

“Letter of Rights”

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

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Bundesministerium
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Maastricht University

Partners of 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

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.

Where we stand now

- Delayed start in June 2009
- Analysis outcome questionnaire Procedural Rights 2008-update
- Gathering texts of existing letters of rights
- Study case law ECHR

Legal basis - case law ECtHR

- **Article 6 § 3a ECHR:**

right to be informed on the nature and cause of accusation

- Preference for written form (*Kamasinski*)

- **Information on rights: not expressly provided for in ECHR, but:**

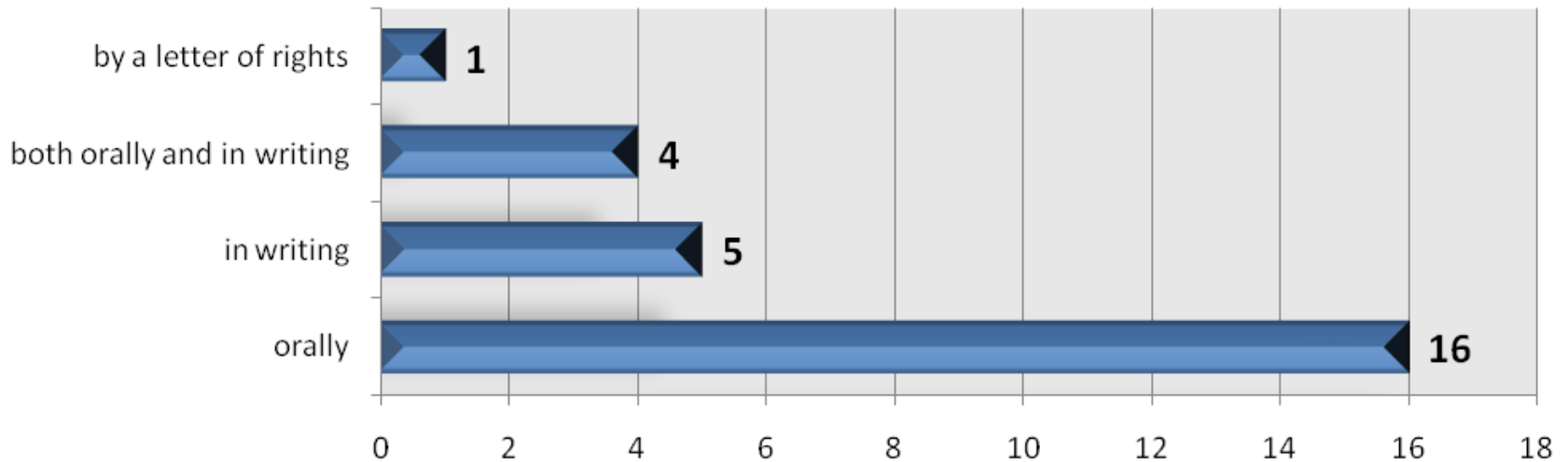
- Obligation to inform suspects of right to legal aid and lawyer from initial stages of criminal proceedings (*Padalov, Talat Tunc, Salduz, Panovits*) → active attitude from authorities demanded

Letter of Rights

- Exists in 10 of 26 Member States
Austria; Czech Republic; England and Wales; Italy; Latvia; Luxembourg; Poland; Slovak Republic; Spain; Sweden.
- Different concepts on what and how suspects are informed
 - By a letter of rights
 - 'in writing'

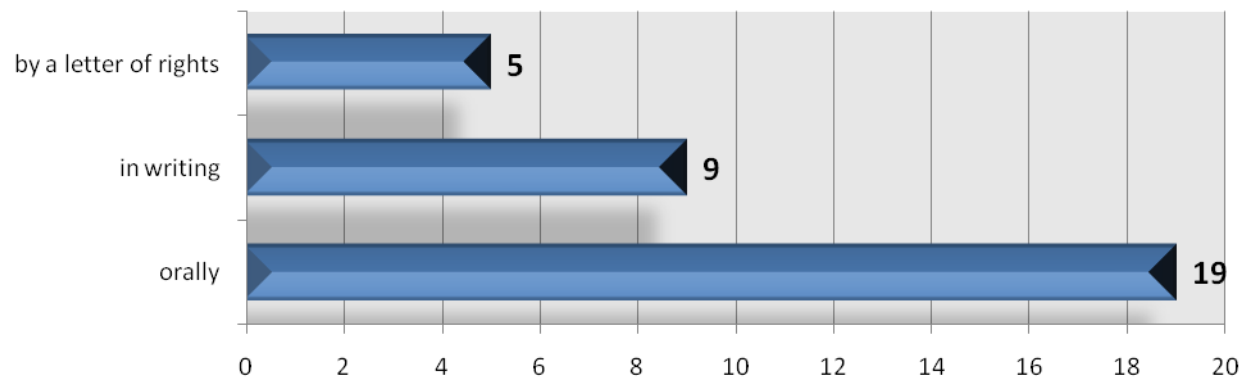
Information on the right to contact a lawyer after arrest

