



# OPEN SOCIETY JUSTICE INITIATIVE

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Marion Isobel will present the Justice Initiative's strategic litigation project on protecting the rights of people accused or suspected of crimes in Europe and will distribute template briefs to provide technical assistance to lawyers conducting litigation in national courts on key arrest rights.

### INTRODUCTION

Every year, millions of people across Europe – innocent and guilty – are arrested and detained by the police. How a person is treated during the period of time immediately following arrest can have a significant impact on the outcome of their case. Crucial decisions about guilt or innocence, detention or freedom, diversion or trial, are often made during this period of police detention. However, in most European countries people are afforded much less protection during police detention than during later stages of the proceedings. Suspects are often unable to exercise their rights or access legal representation. The risk of intimidation, ill-treatment and corruption is at its greatest during this time, as there is often only a nominal degree of judicial or prosecutorial oversight.

In Europe in recent years, there have been a number of important new developments towards reforming and expanding the rights of suspects during police detention. Since 2008, the European Court of Human Rights has released a string of decisions affirming the significance of police detention and strengthening the guarantees related to the right of access to legal assistance. Coinciding with this new jurisprudence, there have been exciting developments towards a European Union legislative framework strengthening and protecting arrest rights and the rights of the defence.

The Justice Initiative has supported and influenced these developments through sustained efforts on a range of levels. We have played an important role in legal aid reforms and the development of protections for the procedural rights of accused and suspected person in many countries across Europe. We use advocacy, networking, lobbying, and litigation activities, both through our European-wide networks and individually, to promote and support the raising of standards for the protection of the rights of people accused or suspected of crimes.

### ARREST RIGHTS STRATEGIC LITIGATION

The Justice Initiative is engaged in a strategic litigation project and an accompanying advocacy effort to promote the rights of people accused or suspected of crimes in Europe.

The project supports and engages in both domestic and international litigation. The objective of domestic litigation is to ensure effective implementation of the existing regional standards on arrest and defence rights into the national law of European countries. The goal of regional litigation is to build up on and to expand the existing standards; especially in relation to the right to legal assistance from the moment of deprivation of liberty, the right to information about charges, defence rights and access to evidence, and the right to legal aid.

A core part of the litigation project is the provision of technical assistance to lawyers who wish to do their own litigation in domestic courts. We have developed a series of template briefs of draft arguments presenting the international standards for arrest rights, which have been translated into different European languages and disseminated widely. These template briefs will be provided to the participants of the ECBA Spring Conference, and will be also available on the Justice Initiative website.

Litigation can be an effective tool to modify a national criminal justice system that fails to adequately provide for the minimum standards of rights to people accused or suspected of crimes. The Justice Initiative encourages lawyers to use the research and arguments in these briefs to support domestic litigation. There are currently three template briefs in the series, covering the following key arrest rights:

**i. The right to early access to legal assistance**

In most European countries, criminal suspects do not enjoy full and unrestricted access to legal assistance during the initial stages of a criminal investigation. In some countries, there are clear legislative limitations on the timing of access, duration of the consultation with the lawyer and the activities that a lawyer can undertake. Equally concerning are those countries where suspects technically have a right to legal assistance, but it is not implemented in practice.

**ii. The right to information**

People who have been arrested or questioned by the police on suspicion of involvement in a criminal activity often find themselves in a vulnerable position. This vulnerability is heightened when people are not given information about why they have been detained, what accusations and evidence exist, and what their rights are. While in most European countries there are legal provisions governing the defence rights of suspects in criminal proceedings, the observance and effectiveness of these rights varies significantly from country to country. There is substantial divergence in the way suspects are given information, the level of detail that is required, and the moment at which the information must be provided.

There are three aspects to the right to information: (a) the right to be informed of the reasons for arrest and the nature and cause of any accusation or charge; (b) the right to be informed of defence rights; and (c) the right to have access to the evidence on which the accusations are based, or in broader terms, access to the case-file.

**iii. The right to legal aid**

Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. It is a foundation for the enjoyment of other rights, including the right to a fair trial, and it is an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. In many countries, although a right to legal assistance may exist in theory, it will never be practical and effective unless the State provides a comprehensive, funded legal aid scheme.

These briefs provide the current regional and international legal standards from the European Convention on Human Rights and the case law of the European Court of Human Rights, supported by principles and standards from the International Covenant on Civil and Political Rights, the UN Human Rights Committee, and other European and UN bodies. Particular focus is placed on the Directives arising from the Council of the European Union's *Resolution on a Roadmap for Strengthening Procedural Rights of Suspected and Accused Persons in Criminal Proceedings*, which aims to ensure full implementation and respect of the ECHR standards across the EU on the rights of accused persons and suspects.

The Justice Initiative is monitoring developments in countries that have successfully reformed their laws on early access to legal assistance, including through litigation. If you are planning or are engaged in a case with this aim, please contact us. We may be able to provide information on reforms which have already been implemented in similar legal systems which could support your case, or connect you with other lawyers or organizations who have successfully litigated this issue.