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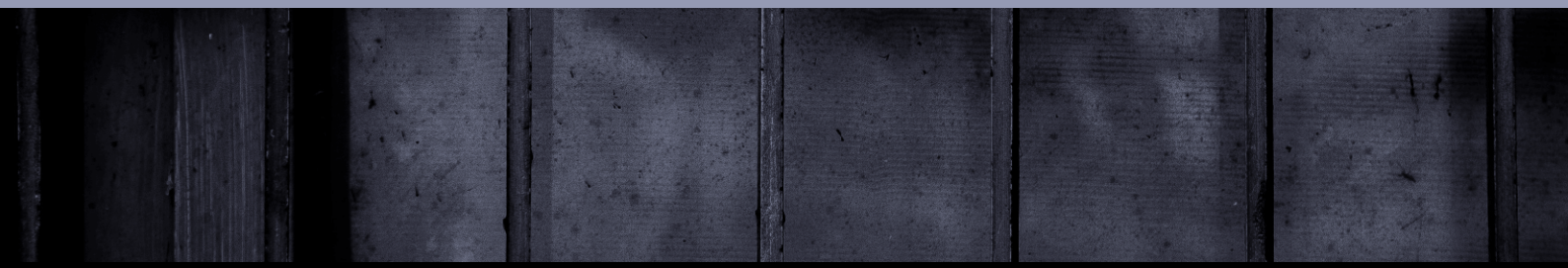
An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries

INSIDE POLICE CUSTODY 2



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Country Report for
Lithuania

Human Rights Monitoring Institute

Human Rights Monitoring Institute

INSIDE POLICE CUSTODY 2

Suspects' Procedural Rights in Lithuania

Research report

2018

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The HRMI monitors the human rights situation in Lithuania, conducts research, engages in advocacy and prepares legislative proposals, submits alternative reports to international human rights supervisory bodies, initiates litigation with respect to strategic human rights questions, and conducts trainings on human rights topics.

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Interrogation No. 13, a 20-year-old man suspected of possessing drugs is questioned

Investigator: Did they give you the Annex? Everything is clear?
Suspect: Yes.
Investigator: You do not qualify to have lawyer free of charge. Thus, if you want a lawyer, you will have to pay him.
Suspect: I want to talk to my parents. When they arrested me, they told me that they would allow me to call them later, but they did not allow me to.
Investigator: There's no necessity for that. You will have the possibility to hire a lawyer at a later stage. I see that you haven't read your rights carefully.
The suspect agrees that the lawyer will not be necessary and signs a corresponding form.
Investigator: I wonder whether you will need an interpreter.
Suspect: I speak Lithuanian. And partly Russian.
Investigator: Oh, too bad… I'll need to call an interpreter…
Suspect: No no, there's no necessity for that. I will understand.
The investigator informs the suspect about his right not to give evidence. The suspect replies that he agrees to give evidence. He pleads guilty and repeatedly states that he regrets his conduct.

CONTENTS

1. INTRODUCTION

1.1 The nine country study of suspects' rights at the investigative stage of the criminal process

This report is based on research carried out in Lithuania as part of a research project in which empirical research was carried out in nine European Union (EU) member states, examining the rights of suspects and accused persons – the right to interpretation and translation, the right to information, and the right of access to a lawyer – as they are applied and experienced in practice at the investigative stage of the criminal process. The research was carried out by partner organisations in the nine countries, co-ordinated by the Irish Council for Civil Liberties (ICCL).

The partner organisations are –

The Ludwig Boltzmann Institute of Human Rights, Austria

The Bulgarian Helsinki Committee, Bulgaria

The Hungarian Helsinki committee, Hungary

Associazione Antigone, Italy

The Human Rights Monitoring Institute, Lithuania

The Helsinki Foundation for Human Rights, Poland

The Association for the Defence of Human Rights in Romania – the Helsinki Committee, Romania

The Peace Institute, Slovenia

Rights International, Spain

The project was primarily funded by the European Commission under an Action Grant, JUST/2015/Action Grants, reference number 4000008627 'Inside Police Custody: Application of EU Procedural Rights'. The action grant funded the research in eight countries. Research in the ninth country, Spain, was funded by the Open Society Justice Initiative. The project was co-ordinated by the ICCL on behalf of the Justicia Network.

The primary objective of the project was to measure the practical operation of suspects' rights at the investigative stage, and to use this evidence to conduct national advocacy directed at improving respect for those rights in practice. It is well established in relation to criminal processes that there is often a significant gap between legal norms and the practical application of those norms. Thus, in addition to establishing and describing the legal norms in the nine countries, the research sought to explore how they operate in practice by conducting observations in police stations and carrying out interviews with key criminal justice personnel. In this way, the project was designed to contribute knowledge concerning the impact of key aspects of the EU procedural rights roadmap, to identify both good and poor systems, procedures and practices, and to make recommendations, both at the national and EU levels, directed at the improvement of procedural rights at the investigative stage in EU Member States.

Work on the project was carried out between June 2016 and December 2018, although the periods during which fieldwork was carried out varied depending on a range of factors in each country. However, fieldwork in all countries was conducted after the respective transposition dates of the EU Directives concerning the three sets of rights which were the subject of the study (see further section 1.2). In other words, when the fieldwork was carried out, member states should already have introduced the laws, regulations, and administrative provisions necessary to give effect to the respective Directives. Therefore, the project provided a timely opportunity to discover how the actions taken by member states were working in practice, and to make an assessment of whether they complied with the requirements of the respective Directives both in principle and in practice.

The study builds upon earlier research projects examining procedural rights at the investigative stage of the criminal process. In particular, the study sought to adapt the methodology developed for the EU funded project that was published in 2014 as *Inside Police Custody: An Empirical Account of Suspects' Rights in Four Jurisdictions* (Intersentia, Cambridge, 2014). That study also examined the three sets of rights that are the subject of this study – in England and Wales, France, the Netherlands, and Scotland. However, the fieldwork for that study was carried out before any of the three EU Directives had come into force. A further study, using a similar methodology, was carried out in three non-EU states – Georgia, Moldova and Ukraine – between 2013 and 2016.

As noted earlier, the current project was co-ordinated by the ICCL, and managed by an experienced project management team consisting of representatives from the ICCL and the Open Society Justice Initiative (OSJI), together with the project research consultant, Professor Ed Cape of the University of the West of England, Bristol, UK. Both the OSJI and Professor Cape had been members of the teams that carried out the first *Inside Police Custody* project, and the subsequent project in Eastern Europe. The first meeting of the whole project team took place in London in September 2016. A two-day fieldwork training course for researchers

from all national research teams was held, also in London, in January 2017. The training was designed to acquaint researchers with the processes, methods and research instruments to be used in the fieldwork, and to train them in those methods. A third meeting was held in Brussels in June 2018 to discuss initial results, analysis and plans for national advocacy. The project management team also held regular telephone conferences with research teams to discuss progress, and any problems arising.

1.2 The European Union context

In 2009 the EU adopted a 'roadmap' of procedural rights in criminal proceedings, with the aim of adopting EU legislation on a range of procedural rights for suspected and accused persons, to be introduced over a number of years.[1] The EU had, over a decade or more, introduced extensive legislation on police, prosecution and judicial co-operation and mutual recognition (most notably, the European Arrest Warrant (EAW)), and it was recognised that this should be matched by measures that would protect the rights of individuals in criminal proceedings and those who are the subject of an EAW. The legislative mechanism to be adopted was the EU Directive, which would require EU member states to introduce legislation, regulations and other measures that ensure that the provisions of the Directive are complied with in domestic law. The Lisbon Treaty enhanced the role of the Court of Justice of the European Union (CJEU), and it has competence to deal with questions of interpretation of the Treaty and of Directives. In doing so, it must also take account of the principles, rights and freedoms embodied in the Charter of Fundamental Rights of the EU. National courts may, in criminal proceedings, ask the CJEU to give a preliminary ruling on a question of interpretation of a Directive during the currency of a case, and there is an expedited procedure in cases where the accused is in detention. Further, the European Commission has the power to refer a case to the CJEU on the grounds that a member state has failed to fulfil its obligations. A finding that a member state has not brought its national legislation into compliance may result in financial penalties being imposed by the CJEU.

In drafting the Directives, full account was taken of the relevant provisions of the European Convention on Human Rights (ECHR), and of European Court of Human Rights (ECtHR) case law. However, the EU legislation was informed by a concern that the ECHR regime was not sufficiently able to ensure that national authorities comply with their responsibilities to safeguard the procedural rights of suspects and accused. Some of the limitations are practical, in particular the backlog of cases to be dealt with by the ECtHR, leading to lengthy delays in consideration

1 *Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings*, 1 July 2009, 11457/09 DROIPEN 53 COPEN 120.

of and judgements in respect of cases taken before it. However, others were systemic. The mechanisms for enforcing ECtHR decisions are relatively weak, and applications can only be made to the court after all domestic avenues of appeal have been exhausted. Of particular significance was the fact that the court considered the procedural rights of suspects and accused within the context of whether, overall, the proceedings were fair. Together with the fact that the court could only consider principles in the context of the fact of cases taken before it, the result has been that whilst the ECtHR has been successful in establishing general minimum standards, it could not develop a comprehensive set of procedural standards, nor general guidelines on how they could or should be implemented.

The EU Directives, together with the enhanced enforcement regime resulting from the Lisbon Treaty, are able to remedy some of these weaknesses and, whilst detailed implementation of the standards is the responsibility of Member States (with, in certain respects, a wide margin of appreciation), the Directives are more comprehensive and more detailed than the ECtHR jurisprudence.

The three Directives that are the subject of the current study are the Directive on the right to interpretation and translation, the Directive on the right to information, and the Directive on the right of access to a lawyer. The provisions of the Directives are briefly described here, and are more fully explored in the relevant sections of the report.

1.2.1 The Directive on the right to interpretation and translation

The Directive on the right to interpretation and translation was adopted on 20 October 2010, with a transposition date of 27 October 2013.[2] The Directive provides that suspects and accused persons in criminal proceedings who do not understand the language of the proceedings: must receive interpretation assistance free of charge during police interrogations, for communication with their lawyer, and at trial; and must be provided with a written translation of documents that are essential for them to exercise their right to defence, including the detention order, the indictment, the judgement and other documents that are essential. Similar rights and obligations also apply in proceedings for the execution of an EAW. It appears from the language of the Directive that the rights and obligations regarding translation only apply to documents provided by the relevant authorities, and not to documents produced by the suspect or accused. Whilst waiver at the instance of the suspect or accused is permitted in respect of translation, provided that they have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, there is no provision for waiver in respect of interpretation.

2 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.

Member states must ensure that interpretation and translation is made available where necessary, and in respect of the former, must ensure that a procedure or mechanisms is in place to ascertain whether suspected or accused persons speak or understand the language of the proceedings and whether they need the assistance of an interpreter. The rights are not limited to persons who cannot speak or understand the language because their first (or only) language is other than that used in the proceedings, but also apply to those who cannot do so because, for example, they have a speech or hearing impediment.

Member States must take concrete measures to ensure that the interpretation or translation provided is of a sufficient quality to safeguard the fairness of proceedings, and in furtherance of this objective, must endeavour to establish a register or registers of independent interpreters and translators who are appropriately qualified. Suspected or accused persons must, in accordance with procedures in national law, have the right to challenge a decision that there is no need for interpretation or translation, and a right to challenge the quality of interpretation or translation.

1.2.2 The Directive on the right to information

The Directive on the right to information was adopted on 22 May 2012, with a transposition date of 2 June 2014,[3] and regulates three sets of rights: the right to be informed about procedural rights; the right to be informed of the reason for arrest or detention, and about the accusation; and the right of access to case materials.

Right to be informed of procedural rights

Suspected or accused persons, irrespective of whether they are arrested or detained, must be provided promptly, orally or in writing, of certain rights: the right of access to a lawyer; any entitlement to free legal advice; the right to be informed of the accusation in accordance with Article 6 of the Directive, and the right to remain silent (Art. 3). Where a person is arrested or detained, they must be provided promptly with a written 'Letter of Rights', which they must be given an opportunity to read and allowed to keep throughout the time that they are deprived of their liberty (Art. 4). In addition to the information provided in accordance with Article 3, the Letter of Rights must contain information about: the right of access to case materials; the right to have consular authorities and one person informed; the right of access to urgent medical assistance; the maximum time that the person may be deprived of their liberty before being brought before a judicial authority;

3 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

and basic information about the possibility of challenging the lawfulness of the arrest, obtaining a review of the detention, or making a request for provisional release. In both cases, the information must be provided in simple and accessible language. In the case of the Letter of Rights, if such a document is not available in the appropriate language, the information contained in it may be provided orally in a language that they understand, followed up with an appropriate translated Letter of Rights 'without undue delay'. Where a person has been arrested for the purpose of the execution of an EAW, they must be provided promptly with an appropriate Letter of Rights containing information about their rights in accordance with Framework Decision 2002/584/JHA.

Right to be informed of the reasons for arrest/detention, and about the accusation

Under Article 6 of the Directive, Member States must ensure that: suspects or accused persons are promptly provided with information about the criminal act they are suspected or accused of having committed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence (Art. 6(1)); and suspects and accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected of accused of having committed (Art. 6(2)). Recital 28 states that the information specified in Article 6(1) must be given, at the latest, before the first official interview by the police or other competent authority, 'and without prejudicing the course of ongoing investigations'. This suggests that such information may be withheld if providing it would cause such prejudice.

Detailed information, including the nature and legal classification of the offence, as well as the nature of participation of the accused, must be provided to the accused, at the latest, on submission of the merits of the accusation to a court (Art. 6(3)). The suspect or accused must be promptly informed of any in the information provided, for example, if new material information comes to light. Thus, the Directive differentiates between the level of information that must be provided at different stages, but leaves significant room for interpretation, both generally and in specific cases, as to the precise amount of information that must be provided at a particular stage of the criminal process.

Right of access to case materials

Article 7 provides for two rights. First, where a person is arrested or detained at any stage, Member States must ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention are made available to the arrested person or their lawyer (Art. 7(1)). Second, Member States must ensure that access is granted at least to all material

evidence in the possession of the competent authorities, whether for or against the suspect or accused, to them or to their lawyer, in order to safeguard the fairness of the proceedings and to prepare the defence (Art. 7(2)). In relation to the latter provision, access must be granted in due time to allow the effective exercise of defence rights, and at the latest upon submission of the merits of the accusation to the judgement of the court (Art 7(3)). Derogation in relation to the disclosure obligations in Art. 7(2) and 7(3) is permitted if, provided it does not prejudice the right to fair trial, access may lead to certain consequences such as serious threat to the life or fundamental rights of another person (Art. 7(4)). Access under Article 7 must be provided free of charge.

Common provisions

In order to verify that information has been provided in accordance with the Directive, Member States must ensure that this is noted using a recording procedure specified in the law. Suspects and accused persons must have the right to challenge failure or refusal to provide information in accordance with the Directive.

For the purposes of this project, which is primarily focused on the procedural rights of suspects in police custody, the right of access to documents under Article 7(1) is clearly relevant. It may appear that, at the early stage of the criminal process, the right of access under Article 7(2) is not relevant. However, it is important to note that many jurisdictions have out-of-court disposal schemes and/or expedited proceedings in certain types of case, some of which avoid court hearings altogether. If Article 7(2) is narrowly interpreted, then suspected or accused persons may be required to make decisions about the disposal of their case without an adequate right of access to material evidence.

1.2.3 The Directive on the right of access to a lawyer

The Directive on the right of access to a lawyer was adopted on 22 October 2013, with a transposition date of 27 November 2016.[4] The Directive sets out rights of access to a lawyer, the right to have a third person informed of a deprivation of liberty and to communicate with a third person, and the right (where relevant) to communicate with consular authorities.

The right of access to a lawyer

Member States must ensure that suspects and accused persons have the right of access to a lawyer in such time and in such manner so as to allow the person

4 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed jupon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

concerned to exercise their rights of defence practically and effectively (Art. 3). Access must be allowed without delay and, in any event, must be permitted from the earliest of:

(a) before questioning by the police or other law enforcement or judicial authority;
(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act;
(c) without undue delay after deprivation of liberty;
(d) where they have been summoned to appear before a court having criminal jurisdiction, in due time before the court hearing.

The Directive explicitly states that suspects and accused persons must have the right: to meet their lawyer in private prior to any questioning; to have a lawyer present when questioned and for the lawyer to be able to participate effectively; and, to have a lawyer present, as a minimum, at the investigative or evidence-gathering acts specified in the Directive (identity parades, confrontations and crime-scene reconstructions), where those acts are provided for under national law and the suspect or accused is required or permitted to attend.

A person arrested under an EAW must have the right of access to a lawyer in the executing state. The Directive specifies that the right shall include the right: of access to a lawyer in such time and in such a manner as to allow the requested person to exercise their rights effectively and without undue delay from the time that they are deprived of their liberty; to meet and communicate with the lawyer; and the right for their lawyer to be present and, in accordance with national laws, to participate during a hearing by the executing judicial authority.

The right of access to a lawyer may be waived, although this is without prejudice to national laws requiring the mandatory presence or assistance of a lawyer. However, for a waiver to be valid the suspect or accused person must have been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right to a lawyer and the possible consequences of waiving it. Any waiver must be given voluntarily and unequivocally.

In addition to the exception regarding minor offences (see below), there is provision for temporary derogation from the right of access to a lawyer at the pre-trial stage on the grounds of geographical remoteness (Art. 3(5)), or on the basis of specified compelling reasons (Art. 3(6)).

Unlike the Directive on the right to interpretation and translation, this Directive does not contain any provisions regarding quality assurance relating to the provision of legal assistance, although the Directive on legal aid does contain a provision regarding the quality of legal aid services (see below).

Rights regarding information to and communication with third parties

Suspects or accused persons who are deprived of their liberty must have the right to have at least one person, such as a relative or employer, nominated by them, informed of their deprivation of liberty without delay. If the suspect or accused person is a child, Member States must ensure that the holder of parental responsibility of the child is informed of the deprivation of liberty as soon as possible, and of the reasons for it; unless it would be contrary to the interests of the child, in which case another appropriate adult must be informed. Temporary derogation from the right concerning information to third parties is permitted on the basis of specified compelling reasons: an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person; or an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised (Art. 5(3)).

In addition, suspects or accused persons who are deprived of their liberty must have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them, although this may be limited or deferred 'in view of imperative requirements or proportionate operational requirements' (which are illustrated in Recital 36).

These rights also apply to a requested person in EAW proceedings in the executing state.

Right to communicate with consular authorities

Suspects or accused persons who are non-nationals and who are deprived of their liberty must have the right to have the consular authorities of their state informed of the deprivation of liberty without undue delay, and to communicate with those authorities, if they so wish. Such persons also have the right to communicate with those consular authorities, and to have legal representation arranged by them. These rights also apply to a requested person in EAW proceedings in the executing state.

Common provisions

Where the power to temporarily derogate from the right of access to a lawyer, or to have a person informed of deprivation of liberty, or to communicate with a third party, is put into effect, it must: be proportionate and not go beyond what is necessary; be strictly time-limited; not bee based exclusively on the type or seriousness of the alleged offence; and not prejudice the overall fairness of the proceedings.

