

RIGHTS OF SUSPECTS IN CYPRUS

INTRODUCTION

I have been asked to address this conference by Mr Stephanou, my co-panelist, who used to be a prosecutor and has now turned defense lawyer. I must admit, that after being a prosecutor for more than 15 years, I find myself today in this strange position of using whatever knowledge I have to facilitate the work of defence lawyers.

However, more important than my personal feelings regarding the subject, is my professional opinion that every lawyer should be aware of the rights a suspect enjoys from the moment there is a reasonable suspicion that that person has committed a crime. Let us not forget that the prosecution does not wish to incriminate the innocent. Our only concern is to convict those who are guilty beyond any reasonable doubt.

In order to address the matter properly, I first have to stress the importance of the rights of suspects in a criminal system. A suspect is innocent until proven guilty and he must be treated as such. It is unacceptable to permit situations where a person is arrested without being informed about the reason behind the arrest, or being held in custody without access to a lawyer or right to interpretation and translation of material or right to inform any family members or anyone else about the situation. As stated by the ECBA, 'it can be a terrifying and life changing experience'.

However, it is only natural that every state wishes to maintain order; thus, there must be balance between this desire of the state and the right of citizens to exist freely.

In order to promote this balance, it is of utmost importance to safeguard such rights; pre-trial stage is as important as any other stage of the proceedings - it is at this stage where evidence is gathered and, consequently, charges are preferred.

SOURCES OF THE RIGHTS OF SUSPECTS

In Cyprus, the rights of suspects derive from various sources. Firstly, such rights are provided for by the Constitution, which is the highest authority and, as such, may not be deviated from. Part II (articles 6 – 35), safeguards fundamental human rights and so, inter alia, provides for the rights of suspects. According to Article 35, “the legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of this Part”.

As held by the Supreme Court in *Police v Andreas Georgiades (1982) 2 C.L.R. 33*, evidence acquired contrary to the provisions of the Constitution would not be admissible in any court.

Naturally, apart from the right to be free from torture, the rights under Part II of the Constitution are not absolute and may be subject to limitations; however, these only include limitations provided for by the Constitution.

Furthermore, rights of suspects are protected by the Criminal Procedure Law Cap. 155, which introduced the English criminal procedure code to the Cyprus legal system and, finally, since 2005, extensive protection of the rights of suspects is provided for by ‘Rights of Persons under Arrest and Detention Law’ (N. 163(I)/2005), which is separated in four parts.

The First Part deals with rights relating to arrest. The Second Part provides for the rights of the suspect during detention. The Third Part provides for criminal offences committed in relation to unconstitutional deprivation of a person's liberty. Articles 31 and 32 lay down what the consequences are for members of the police in such instances. Finally, the Forth Part deals with disciplinary and criminal offenses for violation of the rights envisaged in this Law and what the consequences are.

PRE-TRIAL PROCEEDINGS

My main objective today is to provide a step by step information about all the rights a person enjoys in Cyprus, from the moment there is a reasonable suspicion that the person has committed a crime and until that person is finally charged. In order to do this, I chose to separate the rights of suspects into three categories. These are:

- The rights a suspect enjoys during arrest;
- The rights a suspect enjoys during interrogation; and
- The rights a suspect enjoys during detention

A. ARREST

The first stage to be discussed is that of arresting the suspect and the first and most important right to be mentioned is that provided by Article 11 of the Constitution: "every person has the right to liberty and security of person" and this right can only be limited as and when the article provides. One such circumstance is "the arrest or detention of a person effected for the purpose

of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”

Apart from instances of a flagrant offence, an arrest warrant must be obtained before a suspect may lawfully be arrested. The personal opinion of the police officer that there are reasonable grounds to believe that the person has committed an offence will not suffice. The court, in deciding whether to grant such a warrant, must arrive to its own conclusions from the facts that are put before it.

Furthermore, the article grants the person arrested the right to be informed, in a language he understands, about the reasons of the arrest and his right to be represented by a lawyer of his choice.

As stated by the ECtHR in *Panovits v Cyprus (application no. 4268/04 Judgment Strasbourg 11 December 2008)*, a case decided against Cyprus, the suspect, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said by the arresting officer.

The right of the suspect to be informed about the reasons of his arrest is also provided by Article 21 of the Criminal Procedure Law Cap 155, unless the police officer has reasonable grounds to believe that this will result in failure of executing the warrant. The arrest warrant need not be in the possession of the officer in order to be executed. However, the person arrested has the right to ask the police officer to show him the warrant and the officer has then the obligation to do so as soon as possible.

