact that rights were notified in a language other than the suspect’s native language, without the assistance of an interpreter;*



- *The fact of the notification being given only orally in the form of a standard caution (which barely serves the purpose of acquainting the suspect with the content of the rights);*
- *The ‘stressful situation’ and ‘quick sequence of the events’ leading to questioning of the suspect;*
- *A ‘certain confusion’ in the mind of the suspect at the point of questioning;*
- *The young age of the suspect;*
- *The suspect’s level of literacy;*
- *Familiarity with police encounters; and*
- *Drug dependency of the suspect.*

The 5-country research has highlighted the most problematic issues around waiver with regard to the right to a lawyer. The **right to lawyer** is a “gateway” right, that if not waived can provide the suspect and the accused person with a unique opportunity to understand other rights guaranteed. The presence of a lawyer also means an important safeguard against different forms of pressure and abuse.

Involvement of defense lawyer in criminal proceedings is mandatory and could not be waived in some of the countries examined. There are some exceptions, however. In **Bulgaria** for example accused persons, not speaking Bulgarian, have the right to mandatory defense but could waive their right by making an express statement to this end. Defense is also mandatory but subject to waiver in cases where the accused persons in the proceedings have conflicting interests and one of them already have a lawyer. It is to be added, that all rights, as contained in the letter of rights handed to suspects, held in police custody are subject to waivers.

As the BHC noted, there are **no guarantees envisaged to ensure that waivers are given voluntarily**, that suspects and accused persons understand the consequences of such waivers or that any waiver could be subsequently revoked.

It is to be added, that the **practice** might harshly influence the access to legal defense. Some interviewed inmates – again, in **Bulgaria** – claim that they have been **manipulated** into believing that lawyers’ intervention in the case would only deteriorate their situation, whereas **by waiving the right to a lawyer, they could avoid harsh punishment**. While some interviewees stated that they waived their right to access to a lawyer voluntarily, knowingly and intelligently, most of them share that their access to a lawyer has been actively discouraged or completely denied by the police officers. One of the respondents in the online survey for lawyers shared that suspects are manipulated to believe that if they waive their right to a lawyer police detention, they would be released right after the custodial interrogation. Quotations,

taken from the transcript of the interviews conducted by the BHC, demonstrate the manner in which information is (not) provided to suspects in police custodial setting:

- *“I asked for a lawyer, but the police officers told me: ‘What lawyer, you junkie!’. After that I asked again for a lawyer three or four times, but they did not appoint one to me.”*
- *“I was detained and after that I wrote my statement. I asked for a lawyer, but they told me: ‘Tomorrow!’”.*
- *“They said that a lawyer will be appointed later on.”*
- *“My own lawyer was outside the police station, but they let him in only after they beat me and made me confess committing the crime.”*
- *“The police officer told me: “Do not waste your money on lawyers, we will put you in prison anyways””.*
- *The police officer told me: “You will get a lawyer, but only after you get released”.*

Violations this regard were also reported from **France**, where respondents were generally satisfied with how the right to access to a lawyer was explained in the Letter of Rights, they identified as the principal problem with the effective notification of this right the attempts by the authorities to encourage waiver by misrepresenting the practical effect of the exercise of the right. For example, one lawyer discussed suspects being told by the police: “you will leave more quickly if we do not have to wait for the lawyer to arrive”. A police officer confirmed that this is done and one judge explained that police will take advantage of the fact that in certain areas there is a lack of lawyers by saying “either you wait for a lawyer overnight or you waive your right to have a lawyer and we take a statement now.” A lawyer explained that this threat to stay overnight is influential because of the generally poor conditions in Garde à Vue.

Similar practices were mentioned with regard to the other important “gateway right”, the right to remain silent. Another **French** lawyer stated that while the language used on this right is clear, there is a problem with what is said ‘off the record’, such as “you should be aware that if you remain silent, the judges will not be pleased and you are going to appear guilty, so it is in your interest to talk”.

The law **Lithuania** might be cited as a good example in this regard. The Lithuanian CCP allows for waiving the right to a defense lawyer. The defense lawyer can be waived at any point in the proceedings, but **only on the initiative of the defendant**. This means that the suspect or accused **cannot be advised, suggested or demanded to waive her or his lawyer**.

In **Kosovo** minors cannot waive any of their rights without the consent of a guardian or parent. Similarly in **Turkey** the right to legal assistance cannot be waived by vulnerable suspects such as children and persons with a disability who cannot defend themselves, including people who are deaf or non-verbal.

Similarly, the **Lithuanian** CCP also establishes that waivers of some vulnerable suspects or accused – minors, people with physical or mental disabilities, people who do not speak Lithuanian – **are not binding** on the investigating authorities or the court, if there is reasonable ground to believe that this will compromise their right to defence.

The issue of waivers is also intertwined with the question of what extent of control authorities' exercise over the degree of comprehension of certain important procedural rights. As an extreme example, the **Bulgarian** report contains reference to an occasion when during court hearing, a detained defendant presented his visible bodily injuries to the court, making express allegations that he was a victim of physical ill-treatment by the police. However, instead of ordering medical examination or referring the case to the prosecutor's office, the court wished the accused person "speedy recovery".

While the case may be extreme and unusual, it highlights the importance of whether authorities adjudicating criminal cases are willing to look into matters concerning the circumstances of interrogations, including the adequacy of information provided on defense rights, and assess evidence obtained in light of this issue as well.

### *Recommendations*

- Member States shall ensure that national legislation and practice are in line with the ECHR standards; primarily providing safeguards to ensure that the waiver is voluntary, and it is also constitute a knowing and intelligent relinquishment of a right.
- Member States must provide additional safeguards as far as the validity of a waiver of the right of access to lawyer and to counsel concerned in case of certain groups of defendants.
- Audiovisual recording of information on rights and/or waivers of rights could enable the authorities adjudicating criminal cases to look into the adequacy of the provision of information as well as to the voluntariness of waivers and whether the relinquishment of a certain right was knowing and intelligent.

## 2.8. Accessibility of the letters of rights

Article 4(4) of Directive 2012/13/EU states: "The Letter of Rights shall be drafted in simple and accessible language". The meaning of what is simple and accessible is not explained in the Directive.