The particular needs of vulnerable suspects and accused persons must be taken into account in fulfilling the obligations under the Directive.

Member States must ensure that suspects or accused persons, and requested persons in EAW proceedings, have an effective remedy in the event of a breach of rights under the Directive. The Directive is not prescriptive as to the nature of such remedies, but where evidence has been obtained in breach of the right to a lawyer, or in cases where a derogation from the right was authorised under Article 3(6), any assessment of such evidence must respect the rights of the defence and the fairness of the proceedings (see further, Recital 50).

1.2.4 Common issues under the three Directives

All three Directives apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until the conclusion of the proceedings. This formulation accords with the autonomous interpretation of the concept of 'charge' adopted by the ECtHR,[5] and thus certain provisions of a Directive may apply to a person who has not (yet) been arrested. However, there may be further conditions to be satisfied before any particular right under a Directive is applicable.

The three Directives contain a similarly worded exception regarding minor offences: where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, the Directive only applies to the proceedings before a court following such an appeal. The Directive on the right of access to a lawyer also provides that the exception applies to minor offences where deprivation of liberty cannot be imposed as a sanction.

Note that the approach to articulating rights differs slightly as between, and within, the three Directives. Sometimes the rights of suspected and accused persons are expressed as an obligation on Member States to ensure that a particular right is provided; for example, 'Member State shall ensure that suspects and accused persons have the right of access to a lawyer…' (Directive on the right of access to a lawyer, Art. 3(1)). On other occasions they are expressed in the form of an obligation on a Member State without expressly stating that they concern a right; for example, 'Member States shall ensure that suspected or accused persons who do not speak or understand the language… are provided, without delay, with interpretation…' (Directive on the right to interpretation and translation, Art. 2(1)). Such variances in drafting may be interpreted as reflecting nuanced differences between various aspects of the Directives which may have practical implications. For example, the obligation of a state to ensure that interpretation is provided to

5 See ECtHR 15 July 1982, *Eckle v Germany*, No. 8130/78, para. 73, when the formulation was first adopted.

a person who does not speak or understand the language may suggest, or be treated as suggesting, that a mere claim by a suspect or accused that they do not speak or understand the language is not sufficient, by itself, to put the state under an obligation. However, whilst it is not expressed as a right in Article 2(1), Article 2 is headed 'Right to interpretation' and it is expressed as a right in Article 2(3). It is argued, therefore, for the purposes of this research at least, that such difference in wording are irrelevant, and that a provision of a Directive will amount to a right of the suspected or accused person whether or not it is directly expressed as such.

1.2.5 Other procedural rights Directives

Although the research project was primarily concerned with the practical implementation of the first three Directives under the EU procedural rights roadmap, it should be noted that three further Directives have been adopted, one of which came into force during the period that the project was being conducted, and two of which come into force in 2019.

The first of these, the Directive on the presumption of innocence and the right to be present, was adopted on 9 March 2016, with a transposition date of 1 April 2018.[6] This provides that suspects and accused persons are to be presumed innocent until proved guilty according to law. In support of this principle, the Directive imposes a number of obligations on Member States, including a prohibition on public references to guilt, and provisions regarding the public presentation of suspects and accused persons, the burden of proof, and the right to silence and the right of a person not to incriminate themselves. In addition, it includes a number of provisions regarding the right of an accused to be present at their trial.

The Directive on procedural safeguards for children who are suspects or accused persons was adopted on 11 May 2016, and comes into effect on 11 June 2019.[7] This is the longest and most complex of the six Directives adopted under the procedural rights roadmap, and contains a series of provisions designed to ensure that children who are suspects or accused persons in criminal proceedings (and those who are the subject of an EAW in the executing state) are able to understand and follow those proceedings, and able to exercise their right to a fair trial, and to prevent children from re-offending and to foster their social re-integration (Recital 1). In particular, such children must be informed of their rights in simple and accessible language, must normally be accompanied by a person holding parental responsibility, and must normally be assisted by a lawyer.

6 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

7 Directive (EU) 2016/800 of the European parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

Note that whilst it was originally envisaged under the procedural rights roadmap that a Directive would cover vulnerable suspects and accused persons in criminal proceedings, there is no specific Directive concerned with the rights of people who are vulnerable (other than children). As noted above, the Directive on the right of access to a lawyer does require that the particular needs of vulnerable suspects and accused persons must be taken into account; and the Directive on the right to information does state that in providing information to a suspect or accused person about their procedural rights, the language used must take into account the particular needs of those who are vulnerable. However, a non-binding Commission Recommendation, issued on 27 November 2013, encourages Member States to adopt a series of mechanisms and procedures in order to 'strengthen the procedural rights of all suspects or accused person who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities'.[8] To facilitate these, vulnerable persons should be promptly identified, with recourse to medical examination in order to determine their degree of vulnerability and their specific needs.

The Directive on legal aid was adopted on 26 October 2016, with a transposition date of 25 May 2019.[9] Broadly, the Directive provides that suspects and accused persons in criminal proceedings who have a right to a lawyer under the Directive on the right of access to a lawyer (EU Directive 2013/48/EU), must be entitled to legal aid if they are:

- deprived of their liberty
- required to be assisted by a lawyer in accordance with EU or national law
- required or permitted to attend an investigative or evidence-gathering act

The right to legal aid also applies to requested persons in EAW proceedings who have a right of access to a lawyer under the Directive on the right of access to a lawyer, upon arrest in the executing state. States are permitted to make legal aid conditional on satisfaction of a merits and/or a means test, although the merits test must be deemed to have been met where a suspect or accused person is brought before a court or judge in order to decide on detention at any stage of the proceedings, and during detention. This would include persons who are arrested and detained by the police. Member States must take measures, including with regard to funding, that are necessary to ensure that there is an effective legal aid system of an adequate quality, and that legal aid services are of a quality adequate to safeguard the fairness of the proceedings (with due respect for the independence of the legal profession).

8 Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspect or accused in criminal proceedings (2013/C 378/02), available at https://tinyurl.com/y8pc6hlz.

9 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

1.3 The national context

The Republic of Lithuania operates under a civil-law (continental) system.

The principal body of law is statutory. All legal acts must comply with the Constitution. International treaties of the Republic of Lithuanian are an integral part of the Lithuanian legal system. Those treaties that are ratified by the Parliament (the Seimas), e.g. the European Convention on Human Rights, prevail in application over other laws.

The majority of criminal law related issues are covered by two sets of codified laws – the Criminal Code and the Criminal Procedure Code, both of which came into force in early 2000s after a complete reform of the criminal justice legal framework. Other legal sources relevant for criminal procedure encompass the Constitution and constitutional jurisprudence, international treaties and EU law, case-law of the Lithuanian Supreme Court, and sub-statutory legal acts, such as Recommendations by the Prosecutor General.

The first stage of criminal procedure is the criminal investigation, called 'pre-trial investigation' in the Criminal Procedure Code. Pre-trial investigation is usually conducted by investigating police officers, and in some instances – officers of other investigating institutions. They are jointly referred to as pre-trial investigation officers in the Criminal Procedure Code. Each individual case is assigned to a prosecutor, who oversees the criminal investigation. The investigation is considered concluded when the prosecutor draws up the act of indictment and submits it to the court. From that moment the case is overseen by the court, which decides it.

The first instance court's decision can always be appealed. A second appeal, appeal in cassation, to the Supreme Court of Lithuania is also possible, but only on substantial points of law.

The person suspected of a crime or crimes is called a 'suspect' during the pre-trial investigation phase. A suspect is a person who is arrested on a suspicion of committing a criminal act, or who is interrogated about the criminal act he or she is suspected of committing, or who is called for interrogation based on the notification of suspicion.[10]

A person who was caught committing a criminal offence or shortly afterwards, may be arrested. Arrest (referred to as 'temporary detention' in the Criminal Procedure Code) may last up to 48 hours and the arrested person has to be questioned as a suspect no later than within 24 hours. If it is necessary to order pre-trial detention

10 Criminal Procedure Code of the Republic of Lithuania (CPC), 14 March 2002, No. IX-785, art. 21(2), https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777/asr

of the arrested suspect, such person has to be brought to court within 48 hours and the judge should make a decision concerning detention.[11] Within the shortest possible time after the arrest, a Record of arrest has to be drawn.[12]

When the investigation is concluded, the suspect turns into an 'accused', and is called so throughout the trial stage.

Lithuanian criminal procedure has more characteristics of an inquisitorial system, although there are some features of an adversarial system.[13] Pre-trial investigation is essentially an inquisitorial procedure, while at the court the case is heard in an adversarial manner, i.e. both prosecution and defence have equal rights to submit the evidence, make requests and present their arguments.[14]

The Criminal Code recognizes two different categories of criminal acts: crimes and misdemeanours. The main different between the two is that crimes can be punishable by a custodial sentence, whereas misdemeanours – by a non-custodial sentence only (with the exception of arrest).[15]

1.4 The research method

Practical implementation of the main procedural rights of suspects under arrest has been analysed in three stages: first, desk-research of relevant legal regulation was carried out; second, interrogations of suspects under arrest were monitored; third, structured interviews with lawyers and investigators were conducted.

Desk-research of relevant legal regulation. At this stage, national legislation and case law, academic literature and statistical data was analysed. The aim of the analysis was to evaluate whether national legal regulation complies with the main standards on suspects procedural rights as provided in EU directives.

Observation of interrogations of suspects under arrest. In order to ensure the possibility for researchers of the Human Rights Monitoring Institute (hereinafter referred to as the *researchers*) to monitor the interrogations of suspects under

11 Criminal Procedure Code, Art. 140(4).

12 Criminal Procedure Code, Art. 140(5).

13 Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe* (LARN 2012) , p. 199.

14 Criminal Procedure Code, Art. 7.

15 Criminal Code of the Republic of Lithuania, 26 September 2000, No. VIII-1968, Art. 10-12, https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr

arrest, a cooperation agreement with the Police Department was signed in March 2017. The observation was carried out in March-August 2017 in three divisions of one Chief Police Commissariat – two territorial police stations and one arrest house.[16] In total, information from 54 interrogations was collected; in 52 cases the researchers observed the first interrogation of the arrested person, and in 2 cases repeated interrogations of suspects (who were not arrested) were observed. The researchers observed the interrogations provided that the suspect or his or her lawyer did not object to this. In 46 cases, the researchers were allowed to observe full interrogation, while in 6 cases only the introductory part of the interrogation, i.e. before asking questions about the event, was observed. Data on the protection of the key procedural rights of suspects were collected through a standardized questionnaire.

It is important to emphasize that the number of interrogations observed was limited, moreover, only interrogations of persons suspected of committing minor crimes were observed.[17] Therefore, the data from interrogations should not be considered as necessarily reflecting the practice of conducting interrogations of suspects across Lithuania. In addition, the heads of police authorities were aware of the dates of arrival of researchers in advance, which also might have affected the course of the interrogations. Despite the above-mentioned circumstances, the data collected helped to identify specific problems in implementing the procedural rights of suspects under arrest, and to propose solutions to them.

Data were collected and processed in accordance with strict anonymity requirements.

Structured interviews with defence lawyers and police investigators. In order to complement the material collected during the observation, 5 interviews with lawyers practicing in the field of criminal law and 5 interviews with senior police investigators were conducted. In addition, one judge and one senior police officer were interviewed on specific issues. Lawyers were asked to share their experiences as to legal or practical issues that they encounter when implementing their clients' procedural rights. The investigators were interviewed in order to clarify the practical aspects of the implementation of suspects' procedural rights.

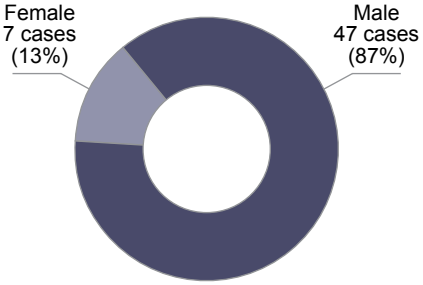
The findings were supplemented with the data collected through previous research by the Human Rights Monitoring Institute.

16 Police arrest houses are institutions where persons under temporary detention (up to 48 hours), persons on pre-trial detention, persons sentenced to arrest and other arrested persons (e. g. arrested by border guards) are being held. According to the Law on Execution of Detention, a person can be held in an arrest house for a maximum period of 15 days. Afterwards, he or she has to be transferred to a pre-trial detention facility.

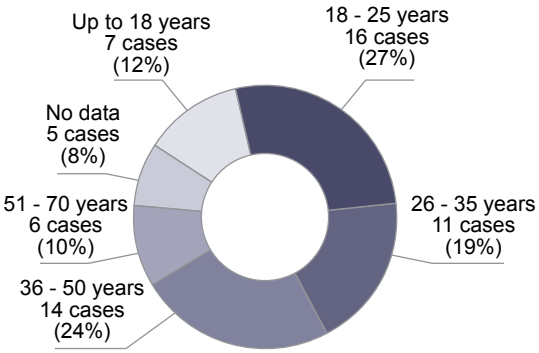
17 This resulted from the fact that the researchers either were invited to the interrogations by the investigators, or waited for interrogations at the police stations or arrest house. During the observation period, the researchers were never invited to interrogations involving serious crimes, and no persons suspected of such crimes were interrogated at the time when the researchers were present.

STATISTICAL DATA ON SUSPECTS IN THE OBSERVED INTERROGATIONS

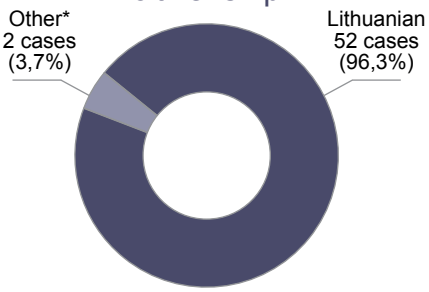
Gender



Age

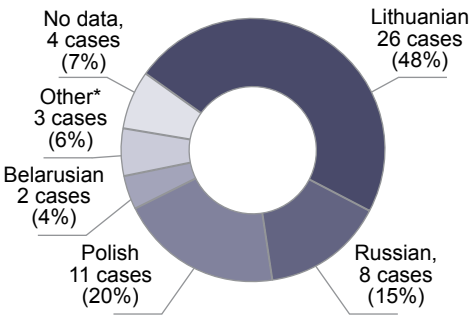


Nationality/ citizenship



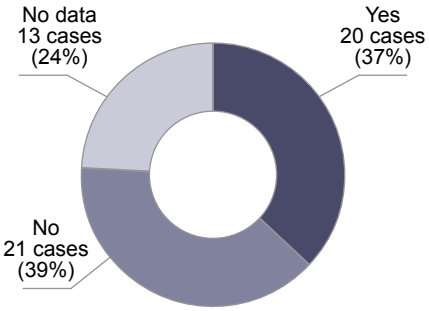
* Belarusian (1 case), Latvian (1 case)

Ethnicity

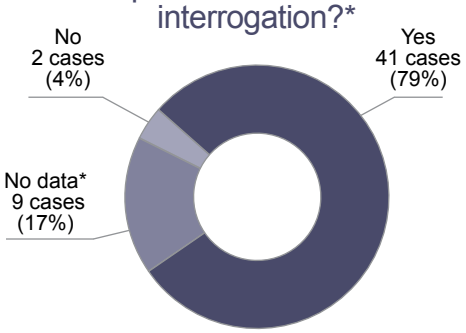


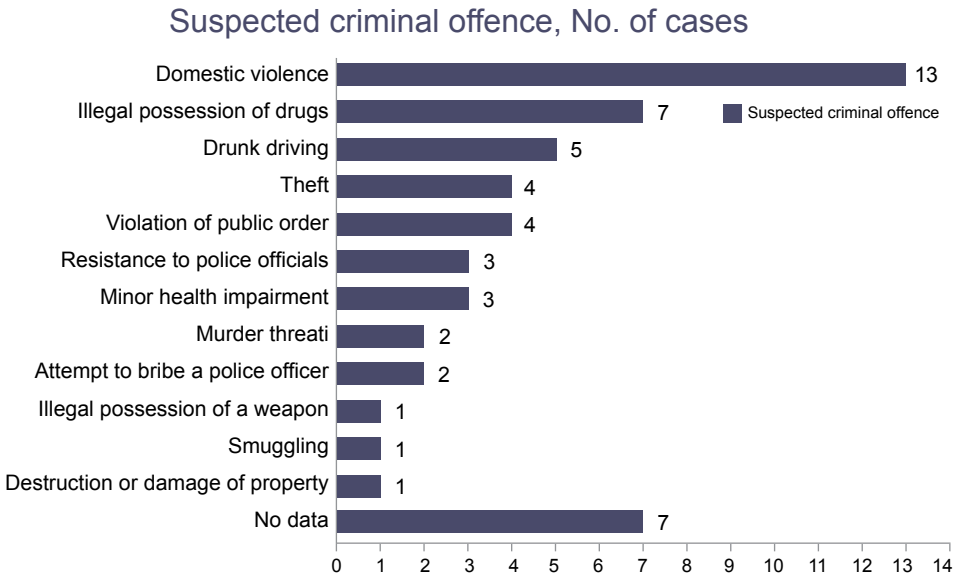
* Azeri (1 case), Latvian (1 case), Ukrainian (1 case)

Previous convictions



Suspect released after the interrogation?*





*In most cases, suspects were released after the interrogation or were told that they will be released on the same day. In another two cases, the person was not released the same day, because he expressed his intention to exercise his right to have a lawyer. In these two cases, the suspect was made familiar with the suspicion, and the interrogation was postponed till the next day, by explaining to the suspect that after the interrogation he will be released.

In 9 cases, persons detained on suspicion of domestic violence were notified that the issue of release would be resolved by the prosecutor the same or the next day.

In only one observed case, the investigator pointed out that she will contact the prosecutor, suggesting to file a request for the pre-trial detention. In another case, a Latvian national was left in arrest until the end of a maximum term of 48 hours when it turned out of that he was searched for by Latvian police and Latvian police authorities asked for the possibility to come and bring him to Latvia.

1.5 The overall normative framework on temporary detention (arrest) and conducting interrogations of suspects

As mentioned while presenting national context, a person who was caught committing a criminal offence or shortly afterwards, may be arrested for up to 48 hours. An arrested person then is brought to the territorial police station

(commissariat) or an arrest house. Currently there are 12 arrest houses in different towns in Lithuania.

It is not regulated in detail whether initially an arrested person should be taken to a territorial police station, or to an arrest house. Thus, the practice on this point may vary. The researchers witnessed several occasions, when arrested persons were brought to a commissariat, a Record of arrest was drawn, and then he or she was escorted to an arrest house.

The procedures applicable after a person is brought to an arrest house are regulated by the Instructions on the security and supervision of arrest houses, approved by the Police Commissioner General.[18] These Instructions regulate such aspects as data to be recorded in the register of arrested persons, conduct of personal searches, storing of personal belongings etc.

