

EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice

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investigative stage of criminal proceedings**

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Maastricht University

The story of this project

- The EU context 2003 – 2008
- Start of the Letter of Rights Project in 2008
- Roadmap Stockholm Programme 2010
- Proposal Directive right to information in criminal proceedings 20 July 2010

Partners to the project

Initiative and leading partner:

Federal Ministry of Justice of Germany

Partners and advisory board:

- Council of Europe
- Ministry of Justice of Austria
- European Criminal Bar Association
- Deutscher Richterbund
- Federal Ministry of Justice of Germany
- Faculty of Law of Maastricht University

Research

- **Prof. Taru Spronken, Faculty of Law of Maastricht University with assistance of Liesbeth Baetens and Anna Berlee**

Research Questions

1. Whether and to what extent suspects are informed **in writing** about their rights in criminal proceedings in the 27 Member States of the EU;
2. How this practice relates to the requirements of a fair trial and more specifically the right to information under Art. 6 para. 3 of the European Convention on Human Rights;
3. Whether it is possible to develop a model Letter of Rights to be applicable throughout the EU.

Parallel research projects

- 1. EU Procedural Rights in Criminal Proceedings 2009**
- 2. Effective Criminal Defence in Europe 2010**

What is a Letter of Rights?

Working definition:

Written information of the suspect's procedural rights in a standardised form that is handed over to the suspect in the course of the criminal investigation or proceedings prior to an investigative act or hearing

Steps of the research

1. Identify Letters of Rights: by questionnaire Procedural Rights 2008-update
2. Gathering and analysis texts of existing Letters of Rights
3. Narrowing and broadening the scope: documents distributed on the **national** level and **written** information
4. EU wide legal basis: study case law ECHR and other sources
5. Interviews with practitioners
6. Concept EU wide Letter of Rights: **core basic rights** applicable at the **first contact** of the suspect with police in relation to a criminal investigation

Existing practice in EU Member States

- Letters of Rights ↔ written information
- 17 Member States provide for written information in standardised form
- Categorisation of data:
 - What rights?
 - Formulation of rights

Top 12 Rights

1. Legal assistance
2. Right to silence
3. Contact with trusted persons
4. Interpretation and translation
5. Medical care
6. Consular assistance
7. Access to the file
8. Information on charge
9. Detention and custody
10. Vulnerable suspects
11. Conditions of detention
12. Participation in proceedings

Practical issues

- **Attitude of investigative authorities**
- **Availability Letter of Rights**
- **Language**
- **Timing**
- **Interpretation**

Language and format matters!

Advice of the charged person:

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

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

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

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

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

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

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

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

Austrian Letter of Rights

"4. Interrogation and presence of a counsel

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

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

Polish letter of rights

"1. The suspect is entitled to:

- **provide explanations, refuse to provide explanations or answer questions without giving any reasons for not doing this (art. 175 § 1 Code of Criminal Procedure);**
- **put a motion to perform the actions within the inquiry or investigation, participate at the evidence gathering (art. 315 § 1 and 2 CCP as well as art. 317 § 1 and 2 and art. 325a § 2 CCP). The suspect who is present at the evidence gathering has the right to provide explanations concerning each evidence (art. 175 § 2 CCP);**
- **have a defense counsel (art. 77 and art. 78 CCP);**
- **demand to be questioned with participation of appointed defense council, whose absence does not stop the hearing (art. 301 CCP).**
- **use the services of an interpreter free of charge if his command of the Polish language is insufficient (art. 72 § 1 CCP);**
- **apply or agree for application by the injured party regarding submission of the case to the reliable institution or person for the purpose of mediations (art. 23a § 1 CCP);**
- **demand, before he/she is given notice of the date on which he/she can examine the files of the inquiry or investigation, that he should be given an oral presentation of the grounds for charges as well as reasons for them prepared in writing. The reasons for the decision on the charges are served upon the suspect and his/her defence counsel within 14 days (art. 313 § 3 and art. 325a § 2 CCP);"**

Etcetera....

Letter of Rights in England and Wales

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

Remember your rights:

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

You will find more details about these rights inside

<http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/rights-entitlements-foreign-lang>

Getting a solicitor to help you

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

Etcetera...

Desired format and language

- Easily understandable; simple language
- Certain degree of detail
- Avoidance of legal terms
- Not discouraging
- Certain flexibility
- Relatively short and accessible format

Legal basis

- European Convention on Human Rights
- Vienna Convention on Consular Relations
- International Covenant on Civil and Political Rights
- CPT-standards
- European Prison Rules
- UN Convention against Torture
- UN Standard Minimum Rules for the treatment of Prisoners

The EU model Letter of Rights

Basic assumptions

- Only rights applicable at first contact with police
- Clear legal basis / common practice
- Model for those in (police) custody
- Rights that apply *as a rule* upon arrest
- Simple language

Practical requirements

Adequate enforcement mechanisms

- Moment at which Letter of Rights is given
- Keep Letter of Rights in possession
- Oral information
- Effective remedy
- Attitude investigative authorities

Model Letter of Rights





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

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

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

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

You can find more details of these rights inside

A. Information on the suspicion

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

B. Right to remain silent

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

C. Help of a lawyer

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

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

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

D. Help of an interpreter

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

E. Telling somebody that you are detained

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

F. For foreigners: how to contact your embassy

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

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

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

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

H. Medical care

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

Publication

Book (forthcoming) & Online

<http://arno.unimaas.nl/show.cgi?did=24161>