Other EU standards also set plain language requirements. On 9 March 2016, the European Parliament, Council and Commission, adopted the Interinstitutional Agreement on Better Law-Making (Agreement). In Paragraph (2) of the Preamble, the institutions agreed that it is their joint responsibility to deliver high-quality Union legislation that "is as simple and clear as possible." Pursuant to Article 2 of the agreement the institutions "agree to promote simplicity, clarity and consistency in the drafting of Union legislation." In Article 3 they "agree that Union legislation should be comprehensible and clear."

The above norms do not give very concrete guidance as to how clarity can be defined and measured, however, there is a document issued by EU bodies, which can be helpful in considering accessibility, even though it provides guidance in a field other than criminal justice.

In 2009, the Enterprise and Industry Directorate General of the European Commission issued a guideline on the readability of the labelling and package leaflet of medicinal products for human use (hereafter: Guideline). The primary purpose of the document was to provide guidance on how to ensure that the information on the labelling and package leaflet of medicines is accessible to and can be understood by those who receive it, so that they can use their medicine safely and appropriately.

The guideline determined what the success criteria in this regard are. According to the Guideline, the labelling and leaflet of medicines are considered accessible "when the information requested within the package leaflet can be found by 90% of test participants, of whom 90% can show that they understand it. That means to have 81% of test participants able to find the information and answer each question correctly and act appropriately. However, according to the Guideline it need not be the same 16 participants in each case. The success criteria will need to be achieved with each question. Results cannot be aggregated."

*Survey respondents of the LEAP research from certain member States (ES, IT, CZ, SI) found that the letters of rights are not drafted as required by Article 4(4) of the Directive in an easily accessible language. Respondents from EE found that the Letters of Rights are too formalistic. The Finish letter is seven pages long. Several of the surveyed defense practitioners from BE, CZ and HR believe the Letter of Rights is only useful to the suspect or accused person if they can discuss the Letter of Rights with a lawyer.*

*The Austrian respondent explained that the Letter of Rights includes an explanation regarding the right to remain silent that is distinctly confusing to any non-legally trained reader and does not effectively inform of the benefits or disadvantages of exercising that right. Similarly, the Maltese respondent is concerned about misleading language with regards to the right to consult a lawyer and the impact that has on the right to remain silent.*

*Some lawyers believe though that the Letter of Rights provided is an improvement on the previous status of not providing a Letter at all (IT, ES). The Dutch respondents believe that the Letter of Rights provided might be a bit too long, but does in practice provide suspects and accused persons with a clear understanding of their rights. The Romanian, Slovenian and UK Letter of Rights were considered accessible and helpful to most suspects and accused persons.*

### **2.8.1. Factors influencing the level of understanding besides language**

The national researches suggest that, beyond the language used in the letters of rights or by the professionals involved in this information procedure, there are factors that have a decisive effect on comprehension by suspects or accused persons of the information they are receiving.

The first of these factors was the existence of some kind of **mental state or condition** (“*mental or psychiatric problems are common as is drug addiction*”; “*sometimes there are people who are completely drunk and it is impossible that they understand anything*”).

The **level of education and the low level of literacy** compared to the general population also affects comprehension, in particular the first time a person is facing criminal proceedings. As one arrested person in Spain explained, “*the language is relatively understandable for an average person, but not for an average person of the*

*kind in the cells; there is a class bias. The average person who ends up in the cells has difficulty understanding”, a conclusion that is shared by some of the professionals interviewed, “the vast majority of investigated persons belong to a social group with basic education”. This is the case in all countries examined. For example, in Hungary, 48% of detainees have finished only elementary school.*

Thirdly, the suspects or accused persons receive **a lot of information in a short time**, which makes it hard to assimilate it. According to half of the professionals asked in Lithuania, the maximum time given to suspects to read the letter of rights is approximately 15 minutes, which is believed by some professionals to be insufficient. (It is to be noted that one third of the respondents claimed that suspects are given as much time as they need.) This factor has been flagged by several of the professionals interviewed in the countries examined. Moreover, as interviewees suggested, it is not uncommon that the arrested person ends up saying that he/she understands the information, apparently with the intention of getting the procedure over with as quickly as possible.

Finally, the **nervousness and stress** during the arrest or at court has a decisive influence on the level of comprehension of the information received. This is highlighted by Spanish police officers (*“when reading, given how nervous they are, they understand less”*), judges (*“they are people in stressful situations, they don’t understand what it means. We ask them if they have understood and, even if they say yes at the time, they later reflect on what happened and realise that they haven’t understood”*) and concerned persons: *“What do you think? (...) You’re nervous, they don’t tell you anything, not what they are looking for, (...) they don’t tell you when you will get out (...) it is not that there are factors, the fact of being there is the factor. You’re not in a fit state to understand anything”*.

An additional factor contributing to the stress was mentioned in France: the notification on rights is included in the document that also sets out the details of the accusation. The accusation is above and followed by the notification on the rights, as a result of which people get distracted and panicked by the language of the accusation and they cannot focus as much as they should on the actual rights themselves.

### **2.8.2. Lessons learnt in the research conducted by HHC assessing the accessibility of the Hungarian letters of rights**

The HHC tested how the accessibility of the Hungarian letters of rights can be measured statistically, and developed a new, alternative letter of rights with the contribution of a plain language expert, a sociologist and criminal lawyers.

In the first wave of the survey, the HHC tested the currently applied letter of rights (a “test letter of rights” created from the combination of the text read out by police to suspects before the interrogation and the text that is provided to detained defendants after their interrogation) on 200 persons (whose compound was equivalent to the compound of the defendants according to their gender, age and highest level of education).