5. If so, how should the suspect be informed of this right? (more than one answer possible)



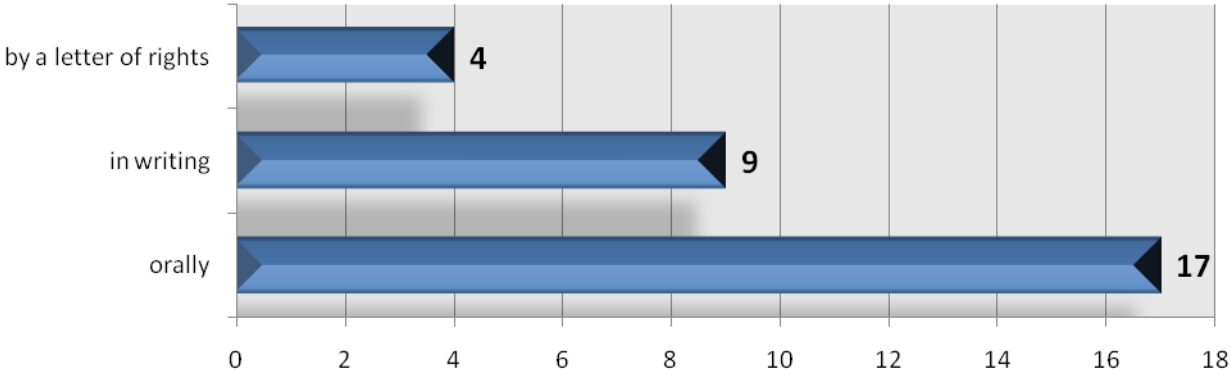
Information on assistance during police interrogation

26. If so, how should the suspect be informed of this right?



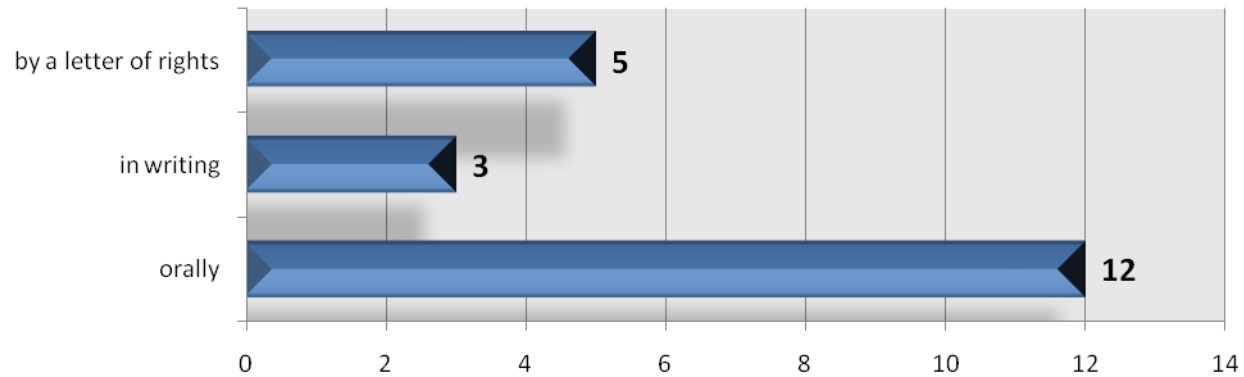
Information on legal aid

42. How should the suspect be informed of this right?



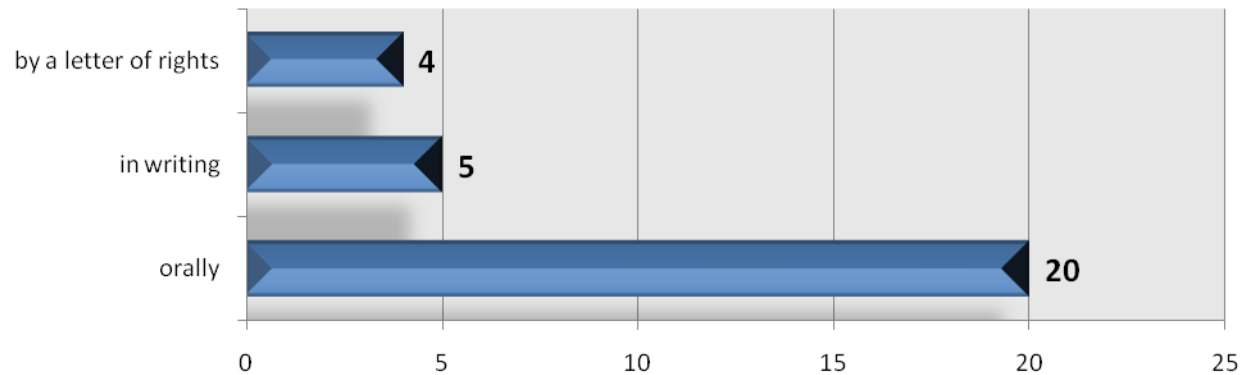
Access to the file

95. How should the suspect be informed of this right?



Right to remain silent

101. How should the suspect be informed of this right?



Scope and definition

- Standardised written information → clear and easy language
- When given? → at/before first contact with police
- What procedural rights? → core rights ECHR **that are applicable upon arrest/first interrogation**
+ information on detention
- Information that is practical and effective

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, unclearness 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...

Time schedule and outcome

Nov. 2009-feb 2010:

- further study case law ECtHR;
- Explore what is “written information”?
- gather information from practitioners on application LoR in practice
- Exploring best practices

Feb –March 2010

- Draft model Letter of Rights + translation into all EU languages (ECBA)

April-June 2010

- Finalise report and Model Letter of Rights

Final conference september 2010