Within 24 hours from the moment of arrest a notice of suspicion has to be served to the person and he or she has to be questioned as a suspect.[19]

General requirements for conducting interrogations are established in the Criminal Procedure Code. According to Art. 188(3), in the beginning of the interrogation, the suspect is asked whether he or she confesses committing the offence. Afterwards, the suspect is suggested to testify (give evidence) on the essence of the suspicion. Subsequently the suspect may be questioned.[20]

In transposing the Directive on the right to remain silent, these provisions were supplemented with a requirement to explain the suspect his right to remain silent and (or) to refuse to testify concerning the allegedly committed offence. The right to remain silent or to refuse to give evidence has to be explained to the suspect by the investigator, prosecutor or pre-trial judge before the interrogation.[21]

A written record of interrogation has to be drawn.[22] The suspect's testimony has to be recorded in the first person, as much verbatim as possible. Where necessary, both the questions and the answers have to be indicated. If the suspect decides to remain silent or not to give evidence, this fact has to be mentioned in the record.[23] Video and audio recordings for the purpose of criminal proceedings are not made (though in some interrogation rooms video surveillance may be conducted).

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18 Order of the Police Commissioner General, No. Nr. 5-V-889, 3 November 2016, On approving the Instructions on the security and supervision of arrest houses (with subsequent amendments), https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ab4d8e30a2d-111e68987e8320e9a5185

19 Criminal Procedure Code, Art. 140(6).

20 Criminal Procedure Code, Art. 188(3).

21 Law amending Articles 21, 22, 44, 188, 189, 272 of the Criminal Procedure Code and its Annex, 30 June 2018, No. XIII-1436 https://www.e-tar.lt/portal/legalAct.html?documentId=3d51600084cf11e8ae2bfd1913d66d57

22 Criminal Procedure Code, Art. 188(6).

23 *Ibid*.

The Criminal Procedure Code provides for the possibility to conduct the interrogation remotely, i. e. via video and audio transmission, if the suspect is held in the arrest house or cannot come for the interrogation.[24] However, this possibility is not used in practice.

If the suspect is a minor, a psychologist and (or) a specialist from a Child rights protection agency may be invited to participate in the interrogation. A psychologist helps to question the minor suspect helps to interview a minor, having regard to his social and psychological maturity, whereas a child rights specialist observes whether the rights of a minor suspect are not violated. A child rights specialist may also ask the suspect questions and to submit requests concerning the interrogation.[25]

Records of all the pre-trial interrogations are included into the case file and reach the court after completing the pre-trial investigation. The court considers the data from suspect's interrogations, and either admits it as evidence, or rejects. According to one interviewed judge, Records of pre-trial investigation are an important source for the court, as based on them the court may evaluate the consistency of the suspect's testimony. For example, if during pre-trial stage the suspect acknowledges that he committed the offence and pointed out the circumstances of the offence, but then changes his position during a court hearing – than the court will treat the new position as a line of defence, and will compare the new position with other data. The case file which is presented to the court reveals all the procedural steps and evolution of the investigation phase: whether the suspicion was amended, what was the position of the suspect and the victim, etc.[26]

24 Criminal Procedure Code, Art. 188(7).

255 Criminal Procedure Code, Art. 188(5).

26 Interview with a judge No. 1.

2. THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS

2.1 The normative framework in Lithuania regarding the suspects' right to interpretation and translation

Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings (Directive on the right to interpretation and translation, Art. 2(1)).

According to Lithuanian Constitution, persons who do not have sufficient knowledge of the Lithuanian language are guaranteed the right to participate in the investigation and court proceedings through an interpreter.[27] This constitutional right is further specified in the Criminal Procedure Code. It is stated that the suspect shall have the right to make statements, give evidence and explanations, file requests and complaints in his or her native language or another language he or she understands.[28] In such cases, the right to receive free interpretation and translation services is guaranteed.

Directive on the right to interpretation and translation in criminal proceedings had to be transposed by 27 October 2013. However, as in the opinion of the Ministry of Justice, Lithuanian legal regulation satisfied the essential requirements of the Directive, no new legal provisions were adopted by 2017.

On 17 November 2016 the European Commission issued a reasoned opinion stating that Lithuania failed to appropriately transpose the Directive, as it was not compulsory under Lithuanian law to provide an interpreter to help suspects or accused persons to communicate with their lawyer. There was also no procedure for testing the suspects' language skills in order to decide whether they need assistance from an interpreter. In addition, there was no national law obliging competent authorities to decide whether the translation of a document is essential

27 The Constitution of the Republic of Lithuania, 25 October 1992, Art. 117(4), http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192

28 Criminal Procedure Code, Art. 8(3).

on a case by case basis, and there was no requirement to provide a written translation of a European arrest warrant.[29]

Following these findings, amendments to the Criminal Procedure Code were adopted in April.[30] These amendments established:

- obligation of the investigator, prosecutor or court to determine, within the shortest possible time, whether a participant of the criminal proceedings understands Lithuanian and whether he requires interpretation and translation services during criminal proceedings in order to be able to properly exercise his rights or understand the proceedings;
- obligation to ensure interpretation during communication between the lawyer and the suspect if the lawyer is not able to communicate with the suspect in a language which the suspect understands;
- suspect's right to submit a request to the investigator, prosecutor or court to provide written translation of important case documents, i. e. documents necessary for the suspect to properly exercise his right to defence or to understand the ongoing criminal proceedings;
- obligation to provide written translation of the European arrest warrant into the native language of the suspect or into another language that he/she understands; if the suspect consents, oral translation (interpretation) may be carried out unless it would conflict with the interests of justice;
- prohibition to question an interpreter as a witness concerning the circumstances that became known to him while interpreting the communication between the suspect and his lawyer.

Violation of the right to interpretation and translation in a specific case may be recognized as a material breach of the criminal proceedings and lead to returning the case for further investigation or annulment of the court judgment.[31] However, the researchers did not find any such decisions.

In general, current regulation complies with the minimum standards required by the Directive on the right to interpretation and translation.

The right to interpretation services includes appropriate assistance for people with hearing or speech impediments (Directive on the right to interpretation and translation, Art. 2(3)).

29 European Commission, Reasoned Opinion C(2016) 7368 final, Brussels, 17 November 2016.

30 The Law on the Amendment of Articles 8, 71-1 and 80 of the Criminal Procedure Code of the Republic of Lithuania, 27 April 2017, No. XIII-324, https://www.e-tar.lt/portal/lt/legalAct/fa8d49a0316911e78397ae072f58c508

31 Criminal Procedure Code, Art. 254(3), Art. 329(1(4)), Art. 369, Art. 383.

According to the Criminal Procedure Code, a person who knows sign language is also considered to be an 'interpreter'.[32] Therefore, persons with hearing or speech impairment are subject to analogous provisions regarding interpretation as persons who do not speak Lithuanian.

All the interviewed investigators pointed out that they had encountered situations where sign language interpretation was necessary, but had not experienced difficulties in ensuring such interpretation. Lithuanian sign language interpretation services are provided by five sign language interpreter centres operating in Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys regions. In addition, social workers from centres for people with disabilities may be contacted or a person who needs this kind of assistance may indicate a person who knows sign language.

2.2 The level of demand for interpretation and translation in Lithuania

Data on the demand for interpretation and translation during pre-trial investigation is not collected. However, the statistics of persons suspected of committing criminal offences show that citizens of foreign countries comprise around 2 percent of all the suspects.[33] It can be assumed that most of these persons require the assistance of an interpreter or translator. Interpretation or translation sometimes may also be necessary for Lithuanian citizens who are Russian, Polish or belong to other nationalities.

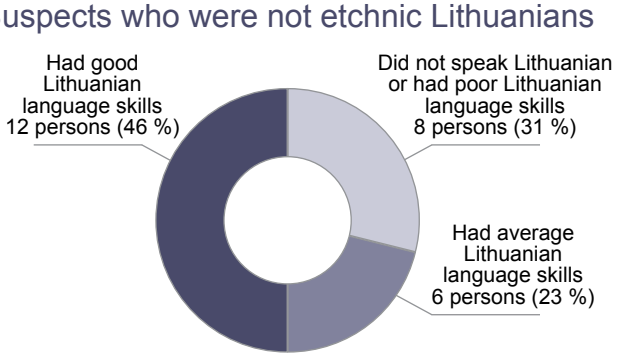
Total number of registered suspects (accused)		**Suspected (accused) foreign citizens**	
2017	January - August 2018	2017	January - August 2018
19 604	15 887	378	374

Researchers from the Human Rights Monitoring Institute observed interrogations of 54 suspects. Out of them 26 suspects were not ethnic Lithuanians, including 24 Lithuanian and 2 foreign (Latvian and Belarussian) citizens. 12 suspects had good knowledge of the Lithuanian language, 6 had average knowledge (could understand the questions and answer them, even though they did not speak Lithuanian well or provided some information in Russian), while 8 suspects either did not speak Lithuanian or their knowledge of the Lithuanian language was very poor.[34]

32 Criminal Procedure Code, Art. 43.

33 Information Technology and Communication Department, Statistics on persons suspected or accused of criminal offences, https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminiu-tyrimu-statistika-1/view_item_datasource?id=7422&datasource=26594, https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteisminiu-tyrimu-statistika-1/view_item_datasource?id=7422&datasource=26598

34 The assessment of suspects' language skills was made by the researchers by observing communication between the suspect and the investigator. The researchers observed whether the suspect understood what the investigator was saying and whether the suspect was able to answer questions in Lithuanian. In cases where the suspect was able to answer only very simple questions, basically with a „yes" or „no", their Lithuanian language skills were assessed as „poor".



2.3 Identification of the need for interpretation/ translation, and identifying the appropriate language

Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter (Directive on the right to interpretation and translation, Art. 2(4)).

An evaluation on whether the suspect understands Lithuanian and whether he or she requires an interpreter in order to exercise his or her rights or understand the ongoing criminal proceedings is carried out by a pre-trial investigator, prosecutor or the court.[35] The Criminal Procedure Code provides that such evaluation must be carried out 'within the shortest time possible', however there are no detailed criteria according to which such an evaluation should be made. Therefore, the decision on whether to invite an interpreter, and if so – of which language, is within the discretion of the responsible officer. At the same time, the observations revealed that the absence of methodology to establish the need for interpretation does not undermine the fairness of the proceedings, as usually investigators ensure the presence of interpreter in the interrogation.

Interview with the investigator No. 3: *We check whether an interpreter participated during arrest. Even if this information is not available because, for example, the arrest took place on weekend, if we see that the name and surname of a person is not Lithuanian and a person is of old age, we presume that an interpreter may be needed during interrogation. Sometimes officers from the arrest house inform us about the need for interpretation. Otherwise, we may receive information from the victim, especially in cases of domestic violence, or from the relatives of the suspect. We may ask them whether the suspect understands*

35 Criminal Procedure Code, Art. 8(2).

Lithuanian, whether he can read and write in this language. We also ask police officers from the arrest house to talk to the person and to find out whether he understands Lithuanian.

Interview with the investigator No. 5: *We simply ask [the suspect] whether he understands Lithuanian and whether he will require an interpreter.*

After the case is brought to the court, the judge decides on whether an interpreter should be present in the hearing.[36]

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation [...] (Directive on the right to interpretation and translation, Art. 2(5)).

A decision that an interpreter is not necessary can be appealed under the same procedure as any other decision made by a pre-trial investigator or a prosecutor, i.e. a decision of a pre-trial investigator can be appealed to a prosecutor who supervises the case, and later to a higher ranking prosecutor and a pre-trial judge.[37] If the decision was made by the prosecutor, an appeal can be made to a higher ranking prosecutor, and later – to a pre-trial judge.[38] A decision of a pre-trial judge is final.[39]

2.4 Interpretation at the initial stages of detention

A Record of arrest includes a graph where it should be specified whether an interpreter is present and what is the language of interpretation.[40] Interviews with investigators revealed different practices. Three investigators pointed out that in all the cases where the suspect communicates not in Lithuanian, police officers try to ensure the participation of an interpreter,[41] while one investigator told that interpretation is guaranteed only from the moment of first interrogation.[42] The main information on procedural rights may also be provided by arresting police officers, who speak Russian or English.[43]

36 Criminal Procedure Code, Art. 233(4).

37 Criminal Procedure Code, Art. 62.

38 Criminal Procedure Code, Art. 63.

39 Criminal Procedure Code, Art. 64.

40 Record of suspect's arrest, approved by Order No. I-288 of the Prosecutor General of the Republic of Lithuania of 29 December 2014.

41 Interviews with the investigators No. 1, 3, 4.

42 Interview with the investigator No. 5.

43 Interviews with the investigators No. 1, 2, 3.

Interview with the investigator No. 1: *Patrolling officers or other officers who participate [in the arrest] report immediately on what's happening. Depending on the required language, that is language in which the arrested person is speaking, the officers invite an interpreter. The rights and duties are explained to the person through an interpreter.*

Interview with the investigator No. 5: *Usually a person should understand what is written in the Record of arrest. However, it is necessary to translate only those documents that are served to the suspect. Of course, in theory, he should understand.. but I can't tell what the practice is. We somehow explain, a person can see his name and surname, and probably can understand what's happening with him. As long as he does not give evidence, there's probably no need for an interpreter.*

Interpretation services are provided by in-house interpreters, working in police institutions, or interpreters working for translation agencies with which police units have signed interpretation/translation services agreements. For example, it was published that Vilnius Regional Chief Police Commissariat concluded three-year agreements for translation and interpretation services into 90 different languages.[44] Interpreters working for translation agencies also provide their services on weekends, holidays and after the working hours of in-house interpreters. Interviewed investigators pointed out that interpreters are available on a 24/7 basis.[45] Interpretation costs during the pre-trial investigation phase are covered from the funds of the pre-trial investigation institutions.[46]

On the other hand, one of the investigators highlighted the fact that arresting officers sometimes fail to record any information on whether the suspect speaks Lithuanian, and whether he or she has a disability or some special needs. These circumstances only become known to investigators during the first interview.[47] Thus sometimes there is a lack of cooperation between arresting police officers and investigators.

2.5 Interpretation during lawyer/client consultations

Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel (Directive on the right to interpretation and translation, Art. 2(2)).

44 http://www.bernardinai.lt/straipsnis/2017-06-04-vilniaus-policija-po-vpt-rekomendaciju-nutraukia-0-4-mln-euru-vertimu-sutartis/160178

45 Interviews with the investigators No. 1, 4.

46 Criminal Procedure Code, Art. 104(1).

47 Interview with the investigator No. 1.

According to the Directive on the right to interpretation and translation, interpretation of communication between a suspect and his or her lawyer is necessary in order for a suspect to be able to explain his or her version of events to the lawyer, to point out any statements with which he or she disagrees and to make a lawyer aware of any facts that should be put forward in his or her defence.[48] The costs for interpretation have to be covered by the state.[49]

When transposing the Directive on the right to interpretation and translation, it was established in the Criminal Procedure Code that a lawyer has to communicate with a suspect in a language that he or she understands. If that is not possible, interpretation has to be ensured'.[50] The costs of such interpretation should be considered as constituting part of the costs of the criminal procedure and should be covered by a respective institution – police station, prosecutor's office or a court.[51] Such costs cannot be recovered from the suspect.[52] Thus, the legal regulation creates necessary preconditions in order to ensure the interpretation of communication between the lawyer and the suspect.

However, neither the investigators, nor the lawyers could identify any situation in which the translation of the communication between the lawyer and his client would have been required.

Interview with the lawyer No. 3: *I had one Iraqi citizen who was also a British citizen; therefore we communicated in English. However, I could see that English was a foreign language to him, thus, even though communication was possible, it was difficult. There were also situations when I had to communicate with a Belarussian and an Estonian in Russian language, though neither me nor my clients were fluent in Russian. Nevertheless, we have managed to somehow solve this issue ourselves. So far, there were no situations where we would need to request for interpretation of our conversations. I, personally, try to avoid this. I do not need anyone else to know what I am discussing with my client.*

Lawyers also expressed their doubts on whether the impartiality and confidentiality of an interpretation performed by interpreters working in a police institution would be ensured.[53]

Interview with the lawyer No. 4: *[...] there is a high probability that an interpreter who works for a pre-trial investigation institution will be invited. Therefore we*

48 Directive on the right to interpretation and translation, Recital 19 of the Preamble.

49 Directive on the right to interpretation and translation, Art. 4.

50 Directive on the right to interpretation and translation, Art. 8(4).

51 Criminal Procedure Code, Art. 103-1(1).

52 Criminal Procedure Code, Art. 105(1).

53 Interview with the lawyer No. 4.

should not expect a high level of confidentiality. This 'little problem' is also relevant to European arrest warrant cases, because a person who is under arrest will not necessarily have enough funds at that specific moment to hire his own interpreter along with the lawyer. This means that he will be provided with an interpreter by the prosecutor's office or the pre-trial investigation institution.

Thus, though the Criminal Procedure Code prohibits to question an interpreter as a witness concerning the circumstances that became known to him while interpreting the communication between the suspect and his lawyer, in order to better guarantee the confidentiality of the interpretation, such interpretations should preferably be carried out by interpreters who do not have employment relationships with law enforcement authorities.

2.6 Interpretation during interrogations

After determining that the suspect does not speak Lithuanian, a pre-trial investigator has to ensure the participation of an interpreter during an interrogation. As mentioned before, interpretation services are provided either by in-house interpreters, working in police institutions, or interpreters working for translation agencies with which police units have signed services agreements.

However, interviews with the investigators revealed that sometimes they face practical difficulties to ensure the participation of an interpreter.

Interview with the investigator No. 2: *Each time when we need an interpreter, we have problems. Our commissariat is big; there are always at least three or four persons arrested, and sometimes eight to ten, most of them not ethnic Lithuanians. We have one in-house interpreter, thus it is really difficult to arrange her participation. If she cannot participate in the interrogation, we ask our regional chief commissariat to find an interpreter.*

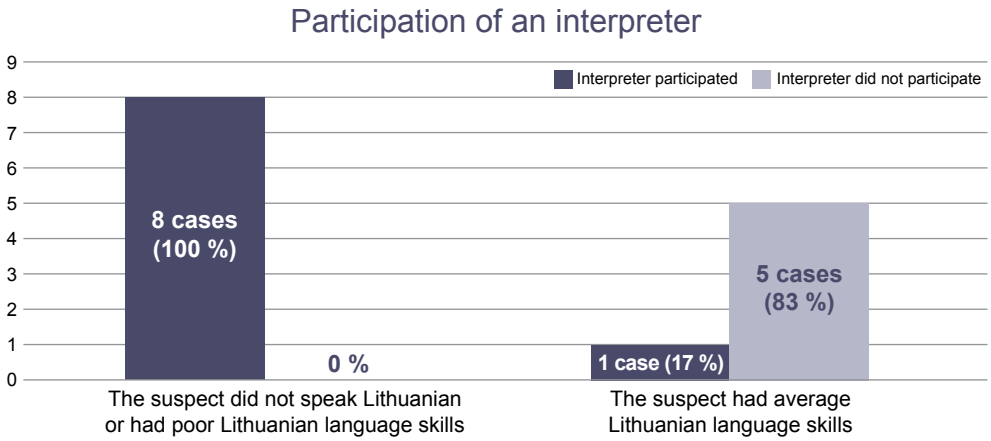
If there is no interpreter who can provide interpretation into the required language, higher education institutions, ethnic communities are contacted. For example, investigators pointed out cooperation with the Institute of Foreign Languages of Vilnius University and embassies.[54]

Interview with the investigator No. 1: *For example, Chinese language. As you know, there are several dialects, sometimes we can't find an interpreter. Sometimes we are calling the embassy for help, and the embassy sends their interpreters. We had Spanish in our practice, and they also have dialects, so we communicated with the Spanish Embassy. The embassies cooperate with pleasure. If we do not have an interpreter, then sometimes the embassies help*

54 Interviews with investigators No. 1, 2, 3.

us, and their citizens at the same time. There are such languages, especially with Arabs - all the ways you want, or Africans. So what are we supposed to do? We communicate through the embassy. If a person is arrested and there's no interpreter, we are stuck – we can neither move forward, nor backward.