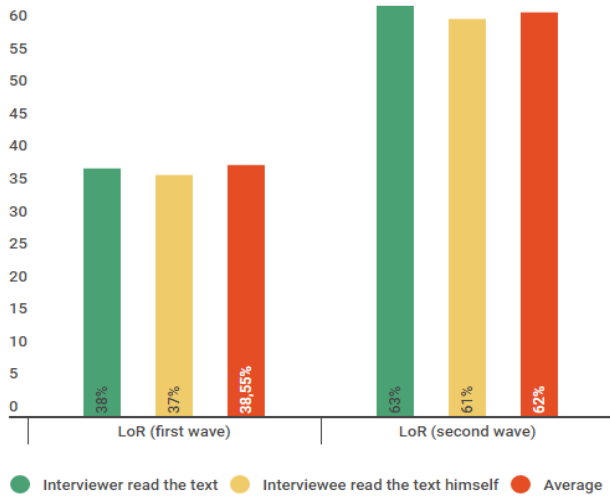
The researchers read out the letter of rights to 100 respondents and then asked them detailed questions about the information the text contained. Also in the first wave, there were another 100 respondents who could read the “test letter of rights” on their own, and after reading it, they had to answer the same questions as the ones to whom the letter of rights was read out.

The questionnaire used in the survey contained 46, mainly closed questions with given answer-opportunities, and the goal was to measure whether and to what extent the respondents could remember, understand and apply the information provided. Due to the structure of the questionnaire, the HHC could see which parts of the texts were harder to understand for the survey participants and detect the weak points.

Based on the results of this survey, the HHC and the plain language and legal experts involved in the project changed the phrasing of the letter of rights and also completed it with information that is required by Directive 2012/13/EU, but is missing from the existing letters of rights.

In the second wave of the research, the HHC tested the accessibility of the new text with the same methodology as in the first wave (on 2x100 persons, with the same methods and same design) and with the same questionnaire, so the results of the two waves are comparable.

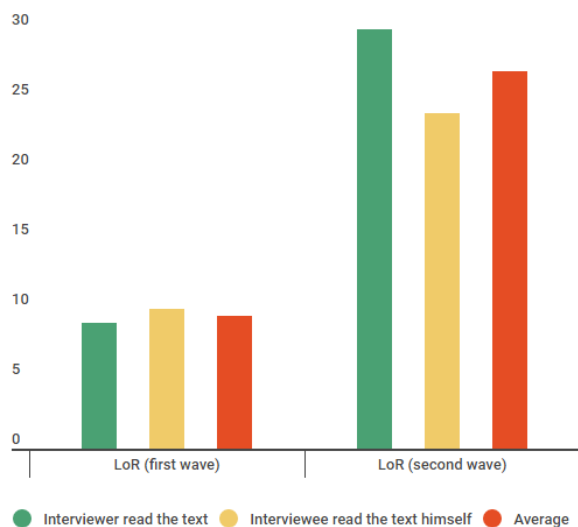
## Accessible Letters of Rights in Europe – Comparative study



The results of the survey suggest that the alternative letter of rights compiled by the HHC and the legal, plain language and sociology experts involved in the project was far more accessible than the current one, and it was easier to understand. The overall level of understanding of the existing letter of rights was 38,5 %, whereas it was 62% in the second wave of the survey, aimed at testing the alternative letter of rights.

### Accessibility of letters of rights

In the present research, we determined as a benchmark for accessibility a lower ratio of understanding than the guideline for medicinal products, as the sample was selected based on the less educated and less literate population of pre-trial detainees. In the research, if **75 %** of the respondents gave the correct answer to our question, we declared that part of the letter of rights accessible.



Number of questions, in case more than 75% of the respondents gave correct answer



The currently applied letter of rights was written by lawyers for lawyers, it seems to contain information important from the standpoint of legal professionals, and it is written in a technical legal language, containing a massive amount of references to particular articles of the Code of Criminal Procedure (without elaborating what the given article contains). These references are obviously not understandable to lay persons.

The Hungarian legal tradition (and this also applies to legal education) prefers technicality and texts that a lay individual can hardly understand, legal 'jargon' and the use of foreign (mainly Latin) phrases. Legal documents (judgments, petitions, etc.) are usually written in a non-accessible language, citing or echoing laws without elaborating on or explaining their actual meaning.

When compiling the alternative letter of rights, the HHC's primary objective was to make it understandable to everybody, as it is intended for reading by members of the general public, mainly by a somewhat less educated and sometimes vulnerable population (see also the aspects of sampling for the sociolinguistic survey), and not for reading by lawyers who are (or should) be aware of the rights of the defendant in the criminal procedure.

There are numerous reasons behind the result that the alternative letter of rights developed by the HHC proved to be more accessible than the current one. Some factors influencing the outcome are closely related to the nature and the special characteristics of the Hungarian language. However, some of the factors identified will most probably be useful also for non-Hungarians, as they are not related solely to changing the wording of the letter of rights, or are not language-specific.

Although the HHC did not have the resources to measure which factor contributed to what extent to the increased accessibility of the text, conclusions could be drawn from the results. Also, a significant part of the amendments was made in strong cooperation with the plain language expert, but some of the changes that had to be made to serve the improved comprehensiveness of the text were also obvious on a pure common sense basis.

The most important change, most probably entailing the biggest improvement, was that the technicality of the text was significantly decreased, and we attempted to eliminate terms used only in the legal technical language. 'Translating' and explaining the technical legal terms while maintaining the text's accuracy was one of the biggest challenges, and related efforts resulted in a lengthier text, involving additional explanations of legal terms.

First of all, references to legislative provisions were deleted, since the inclusion of a reference to a particular paragraph of the relevant law without explaining what that paragraph contains does not provide added value. It is not only redundant information, but it also makes the text less comprehensive and unnecessarily increases its length.

Whenever it was necessary, the HHC included examples and explanations of the “hard” legal terms. By using less technical terms, the alternative letter of rights became much less formal in tone. Also, the text was made more personal: for example, instead of beginning a sentence with “the defendant has the right to...”, the reader was addressed: “you have the right to...”. The HHC even tried to use simple wording instead of ‘ordinary’, non-legal terms, for example the word ‘indigent’ was replaced by the word ‘poor’. In addition, survey results showed that shortening the parts on ‘obvious’ information could also be considered when drafting.

Some structural changes were also made. The alternative letter of rights became longer than the existing one, partially due to the added information that was not included in the current letter of rights although it would be required by the Directive, and also because of the added explanations of certain legal terms. This increase in length was offset by structural changes aimed at increasing comprehensibility.