Generally, it is unconstitutional for a person to be searched without his consent. However, if an arrest warrant has been granted against that person he may be searched and any items in his

possession may be confiscated and used against him in a court of law (Section 10 of the Criminal Procedure Law Cap 155).

Since 2005, the rights that protect a person at the time of the arrest are provided for in Law 163(I)/2005.

Article 3(1) (a) provides for the right of a suspect to contact a lawyer of his choice immediately after his arrest without the presence of the authorities, as it is vital that confidentiality between suspect and lawyer be protected.

Although this was not the case prior to the enactment of Law 163(I)/2005, the right to communicate with a lawyer immediately following the arrest, is now safeguarded. The police have now an obligation to offer the suspect all necessary means in order to be able to make use of this right, and, if the suspect does not wish to make use of it, a special document confirming this must be signed by him and put in the case file.

Violation of the right of access to a lawyer results in inadmissibility of any statement in evidence, as was the case in *The Republic v. Achillea Iakovou and Mariou Michael (Assize Court – case no. 8322/2008)*. As stated by the court, where there is a violation of the provisions of this Law, “there is a mandatory exclusion of a statement given that the intention of the law-maker when drafting the Law was that”. The reason I am referring to an Assize Court judgement is because there is a lack of Supreme Court Judgments on Law 163(I)/2005.

Furthermore, violation of the obligation of the police to inform the suspect of the right of access to a lawyer amounts to a disciplinary and a criminal offence (*Limassol Police Director v. Lofty Samir Lofty Imbrahim and Albert Kamal Gabra Awad - Assize Court – case no. 6993/2009*).

Article 3(1) (b) provides for the right to communicate immediately after arrest with relatives or other persons of the suspect's choice in the presence of the police. Persons under the age of 18 have a right to contact their parents or legal guardians in order to inform them about the arrest and detention.

The right of immediate contact under 3(1) (a) and (b) has certain exceptions listed in article 3(2), which may postpone its use, but not longer than 12 hours following the time of the arrest.

The suspect must be informed about these rights, in a language he understands, immediately following the arrest and at the police station (article 3(3)). The rights of mentally disordered persons are governed by special provisions. Foreign nationals have, under article 5, the additional right to contact their embassy.

The police at the time of the arrest have an obligation to inform the suspects about their rights (article 7) and provide them with the list of all lawyers, including names and contact numbers (8 (3) (b)).

B. INTERROGATION

At this point, I shall proceed to refer to the rights that govern the stage of interrogation which is, in my opinion, one of the most important stages of a crime investigation. The reason is evident; at this point we have a police officer, who wishes more than anything to obtain a statement that will lead to the solving of the crime, and a suspect, who is an innocent person in the eyes of the law. It is not always easy for the authorities to completely detach themselves from their feelings, especially in situations where they truly believe that the suspect is guilty. However, it is

unacceptable to permit violation of the rights of persons contrary to the law. It is only the Court that has the competence to decide whether a person is guilty or not.

The law in Cyprus provides extensively on rights of suspects during interrogation.

According to Article 11 of the Constitution, following arrest, the arrested person must, if not earlier released, be brought, as soon as possible and within 24 hours, before a court of law where the judge shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person and shall, as soon as possible and in not later than 3 days from such appearance, either release the person arrested or remand him in custody.

The arrested person is entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Furthermore, every person who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Before questioning, the suspect must be informed about his right to legal advice and must, according to Section 13 of the Criminal Procedure Law Cap 155, be given reasonable facilities for obtaining legal advice, for taking steps to obtain bail and otherwise for making arrangements for his defense or release.

Since the decision in *Panovits* case (mentioned above), the lack of provision of sufficient information on the suspect's right to consult a lawyer before his questioning by the police, constitutes a breach of the suspect's defense rights. This is also provided for in Law 163(I)/2005.

Article 12 of the Constitution, which provides that every person charged with an offence shall be presumed innocent until proved guilty according to law, confers to the accused the right to

defend himself in person or through a lawyer of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require and to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Although before *Panovits* case this article seemed to apply only to proceedings during trial, the Court decided that the fact that the article refers to a fair trial does not exclude its application to pre-trial proceedings. As stated, in order to determine whether the aim of the article has been achieved, regard must be had to the entirety of the domestic proceedings.