In the case of observed interrogations, all suspects who did not speak Lithuanian or had poor knowledge of this language were provided with an interpreter. When interviewing persons with average skills of the Lithuanian language, an interpreter participated only once.[55] In all cases interpretation was carried out into Russian.



When determining the need for interpretation, the position of the suspect is very important. Thus the suspect has to be properly informed about the right to interpretation. During the observed interrogations, all the suspects were informed of their right to interpretation at the beginning of the interrogation. This was done orally and (or) by serving them a letter of rights.

Most of the investigators pointed out that if the name and surname of a detained person indicate that he or she might not be Lithuanian and there are doubts on whether he or she speaks the Lithuanian language, an interpreter is usually summoned, even if the person is able to communicate in Lithuanian. This, among other things, is done in order to ensure that no violations of the procedural rights of the suspect are determined by court later on.[56]

Data gathered during the observations, as well through interviews with lawyers and investigators shows that sometimes investigators conduct interrogations in a language that the suspect can understand (usually in Russian), even if an interpreter is present. Such situations were observed in four cases out of eight, when the suspect could not speak Lithuanian or his Lithuanian language skills were

55 There was one case when an interpreter was provided for a suspect who had good Lithuanian language skills, however the suspect refused interpretation services.

56 Interview with the investigator No. 3.

very poor.[57] In these cases, an interpreter helped translate separate words and phrases, translated the list of procedural rights, the content of the suspicion and the interrogation record.

The common practice to carry out interrogations and other procedures (e.g., confrontation) in suspect's language with minimal interpreter participation was also confirmed by the lawyers and investigators.[58] According to investigators, communication through an interpreter creates an additional barrier, thus, where possible, they attempt to interact directly with the suspect.[59]

Interview with the investigator No. 2: *We have one investigator who is born around 1996 who does not know Russian. So I don't know how she will be able to work without having a contact with the suspect. It is difficult to conduct an interrogation when you do not have direct contact.*

Lawyers also indicated that there are cases where procedural actions are carried out in Russian or Polish, while the interpreter signs the interrogation record later on.[60] Though such practice may be determined by lack of interpreters, it constitutes a violation of the requirements of criminal proceedings and should not be tolerated.

Interview with the lawyer No. 1: *The client brought her documents, one of which contained a sentence by a Russian speaking person, stating that 'I do not understand Lithuanian, therefore I need an interpreter' and his interrogation is underway. However, there is no signature of the interpreter. Thus, a question was raised during the court hearing on whether data from this interrogation should be admissible as evidence. [...] The judge then says: 'Wait, just a moment, there is a signature'. In the case file, he opened the relevant volume, and I have no idea when did that signature appear. But the fact is that there was no signature of the interpreter when my client made a copy of the interrogation record. Therefore it is likely that signatures were provided by an interpreter much later, after the interrogation. And practice shows that such situations do occur.*

Researchers observed one case where the interrogation of a suspect with average Lithuanian language skills was carried out in Russian without an interpreter.

Interrogation No. 5, a 25-year-old man suspected of domestic violence is questioned
The investigator asks the suspect whether he understands Lithuanian, what language would he prefer to speak – Lithuanian or Russian, and what is his nationality. The suspect answers that he is Polish and that he has no language

57 Interrogations No. 9, 19, 23 and 34.

58 Interviews with the lawyers No. 1, 2, 3, 4, 5; interviews with the investigators No. 1, 2, 3, 4, 5.

59 Interviews with the investigators No. 2, 3.

60 Interviews with the lawyers No. 1, 2, and 4.

preference. The investigator proposes to carry out the interrogation in Russian and informs that the record will be written in Lithuanian.

Even though in the observed case the suspect understood Lithuanian, the practice of conducting an interrogation in Russian while the record is written in Lithuanian might lead to situations when the suspect signs a record without understanding the text. This would constitute a violation of suspect's rights.

Interviews with lawyers and observation of interrogations indicated no substantive practical problems in ensuring the suspect's possibility to give testimony in a language that he or she understands. No cases of a suspect failing to understand the questions or of being required to give testimony in Lithuanian were recorded during observations. The interviewed lawyers also did not indicate any cases where an interpreter had not been provided upon request or where a requirement to justify the need for interpretation had been imposed upon the suspect or the lawyer.

The Criminal Procedure Code also provides for the opportunity for an interpreter to participate in the procedural actions remotely, via audio and (or) video transmission.[61] However personal participation of the interpreter/translator is given priority and usually ensured.

2.7 Arrangements for translation of documents

Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings (Directive on the right to interpretation and translation, Art. 3(1)).

The Directive on the right to interpretation and translation establishes that essential documents include any decision depriving a person of his or her liberty, any charge or indictment, and any judgment.[62] Competent authorities have to decide whether any other document is essential on a case-by-case basis. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.[63]

61 Criminal Procedure Code, Art. 43.

62 Directive on the right to interpretation and translation, Art. 3(2).

63 Directive on the right to interpretation and translation, Art. 3(3).

According to the Criminal Procedure Code, translation of case documents into the suspect's native language or a language that the suspect understands has to be ensured in two cases:

Firstly, all documents that, according the Criminal Procedure Code, have to be served to the suspect must be translated.[64] These documents include a decision to recognize a person as a suspect, a decision to set bail, an indictment, a court judgment, decisions of appellate and cassation instance courts, and requests of the prosecutor and the victim to change the legal classification of the offence. It should be noted that, according to the Criminal Procedure Code, a decision 'to impose a restrictive measure (e.g. obligation not to leave the country) is announced to the suspect upon signed acknowledgement'[65]. However, in cases other than setting bail, no direct obligation to serve a decision to the suspect is established. Such regulation, when interpreting it formally, opens up the opportunity to not include decisions under which a person is deprived of liberty (e.g., imposing detention or house arrest) to the list of documents that have to be translated. In practice, however, decisions to impose a restrictive measure are served to the suspect, and this is also provided in the form of the decision.[66] A decision to temporary arrest a person, a notification of the end of pre-trial investigation, and notice of the transfer of the case to the court are also served,[67] however there are no clear provisions concerning the translation of these documents. One of the interviewed lawyers indicated that the contents of the served documents may be translated orally,[68] even though this is not provided in the Criminal Procedure Code.

Secondly, the suspect or his or her lawyer may submit a reasoned request for the written translation of other documents or their parts, if the translation of such documents is necessary in order for the suspect to be able to properly exercise his or her right of defence or to understand the ongoing criminal proceedings. The request has to be submitted to the investigator, prosecutor or the court, and must be examined within five days. Refusal to comply with the request may be appealed under the usual appeal process (see section 2.3).[69]

The Criminal Procedure Code also provides for an obligation to translate the European arrest warrant into the native language of the person in respected of whom the warrant was issued, or to a language that the person understands. Usually a written translation has to be provided. However, following the consent of the suspect oral interpretation may be deemed sufficient, provided that the interests of justice are not undermined.[70]

64 Criminal Procedure Code, Art. 8(5).

65 Criminal Procedure Code, Art. 125(3).

66 Order No. I-288 of the Prosecutor General of 29 December 2014 "On the approval of the forms of criminal procedure documents" (with later amendments), https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4/RnuZPoNCAA

67 *Ibid*.

68 Interview with the lawyer No. 3.

69 Criminal Procedure Code, Art. 8(5).

70 Criminal Procedure Code, Art. 71-1(2).

The interviewed lawyers noted that amendments to the Criminal Procedure Code, which directly established the right of a suspect to receive a translation of the most important documents, had a positive impact. However, most prosecutors are still reluctant to grant such requests and to translate documents other than those obligatory served to the suspect. This may curtail the defence possibilities of a suspect. For example, in a case concerning a traffic accident, it may be important for the suspect to receive translation of the police report on the event, witness testimonies or the scheme of the accident, while the prosecutor may argue that these documents have no significant probative value.[71]

Interview with the lawyer No. 3: *There were issues with the translation of documents, although they are being solved now. But, again, there is freedom and discretion [on the part of prosecutors – ed.] to decide which documents are material, and which are not. It is sometimes difficult to come to an agreement with a prosecutor without filing complaints. The traditional understanding is – if we are not obliged to provide, then we will not provide. Of course, this [providing translation – ed.] costs them both time and money.*

Interview with the lawyer No. 1: *Everyone understands the term 'material documents' differently. Nevertheless, we understand 'material' to the extent they are related to the suspicion and accusation. If, let us say, the record of a traffic accident or a witness interview are important grounds for a suspicion, then they should be translated.*

In cases other than those concerning the European arrest warrant, the Criminal Procedure Code does not explicitly provide for oral translation of material documents. However, data collected during observations showed that arrested suspects with little to no Lithuanian language skills were provided with an oral translation of their notification of suspicion, while the notification itself was served in Lithuanian. The fact that the content of the served documents is sometimes translated only orally was also indicated by one of the interviewed lawyers. One of the interpreters participating in interrogations told that usually suspects receive interpretation services only, and all documents are served in Lithuanian ('because, after all, it is our official language'). Written translation is provided only upon the request of the suspect.[72] Such practice can be linked to scarce resources and the circumstance that most suspects who have poor Lithuanian language skills are citizens of Lithuania and can understand written text.

Violations of the requirement to provide written translation are dealt by courts on a case-by-case basis and usually are not recognized as amounting to material violations of criminal procedure. In the judgment of 5 June 2018, the Lithuanian Supreme Court found that failure to comply with the requirement to provide written translation should be evaluated in each particular case by also considering the

71 Interview with the lawyer No. 3.

72 Interrogation No. 23, additional notes.

main objective of this requirement – namely, to ensure the fairness of the criminal procedure.[73] Therefore, for example, even if a suspect was not provided with a translation of the court judgement, but his or her basic Lithuanian language skills enabled him or her to read and understand the contents of that judgement, and the person was able to exercise his or her right to appeal, such a violation of the right to translation shall not be recognized as material, i.e. as essentially restricting the rights of the suspect.[74]

2.8 The quality of interpretation and translation, professional ethics

Interpretation and translation shall be of a quality sufficient to safeguard the fairness of the proceedings (Directive on the right to interpretation and translation, Art.2(8), Art.3(9))

In order to ensure the quality of interpretation and translation, the Directive encourages states to create a register or registers of independent translators and interpreters who are appropriately qualified. Such a register should be available to both lawyers and competent public authorities.[75] Unfortunately, Lithuania does not have such a register. Interpretation and translation services are provided either by in-house interpreters and translators, or by interpreters and translators working for translation agencies who have won public procurement contracts.

Such a system still may pose practical difficulties, particularly when interpreting from/to languages that are less common in Lithuania or when qualified legal interpretation is necessary. The latter was also confirmed by all the interviewed lawyers and some investigators.[76] As mentioned before, in such cases, higher education institutions, national communities and embassies are requested to provide assistance. Therefore, a register of qualified interpreters and translators could become a valuable instrument supplementing the existing system.

Interview with the investigator No. 1: *Well, what we're doing is just calling everyone. We start from the embassy, also everyone has some acquaintances, later we are calling other services, state border guard service – maybe they have someone. And if we do not find anyone who knows the required language, we look for a similar language. One which the person can somehow understand. What else can we do?*

73 Supreme Court of Lithuania, ruling of 5 June 2018, criminal case No. 2K-189-895/2018.

74 *Ibid*.

75 Directive on the right to interpretation and translation, Art. 5(2).

76 Interviews with the lawyers No. 1, 2, 3, 4, 5; interviews with the investigators No. 1, 2, 3.

Sometimes double interpretation is carried out, but this practice was evaluated differently.

Interview with the lawyer No. 3: *There was one case where two interpreters were used during the interrogation of an Estonian suspect: one of them translated from Lithuanian to Russian, while another - from Russian to Estonian. This is a textbook example of a 'broken telephone'.*

Except for sign language interpreters, there is no mandatory certification / accreditation of interpreters, no periodic attestations, no obligation to improve qualification and no quality control system. There are also no special requirements for translators/interpreters participating in the criminal proceedings. In 2017, the Lithuanian Translators' Association adopted a Code of Professional Ethics that established the requirements of translation quality, confidentiality, impartiality and other. [77] However, this Code applies only to the members of the Association.

Interview with the lawyer No. 1: *There are usually no issues with Russian and Polish languages, however the quality of interpretation of English and German languages usually depends on whether the interpreter is able to perform simultaneous interpretation, or whether he requires some time to process the information, because, again, there are different requirements for different situations. And, for example, I often help the interpreter during interrogations, at least as far as foreigners are concerned. [...] Last week I had an interrogation which involved a German client with whom we communicate in English, as I 'nicht verstehen'. A German interpreter participated in the interrogation, however she warned me immediately prior to the interrogation that she is not familiar with German legal terms, therefore she can only interpret using simple spoken language. And when she orally translated the notification of suspicion to my client, she only transmitted its essence, while all the legal aspects of it were provided by me in English. And then I would explain these legal aspects to the interpreter in simple words, and the interpreter would translate this to the client in the same simple spoken language. However, an interpreter should have some legal knowledge and know these specific terms.*

The situation is different with Lithuanian sign language interpreters. Qualification categories are applied to Lithuanian sign language interpreters which require qualifications requirements established by the Minister of Social Security and Labour.[78] Lithuanian sign language interpreters are certified every 5 years.[79] Lithuanian sign language interpretation services are provided by five sign language interpreter centres operating in Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys regions. These centres are subordinate to the Ministry of Social Security and

77 Code of Ethics of the Lithuanian Association of Translators http://www.lvasociacija.lt/apie-lva/etikos-kodeksas/

78 Order No. A1-209 'On the approval of the description of procedure for the certification of Lithuanian sign language interpreters' of the Minister of Social Security and Labour of 26 April 2016, https://www.e-tar.lt/portal/lt/legalAct/1ecfb0e00c5511e6a238c18f7a3f1736/IRBgZI-ZwcU

79 Description of procedure for the certification of Lithuanian sign language interpreters, § 24.

Labour. Lithuanian sign language interpreters are subject to ethical norms listed in the Code of Ethics of Lithuanian sign language interpreters.[80]

In relation to the observed interrogations where an interpreter was present, these all involved simple interpretation into Russian, and the quality of interpretation was good. However, there were a number of situations when an interpreter (working for a translation agency) took over the interrogation initiative from the investigator.[81] In some cases, this might cause some doubts regarding the interpreter's impartiality. As mentioned before, concerns over the interpreter's impartiality might also arise in cases when interpretation is provided by employees of investigating institutions.

Interrogation No. 18, a Latvian citizen suspected of shoplifting is questioned. *The investigator asks questions about the circumstances of the incident. Since the investigator is slightly unsure with the interrogation, the interpreter takes the initiative and begins to ask the suspect questions. The investigator has nothing else to do but to record everything. The interpreter asks the suspect about the stolen goods and dictates everything back to the investigator 'three units of red caviar, three black, two of other type, the name of which he does not remember'. The investigator also asks the suspect questions which the interpreter translates.*

Exclusion from the proceedings is the main measure established by the Criminal Procedure Code which can be used to respond to the interpreter's inappropriate performance of duties. An interpreter may be excluded both due to circumstances that raise doubts about his or her impartiality,[82] and due to his or her incompetence.[83] The suspect or his or her lawyer may request the exclusion of the interpreter by submitting a reasoned request in writing.[84] During the pre-trial investigation, decision regarding the exclusion of an interpreter is made by the investigator or prosecutor responsible for the case.[85]

Translation quality issues may also be raised when challenging decisions made during the proceedings, as well as when appealing against a court judgement.

The interpreter may be held criminally liable for false and obviously incorrect interpretation/translation during the pre-trial investigation or during court proceedings.[86]

80 http://vertimaigestais.lt/v1/index.php/58-lietuviu-gestu-kalbos-verteju-etikos-kodeksas

81 Interrogations No. 18, No. 19.

82 Criminal Procedure Code, Art. 58(1).

83 Criminal Procedure Code, Art. 58(3).

84 Criminal Procedure Code, Art. 57(1), Art. 60(2).

85 Criminal Procedure Code, Art. 60(3).

86 Criminal Procedure Code, Art. 235(1).

2.9 Conclusions

The main requirements arising from the Directive on the right to interpretation and translation are consolidated in Lithuania on a statutory level:

- Investigators are obliged to evaluate whether the suspect speaks Lithuanian and/or whether he or she needs an interpreter;
- A suspect and his or her lawyer have a right to appeal against the decision not to invite an interpreter;
- When necessary, interpretation of communication between a suspect and his or her lawyer has to be ensured; the interpreter may not be called to testify on the contents of such interpretation;
- A suspect and his or her lawyer have a right to receive the translation of documents that are necessary for defence.

Interviews with lawyers and observation of interrogations indicated no substantive practical problems in ensuring the suspect's possibility to give testimony in a language that he or she understands. The identified practical problems related to ensuring the right to interpretation and translation mainly resulted from the lack of clear procedures and insufficient resources instead than from loopholes in legal regulation:

- The lack of qualified interpreters and translators capable of providing high quality interpretation and translation services in the criminal proceedings, as well as lack of a register of qualified independent interpreters/translators lead to the difficulties in ensuring the quality of interpretation/translation or in providing interpretation/translation to/from rarely used languages.
- Sometimes interrogations are carried out in the suspect's language, without participation of an interpreter. Such practice may lead to infringement of suspect's rights in situations where the suspect signs a Record of interrogation without understanding the text.

3. THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

3.1. Information about procedural rights

3.1.1 The normative framework in Lithuania regarding the suspects' right to information about procedural rights

The Criminal Procedure Code establishes the most important safeguards related to the provision of information about applicable rights to the participants in criminal proceedings: information about rights must be provided both during the pre-trial investigation and in court. The obligation to explain to the suspect his or her procedural rights lies with investigators (usually police investigators), prosecutors and judges.[87] The information about rights must be provided no later than before the first interrogation.[88] When the criminal proceedings reach the judicial stage and the suspect becomes the accused, his or her procedural rights must also be explained to him or her orally by the judge at the beginning of the court hearing.[89]

When transposing the provisions of the Directive on the right to information, amendments were made to the Criminal Procedure Code in 2014, establishing rights that previously were not included into the list of suspect's rights: to inform consular authorities, to receive urgent medical assistance, to know the maximum period of arrest or pre-trial detention, and the right to remain silent.[90]

However, even after the latter amendments, the Criminal Procedure Code still did not ensure the suspect's right to be given access to documents necessary to challenge the arrest or detention as required by the Directive. Suspects were also not given a written letter of rights.[91] The latter shortcomings were eliminated by subsequent amendments to the Criminal Procedure Code and secondary legislation.