A table of contents was added, and the text became more structured (broken down into more paragraphs). Furthermore, titles and subtitles were included to each and every part of the text to make it easier to navigate in the document. We shortened the sentences and used bulleted items whenever it was possible. Results pointed out the relevance of formatting as well – bold letters attracted more attention, were read more carefully. Thus, changing the size of the letters, using larger print and including additional formatting (italic, coloured text, etc.) should be considered when drafting the new letters of rights, along with including drawings or infographics.

In the alternative letter of rights the aim was to organize the text according to the order of the questions, but it might need additional discussions to determine the proper order of the parts of the text. The main factor in this regard could be the usual order of the criminal procedure’s elements (i.e.: the right to remain silent should be included prior the issue of the consequences of telling or not telling the truth).

Finally, we have identified those most typical problems that a defendant may come across in relation to the individual rights, and tried to address briefly what the solution of those problems may be. By way of example, the current letter of rights provides information about the general right to a defence lawyer (“I inform you that you can

hire a defence counsel or you can ask the police to appoint one”). The suspect, however, has no chance to know from this sentence whether he/she can ask for another attorney if he/she is not satisfied with the work of the actual one. Therefore, in order to make the exercise of this general right more effective, we added detailed information to the text of the alternative letter of rights: “You cannot choose the attorney to be appointed for you, but **you have the right to request that another one** be appointed if you are not satisfied with the work of the actual one” [emphasis in original]. The proportion of correct answers to the question whether there is a chance to get a new lawyer if the current one fails to perform his/her activities, increased to 87.5 percent (second wave) from 32.35 percent (first wave).

An interesting observation was that whereas it was believed that the way of conveying the information (i.e. whether it is read out the respondent or whether he/she can read it) would have a significant impact on the level of comprehension, this was not the case (for the numbers and the possible explanations see Section 2.3.1. above).

## 2.9. Accessibility of letters of rights in the countries examined

### 2.9.1. The obligation to provide information in an accessible manner

In some of the countries examined, there is an express legal obligation to provide suspects with the information of rights in an accessible manner.

According to the **Spanish** law, “the information referred to in this section will be supplied in accessible and comprehensible language. In this regard, it will be adapted to the age of the recipient, his/her degree of maturity, disability and any other personal circumstance that may alter his/her capacity to understand the scope of the information being provided”.

The **Hungarian** CCP stipulates that the court, the prosecutor and the investigation authority strives to communicate with persons participating in the criminal procedure both in writing and orally in a simple and accessible manner. The information about rights and the warnings about obligations shall be formulated in an understandable way for the person concerned, taking into account the concerned person’s condition and personal characteristics.

In **France**, Article 803-6 of the CPP, which was added by the law transposing the Directive, provides that “any suspect or accused person subject to a measure of deprivation of liberty pursuant to a provision of this Code” shall be given a written declaration of rights setting out in simple and accessible terms the procedural rights that he/she has.

On the other hand, in **Lithuania**, there are no legal requirements to provide the information on the rights in a clear and easy-to-understand language, and the **Bulgarian** laws do not contain any such obligation either.

However, there have been no great differences as to the actual accessibility of the letters of rights between countries where such an obligation is stipulated in a law, and those where no express obligation exists. In all of the countries examined the letters of rights seem to fail the requirement of accessibility, which shows that a provision of declarative nature is meaningless without mechanisms to ensure compliance.

### 2.9.2. The process of drafting letters of rights

The text of the Letters of Rights is compiled by the authorities in every country. In **Hungary**, for example the texts of the information documents were compiled by the National Penitentiary Headquarters and the National Police Headquarters in line with what is prescribed by the law.

Since these authorities do not always have at hand the required expertise concerning accessibility, one useful way to ensure this is the inclusion of external expertise into the process of drafting letters of rights, including organisations and/or professionals dealing with specific vulnerable groups (children, persons with disabilities, illiterate persons, etc.) as well as plain language experts.

Another desirable mechanism could be the preliminary testing of the drafts. As the Hungarian Helsinki Committee’s quantitative research has shown, a testing exercise can be carried in a cost-effective manner, but at the same time it may significantly contribute to the improvement of the text from the point of view of accessibility.

However, in **all of the examined countries**, it was found that the state authorities responsible for the drafting of the respective letters of rights, had done so without

either trying to channel non-legal expertise into the process or performing a statistical-quantitative testing of the drafts before they were put into use.

These texts have an inevitably huge impact, as during the years when they are in use, thousands of defendants are informed of their fundamental rights through them in situations where the full comprehension of what those rights are and how they can be exercised is of crucial importance, however due to a number of factors (see above), the concerned persons face increased difficulties of understanding the information conveyed to them.

In addition, while it must obviously be the acting authorities that are vested with the task of making sure that the letters of rights are presented to the defendants, and that the defendants comprehend the rights listed, one must not forget that there is a built-in tension in the relationship of the police and the defendants stemming inevitably from their procedural roles. Therefore, deliberate omissions or unconscious negligence concerning the obligation to inform suspects may never be fully excluded, which is an additional argument for trying to ensure that already the letter of rights is as comprehensible as possible.

Therefore, the inclusion of representatives of vulnerable groups and the actual testing if the drafts prepared seems highly advisable.

### **2.9.3. Making the letters of rights publicly available**

In some countries (e.g. **Spain**), neither the letters of rights for investigated and arrested persons, nor the instructions which regulate the rights information procedures (in the Spanish case: the instructions from the Interior Ministry or the respective Departments of the Autonomous Regions) are available from official publicly accessible sources.

In others, the templates are available as legal norms or annexes thereof, therefore, while they are out in the public domain, they are still not easy to access for the public.

To increase awareness of defence rights in general, and also facilitate better understanding of the rights should a person find himself/herself in a situation where he/she needs to exercise them, it would be highly desirable if the letters of rights would be published in a manner that it makes the information contained in them easily accessible for anyone.

This is the practice for example in the **United Kingdom**. A template of the Notice of Rights and Entitlement has been developed and is available online. Translations of the letter are also available online in 60 languages.

#### 2.9.4. Legal wording

The **overuse of technical terms**, legalistic texts is a common and serious problem in the countries examined. The difficulty for those facing criminal proceedings for the first time to understand their rights is aggravated by the use of legal language and technical terms in the letters of rights.