As I mentioned earlier, the ultimate intent of a police officer during questioning is to obtain a confession, which may on its own result to the conviction of the accused. As a result, “when investigating into a criminal case, especially a grave offence, the Police, in their zeal to detect and bring to justice the criminal, are, naturally, often inclined to overstep the marks set by the law for the protection of the individual in their hands” (*Kokkinos v Police (1967) C.L.R. 217*).

In order for a confession to be admissible in court it must be proved to be voluntary beyond any reasonable doubt. As held in *Psaras and Another v Republic (1987) 2 C.L.R. 132*, in defining voluntariness, the courts have consistently been guided by the definition of voluntariness of Lord Sumner in *Ibrahim v R. (1914) AC 599, 609. (1914-1915) All ER Rep. 874, 877*: “A statement is voluntary if it has not been obtained either by fear of prejudice or hope of advantage held out by a person in authority. In discerning the likelihood of prejudice resulting from fear, the Courts have increasingly laid stress on the element of oppression that may, in an indirect way, sap the free will of the maker”.

In order to ensure the voluntariness of a confession, certain rules were adopted which regulate the procedure of interrogation. Section 8 of the Criminal Procedure Law provides the adoption of the Judges Rules as enforced in England in 1964. The obligations of the authorities and the rights of the accused vary according to the stage of interrogation and the evidence gathered. The suspect must always be cautioned in the appropriate manner according to the stage of interrogation.

It can be said that there are 3 such stages:

- The stage where information is gathered;
- The stage where information leads to evidence against the suspect; and
- The stage where charges are preferred

Rule I covers circumstances where the police officer is trying to discover whether a crime has been committed, and if so by whom, by gathering information from anybody– not necessarily a suspect. At this stage, no caution of any kind need be administered.

However, in *Petri v The Police (1968) 2 C.L.R. 40*, the Supreme Court decided that when a person is considered a suspect but there is no evidence to formally charge him, justice requires that he be cautioned. The Supreme Court, considering it a fundamental principle of criminal investigation that a caution should be administered as soon as the person questioned comes under suspicion, refused to abide by a literal interpretation of the Judge's Rules. As held, "fairness, which is firmly embedded at the root of our law governing criminal investigation, requires that in such circumstances the suspected person should be warned against the danger of making statements to his prejudice, unless he freely and voluntarily wishes to do so".

As stated by judges Loizou and Piki in their book, *Criminal Procedure in Cyprus* (p.147), this reasoning echoes earlier judicial dicta of common law judges that the need to protect the suspect from self-incrimination is fundamental under our system of criminal investigation.

Rule II covers situations where the police officer investigating the crime meets a stage in between the mere gathering of information and having enough evidence to prefer the charge. This is the stage where he has got the beginnings of evidence. It is at this stage that he must caution the suspect that he has the right to remain silent and that anything he says might be used against him in a court of law.

Rule III is used where there is enough information to prefer charges. At this stage, the police officer – after charging the person in writing and in a language he understands - must emphasize the right of the suspect to remain silent and must caution him that anything he says may be used against him in a court of law.

It is important that the police officer charges the person as soon as he gathers enough evidence. In *Koutrouzas v The Republic* (1972) 2 C.L.R. 9, the Supreme Court held that as the police had at the time enough evidence to prefer a charge against the suspect, the protection afforded by Rule III ought to have been accorded to him in obtaining his statement. As a result, the statement was held inadmissible.

As stated in *Republic v Pierides* (1971) 2 C.L.R. 181, if the protection to be found in Rule III is not accorded to a person in relation to a statement made by him to the police, it would not be safe to treat such a statement as being admissible in evidence, in the sense of it not being undoubtedly a voluntary one. It is evident that the courts act in such a way so as to safeguard the right against self-incrimination.

Furthermore, Rule III requires that a record of questioning be kept.

The procedure to be followed when recording a formal written statement is provided for in Rule IV. As stated, the suspect has a right to write the statement himself and must be informed of this right. At this stage, questions must not be leading in character or suggest answers and must not, on the face of them, affect the power of the person questioned to choose his own words and use his own language.

I must stress that failure to conform to the Judges Rules does not result automatically to inadmissibility of a confession. The court has the discretion to decide whether to permit its admission, based on whether it was voluntary or not. In exercising its discretion, the court has to take into consideration the consequences and severity of the breach.

The Supreme Court, both in *Azinas v The Police (1981) 2 C.L.R. 9* and *Petri's case* (mentioned above), cited the wording of Lord Devlin's book 'The Criminal Prosecution in England' which states that "the essence of the thing is that some unfair or oppressive use has been made of police power. If the judge is so satisfied, he will reject the evidence notwithstanding that there is no rule which specifically prohibits it; if he is not so satisfied he will admit the evidence even though there may have been some technical breach of one of the Rules. It must never be forgotten that the Judge's Rules were made for the guidance of the police and not for the circumscription of the judicial power".