In December 2014, the Prosecutor General approved 'The record of notification of the rights of the suspected person' and it's Annex.[92] The 'Annex to the record of

87 Criminal Procedure Code, Art. 45.

88 Criminal Procedure Code, Art. 187(1).

89 Criminal Procedure Code, Art. 268.

90 Law amending Articles 21, 22 of the Code of Criminal Procedure and its Annex, 15 May 2014, No. XII-891.

91 Directive on the right to information, Art. 4 and Art. 7(1).

92 Order No. I-288 of the Prosecutor General of 29 December 2014 I-288 "On the approval of the forms of criminal procedure documents" (with subsequent amendments) https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4

notification of the rights of the suspected person' is a Lithuanian equivalent of the letter of rights envisioned in the Directive (see Annex No. 1 to this Report). The list of rights provided for in this Annex essentially corresponds to the rights of which the suspected or accused person must be informed according to the Directive on the right to information. The Annex was approved together with its translations into English, French, German, Polish and Russian languages. This document must be served to each suspect, i. e. not only to those who are arrested, as required by the Directive. Therefore, in this regard, Lithuania established a higher standard than the minimum standard required by the Directive.

On the other hand, as further explained in the next section, the letter of rights given to suspects is a long document written in complex legal language. This may not comply with the requirement established in the Directive on the right to information that the letter of rights must be prepared in a simple and accessible language.

The consequences of failure to serve the letter of rights are not directly established in the Criminal Procedure Code. Theoretically, after evaluating a specific situation, a failure to inform the suspect of his or her procedural rights could be recognized as a material breach of the Criminal Procedure Code and determine the return of the case to prosecution or annulment of a court's judgment.

The suspect's right of access to all the material on which the prosecutor's request to detain the suspect is based, was established by the amendments to the Criminal Procedure Code adopted in June 2015.[93]

'The record of notification of the rights of the person to be surrendered on the basis of the European arrest warrant' and its Annex were approved in February 2017.[94] This Annex is an equivalent of a letter of rights in European arrest warrant proceedings, provided for in the Directive on the right to information.

When comparing the provisions of the Directive and the Criminal Procedure Code, there is a formal discrepancy between the Directive's requirement to provide all suspects with information about the conditions for obtaining free legal advice[95] and the regulation established by the Criminal Procedure Code. According to the Criminal Procedure Code, an obligation to inform the suspect about the procedures for free legal aid arises only in cases where a suspect requested to ensure the participation of a lawyer, and the participation of a lawyer is not mandatory.[96] However, this discrepancy is minor. In other aspects Lithuanian regulation, except for the letter of rights which is discussed further, complies with the standards required by the Directive on the right to information.

93 Law on the Amendment of Articles 121, 123, 125, 126, 127, 130, 131 and 181 of the Code of Criminal Procedure, No. XII1878, 25 June 2015.

94 Order No. I-55 of the Prosecutor General of 28 February 2017 'On the approval of the forms of criminal procedure documents' https://www.e-tar.lt/portal/lt/legalAct/88c65c40fe8711e68034be159a964f47

95 Directive on the right to information, Art. 3(1)(b).

96 Criminal Procedure Code. Art. 50(3).

3.1.2 The 'letter of rights'

Where suspects or accused persons are arrested or detained, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist those persons in understanding their rights (Directive on the right to information, Recital 22).

The 'Annex to the record of notification of the rights of the suspected person' (Annex No. 1 to this Report) applied in Lithuania is the equivalent of the letter of rights indicated in the Directive on the right to information.[97] It indicates and describes the following rights:

- he right to be informed about the suspicion;
- the right of access to a lawyer;
- the right to interpretation and translation;
- the right to have consular authorities and one person informed, if the suspect is arrested or detained;
- the right of access to urgent medical assistance;
- the right to know the maximum term of arrest or pre-trial detention;
- the right to testify or remain silent;
- the right to submit evidence relevant to the investigation;
- the right to submit requests;
- the right to make challenges;
- the right to have access to the materials of the pre-trial investigation case;
- the right to appeal against the actions and decisions of investigators, prosecutors and judges.

The letter of rights has to be served to every suspect upon their arrest or detention.[98] This provides the arrested person with the possibility to learn about his or her procedural rights. Otherwise, it may be difficult for the suspect under arrest to concentrate on the contents of the list of rights when such a list is received at the beginning of the interrogation. Suspects who are not under arrest are served their letter of rights at the beginning of the first interrogation.

The Directive on the right to information requires that the letter of rights be prepared in simple and accessible language.[99] Lithuanian version of a letter of rights is a three-page document. It is written in formal and complex language: most of the text essentially reproduces the relevant provisions of the Criminal Procedure

97 Order No.I-288 of the Prosecutor General of 29 December 2014 "On the approval of the forms of criminal procedure documents" (with subsequent amendments) https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4

98 Interviews with the investigators No. 1, 2, 3, 4, 5.

99 Directive on the right to information, indents 22 and 38 of the Preamble, Art. 3(2), Art. 4(4).

Code. Part of the text is redundant due to the inclusion of provisions applied to the investigator or prosecutor, i.e. establishing the procedure for ensuring a specific right. There are as many as five general references to the Criminal Procedure Code or 'procedures established by law'.

The document is also full of legal terms, such as 'pre-trial investigation officer' and 'pre-trial investigation judge', which are not explained. The descriptions of the rights are provided in long and complex sentences, some spanning over 5 lines in length. The reader is not addressed directly in these descriptions, but rather referred to in third person, as 'the suspected person shall have the right'. Such form of providing information is not easily accessible to those without legal education, therefore it does not comply with the requirement of the Directive for the letter of rights to be 'drafted in simple and accessible language'.[100]

Interrogation No. 25, a man suspected of domestic violence is questioned
Investigator: Did you receive the Annex to the record of notification of the rights of the suspected person?
The suspect nods.
Investigator: Did you understand everything?
The suspect nods.
Investigator: Then sign it, - gives the suspect's rights clarification protocol to the suspect.
The suspect hesitates. 'I understood it more or less'.
Investigator: And what did you not understand?
Suspect: Some of the words are interesting.
Investigator: Which specifically?
The suspect pulls out the document from his pocket and reads it. The investigator stands in front of the caged suspect.
Suspect: I will continue reading it later.
Investigator in a strict tone: You had to read it when the document was served to you, and sign it confirming that you understood everything. I can explain the parts that are unclear to you.
Suspect: No, thank you.

Interviewed investigators were also critical about the letter of rights. [101]

Interview with the investigator No. 3: *It seems to me that everything has been explained excessively there. Sometimes you read and cannot understand what is written there. Sometimes it even seems funny to me. Too many unnecessary words. For example, a person has 8 grades education. What kind of people we usually encounter here? And for them, to understand something here [in this document]?*

100 Karolis Liutkevičius, *Letter of rights in Lithuania: regulation and practice. Research report*. Human Rights Monitoring Institute (2017), p. 9, https://hrmi.lt/wp-content/uploads/2017/06/Letter-of-rights-EN-2017.pdf

101 Interviews with the investigators No. 1, 2, 3, 4.

Interview with the investigator No. 2: *For them [suspects] it's written incomprehensibly. If they start reading – they have ten thousand questions.*

The Human Rights Monitoring Institute conducted a research in 2017 during which police officers and defence lawyers (a total of 44 respondents) rated the accessibility and comprehensibility of the letter of rights on a scale from 1 ('the letter is completely incomprehensible') to 5 ('the letter is completely comprehensible'). The results of the rating showed that the total score was a little over 3 points, i.e. slightly above average.[102]

In order to improve the level of comprehensibility of the letter of rights, the Human Rights Monitoring Institute prepared an alternative, simplified version of the letter of rights and presented in to the Prosecutor General's Office in 2017. However, the proposed version was not adopted.

As mentioned previously, a letter of rights is translated into 5 other languages that are most commonly used in Lithuania – English, French, German, Polish, and Russian. If the suspect does not speak any of these languages, his or her rights are explained to him or her through an interpreter.[103] However, later the letter of rights should still be translated into the language that the suspect understands. Otherwise, failure to do so would violate the requirement of the Directive to give the suspects a letter of rights in a language that they understand without undue delay.[104]

The Directive obliges to provide suspects with information about their rights by taking into account any particular needs of vulnerable suspects or vulnerable accused persons,[105] such as minors[106] or persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders, hindering them to understand and effectively participate in the proceedings.[107]

In Lithuania there is no simplified form of a letter of rights which would be adapted for minors or suspects with disabilities, and no requirement for officers to take additional steps to ensure that such persons understand their procedural rights. The requirement to take into account particular needs of vulnerable suspects might be partially fulfilled by the provision requiring the mandatory participation of

102 *Ibid*.

103 *Ibid*, p. 9.

104 Directive on the right to information, Art. 4(5).

105 Directive on the right to information, Art. 3(2).

106 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Recital 25 https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX-%3A32016L0800

107 European Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Art.7, https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013H1224%2802%29

a defence lawyer in such cases.[108] Though this requirement may be perceived as implying the assistance of a lawyer in helping such suspects to understand their rights and the entire criminal procedure, in itself it does not guarantee that the lawyer will explain the suspect his or her rights.

Only two interrogations of minor suspects were observed during the research. However, in both of them legal aid lawyers were passive and did not provide any explanations to the suspects.[109] Therefore, even in the case of vulnerable suspects, the letter of rights is likely to remain the most important measure of informing suspects about their rights. Thus, it would make sense to prepare a version of the letter of rights which would be adapted for vulnerable groups.

The need for a letter of rights intended for minors is also determined by the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings.[110] This directive must be transposed into national law until 11 June 2019. It provides that, in addition to the information about other rights, suspects who are minors must be provided with simple and easily comprehensible information about the right to have the holder of parental responsibility informed, the right to protection of privacy, the right to be accompanied by the holder of parental responsibility during criminal proceedings, the right to an individual assessment, the right to a medical examination, the right to limitation of deprivation of liberty, the right to effective remedies, and the right to specific treatment during deprivation of liberty.[111]

The letter of rights served to persons arrested under a European arrest warrant (see Annex No. 2 to this Report) better complies with requirement of accessibility, even though not entirely. Just like the regular letter of rights, the latter includes legal terms and phrasings which are hardly understood by the detained persons ('legal classification' of the criminal offence, 'surrendered under simplified procedure', 'did not renounce entitlement to the speciality rule'). However, this letter was written by addressing the suspect in second person ('you'). This determines the fact that the text of the letter can be read more easily compared to the regular version where the suspect is referred to third person ('the suspect shall have the right', 'after the suspect is arrested'). The text of a letter intended for persons subjected to European arrest warrant proceedings is also more laconic than the general version (less than 1.5 pages long).

For comparison, the right to have consular authorities and one person informed spans 18 lines in length in a regular letter of rights, while the same right is

108 Criminal Procedure Code, Art. 51.

109 Interrogations No. 47 and No. 48.

110 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A32016L0800

111 Directive on procedural safeguards for children who are suspects, Art. 4.

described in 5 lines in a letter that is served in European arrest warrant cases. Another positive aspect of the latter served in European arrest warrant cases is that it does not have any blanket references to the 'procedures established by the Criminal Procedure Code' or 'by other laws'. The only concern is that the right of a person arrested on the basis of a European arrest warrant to agree or disagree to being surrendered is only formulated as a right 'to give consent to surrender by simplified procedure', without mentioning the possibility to disagree. Such formulation is misleading; therefore it should be adjusted according to the Indicative model Letter of Rights for persons arrested on the basis of a European arrest warrant, which is provided in the Directive on the right to information.

3.1.3 Timing and method of providing information to suspects about their procedural rights

Member States shall ensure that the information [about rights] shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons (Directive on the right to information, Art. 3(2)).

The requirement to provide information to suspects about their procedural rights in simple and accessible language is not established in Lithuanian legal acts. There are also no provisions intended to ensure or check whether a person actually understood the information provided. On the other hand, the provision of the Criminal Procedure Code obliging the investigator, prosecutor or judge to explain procedural rights to the participants of the criminal proceedings[112] implies the obligation to answer all the questions asked by the suspect, as well as to provide additional clarifications.

Serving a letter of rights. The main method of informing suspects about their procedural rights is in written form, by serving them a letter of rights. All the interviewed investigators pointed out that the letter of rights must be served to arrested suspects at the moment when arrest is formally recorded.

Observations revealed that some investigators also serve the letter of rights at the beginning of the interrogation.[113] Usually investigators would ask the suspect whether he or she 'read his rights', or received a 'list of rights', 'a long list of rights', 'annex on rights' or 'pages with rights' and, in the event of a negative answer,

112 Criminal Procedure Code, Art. 45.

113 In 32 cases observed (out of 54), a letter of rights was served to the suspect at the beginning of the interrogation, or the suspect confirmed that the letter was given to him after arrest.

the suspect was served with a letter of rights.[114] Such practice, verifying whether the suspect received a letter of rights, is very positive and should be applied in all cases. The letter of rights was also served before the observed subsequent interrogations. Investigators who carried out the interrogations later commented that this document is usually served before each interrogation.[115]

On the other hand, it is worrying that 9 suspects indicated that a letter of rights was not served to them after they were arrested, or that they were not allowed to keep the document, even though they signed the suspect's rights clarification protocol. Even though some suspects may not accurately remember what happened when they were being arrested, in one case several persons who were arrested by the same officers stated that they did not receive the letter of rights. This enables to make an assumption that, in some cases, a letter of rights is not served to suspects after their arrest.

Interrogation No. 47, a 17 year old girl is questioned
Investigator: 4 pages were served yesterday. Did you receive them?
Suspect: Yes.
Investigator: Did you read them?
Suspect: No, I was not allowed to keep them.

The fact that the letter of rights is not always served after arrest was also indicated by some interviewed lawyers.[116]

Interview with the lawyer No. 5: *Usually it [the letter of rights] is served only during interrogation. At least in my practice, I have never heard that someone would receive a letter of rights immediately after arrest, I don't know. These documents are always served during interrogation: notification of suspicion, record of notification of rights, and a letter of rights.*

In cases when the suspect states that he or she did not receive a letter of rights immediately after arrest, he or she should also be given sufficient time to read the document. In the observed cases the time given varied from 3 to 15 minutes. There were a couple of cases where the letter of rights was served without providing any time to read it, and the suspect read it during interrogation, while the investigator was typing the answers.[117] In any case, serving the letter of rights at the beginning of the interrogation does not substitute serving it immediately after the person's arrest, because lack of time, stress and uncertainty related to forthcoming interrogation determine that it is hard for the person to concentrate and understand this information at that time.

114 Interrogations No. 4, 6, 26, 27, 28, 29, 35.

115 Interrogations No. 10, 40.

116 Interview with lawyer No. 1, 2, 5.

117 Interrogations No. 10, 30.

In several observed cases, the letter of rights was served after asking the suspect a few questions about the event, or even at the end of the interrogation.[118]

As revealed by the observed interrogations and interviews with the lawyers, the letter of rights is usually served to the suspect together with other four documents that must be read and signed by the suspect – a personal data certificate, a notification of suspicion, a Record of notification of rights, and a Record of notification of the right of access to a lawyer. According to the lawyers, serving a letter of rights is usually treated as a formality, and no adequate time is given to the suspect to read it.

Interview with the lawyer No. 2: *They give the suspect documents and tell him to sign them. All the documents are provided in a single pile. Everything is printed at the same time: the suspicion, the notification of rights and the record regarding the lawyer. The suspect is given these documents and is told to: 'Sign here, sign here, here that you will need a lawyer, write down that a lawyer is participating' or 'Write down that you do not need a lawyer'.*

Interview with the lawyer No. 4: *Some investigators give the suspect a document saying that these are his rights. Then the investigator continues to ask the suspect about his personal data and fill out information, while the suspect is trying to locate both his rights and obligations across these two pages of documents. Even in the presence of a lawyer, the investigator asks the suspect about his date and place of birth while filling out the personal information section. Then, when it is finally filled out, the investigator prints it and requests the suspect to check whether the information is correct and then 'sign here, here, here and here'. So I believe that when nobody else is participating, everything depends on the investigators, and there are a lot of different investigators out there. Some of them follow these procedures, even though are irritated by them, because the current ICPIS system [Integrated Criminal Procedure Information System] is very slow and even the introductory part [of an interrogation] takes twenty minutes. So this is how the explanation of rights looks like.*

Provision of oral explanations. In 25 observed cases, at the beginning of the interrogation suspects were provided with short oral information about their main rights (by listing these rights) – the right to have a lawyer, the right to have an interpreter, and the right to refuse to give evidence. In cases where suspects had poor Lithuanian language skills, the list of procedural rights was read by an interpreter.

Additional explanations were provided in 6 cases. The right to refuse to give evidence was emphasized in 4 of the latter 6 cases,[119] while in one of those cases

118 Interrogations No. 5, 10, 15, 19, 20.

119 Interrogations No. 5, 6, 13, 14, 48. By the way, the right not to give evidence was usually emphasized by investigators of the Criminal

the suspect was additionally informed that he may change his testimony, and he will not be liable for a false testimony.[120] In another case, more details were provided about the suspect's right to have a lawyer, while a suspect with physical and mental disabilities was informed about the right to receive medical assistance if he should have any health problems.[121] During one of the interrogations, the investigator asked an injured suspect whether he would like to receive medical assistance after the interrogation and whether his wife should be contacted so she could meet him.[122]

All the interviewed investigators asserted that they always provide additional practical information to suspects who ask for additional information.

Interview with the investigator No. 1: *There are people of all kinds, and sometimes disasters hapen for them, and they are pushed to commit a certain crime. I'm not talking here about violent crimes, but to steal something, to forge something – you know what I mean. It is with such people that I pay a lot of attention to explain their rights. For they are asking a lot: what will happen to me? How should I behave, what if I did this or that? Maybe I should show where the stolen items are hidden? They have a lot of questions. And I tell them that they have the right to have a lawyer. And they ask: how can the lawyer help me? What can he do for me? Immediately other questions follow. There's not much use of these written template rights. But if a person is arrested for a third or fourth time – he's no more interested.*

Meanwhile, interviewed lawyers were critical regarding the provision of information to the suspects about their rights. [123]

Interview with the lawyer No. 5: *As far as I have seen, there is no appropriate explanation of rights. The written form is, of course, served to the suspect. However, it is considered to be only a formality carried out only out of obligation. Investigators do not bother to read and explain the rights, such as the right to refuse to give evidence, the right to appeal, and so on. They simply state that this is just a formality and this has to be done. At best, they say that the suspect may read everything later on. Therefore, I feel confident to say that investigators do not clarify and explain anything. At least I have personally not seen any cases where they would do so.*

On the other hand, interviewed investigators pointed out that it is a duty of lawyers to explain procedural rights to their clients. Thus, if a suspect has a lawyer, there

offence registration department, who question arrested suspects on weekends and submit the material to territorial police stations later on.

120 Interrogation No. 14.

121 Interrogations No. 5, 15.

122 Interrogation No. 4.

123 Interviews with the lawyers No. 1, 2, 3, 4, 5.

is no need for the investigator to provide additional explanations. In addition, according to investigators, suspects only occasionally are interested in their rights or have additional questions. [124]

Interview with the investigator No. 5: *I can tell from my practice that the suspects pay zero attention to their rights. But I work with economic crimes. It is important for the suspects what is written in the notice of suspicion and not what their rights are. After all, they usually know their rights – the right to be silent, etc. Thus they do not pay any attention to that document [letter of rights].*

In the observed interrogations suspects rarely asked the investigators any questions, and the investigators themselves were also reluctant to encourage the suspects to do so. Most of the observed interrogations gave the impression that both the investigators and the suspects (particularly those who were arrested not for the first time) believe that procedural rights are simply a formality, distracting from the main objective – interrogation about the event.