In most of the examined countries, the letters of rights are a mere replication of the relevant pieces of legislation, thus, the text is entirely legalistic. As the **Bulgarian** report points out: it is written “in legal language, not readily understandable, particularly for individuals with a lower level of education”. The meaning of few terms, used in the letter of rights, provided to police detainees, is also not entirely clear or easy to understand by the general public, especially by the categories of persons, usually detained by the police. For example, in Bulgaria, the term “other interested party” used in the context of detainees’ right to notify a family member or another person of their choice, could be confusing.

The texts often simply refer to a specific Article of the law without explaining what that Article covers. A telling and typical example from the Bulgarian letter of rights: *“Immediately after my arrest, I was orally informed on my rights as stipulated in Article 72, 73, 74 of the MIA. (signature of the detainee)”*. No further elaboration on the content of these provisions is given.

Another illustrative example from **Lithuania** on the (over)use of technical terms is that although the Lithuanian letter of rights does not refer to specific articles within the Code of Criminal Procedure, it does point, in a general manner, to the “procedure laid down in the Code of Criminal Procedure” on five different occasions throughout the text. The letter also includes a lot of legalistic terms, such as “pre-trial investigation officer”, “pre-trial judge”, or “BPK” – the abbreviation of “Code of Criminal Procedure”. These terms are not explained anywhere in the letter of rights.

In **France**, it was also mentioned that multiple different actors in the criminal justice system are mentioned without a proper explanation of their roles, sentences are often

long and complicated, e.g. the following one discussing the right to access a lawyer: *“The public prosecutor (or the investigating judge) and the judge for freedom and detention, may, for compelling reasons and on an exceptional basis, decide to delay attendance by your lawyer during your interview, for a period of 12 hours, renewable once, if the sentence of imprisonment incurred is at least five years.”*

Also in France, attention was also called to the fact that the letter of rights in a number of places requires knowledge of the potential length of sentence for the offence of which the person is suspected in order to understand the right. For example, in its first section the letter states: *“You will be heard on these facts during the Garde à Vue which can last twenty-four hours. At the end of this period, the public prosecutor (or the investigating judge) may decide to extend the Garde à Vue for a further twenty-four hours, if you may incur a punishment of at least one year's imprisonment.”* Thus, a reader is required to know the underlying law governing the suspected offence prior to being able to fully understand his/her rights.

The lack of accessibility of the letter of rights was echoed in the interviews which were conducted in the framework of the national researches. As one **Spanish** judge indicated, *“the wording of the documents is a form with difficult words”*, a conclusion that is shared by arrested persons: *“look, at a moment like that, they put a piece of paper in front of you, written in double Dutch, it is not what you need. It's like they give you a law or the BOE [Official State Journal of Spain] or something like that, you don't understand anything. You're at your wits' end and don't understand anything (...), they put a piece of paper in front of you for you to sign and you don't understand it, you're nervous and you want to go, and because you don't understand you don't want to sign anything”; “it was clear to me, because I am a student at university, but someone who isn't, wouldn't understand anything. I understand that there is a legal language that is obligatory because of bureaucracy, but there are people who may not understand it because it uses legal terms that are not comprehensible”*.

According to the Spanish research, the arrested persons themselves admit that they did not exercise some rights because they did not understand how they were to do so or the implications of exercising them: *“well, and about the doctor. Yes, of course, if I had been told how to do it and what it implies, whether it is worse for you because you stay longer or whatever, or that they tell you where they are taking you, who the doctor is, whether it is there or somewhere else, I don't know. Look, I was scared and didn't go for that reason”*.

As a **Hungarian** lawyer summed up the problem: *“A lay person has no idea what the word ‘motion’ means, what ‘self-accusation’, ‘the possibility of defence’ or ‘remedy’ means, and does not know that if he is asked a question and he answers, just then he*

*may accuse himself with of committing a criminal offence, for example if he tells [the police] that ‘his wife attacked him, he was sitting in the car, and while leaning back, he tried to hold off the raving woman with his legs, in the course of which he might have kicked her’. The investigators will deduce from that that he kicked his wife on her chest intentionally, two ribs of whom broke, and since his child was also present, he also endangered his child. A lay person does not know that a person with much more routine and better verbal skills may easily confuse someone with inferior verbal skills even if the defendant [i.e. the latter person] did not do anything.”*

It is to be noted, that the overuse of ‘legalese’ is experienced also if information is provided orally. It seems obvious that one speaks his/her mother tongue, but providing information on complex legal issues in an accessible way might be challenging, especially for lawyers.

### 2.9.5. Structure and format

According to our research, none of the examined letters of rights can be considered well-structured and properly formatted. All of them can seem to lack clarity and simplicity. Tables of contents are not included, the letters of rights do not follow the structure of the criminal procedure, they are not internally consistent, and the only fragmenting applied is the use of headings and subheadings, if any. Bullet points are used in only some of the letters

The most telling example to illustrate is from **Bulgaria**, where each of the rights, contained in the letter of rights provided by the police, is formulated by the use of one sentence only, following an identical pattern.

..... to be assisted by a lawyer in accordance to the Legal Aid Act.

I wish/ I does not wish

(signature of the detainee)

..... that I have the right to visits, to receive correspondence and small parcels.

I am informed/ I am not informed

(signature of the detainee)

The letters of rights are readable in terms of font and size, but no graphic elements, colours, graphs are used in any of the countries examined.



The sentences are far too long and complex, in Lithuania for example some sentences are over five lines in length. Description of the rights also varies on a large scale, from a couple of sentences to more than four paragraphs (although this can be justified in certain cases, as some rights are far more complex, far more difficult to understand than others).

The readers, the suspects are not addressed directly in the majority of the countries examined, but referred to as a third person as “the suspect”, which also hinders understanding according to plain language experts.

A major lesson learnt from the HHC’s research (see Section 2.7.2.) is no matter how well-intentioned and careful the authors are, the text of the letter of rights will not be accessible if it written by lawyers only and without testing the intelligibility of the text.