Judges Rules also contain guidelines which must be followed in order to ensure that the rights of suspects are not violated and that statements are given voluntarily. These guidelines provide for the procedure to be followed at the time of questioning, the process of keeping records, the obligation of the authorities to make reasonable arrangements to provide for the comfort of the

people questioned, the procedure to be followed when questioning children, young people, people with mental disorder and foreign nationals.

Since Law 163(I)/2005 came into force, interrogation cannot begin if the suspect is not informed by the authorities of his rights, and/or has not enforced his rights of contact if he has asked for them (Article 9). Furthermore, the law guarantees the presence of a lawyer during interrogation, in cases where the suspect is either under the age of eighteen or mentally disordered.

C. DETENTION

Finally, I will discuss the third and last category of the rights of suspects; those governing the stage of detention.

The power of the police officer to take a suspect in custody derives from article 11 of the Constitution. The procedure that ought to be followed is the result of the combination of subsections 5 and 6 of the article as well as article 24 of the Criminal Procedure Law.

If investigations have not been completed, the person arrested shall be brought, following an application by the authorities, before a court of law in order to decide whether that person shall be detained, for a period not exceeding 8 days at each time and 3 months in totality.

Such an application can only be made by a police officer, not inferior to a police lieutenant. The reason is evident; such an application results in deprivation of the rights of the person and, as such, must be limited to the powers of the officers with higher ranks (*Δημητριάδης v Αστυνομίας* (1997) 2 A.A.Δ 312).

Once the suspect is present in court, he is informed about the reasons of his detention and, where he is not represented by a lawyer, he must further be informed about the procedure to be followed. The only relevant legal issues at this hearing are the grounds based on which custody is requested.

Law 163(I)/2005 granted essential rights to suspects during detention.

Firstly, the suspect has a right to have private meetings with his lawyer in order to prepare his defense (article 12) or to discuss any other cases he might be involved in (article 13). It is worth mentioning that confidentiality between a suspect and his lawyer, which derives from Rule 13 of the Lawyers' Code of Ethics, is well secured by the provisions of these articles.

Furthermore, article 14 states that it is an obligation of the police officer in charge to take all necessary steps in order for the suspect to be able to enjoy his rights under articles 12 and 13.

The right to send and receive personal letters is provided for in article 15. It is only in specific situations, provided for by the article, where the authorities may open such a letter.

The right to have meetings with relatives and friends, in the presence of the authorities, is found in article 16. In the cases of minors and foreign nationals, there are specific measures.

The suspect must be informed about the rights contained in articles 12-16, as soon as possible after detention (Article 17). Furthermore, in certain occasions, third parties must also be informed about these rights. In situations where the suspect is a minor, the parents or legal guardians must be informed, and in situations where the suspect is a foreign national, the embassy or diplomatic mission of his country should be informed.

Once again, it is not only the suspect's right, but also the obligation of the authorities to ensure that the suspect is informed about his rights in a language he understands (article 18).

Of great importance is article 19, which deals with the detention conditions and treatment of suspects by the police, and provides the right to be free from torture, cruel behavior, physical or psychological violence and humiliating or inhuman behaviour.

Another important provision is found in article 23 which contains the right of suspects, at any time, to be given medical examination, or treatment, or medical attention from a doctor.

The suspect must be given a document in which this right is written in a language he understands (Article 24). The suspect must then sign it; if he refuses to do so, this must be recorded.

According to Article 29, a list, containing all rights under this Law, as well as the police station rules, must be kept in every cell for the information of the suspects. Additionally, a copy of this list must be given to them, in a language they understand, as soon as possible after detention.

CONCLUSION

The rights I have mentioned and explained are the rights that govern the legal situation of a suspect in Cyprus. Although there are certain issues that could and should be dealt with in more depth, Cyprus law, especially following the enactment of Law. 163(I)/2005, is on a par with the EU proposal for a Directive on the right of access to a lawyer. Our only concern is in relation to the proposal of the right of the suspect to have his lawyer present when officially interrogated and to allow the lawyer to participate actively during the interrogation.

This does not in any way mean that I am suggesting that the criminal system in Cyprus is perfect; there always must be change in a constantly changing world – we must always strive for the better. Cyprus, as a member of the EU, has as its objective, to act in accordance with the rights and principles recognized and safeguarded at a European level.

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