The fact that suspects are not always interested in their procedural rights was also revealed by previous research by the Human Rights Monitoring Institute. During this research almost half (10 out of 22) of the interviewed investigators, and more than a third (8 out of 22) defence lawyers indicated that suspects rarely or never ask them questions about procedural rights.[125]

On the other hand, some suspects showed interest in their rights, particularly the right to have a lawyer, the right not to give evidence and the right to contact family members.[126] For example, two suspects wanted to know whether their arrest would last longer if they exercised their right to a lawyer and (or) refused to give evidence.[127] Some suspects also enquired about further steps of the proceedings, and when they will be released.[128]

Therefore, particular attention should be paid to comprehensive explanation of further procedural steps, as well as the right to have a lawyer, the right to silence, and the right to inform a third person. The essential information concerning these rights should be provided orally, in simple language. Oral explanations are also very important in cases when the letter of rights is first served to the suspect at the beginning of the interrogation. Additional clarifications and an active role of police officers in assessing whether the suspect truly understands his or her rights would help to ensure that the provision of information does not become a formality, but effectively contributes to the fairness of the proceedings.

124 Interviews with the investigators No. 2, 3, 4, 5.

125 Karolis Liutkevičius, Letter of rights in Lithuania: regulation and practice. Research report. Human Rights Monitoring Institute (2017), p. 11, https://hrmi.lt/wp-content/uploads/2017/06/Prane%C5%A1imas-apie-teises-Lietuvoje-2017.pdf

126 Interrogations No. 4, 13, 14, 17, 20, 29, 33, 44, 46, 47.

127 Interrogations No. 17, 20.

128 For example, interrogations No. 4, 14, 20, 29, 33, 46.

3.2 Information about reason for arrest and suspected offence

3.2.1 The normative framework in Lithuania regarding information about suspected offence

Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence (Directive on the right to information, Art. 6(1)).

Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention (Directive on the right to information, Art. 6(2)).

The Criminal Procedure Code directly establishes the right of suspects and accused persons to know what they are suspected or accused of.[129] Information about the criminal act of which the person is suspected must be provided before the first interrogation, by giving the suspect a written notification of suspicion.[130] This notification indicates both legal qualification of the suspected criminal offence and factual information about it – e. g. where and when it was committed.[131] The suspect must be provided with an updated notification of suspicion each time there are any changes in the contents of the suspicion.[132]

Each arrested or detained person must be immediately informed about the reasons for his or her arrest or detention in a language that he or she understands.[133] In the event of arrest, a person is familiarised with a written Record of arrest ('Record of temporary detention') which indicates the criminal act he or she is suspected of, and the reasons for his or her arrest (e.g. has been caught committing a criminal act or immediately after committing a criminal act).[134] This record must be drawn

129 Criminal Procedure Code, Art. 21(4) and Art. 22(3).

130 Criminal Procedure Code, Art. 187(1).

131 Criminal Procedure Code, Art. 187(1).

132 Criminal Procedure Code, Art. 187(2).

133 Criminal Procedure Code, Art. 44(2).

134 Criminal Procedure Code, Art. 140(5), Order No.I-288 of the Prosecutor General of 29 December 2014 'On the approval of the forms of criminal procedure documents' (with subsequent amendmentshttps://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4

up 'within the shortest possible time'.[135] The Criminal Procedure Code does not provide the requirement that a reason for arrest be indicated orally at the moment of arrest.

The suspect or accused person may only be detained under a court order.[136] The order for pre-trial must also indicate the criminal offence of which the person is suspected or accused, as well as detailed reasons of why it was necessary to detain the person.[137] In all cases, a person whose pre-trial detention was ordered must be familiarised with the order in writing.

3.2.2 Provision of information about the suspected offence in practice

The notification of suspicion, describing the circumstances of the offence and its legal qualification under the Code of Criminal Procedure, must be served to all suspects before the first interrogation. It is usually served during the introductory part of the interrogation where a personal data certificate is also filled out, and a Record of notification of suspect's rights, a Record of notification of the right of access to a lawyer, and the letter of rights (if served) are given to the suspect to be read and signed. In most cases only after the notification of suspicion is provided to the suspect that the suspect was asked whether he or she admits of committing the criminal offence, and then the interrogation moved on to the circumstances of the event. However, in three observed cases, the notification of suspicion was served at the end of the interrogation, along with a Record of notification of the right of access to a lawyer.[138]

In almost all of the cases (excluding the two mentioned cases when the notification of suspicion was served at the end of the interrogation), the suspect was told to read the contents of the suspicion. In several cases, the investigators checked whether the suspects understood of what they were suspected of, and whether they had any questions.[139] For suspects who had poor Lithuanian language skills, the suspicion was translated orally by an interpreter participating in the interrogation.[140]

According to the interviewed lawyers, notification of suspicion is not served to suspects only in isolated cases. Whereas the interviews with the investigators revealed that the practice is not uniform.

135 Criminal Procedure Code, Art. 140(5).

136 Criminal Procedure Code, Art. 121.

137 Criminal Procedure Code, Art. 125.

138 Interrogations No. 15, 28, 29.

139 Interrogations No. 2, 7, 9.

140 Interrogations No. 9, 19, 23, 31, 34, 37.

Interview with the investigator No. 1: *If a person goes to a lawyer, what will he say about his suspicion? If we do not serve the suspect the notification of suspicion, we deprive him of his right to effective defence. I always serve it, as usually later in court it will be like that: 'I don't know what I am suspected of, I confessed, but I did not understand anything'. Thus, I always serve a copy. If he is in a state of shock that evening, if he cannot fully understand but gives evidence, he can read that suspicion the day after. Maybe he will want to clarify some statements; maybe he will remember certain additional circumstances. Maybe he will go and consult a lawyer. Thus I always tell my employees that a copy of the notification of suspicion has to be served to the suspect.*

Interview with the investigator No. 2: *Concerning the notification of suspicion – we ask whether a person wants to receive a copy of this document, and then serve it. I know that some [investigators] serve it, while others don't. In practice, the notification of suspicion has to be served to the suspect. But nobody has ever complained to me. Once I wanted to serve a copy of that notification and the suspect told he did not need it. So, why should we waste paper?*

Such a practice, when the suspect is asked whether he or she wishes to receive a notification of suspicion, and the document is provided only upon request, should not be sustained. At the initial stage of the proceedings the suspect may not understand the meaning of this document and refuse it without knowing that it is detrimental to his or her defence. Having information about the suspicion constitutes a necessary precondition for the effective exercise of the right to defence, thus a notification of suspicion should be served to every suspect.

3.3 Access to case materials and documents

3.3.1 The normative framework in Lithuania regarding the right to access case file

Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence (Directive on the right to information, Art. 7(2)).

The Directive on the right to information provides that documents which are essential to effectively challenging the lawfulness of the arrest or detention are

made available to arrested persons or to their lawyers.[141] The Directive does not provide for any possibilities for restrictions in this respect. However, certain restrictions may be applied to accessing other material of the case.[142]

The right provided by the Directive to access the documents that are necessary to challenge the lawfulness of the arrest or detention complies is reflected by the provision of the Criminal Procedure Code, which establishes a right of persons or their lawyers to have access to all the material, on the basis which the prosecutor's request to apply a restrictive measure, including pre-trial detention, is made. Access to this material has to be granted both prior to the court hearing during which the matter of whether to apply a restrictive measure is addressed[143], and at a later stage of the pre-trial investigation.[144] The Criminal Procedure Code does not provide the possibility to restrict this right.

The Criminal Procedure Code also provides that suspects and their lawyers, in principle, have the right to access the pre-trial investigation data (excluding the personal information of participants of the proceedings) during the entire pre-trial investigation. Extracts and copies of the case material may also be made.[145] Access to the case material is free of charge, however copies are made for a certain fee.[146]

Copies of certain data cannot be made. Such data includes information on suspects and accused persons who are minors, information on the private lives of participants of the proceedings, information on sexual crimes, information collected using criminal intelligence methods (e.g., covert surveillance, listening to telephone conversations), and information comprising state, service, professional or commercial secrets. No extracts of confidential information can be made.[147]

Request to access the pre-trial investigation material and make copies of it has to be addressed to the prosecutor in charge of the case, who usually adopts a decision within 7 days. The prosecutor may make a reasoned decision to refuse access to all or part of the case material if, 'in the opinion of the prosecutor, this could prejudice the success of the pre-trial investigation'.[148] The decision of the prosecutor may be appealed to the pre-trial judge.[149]

141 Directive on the right to information, Art. 7(1).

142 Directive on the right to information, Art. 7(4).

143 Criminal Procedure Code, Art. 121(2).

144 Criminal Procedure Code, Art. 181(2).

145 Criminal Procedure Code, Art. 181(1).

146 Government Decree of 3 November 2004 No. 1368 (with subsequent amendments) https://www.e-tar.lt/portal/lt/legalAct/TAR.CFE79D-B62CD2/EoQFGqNYEO

147 Criminal Procedure Code, Art. 181(6).

148 Criminal Procedure Code, Art. 181(1).

149 *Ibid*.

When comparing the grounds for the restriction of the right to access case materials as provided in the Directive on the right to information and in the Criminal Procedure Code, it can be observed that, unlike the three grounds provided by the Directive, the Criminal Procedure Code provides a single ground for restriction only – when the prosecutor believes that granting access to certain information could prejudice the success of the pre-trial investigation.[150] However, this formulation of the Criminal Procedure Code leaves a broad discretion to the prosecutor. For comparison, according to the Directive, one of the grounds on which giving access to certain material can be refused is if such refusal is 'strictly necessary' in order to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation.

The concept of the 'threat to the success of the investigation' is further specified in the 'Recommendations on access to pre-trial investigation material' which were approved by the Prosecutor General in February 2018. According to these recommendations, granting access may constitute a threat to successful investigation in cases when there are contradictions between the defensive positions of suspects, or when there is a threat that the suspect may change his testimony after the testimony of a witness or the victim, or when it is too early to grant access to the case material, etc.[151]

Even though the list of cases is open, it no longer has the abstract reference to cases when 'restrictions of the right to access information are determined by the laws of the Republic of Lithuania', as was provided in the recommendations that were valid in 2003-2018.[152] In 2018 grounds unrelated to the need to safeguard the success of the investigation, such as the protection of state, service, professional or commercial secrets, were also removed from the list. Nevertheless, the prosecutor still has wide discretion to refuse access to the case file until the pre-trial investigation has been completed.

Upon the completion of the pre-trial investigation, restrictions on access to the case file (excluding personal data) cannot be applied.[153] In the Recommendations on access to pre-trial investigation material (2018) it is provided that, after the suspect is notified about the completion of the pre-trial investigation, his right to access the pre-trial investigation material must be explained to him. In the Record of notification about the end of pre-trial investigation it has to be indicated whether the suspect wishes to access the pre-trial investigation material, and whether he or she agrees to receive a copy of the case file in electronic form.[154]

150 The Directive provides two grounds for derogation from the right to access case file: 1) if such access may lead to a serious threat to the life or the fundamental rights of another person; 2) if a refusal of access is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted (Art. 7(4)).

151 Order No. I-57 of the Prosecutor General of 14 February 2018 "On recommendations on providing participants of the proceedings with access to pre-trial investigation material", https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0f4ade40121811e88a05839ea3846d8e

152 Order No. I-58 of the Prosecutor General of 18 April 2003 "On the approval of procedures for the registration of the initiation of the pre-trial investigation and recommendations", https://www.e-tar.lt/portal/lt/legalAct/TAR.598B38830D50/HeDmlMfIAa

153 Criminal Procedure Code, Art. 181(2).

154 Recommendations on providing participants of the proceedings with access to pre-trial investigation material, paragraph 47.

It can be concluded that, for the most part, the current regulation on the right to access the case file complies with the main standards established in the Directive on the right to information. Nevertheless, the discretion granted to prosecutors to restrict access to the case file during pre-trial investigation in order to ensure the success of the investigation is broader than established in the Directive, according to which the test of 'strict necessity' should be applied.

3.3.2 Access to case file in practice

Arrested persons and their lawyers are not given access to the case file prior to the first interrogation, because a request to receive access to case material must first be submitted to the prosecutor and examined within 7 days, whereas the first interrogation has to take place within 24 hours.

The interviewed lawyers stated that during the entire pre-trial investigation the prosecutors tend to use their right to restrict access to case material rather broadly:

Interview with the lawyer No. 2: *This is a very relevant problem, because prosecutors practically abuse their power by stating that access to case material cannot be provided, as this might prejudice the success of the pre-trial investigation. What is success? Nobody can explain this. Is it success when a person is convicted, or when he is acquitted? And when you receive access to information, if you manage to win such a right through the court, because young judges have a different attitude and value human rights more, then it turns out that the suspicion is completely ungrounded. And all the further investigative actions were carried out in order to justify it retrospectively, which is essentially not allowed.*

Interview with the lawyer No. 1: *When talking about suspicion, even in Strasbourg practice it is consistently held that the grounds for arrest, detention and suspicion have to be clear to the person. It is one of the essential moments of the right to defence – the right to know. However, in practice... For example, it is difficult to find out the grounds of suspicion without putting up a fight [with a prosecutor]. And the success of such a fight is unclear, because the outcome will depend on the judge.*

Interview with the lawyer No. 3: *As far as I have seen, these matters are still treated using old methods, as if these Directives would not even exist – we do not give anything, if we do not want to do so. And if the information is not relevant, then please, feel free to access it. [...] The Directive leaves much less room for interpretation, while our own rules give too much freedom for that. We believe that our Criminal Procedure Code does not comply with the aforesaid Directive. Prosecutors are given too much discretion. So far, as I have encountered myself, these prosecutors do everything like*

in the old days. Yes, they do provide us with documents related to pre-trial detention. There is no problem with that. However, they do not give anything else. And, of course, they choose what material to use as grounds for detention, because if something is important, then they keep it for themselves, so that we could not have access to it. Thus, this problem remains and we are still unable to see any remedies for it, unless we come up with some kind of an initiative.

The fact that the actual possibility to access case material during the pre-trial investigation is limited was also revealed by interviews with lawyers and prosecutors carried out in 2016. The prosecutors indicated that they usually provide access only to a minimum amount of pre-trial investigation data or altogether refuse to give access to the case material at the beginning of the pre-trial investigation. Later, by the end of the investigation, permission is given to access more data, but not all the case file. The decision to either give or refuse access to the pre-trial investigation data is usually based on the presumption that providing such access would prejudice the success of the pre-trial investigation.[155]

Both the lawyers and the prosecutors also indicated that courts rarely satisfy appeals regarding refusal to give access to the case material. The lawyers noted that court rulings are usually very formal and support the position of prosecutors without a more critical assessment. Even in cases when the appeal is satisfied, the court usually simply annuls the decision of the prosecutor due to lack of reasoning and obliges the prosecutor to adopt a new decision. Therefore, the result of the appeal is usually a decision by the prosecutor with more reasoning.[156]

Even though restrictions on access to case file can no longer be applied after the end of the pre-trial investigation, suspects and their lawyers are not always granted sufficient time to familiarise themselves with the case.

Interview with the lawyer No. 2: *We get the necessary time ourselves; at least I do, after putting up a fight against the investigator and the prosecutor. Because, for instance, I had one case. On the 14th of August, if I am not mistaken, a person was served a suspicion. After two or three days, that person was informed that the pre-trial investigation was completed. As told by the investigator herself, the case comprised of over a thousand pages. The person was given the opportunity to read the case and submit requests to the prosecutor on supplementing the pre-trial investigation until the 22nd of September.*

We submitted a request to the prosecutor to prolong the term, because it is disproportionate and inadequate, and it is not possible to familiarise with the

155 *Implementation Report of Directive 2012/13/EU on the right to information in criminal proceedings.* Human Rights Monitoring Institute (2016), p. 20.

156 *Ibid*, p. 21.

material within such a short period of time. Then I received a call from the investigator who was outraged and said 'Is it so hard for you to come and flip through the case material?'. So I said 'Flipping through and reading it are two different things. I can simply flip through the pages and this might take me just half an hour, however it is necessary for me to read and assess everything, and this requires time'. We asked for a month, but we are still waiting for the prosecutor's decision. In most cases, at least as far as I have seen, we are forced to put up a fight against the prosecutors in order to win more time. Our requests are not always satisfied to full extent, however the dates are still more or less extended. I also had cases in Vilnius district where the prosecutor refused to extend the time to read the case material. He brought the case to court, so we raised this issue in court stating that we are unable to examine the case and the court took this into account.

Thus, even though the right to access case material in order to ensure effective defence is clearly established by the Criminal Procedure Code, in practice this right is rather limited due to prosecutor's discretion to refuse access to the case file, if this could prejudice the success of the investigation.

3.4 Conclusions

Most of the provisions of the Directive on the right to information in criminal proceedings were transposed to the Lithuanian law. However, there are two areas with possible non-compliance with the standards established in Art. 3(2) and Art. 7(4) of the Directive:

- Suspects are served a letter of rights written in long, complex sentences, where part of the information is redundant. Thus persons who do not have legal background may find it difficult to read such a document and understand its contents. In addition, the letter of rights is served along with several other documents, which makes it even more difficult for the suspect to concentrate on the description of rights. The same version of the letter of rights is also served to minors and persons with disorders of perception.
- The Criminal Procedure Code establishes the right of the prosecutor to decline access to case material, if such access, in the prosecutor's opinion, could prejudice the success of the pre-trial investigation, thus leaving the prosecutor with a broad discretion to restrict the rights to defence.

Observations of interrogations and interviews with lawyers and investigators highlighted certain practical issues related to the implementation of the right to information in criminal proceedings:

- Even though the letter of rights should be served to detained persons when the Record of arrest is being drawn up, such practice is not always followed. Some investigators follow good practice in beginning of the interrogation to inquire whether the suspect was served a letter of rights. However, when a letter is served in the beginning of the investigation, it is difficult for the suspect to concentrate and familiarise with the contents of the document.
- Investigators often carry out their obligation to familiarise suspects with their procedural rights only formally, by serving a letter of rights along with several other documents. Considering the fact that the letter of rights is 3 pages long and written in a complex language, the possibility of suspects to understand their rights becomes very limited.
- The notification of suspicion is not always served to the suspects. Some investigators serve the notification only on request. However, the suspect may not understand the relevance of this document and refuse it, thus complicating effective exercise of his right to defence.
- Until the pre-trial investigation is completed, the possibilities of the defence to access the case file (with the exception of data on which the prosecutor's request for pre-trial detention is based), are limited. Prosecutors tend to widely use the right granted to them by the Criminal Procedure Code to deny access to the case file, if they think it could prejudice the success of the pre-trial investigation.
- After the pre-trial investigation is completed, defence is not always granted sufficient time to familiarise with the case material.