#### 2.9.6. The order of presenting the rights

In **Spain**, an additional factor was identified as having a decisive effect on comprehension, namely that the information is not presented as part of a broader process, i.e. the presentation does not follow the chronology and logic of the process itself, which makes it hard to understand the rights themselves and their scope. One of the lawyers explained this very clearly: *“the rights are stated as isolated elements, not as part of a process (...). The lawyer arrives (when, how long will he/she take), then I am taken to give a statement to the police (what do I have to do, not giving a statement is the same as admitting guilt...), then back to the cell and you are brought before the judge when a police van is available, or whenever they feel like it, basically. It is not explained as a linear process with a series of steps, which would help the person situate themselves”. This opinion is shared by some judges, “it should be obligatory to inform properly (...) on the development of the process, its phases, the consequences of not notifying changes of address”.*

It seems advisable to structure the letter of rights in a way that reflects the chronology of the proceeding, as this can assist comprehension.

### 2.9.7. “Counter-intuitive” rights

One interesting finding from the Hungarian sociological research was that there were rights that one may call ‘counter-intuitive’, i.e. contradicting everyday experience, “common sense”, general social expectations.

E.g. in the first wave of the research, the proportion of those who knew that they had the right to make untruthful statements to the criminal authorities (9.45 percent) was the extremely low. Being unaware of this right can have a very detrimental effect on the defence strategy. Lack of this knowledge can also make defence more difficult for an innocent person (because s/he may have different reasons for not telling the whole truth).

The reason for the very high proportion of wrong answers may partly be that the opportunity to lie to the authorities is highly counter-intuitive and the current letter of rights does not provide direct information on this right. In a ‘tricky’ way, it only warns the defendant about the legal consequences of false accusation of other persons. It is not expectable from an ordinary person to realize that the ban on false accusation implies the right to tell other than the truth provided that it does not constitute false accusation of another person at the same time.

Even in the second wave of the research, when this right was formulated in a very straightforward manner (“you can say anything in your defence, **you are not obliged to tell the truth** [bold in the original], but you may not falsely accuse others of the perpetration of a crime, a petty offence, an infraction punishable by administrative penalty or disciplinary infraction”), the proportion of correct answers only increased to 54 percent (i.e. below our 75% threshold of accessibility).

Reports of especially problematic rights were reported from other countries as well: in **France**, both police officers and lawyers said that first-time suspects will have a difficulty understanding the right to remain silent. First-time offenders will have a hard time comprehending that not putting forward a defence may be the better option for them and therefore may be more easy to influence in the direction of making a statement. As one lawyer phrased it, *“a hardened criminal knows about the practical use of the right to silence, so it is harder to make them talk – they know the police tactics. So it depends on the suspect in question – whether they are more likely to be convinced.”*

In **Spain**, while police officers and lawyers considered that suspects or accused persons obtain sufficient information in relation to the right not to answer specific questions,

the arrested persons interviewed stated that they did not understand that they were entitled to only answer some of the inquiries addressed to them: *“I didn’t know that, they didn’t explain that to me”*; *“I had no idea. I don’t think my lawyer even told me that, because he only told me to keep my mouth shut. How about that, I didn’t even know you could answer some questions and not others”* (LoR28).

Again, it must be noted that some of the concerned rights are “gateway rights” – such as the right to silence –, which, if not waived, can provide the suspect or accused person with sufficient time to consult with a lawyer and understand other rights guaranteed before making a statement.

Therefore, when drafting a letter of rights, the differences in the complexities of the rights must be duly taken into account, and increased attention must be paid to the formulation of the information of those rights that are “counter-intuitive”.

### *Recommendations*

- The Letters of Rights are to be improved significantly with a close review to remove overly technical terms and legalese with the contribution of plain language expert(s) and the inclusion of groups of people with low literacy and the representatives of vulnerable groups.
- The formatting of the Letters of Rights is to be greatly improved to better highlight the key pieces of information being provided. Better use of bullet points, bold and other methods to highlight critical text, as well as, more generally a clearer and more visually attractive format would aid understanding of the information provided on rights.
- Draft letters of rights are to be empirically tested before being finalised.
- Letters of rights should be drafted in a way reflecting the chronology and logic of the criminal proceeding to facilitate comprehension.
- Special attention must be paid when drafting information on rights that may not be in line with everyday “common sense”, but have an important “gateway” role in relation to exercising other rights (such as the right to silence).
- The texts of the Letters of Rights shall be made publicly available.

## 2.10. Consequences of improper notification about rights, available remedies

Under Article 8(2) of Directive 2012/13/EU, Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.

*All of the international and regional documents examined, except for the African Principles and Guidelines on the Right to a Fair Trial and Legal Assistance and the African Resolution on the Right to Recourse to Fair Trial, provide for a right to a remedy or compensation if an arrest or detention took place in violation of rights under the treaty. The Luanda Guidelines appear to be the most progressive, outlining in Articles 35 to 38 that the suspect or accused person has the right to have the legality of their detention reviewed, has the right to access appropriate complaints mechanisms and seek and obtain effective remedies for the violations of their rights, the remedies including “restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition”. Additionally, non-compliance with the rules on arrest and custody – including relating to notification – should be a disciplinary offence, a mechanism which is intended to deter police officers from violating the rights of suspects or accused persons in the first place.*

*Most laws of non-EU countries researched did not explicitly provide remedies for failure to provide a notification of rights. Many countries do however provide remedies for “unlawful arrest or detention” or exclusion of evidence that was unlawfully obtained or without due process. For some countries (e.g. Australia, Canada, Chile, Kosovo, South Africa, Switzerland, US), the research showed that this remedy would be applied if the suspect or accused person was not lawfully informed of their rights. In India in general terms, the infringement of the right to inform detainees of their rights may vitiate the trial and could potentially lead to the abrogation of the conviction. In addition, if a police officer fails to inform of the right to notify a third party of the arrest, not only would the suspect be entitled to receive compensation, but the officer in question could incur in personal liability and may even be punished for contempt of court.*

*In Turkey the suspect or accused person may claim damages from the State (material and economic losses) if they have been arrested without being provided a written notification of rights or without being provided the opportunity to exercise their rights. On the other hand, in Singapore, courts have established that the violation of notification rights need not necessarily result in the evidence obtained being inadmissible.*

*In several Member States evidence that was obtained in violation of the notification obligation or the duty to provide a letter of right can result in exclusion of the evidence or repetition of the respective procedural stage (BE, BG, CZ, DE, IE, NL, PT, SL, SI) especially if the suspect or accused person was not informed about their right to a lawyer or to remain silent (FI). However, in a number of countries the respondents believe that it is extremely unlikely that the court would actually order such remedy (BG, EL, FI, FR, PL, HU, and UK). Some respondents believe a breach of the procedural rights would be impossible to prove as the defendant must sign a statement affirming receiving and understanding the Letter of Rights (BG, CZ, SL) or the courts would not consider such violation sufficiently substantial to require an exclusion of evidence or other remedy (ES, EL, HU, UK), except if for example the right to a lawyer were waived (EL, NL). In other Member States there is currently no legal provision or case law concerning such remedy (EE, IT, MT, PL, RO).*

With some minor differences, in all countries examined there are rather general provisions regarding the consequences of breaching procedural guarantees such as the provision of information on procedural rights. Not providing the suspect with information on his/her rights may constitute an infringement of essential defence rights (depending on the type of right about which the concerned person was not informed). This can constitute grounds for excluding the confession as unlawfully obtained evidence, in some cases the termination of the court proceedings and/or returning the case to the investigative authority for a repetition of the procedural act, and/or the repetition of all investigative acts that followed the initial bringing of the charges.

There are, however, relatively few cases reported, when a procedure was actually terminated or sent back to the investigative authority.

In **Bulgaria**, for example, by virtue of an Interpretative decision 2002/2 of the Criminal Division of the Supreme Court of Cassation, failure on the side of the investigative authorities to provide translation of the charge sheet, where the accused persons do not speak Bulgarian language and have not expressly waived their right to translation of documents, constitutes a violation of the rights of the accused person. The consequences of such violation would be the termination of the court proceedings and repetition of the procedural act of bringing charges.

The **French** CPP gives the courts the power to declare a procedure null and void if the failure to comply with the rules relating to that procedure causes prejudice to the person concerned. The result is that the procedure is annulled. So, with regards to

unlawful custody, **all information obtained from the interview held during custody is excluded from subsequent proceedings**. The French Supreme Court has considered that the late notification of verbal rights under CPP can lead to a court to declare nullity of the information obtained in the interview held in custody. The test that the Supreme Court applied was whether the delay can be justified by insurmountable circumstances. If the delay cannot be so justified, then it has necessarily caused prejudice to the suspect, giving rise to a declaration of nullity. It is to be added that the French CPP does not expressly provide a sanction for failure to timely provide a letter of rights but it can be inferred from the case law that a remedy for failure to provide a letter of rights is likely to exist, at least in some circumstances. While there have been two recent decisions from the Supreme Court which did not declare nullities after failures to provide letters of rights, those decisions relate to the provision of notification orally through an interpreter where no written letter in the appropriate language was available.

The **Lithuanian** CCP does not have a specialised procedure for challenging such procedural violations, therefore if a suspect does not receive the letter of rights before first questioning, the general procedure for challenging actions in pre-trial investigation should be applied. Under this procedure, investigating officers' actions and decisions, including failure to provide information, can be appealed to the prosecutor, prosecutors' actions and decisions – to a higher prosecutor, and the former's – to a judge. Questions on such procedural violations can also be raised later – when the case is being decided in court. However, the CCP does not provide a specific answer to what consequences should follow if a violation is found. On the one hand, if the violation is established during the pre-trial investigation, the officer can be obligated to carry out the required actions – serve the letter of rights. On the other, this not a suitable solution if the violation is established in the trial stage. In such circumstance evidence obtained in violation of procedure and rights of the defence should be considered obtained illegally, and as such be considered inadmissible, as only information collected by lawful means may be considered evidence under the Code of Criminal Procedure.

In **Spain**, in principle, the statement given at the police station will only be relied upon in Court if the suspect has confirmed this statement before the investigating judge. However, if he/she changes his statement but other existing evidence confirms what he/she said at the police station in the presence of a lawyer and the police agents before whom his statement was given testify before the judge, then this statement given at the police station may be relied upon by the Court to convict him. Meanwhile, in the event that the investigated person gives a statement at court without having been informed of his/her rights, some judges interviewed responded categorically that the statement would be null and void: *“of course, if he/she has been deprived of the*

*right to defence (the clearest example is giving a statement without a lawyer, or without knowing in relation to what he/she is being investigated), without a doubt” it would be declared null and void; “the other day we declared a matter null and void because a statement was given at the Magistrate’s Court, by injunction, without the rights having been read [to the suspect]”. However, another investigating judge interviewed replied that in that case the investigation procedure carried out without a prior reading of the rights “could be repeated” but “without excluding it; I believe it is not for me to do as the investigating judge. The procedure would appear in the case file in duplicate and it would be for the sentencing body to decide”.*

In **Hungary**, under Article 117(2) of the CCP, the defendant shall be warned at the beginning of the questioning that he/she is not obliged to testify, may also deny to answer individual questions at any time, but may also decide to testify even if previously he/she decided to remain silent. He/she shall be warned that anything he/she says may be used as evidence. The warning and the defendant’s response to the warning shall be recoded in the minutes. If recording of the warning or of the response given to the warning is omitted, the testimony shall not be admissible as evidence.

As a more general provision, Article 78(4) of the CCP sets out that “facts derived from means of evidence obtained by the court, the prosecutor or the investigation authority [...] by the substantial restriction of the procedural rights of the participants of the proceeding may not be admitted as evidence.”

There is ample case law<sup>20</sup> on these provisions, however, these judgments primarily concern cases when the warnings were fully omitted, cases where doubts may be raised as to whether the information was provided in an accessible manner, are not known.

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<sup>20</sup> E.g. Leading Decision BH1994. 177

## *Recommendations*

- The national legislations shall ensure effective remedy for suspects and accused in case the information on their right has not been provided in an accessible manner or if information on some or all rights has not been provided at all.
- The letters of rights would be significantly improved by the provision of additional explanatory language on the right to silence and the right to access to a lawyer, including information regarding the potential consequences or risks of failing to execute them.

### **2.11. Vulnerable suspects**

The obligation imposed by Directive 2012/13 on competent authorities to inform suspects or accused persons of their rights and the accusations made against them includes the duty to adapt the language in which the information is conveyed to the particular needs of each person, with special attention to cases of vulnerability.