4. THE RIGHT TO EFFECTIVE DEFENCE

4.1 The normative framework regarding access to a lawyer and legal aid in Lithuania

4.1.1. Access to a lawyer

The Constitution of the Republic of Lithuania establishes that each person suspected or accused of committing a crime shall be guaranteed, from the moment of his or her arrest or first interrogation, the right to defence and the right to a lawyer.[157] The Constitutional Court of the Republic of Lithuania has interpreted the right to defence as well as the right to have a lawyer (referred to as 'advocate') to be absolute, which may not be denied or restricted on any grounds or any conditions. The Constitutional Court further noted that the Constitution requires specifying this constitutional right by means of a law, whereas public authorities have a duty to ensure that this right can be effectively exercised.[158]

The right to defence is understood as a composite right, encompassing a set of rights allowing a person to counter the charge against him, or to mitigate his or her liability.[159] This right may be exercised by either the person defending himself, or by doing so through a lawyer. As such, the right to a lawyer is considered to be one of the components of the right to defence.[160]

The content of the right to a lawyer is further specified in the Criminal Procedure Code. As this right is interpreted as absolute, the Criminal Procedure Code does not provide for any restrictions on this right, and can thus be said to protect this right to a higher standard in comparison with the Directive on the right of access to a lawyer.[161]

Timing of the right of access to a lawyer. The Directive on the right of access to a lawyer provides that suspects 'shall have access to a lawyer without undue delay', with this right coming into existence at one of the following points in time (whichever is the earliest):

157 Constitution of the Republic of Lithuania, Art. 31(6), http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192

158 Constitutional Court of the Republic of Lithuania, ruling of 12 February 2001, http://www.lrkt.lt/en/court-acts/search/170/ta1173/content

159 Supreme Court of the Republic of Lithuania, ruling of 2 December 2014, criminal case No. 2K-522/2014.

160 Gintaras Goda et., al. *Law of Criminal Procedure* (Legal Information Centre, 2005), p. 64.

161 The Directive sets out the situations in which the suspect's right of access to a lawyer may be temporarily derogated from during the pre-trial investigation in exceptional circumstances, e. g., where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings (Art. 3(6)).

- before they are questioned by the police or by another law enforcement or judicial authority;
- upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act, including, at the very least, identity parades, confrontations and reconstructions of the scene of a crime;
- without undue delay after deprivation of liberty;
- where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.[162]

The Criminal Procedure Code previously provided that the right of access to a lawyer is guaranteed 'from the moment of arrest or the first questioning'. Unlike the Directive, the Criminal Procedure Code did not explicitly provide that the right to have a lawyer comes into existence *prior* to the first interrogation. It sometimes led to misunderstandings in practice[163] and lawyers were not allowed to meet their clients before interrogation.[164]

In May 2017 the Criminal Procedure Code was amended to expressly state that a suspect under arrest has to be guaranteed a possibility to consult a lawyer in private before the first interrogation. In addition, a lawyer's right to meet with a suspect or accused person in private before the interrogation or a court hearing was added to the list of lawyers' procedural rights.[165]

Exercising and waiving the right to a lawyer. The Criminal Procedure Code imposes a duty on an investigator, a prosecutor or a court to inform a suspect about his or her right to have a lawyer from the moment of arrest or the first interrogation, and to ensure the possibility to exercise this right.[166] A suspect has a right to invite a lawyer of his or her own choosing. At the request of a suspect, a lawyer may also be invited by other persons.[167]

The Criminal Procedure Code sets two instances where a lawyer chosen by the suspect has to be substituted with another lawyer:

1. if a suspect's lawyer cannot participate in the proceedings for more than three days in a row;
2. if he or she is unable to attend the first interrogation or the questioning regarding pre-trial detention within six hours.[168]

162 Directive on the right of access to a lawyer, Art 3(2).

163 Natalija Bitiukova et al., *Accessible Justice. The right to a lawyer and the right to legal aid in Lithuania*, Human Rights Monitoring Institute (2017), p. 14.

164 Interview with the lawyer No. 4.

165 Law No. XIII-357 Amending Articles 10, 44, 48, 50, 52, 69, 69-1, 71-1, 72, 128, 140, 168, 190, 192, 196, 197, 233 and the Annex of the Criminal Procedure Code of the Republic of Lithuania, 11 May 2017, Art. 3 and 4, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/251ab-ba23c6211e79f4996496b137f39?positionInSearchResults=0&searchModelUUID=835c0036-6b26-413d-b044-23a972f7cc64

166 Criminal Procedure Code, Art 50(1).

167 Criminal Procedure Code, Art 50(2).

168 Criminal Procedure Code, Art 50(4).

In such cases either the investigator or the prosecutor must suggest the suspect to contact another lawyer. If the suspect does not, a new legal aid lawyer is appointed by law enforcement officers at their discretion and the suspect's wishes to have particular lawyer are not taken into account. Appointment of a new lawyer does not preclude previous lawyer from participating in the proceedings.[169]

The same rules can be applied if a lawyer does not appear for a court hearing.[170]

If a lawyer cannot appear before the investigator, prosecutor or a court at a prescribed time, he or she must inform about this in advance and to indicate reasons for absence. A lawyer who does not appear without a valid reason may be fined up to EUR 1500.[171]

At any stage of the proceedings a suspect may waive his or her right to have a lawyer without relinquishing a right to have a lawyer in the future[172] (for a more detailed analysis, see section 4.3).

Confidentiality of communications between a lawyer and his or her client. According to the Criminal Procedure Code, a lawyer has a right to meet an arrested or detained suspect without third parties being present. The number or duration of such meetings cannot be limited.[173]

Right of a lawyer to participate effectively in pre-trial investigation. Apart from a right to meet his or her client before the first interrogation, a lawyer has a right to actively participate in all procedural actions where the suspect is present or which are carried out at the request of the suspect or his or her lawyer. [174] These include interrogations, identity parades, experiments etc. The defence lawyer may participate in other procedural actions aimed at gathering evidence only with permission from the investigator, prosecutor or judge.[175] A lawyer can also actively gather evidence by requesting information from legal entities, interviewing persons possessing information about the event, etc.[176]

The Directive on the right of access to a lawyer provides that suspects or accused persons have the right for their lawyer to participate effectively when questioned.

169 *Ibid*.

170 Criminal Procedure Code, Art. 250.

171 Criminal Procedure Code, Art. 48(2(2)), Art. 163, Government Decree of 30 August 2017, No. 707 'On approving basing amounts of punishments and penalties'.

172 Criminal Procedure Code, Art 52.

173 Criminal Procedure Code, Art 48(1), Art 14(1) of Law No. I-1175 on Pre-trial Detention, dated 18 January 1996 (with later amendments), https://www.e-tar.lt/portal/lt/legalAct/TAR.11A8B08A7405/hOqkUhOhFI

174 Criminal Procedure Code, Art 48(1(2)) and 48(1(4)).

175 Criminal Procedure Code, Art 48(1(5)).

176 Criminal Procedure Code, Art 48(1(7)).

Compared to the Directive, the Criminal Procedure Code guarantees a lawyer greater scope for active participation in the pre-trial investigation, as a lawyer has the right to ask questions, request clarifications and make statements, as well as give remarks on the contents of written records when participating in any procedural action.[177] Lawyers may also pose questions during direct or cross-examination during a trial hearing.[178]

Violation of a right to have a lawyer. To be recognized as evidence by the court, the material has to be obtained in accordance with the law (principle of admissibility).[179] Principle of admissibility is violated when, in the course of procedural actions, human rights are unreasonably restricted; when procedural principles are breached; or when procedural actions are carried out without closely following the main rules regulating them.[180] For example, information collected by wiretapping communication between a lawyer and client would be inadmissible as evidence. However, minor deviations from established procedure would not prevent important material from being admitted as evidence.[181]

Furthermore, violation of a right to have a lawyer in a particular case may be recognised by court as constituting a fundamental breach of the Criminal Procedure Code.[182] Some breaches of the Criminal Procedure Code may be remedied by court, for example, by allowing the suspect and his or her counsel to pose questions to the victim if they were denied this right during the pre-trial investigation. If a breach cannot be remedied during court proceedings, the case has to be returned to the prosecutor or, if the fundamental breach is established during appellate or cassation proceedings, lower court's judgment has to be quashed.[183]

4.1.2. Legal aid

Model for the provision of legal aid. Legal aid in criminal cases is provided both based on means testing, and in set instances of mandatory defence lawyer participation.

177 Criminal Procedure Code, Art 48(1(6)).

178 Criminal Procedure Code, Art 275(1).

179 Criminal Procedure Code, Art 20(1).

180 Ruling of the Supreme Court of Lithuania Criminal Cases Division of 16 January 2007 in criminal case No. 2K-4/2007.

181 Gintaras Goda et., al. *Law of Criminal Procedure* (Legal Information Centre, 2005), p. 168.

182 Fundamental breaches of criminal procedure are breaches of the CPC that lead to restrictions of the rights of the defendant or which preclude the court to examine the case thoroughly and impartially and to adopt a fair judgment (Criminal Procedure Code, Art. 369(3)).

183 Criminal Procedure Code, Art. 254(3), Art. 329(1(4)), Art. 369, 3 Art. 83.

The Criminal Procedure Code enumerates 10 instances where the participation of a lawyer is mandatory – in those cases legal aid is provided to suspects or accused persons irrespective of their wealth or income.[184] It is presumed that in those circumstances people are in vulnerable position (for example, by virtue of their age, disability, inability to understand the language of the proceedings or because of the specificity of the proceedings) and the interests of justice require that they be represented by a lawyer.

In order to transpose the Directive on legal aid for suspects[185], amendment to the Criminal Procedure Code was adopted in June 2018, providing for mandatory participation of a lawyer also for suspects who are under arrest. This amendment will come into force from 1 January 2019.[186] After this date, all the suspects under arrest will be entitled to legal aid.

In addition, investigator, prosecutor or a court may adopt a reasoned decision concerning mandatory participation of a lawyer in other cases as well, where otherwise the suspect's rights and interests would not be duly protected.[187] In this case, legal aid is also provided without regard for the person's financial means.

In all other circumstances, suspects or accused persons may apply to the State-Guaranteed Legal Aid Service (SGLAS), which assesses their wealth and income in accordance with set criteria and decides whether to grant legal aid.[188] In 2017-2018 free representation was granted to Lithuanian citizens whose annual income did not exceed EUR 4000 (or EUR 333,33 per month). If annual income is between EUR 4000-6000, a person has to cover 50 % of the legal aid costs.[189]

In certain cases, SGLAS may decide to provide legal aid regardless of the person's wealth or income, e.g., when they are residing in social care institutions.[190]

If grounds for mandatory participation of a lawyer is established, the investigator has to contact a legal aid coordinator who designates a lawyer. On weekends, holidays, and outside working hours of State-Guaranteed Legal Aid Service, an investigator or a prosecutor has to appoint a lawyer from a list of on-duty lawyers who provide legal aid.[191]

184 Criminal Procedure Code, Art. 51(1).

185 This Directive has to be transposed by 25 May 2019.

186 Law No. XIII-1438 Amending Article 51 and the Annex to the Code of Criminal Procedure of the Republic of Lithuania, dated 30 June 2018 m, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/35a873127f8511e89188e16a6495e98c?positionInSearchResults=5&searchModelUUID=32f4d47a-2156-480a-8822-c4a82301692e

187 Criminal Procedure Code, Art. 51.

188 Law on State-Guaranteed Legal Aid, 28 March 2000, No VIII-1591 (with subsequent amendments), Art 11, http://www.teisinepagalba.lt/en/antrine/tm/calculator/

189 http://www.teisinepagalba.lt/en/antrine/tm/calculator/

190 Law on State-Guaranteed Legal Aid, Art 12.

191 Criminal Procedure Code, Art. 51(3).

Lawyers who provide legal aid fall into one of these categories:

1. Lawyers who provide legal aid services full-time (paid a monthly remuneration);
2. Lawyers who provide legal aid services cases on demand (their fee is calculated based on approved tariffs).[192] Otherwise they practice as private lawyers.

In 2017 legal aid in criminal cases was provided by 30 full-time legal aid lawyers and 479 lawyers providing legal aid on demand.

Information on the right to legal aid. The letter of rights, which has to be served to every suspect, contains a formal statement that 'in the event the suspected person does not have sufficient means to pay for legal assistance, he or she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State'.[193]

A reference to the possibility to receive free legal aid is also included in the Record of notification of the right of access to a lawyer. It *inter alia* specifies that the suspect was notified about the possibility that the costs related to mandatory participation of a lawyer may be recovered to the state budget. The corresponding provision of Criminal Procedure Code expired on 1 July 2017,[194] but even before that date the Supreme Court of Lithuania had developed a consistent practice that the costs of mandatory participation of a lawyer cannot be recovered from the sentenced individual.[195] To avoid misleading, the Record of notification of the right of access to a lawyer should be amended accordingly.

According to the Criminal Procedure Code, if a suspect asks to invite a lawyer in cases where participation of a lawyer is not mandatory, investigator, prosecutor or a court has to explain the procedure of appointing state guaranteed legal aid.[196] However, it is not specified, what particular information should be provided to the suspect.

In general, current legal regulation complies with the standards required both by the Directive on the right of access to a lawyer and the Directive on legal aid for suspects.

192 Law on State Guaranteed Legal Aid, Art 17.

193 Annex to the record of notification of the rights of the suspected person. Form approved by the Order of the Prosecutor General No. I-288 of 29 December 2014.

194 Law on the Amendment of Articles 51 and 106 of the Criminal Procedure Code of the Republic of Lithuania, 20 December 2016, No. XIII-165, https://www.e-tar.lt/portal/legalAct.html?documentId=908a7a20cd9e11e6a2cac7383cbb90a3

195 Supreme Court of Lithuania, ruling of 17 June 2014 in a criminal case No. 2K–322/2014, cited from: Natalija Bitiukova et al., *Accessible Justice. The right to a lawyer and the right to legal aid in Lithuania*, Human Rights Monitoring Institute (2017), p. 20.

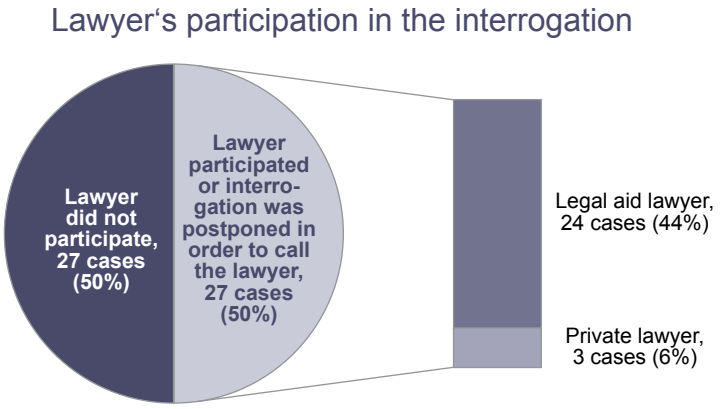
196 Criminal Procedure Code, Art. 50(3).

4.2 The arrangements for providing legal assistance and legal aid at the police station

Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned (Directive on the right of access to a lawyer, Art. 3(3)b)).

Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority (Directive on legal aid for suspects, Art. 4(5)).

Out of 54 observed cases, a defence lawyer was called to the interrogation beforehand in 24 of them. A legal aid lawyer was invited to 22 and a private lawyer to 2 of the latter cases. There were three cases where interrogation was postponed after the suspect decided to exercise his or her right to have a lawyer[197] (in two of these cases, the suspect requested to use a state-guaranteed legal aid lawyer, while in one case the family members of the suspect were called upon the suspect's request who then hired a private lawyer; in cases when the suspect requested to use a legal aid lawyer, interrogation was postponed until the next day). A lawyer was not called in advance in 27 cases observed, and at the beginning of their interrogation the suspects waived their right to have a lawyer.



197 Interrogations No. 17, 50 and 51.

4.2.1 Practical implementation of the right of access to a lawyer when grounds for the mandatory participation of a lawyer are lacking

The European Court of Human Rights acknowledges that the possibility to have a lawyer in the initial stage of the criminal proceedings is an important procedural safeguard which is taken into account when examining whether the very essence of the privilege against self-incrimination was violated or not.[198]

Provision of information on the right to have a lawyer. The possibility of the suspect to exercise his or her right to have a lawyer largely depends on when and how information about this right is provided. Properly informing a suspect on his or her right of access to a lawyer is particularly important when the person is under arrest and therefore is not able to find information himself or seek advice from other people.

According to the Criminal Procedure Code, the obligation to provide the suspect or accused person with information about the right of access to a lawyer and give him or her the opportunity to exercise this right must be fulfilled by a pre-trial investigation officer (usually the police investigator), the prosecutor or the judge.[199] If the suspect asks to ensure the participation of a lawyer and there are no grounds for mandatory participation of a lawyer, the suspect has to be provided with information on the right to legal aid.[200]

Commission Recommendation on the right to legal aid[201] indicates that information on legal aid must be provided to suspects 'in easily accessible and understandable language". It must include aspects, such as:

- how and where to apply for aid;
- transparent criteria on when a person is eligible for legal aid;
- information on the possibilities to complain in circumstances where access to legal aid is denied or a legal aid lawyer provides insufficient legal assistance.[202]

In Lithuania, suspects are informed about their right of access to a lawyer and right to legal aid by serving them a letter of rights. Suspects must also sign a Record of notification of the right of access to a lawyer. In this document, the position of the suspect regarding the participation of a lawyer – whether a lawyer is needed,

198 *Salduz v. Turkey*, ECHR judgment of 27 November 2008, No. 36391/02, § 54.

199 Criminal Procedure Code, Art. 50(1).

200 Criminal Procedure Code, Art. 50(3).

201 Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H1224(03)

202 *Ibid*, Paragraph 5.

or whether the suspect will defend himself, is indicated. The possibility to receive legal aid is disclosed in these documents very formally and in a laconic manner, by directing the reader to the procedures established by the 'law regulating the provision of the state-guaranteed legal aid'.

In 20 cases out of 30 when the private lawyer or the legal aid lawyer had not been invited to the interrogation in advance, the investigators orally addressed the issue of participation of the lawyer in one way or another. However, the information on the access to a lawyer was provided very briefly, with the right to have a lawyer being presented as a mere formality. In most cases it was emphasized that the suspect was not eligible for legal aid and thus the lawyer will have to be paid.

Interview with the investigator No. 3: *If the suspect is arrested and asks for a lawyer, and according to the circumstances the participation of a lawyer is not mandatory, I explain to him, that it will cost him. I also tell that we will be deciding how to finish the case, while with the participation of lawyer everything will take longer.*

Although such way of providing information can be easily understood by the suspect, it is not accurate. For example, there may be cases when the level of income and property of the suspect complies with the criteria for the provision of free legal aid. Moreover, only formal mentioning of the opportunity to access a lawyer, without explaining the functions that could be undertaken by the lawyer during the interview is not informative. In these circumstances, the suspect may even not understand why he or she might need a lawyer.

The obligation to explain the consequences of the waiver of the access to a lawyer, as established under Criminal Procedure Code, is fulfilled improperly as well, by limiting it with an explanation that an advocate may be called later. This manner of informing about the consequences of the waiver sometimes may be treated as the suspect's encouragement to refuse the services of the lawyer.

Some examples of informing of the access to a lawyer when the explanation of this right has been carried out improperly are given below.

Interrogation No. 12, a man of around 20 years old suspected of possessing drugs is questioned
Investigator: Did you read your rights?
Suspect: Yes.
Investigator: Do you have any questions?
Suspect: No.
Investigator: Do you need a lawyer?
Suspect: I don't know.
Investigator: You will have to pay for a lawyer. You are Lithuanian, with no health problems.
Suspect: Oh, then no.