*It is to be noted that there international documents provide for additional safeguards as far as the notification of vulnerable suspects about their rights is concerned. While Article 40(2)(b)(ii) of the Convention on the Rights of the Child (“CRC”) only concerns the right of the suspect or accused person to be informed of the charges against them, the respective General Comment 10 of the Committee on the Rights of the Child, paragraph 44 outlines that “the child, in order to effectively participate in the proceedings, must be informed not only of the charges, but also of the juvenile justice process as such and of the possible measures”.*

*In terms of the method of delivery, General Comment 10, paragraph 47 states that notification must be “prompt and direct”, meaning when the prosecutor or judge initially takes procedural steps against the child, and in a language the child understands. “This may require a presentation of the information in a foreign language but also a “translation” of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.” Further, in paragraph 48 the Committee on the Rights of the Child explained that:*

*Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the*



parents or legal guardians or the child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

Further, Article 40(2)(b)(iv) of the CRC provides that the child has the right to be informed of their right to examine witnesses. General Comment 10, paragraph 10 reads "[...] it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard [...]". It is, therefore, unclear who might be responsible for such notification and how violation should be addressed.

Modifications for other vulnerable suspects, such as minors, are not explicitly mentioned in the majority of **non-EU** countries examined, although some notable exceptions exist. For example, in the US Federal system, the language of the notification of rights must be adapted to the education level of the addressee. Further modifications for minors exist in some states. In Canada, children are to be repeatedly informed of their rights at different points during the criminal process, and the right to counsel must be provided in writing. Finally, Kosovo and Turkey have introduced safeguards with regards to waiving the right to access a lawyer for minors. In Kosovo the right can only be waived with the permission of the parents or guardian, while in Turkey minors cannot waive their rights to legal assistance at all. While these safeguards do not ensure that the defendant understands their rights initially, it does provide them with support in understanding them through the explanations of their lawyer.

According to the LEAP survey a clear majority of the respondents from **Member States** outlined that the safeguards for vulnerable suspects or accused persons are non-existent, despite clear requirements in Article 3(2) to take particular needs of vulnerable suspects or accused persons into account. However, there are exceptions. According to the respondents in Belgium and the Netherlands the interrogations will be modified to address the vulnerabilities of the suspect or accused person, such as requiring mandatory lawyers for suspects or accused persons that are minors who would then be able to ensure that the suspect in fact understands their rights. In Finland, any interrogation of a minor must be recorded. In the Netherlands any suspect or accused person who is arrested or detained will be provided with a duty lawyer and cannot waive this right until after they have spoken to them.

The countries examined provide additional guarantees in case the criminal procedure is launched against vulnerable suspects. **Hungary** can be cited as a good example.

According to the **Hungarian** CCP the court, the prosecutor and the investigation authority strives to communicate with persons participating in the criminal procedure both in writing and orally in a simple and accessible manner. The CCP states that the information about rights and the warnings about obligations shall be formulated in an understandable way for the person concerned, taking into account the concerned person's condition and personal characteristics. The CCP also prescribes that the court, the prosecutor and the investigation authority shall ascertain in the course of their oral communication that the person concerned has understood what was said, and if not, they shall explain the information provided or the warning said.

The authorities shall proceed with consideration to the concerned person's age and maturity if he/she is under 18 years old, and with consideration to the concerned person's condition if he/she is hearing impaired, deaf-blind, blind, unable to speak or suffers from mental insanity – regardless of his/her accountability –, and in both cases with utmost care.

Another good example from **Hungary**, as far as vulnerable suspects are concerned is the practice that if “there is a psychological problem”, thus, serious concerns emerge as to whether the defendant will be able to understand the information provided or whether he/she will be able to sign his/her testimony (which includes the information on his/her rights), a video recording is made about providing the information. We have no information on how widespread this practice is, however, one of the police officers interviewed stated that if they have to interrogate a defendant in a psychiatric institution, they automatically bring a camera with them.

**Canada** has adopted specific notification procedures and enhanced rights for children, which are codified in the Youth Criminal Justice Act, Section 25.45 The Act provides enhanced notification rights regarding the right to counsel, such that children are to be notified at various points in the criminal process, and not solely at the time of arrest. In addition, the notification informing of the right to counsel must be provided in writing. The Canadian Charter of Rights and Freedoms, section 24, provides that evidence obtained in violation of an accused's notification rights may be excluded.

### *Recommendations*

- Member States shall ensure that the rights are communicated with utmost care and an intelligible manner to all suspects no matter the person's age and maturity if he/she is under 18 years old, and with consideration to the concerned person's condition if he/she is hearing impaired, deaf-blind, blind, unable to speak or suffers from mental insanity.

### 3. Conclusions

The desk research carried out in this Project leads us to the conclusion that, first of all, the **transposition** of Directive 2012/13/EU into the legal system of the countries examined has been **performed** generally speaking, with some shortcomings. In some countries several rights contained in the Directive 2012/13/EU were not explicitly indicated in the CCP, or the CCP contains restrictions on some of the suspects' rights. In addition to the above, the letters omit information that is relevant for comprehending the scope of the rights and exercise thereof.

The letters of rights in all countries examined use legal jargon, in many cases it is a reproduction of the CCPs, sometimes referencing the law. According to the research of the HHC, texts written in a complex and legal language are difficult to understand. As the research suggest, these texts were written by lawyers for lawyers, although the defendants in all countries are less educated, the level of literacy is lower than that of the general population. Without the support of **plain language expert** and without **testing** the text by people with low literacy, the letters of rights will not be accessible, even if compiled with the best intention of lawyers.

Providing the information on rights to the suspect meets the **minimal requirements** prescribed by the Directive 2012/13/EU, it is however **not sufficient**. Professionals have to inform the investigated or arrested persons of their rights **in a way they understand it**. Moreover they have to take into account a series of factors that affect their ability to understand and adapt the manner in which they perform this procedure accordingly. The **vocabulary** used in the oral information must be adapted to the level of education of the person to whom it is addressed, always looking to avoid legal jargon. In addition to the above, account must always be taken of the fact that the suspect or accused person will probably be nervous and this will hinder comprehension of the information and its scope, meaning that greater effort must be put into explaining it.