Investigator: If you decide that you want a lawyer later on, you will be able to call one at any time, during any stage of the proceedings.

Interrogation No. 38, a man suspected of threatening his landlord with a knife is questioned
Before printing the records, the investigator asks the suspect whether he requires an interpreter or a lawyer and then immediately makes a conclusion: 'well, I can see that you do not need an interpreter, however you are not eligible to have a lawyer'. The suspect answers that he doesn't need anything, because he did not do anything.

Interrogation No. 40, a 18-year-old male teenage suspected of the violation of public order and destruction of property is being repeatedly questioned (proceedings began when the suspect was still a minor)
The investigator fills out the necessary data, then prints out the Record of notification of suspect's rights, its annex and the Record of notification of the right of access to a lawyer. The investigator then states: 'No lawyers will be necessary, right? A lawyer was mandatory before, when you were under 18'. The investigator hands all the documents to the suspect to be signed.

Interrogation No. 43, an approximately 40-50 year old man suspected of drunk driving and attempting to bribe police officers is being questioned
Investigator: Did I understand you correctly? You do not need a lawyer?
Suspect: I don't have one anyway.
This matter is not addressed further. The investigator simply informs the suspect that he will be able to hire a lawyer in the future.

In one of the observed cases, the suspect was informed orally about his right of access to a lawyer after he was already asked the first few questions about the circumstances of the event.

Interrogation No. 8, a 19-year-old male teenage suspected of illegal possession of a firearm is questioned
The investigator asks him whether he was given a 'long list of rights' upon arrest. The suspect answers that he received it and read everything carefully. The investigator asks once again whether the suspect knows his rights and whether everything is clear to him. The suspect ensures that he knows his rights.
Then the interrogation continues as per usual – personal data is collected, questions are asked on the circumstances of yesterday's event – where was the suspect arrested, why did he have a gun, when did he acquire it, etc.
Then the investigator prints out a Record of notification of the right of access to a lawyer and the notification of suspicion (a total of 3 pages) which are given to the suspect to be read and signed. The investigator provides information on the right of access to a lawyer at any stage of the proceedings, as well as mentions the possibility to apply for state-guaranteed legal aid. He also mentions that a lawyer is

not provided to the suspect, 'because Art. 51 of the CPC does not require to do so' (without clarifying on why a lawyer cannot be appointed to the suspect).

Prior to the adoption of the amendment to the Criminal Procedure Code (that will come into force on 1 January 2019) which provides the mandatory presence of a lawyer in all cases when suspects are under arrest, there was no clear regulation that would establish methods of ensuring the right of such suspects to legal aid (except when grounds for the mandatory participation of a lawyer were established). According to the Law on State-Guaranteed Legal Aid, usual procedure had to be applied in the latter cases, i.e. a person had to submit a request for state-guaranteed legal aid, as well as documents on his financial situation, and the decision on whether to provide legal aid had to be made immediately, but not later than within five days.[203] It is obvious that suspects under arrest had no chance of submitting the necessary documents to the service prior to the first interrogation and be granted legal aid under this procedure.

Situations when the right to have a lawyer during the first interrogation was presented simply as the suspect's right to have a privately hired lawyer were also recorded during the observations.[204]

Interrogation No. 44, a man of around 50 years old suspected of drunk driving is questioned
The investigator explains to the suspect that, since he is a Lithuanian citizen and is not a minor, a state-guaranteed legal aid lawyer cannot be appointed for him. The suspect is then asked whether he has his own lawyer whom the investigator should call. The suspect clearly does not know what to say.
Investigator: 'Let us first begin with the easier questions.' The suspect is given questions about his personal data. After the information is filled out, a certificate of personal data is given to the suspect to be signed by him and the suspect signs it without reading. Then a notification of suspicion is served to him. Investigator: 'First sign it confirming that you have received it. Then read it, and then we will talk.' The suspect reads and signs it.
The investigator asks the suspect whether he will provide evidence. The suspect agrees to do so. Then he is asked whether he will provide evidence without a lawyer. The investigator repeats that a state-guaranteed legal aid lawyer will not be provided, because the suspect has no right to receive one, and the investigator can only call the suspect's private lawyer if there is one. The suspect is, once again, clearly confused. The investigator indicates that the suspect will be able to hire a lawyer later on in order to have a lawyer present during later interrogations.
The suspect hesitates thinking aloud, that he does not know where to get a lawyer and that a lawyer will probably cost a lot of money. In the end, he decides that he does not need a lawyer. Then the investigator quickly prints out a Record of notification of the right of access to a lawyer which the suspect signs.

203 Art. 8, 18(1,2) of the Law on State-Guaranteed Legal Aid.

204 Interrogations No. 33, 35, 44.

4.2.2 Ensuring the presence of a lawyer when the grounds for the mandatory participation of a lawyer are present

Lithuania has a centralized system for the provision of legal aid. Provision of legal aid is organized by the State-Guaranteed Legal Aid Service which has 5 territorial divisions.

After establishing the grounds for the mandatory participation of a lawyer, the investigators must ensure the participation of a lawyer during interrogation. For this purpose, within the working hours of the State-Guaranteed Legal Aid Service, the investigators must contact the legal aid coordinator who accepts notifications to select a lawyer and transfers them to an employee who is responsible for selecting a lawyer. On weekends and holidays, as well as after the working hours of the Service, the investigators select lawyers based on the on-call schedules of legal aid lawyers. These schedules are available on the website of the Service.[205]

The table below provides information of the State-Guaranteed Legal Aid Service on the grounds for the mandatory participation of a lawyer currently established in the Criminal Procedure Code, as well as the number of cases when a lawyer was appointed in 2017 based on these grounds.[206] After 1 January 2019 the participation of a lawyer will also be mandatory in cases where the suspect is arrested.

205 http://vilnius.teisinepagalba.lt/lt/tm/advokatubudejimograf/

206 Annex 4 of the activity report for 2017 of the State-Guaranteed Legal Aid Service, Table 4.1, http://vgtpt.lrv.lt/uploads/vgtpt/documents/files/VEIKLOS%20ATASKAITA%202017%20internetui.pdf

Grounds for the mandatory participation of a lawyer according to Art.51(1) of the Criminal Procedure Code	**Number of times a lawyer was appointed based on these grounds in 2017**
When investigating cases where the suspect or accused person is a minor	3535
When investigating cases involving blind, death, mute or other people who, by virtue of their physical or mental disability, are unable to exercise their rights of defence	3280
When investigating cases of persons who do not speak the language used in the proceedings (i. e. Lithuanian)	2457
When there is a conflict between the interests of defence of suspects or accused persons and at least one person is represented by lawyer	1894
When investigating cases involving offences punishable by life imprisonment	56
In cases of trial in absentia	66
When investigating and examining cases involving detained suspects or defendants	2780
In proceedings for extraditing persons, surrendering them to the International Criminal Court or transferring them under the European arrest warrant	162
In summary proceedings	1649
When examining the case in a hearing at an appellate court	2033
In other cases where the investigator, prosecutor or judge decide that the participation of a lawyer is mandatory because otherwise the suspect's or accused person's rights and legitimate interests would not be adequately protected	6088
TOTAL	**24 000**

The table shows that investigators, prosecutors and courts widely use their discretion to invite a legal aid lawyer, as this was the most common ground for appointing a legal aid lawyer in 2017.

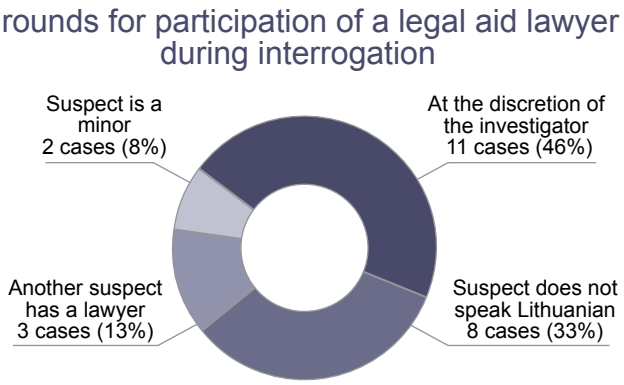
The tendency to appoint a legal aid lawyer for arrested suspects was also confirmed by the interviewed investigators. They pointed out that prosecutors usually instruct to invite legal aid lawyers to all interrogations of arrested suspects. Other circumstances, such as level of education of the suspect, are also taken into account when deciding, whether participation of a legal aid lawyer is necessary in the interests of justice. [207]

Interview with the investigator No. 2: *Our practice is that if a person is arrested, it means his rights are restricted, and thus we invite a lawyer. In this case it doesn't matter whether he is Lithuanian, Russian, Polish, Tartar or any other. We invite a lawyer.*

Interview with the investigator No. 3: *If I see that his education is eight grades or similar, I invite a lawyer. Cause he won't be able to understand what's happening.*

Interview with the investigator No. 4: *Of course, there are cases, when a person has a job, thus normally would not qualify for a legal aid lawyer, but if he is arrested, we invite a lawyer. It depends on a particular person, if he demands a lawyer – we usually invite him, in order to conduct an interrogation. Otherwise, what's the point, if he will refuse to give evidence, 48 hours will lapse, and we'll have to release him? We'll have to search for him again, to arrange a time for the interrogation. To avoid all that, it's better to invite a lawyer.*

In the observed interrogations, the most common ground for mandatory participation of lawyer was the fact that the suspect does not speak Lithuanian. In three cases a legal aid lawyer was invited as another suspect in the case had a lawyer. In two more cases the suspect was a minor.



207 Interviews with the investigators No. 1, 2, 3, 4, 5.

However, in the majority of interrogations (11) legal aid lawyers were invited at the discretion of the investigators. In one of the cases, where the investigator decided to use her discretion to appoint a legal aid lawyer, she explained that pre-trial detention of the suspect, who had been previously convicted several times, including for resisting police officers, was very likely. The investigator commented that, in this case, a lawyer was necessary in order to ensure the procedural rights of the suspect.[208] There was also one case where a legal aid lawyer was invited instead of the lawyer who was requested by the suspect.[209] In all other cases, the motives of the decision of the investigator were not identified.[210] Thus, introduction of mandatory legal representation of arrested suspects will be in line with the evolving practice.

4.3 The suspect's decision regarding access to a lawyer, and waiver of the right

This Directive ensures that suspects and accused persons, including children, are provided with adequate information to understand the consequences of waiving a right under this Directive and that any such waiver is made voluntarily and unequivocally (Directive on the right of access to a lawyer, Recital 55).

The Directive on the right of access to a lawyer aims to ensure that a person understands the consequences of the waiver of the right to a lawyer. Thus, a person who wishes to waive his right to a lawyer must be provided with the clarification of consequences of such a waiver, either orally or in writing. It is particularly important to ensure that the waiver of the right to a lawyer is made voluntarily and unequivocally.[211] The Directive also provides that the waiver, as well as the 'circumstances under which the waiver was given', must be noted using the recording procedure in accordance with national law.[212]

The principle that the waiver of a right to a lawyer must be made voluntarily is also established in the Criminal Procedure Code which indicates that it is permitted to waive the participation of a lawyer only on the initiative of the suspect or accused person himself.[213] This formulation is even stricter than the one used in

208 Interrogation No. 6.

209 Interrogation No. 24.

210 Interrogations No. 2, No. 5.

211 Directive on the right of access to a lawyer, Art. 9(1).

212 Directive on the right of access to a lawyer, Art. 9(2).

213 Criminal Procedure Code, Art. 52(1).

the Directive on the right of access to a lawyer. It means that the suspect may not be pressured in any form in order to encourage him to waive his or her right to a lawyer.

When transposing the aforesaid directive, it was established in the Criminal Procedure Code that before the suspect or accused person waives his or her right to a lawyer, he or she must be immediately informed about the consequences of this waiver in a language that he or she understands, including the possibility to have a lawyer later on, at any stage of the proceedings. The suspect's waiver of his or her right to a lawyer is recorded in the Record of notification of the right of access to a lawyer.[214]

Though in some of the observed interrogations, suspects clearly waived their right to a lawyer, in some cases waiver of the right to a lawyer could not be considered to be truly voluntary or, even more so, expressed upon the suspect's initiative. The following examples show a certain manipulation or even pressure by investigators in order to encourage the suspect to agree with the first interrogation without any participation of the lawyer.

Interrogation No. 35, a 25-30 year old woman suspected of shoplifting is questioned
The investigator asks: 'Do you have your own lawyer which we could call?'. Suspect: 'I don't have a lawyer, unless my mother would find me one'. The investigator asks the suspect once again whether she will need a lawyer. The suspect does not understand, so the investigator clarifies with 'an advocate'. The suspect answers that she 'probably needs one'. Then the investigator explains that the suspect may request for legal aid, when a lawyer is provided by the state, or she may hire her own lawyer. The investigator lists all the requirements to receive a legal aid lawyer (mandatory participation grounds) and states that 'you are not eligible to receive one'. The suspect says that she must talk with her mother who might hire a lawyer. The investigator explains that the suspect will be able to hire a lawyer anytime in the future. Investigator: 'Do you agree to give evidence today, without a lawyer?'. Suspect: 'Yes, probably..'. The investigator gives a Record of notification of the right of access to a lawyer to the suspect to sign and then repeats once again that 'you do not need a lawyer today, you will be able to hire one in the future'.

214 Criminal Procedure Code, Art. 52(1).

Interrogation No. 15, a man of around 25 years old suspected of drunk driving without a driver's licence is questioned

The investigator first informs the suspect that he has the right to a lawyer, however he is not eligible to receive free legal aid. The suspect says that he wants to have a lawyer. The investigator looks surprised and asks again 'Will you need a lawyer?' Suspect: 'Yes'. Investigator: 'You understand that you will have to pay for the lawyer yourself?' Suspect: 'Yes'.

The investigator asks whether the suspect admits of committing a criminal offence. The suspect says 'Yes'.

Then the investigator asks again whether he truly needs a lawyer, because the costs will be recovered from the suspect. The suspect hesitates.

The investigator immediately explains to the suspect that he may not give evidence today. He will be simply questioned for now and then released. After that, the suspect will be able to find a lawyer himself, as a lawyer can be invited at any stage of the proceedings. The suspect will not receive a free lawyer for now, because he understands Lithuanian. The suspect is asked again whether he admits of driving under the influence of alcohol. The suspect says 'Yes'.

Interrogator: 'So that is it, you do not need anything; you may later appeal against the actions of investigators and so on'. The suspect shows that he agrees.

Interrogation No. 11, a man of around 20 years old suspected of possessing drugs is questioned

'You are not eligible to receive a free lawyer. If you wish to receive a lawyer, you will have to pay for his services'. The suspect says that he has his own lawyer. The investigator asks whether the suspect's lawyer will be able to come today. 'I don't know, perhaps not'. The investigator says that the suspect must be questioned within 24 hours.

Suspect: 'Then, maybe without a lawyer..'.

Investigator: 'Okay, you will be able to call a lawyer later at any time'.

Interrogation No. 17, a 20-year-old woman suspected of possessing drugs is questioned

The investigator asks the suspect whether she read and understood her rights. The investigator tells the suspect that she has the right to a lawyer, but she is not eligible to receive state-guaranteed legal aid, therefore, if she requires the presence of a lawyer, she will have to pay for his services. The suspect is also informed that she has the right not to give evidence.

The suspect asks whether she will be detained longer than two days if she chooses to have a lawyer or not to give evidence. The investigator says that these things are not related.

The suspect says that she would like the presence of a lawyer. The investigator looks displeased: 'Have you decided what you want?'

The suspect confirms that she wants a lawyer.

The investigator leaves the room to make a call, then returns and informs the suspect that she had contacted the suspect's sister. After returning, the investigator

says that, for now, the suspect will have to return to her cell and wait for the lawyer, because it is unclear when will the latter show up.

In three cases, researchers recorded a situation which was particularly concerning – after asking the suspect on whether the letter of rights was served to him after arrest and receiving a positive answer, the suspect was given a Record of notification of the right of access to a lawyer and was instructed to write down 'I have understood my rights' in the section where the suspect has to indicate whether he or she needs a lawyer. This way, confirmation on receiving a letter of rights replaced the position of the suspect concerning a lawyer and was interpreted as a waiver. In these cases, the right of access to a lawyer was not commented upon, the suspect was not provided with the opportunity to read the contents of the record, and a copy of the record was not provided to the suspect.[215]

The reluctance of some investigators to call a lawyer to the suspect's first interrogation can be linked to the statutory requirement that the suspect under arrest must be questioned within 24 hours. If there are a lot of detained suspects, for example, on a weekend, ensuring the participation of a lawyer for each suspect becomes time consuming and poses a threat that deadlines established by the Criminal Procedure Code will not be met.[216] As indicated by one investigator, the position of the arrested suspect regarding a lawyer becomes known only at the beginning of the interrogation, even though 'it should be determined whether the suspect wants a lawyer and which specific lawyer immediately after the suspect is arrested'. [217]

After the entry into force of the provisions on the mandatory participation of a lawyer in interviews with arrested suspects, situations when a suspect is pressured into refusing to have a lawyer should cease. On the other hand, the new provisions will not remedy the problem of legal aid quality, which is discussed in sections 4.7 and 4.9. In fact, the increased workload for legal aid lawyers may even further reduce the quality of legal aid. In addition, after amendments come into effect it will be important to ensure that the right of suspects to defend themselves through a 'chosen lawyer' is not violated. Therefore, if the suspect asks for a specific lawyer, this lawyer should be contacted in all cases.

Waiver of a lawyer by vulnerable suspects. In order to protect the interests of vulnerable suspects, the Criminal Procedure Code establishes that the waiver of the right to a lawyer is not mandatory for the investigator, the prosecutor or the court, if such a waiver is made by:

- a minor;
- a person who is not able to exercise his or her right to defence himself due to a physical or mental disability;

215 Interrogations No. 26, 32, 39.

216 Such a situation was observed in interrogations No. 50 and 51.

217 Interrogation No. 6, additional comments.

- a person who does not speak Lithuanian;
- a person who is suspected or accused of committing a serious or very serious crime, when the complexity and size of the case, as well as other circumstances raise doubts on whether this person is able to exercise his or her right to defence.[218]

These provisions, along with the provisions regarding mandatory participation of a lawyer in cases involving minors or disabled persons, are important in the implementation of the requirement of the Directive on the right of access to a lawyer to ensure that the needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.[219]

In the case of the observed interrogations, the suspect's wish to waive his or her right to a lawyer was not taken into account in one case. After a suspect, who was a citizen of a foreign country (Latvia) and did not speak Lithuanian, indicated that he did not need a lawyer, the investigator explained that, according to the Lithuanian law, in cases where the suspect does not speak Lithuanian participation of a lawyer is mandatory regardless of the will of the suspect.[220]

To summarise, though the provisions of the Criminal Procedure Code comply with the standards required by the Directive on the right of access to a lawyer, the observations revealed that where grounds for mandatory participation of a lawyer were lacking, the investigators were reluctant to guarantee the suspect's right to have a lawyer present at the first interrogation. The information concerning the right of access to a lawyer was provided very laconically, by emphasising legal aid costs and the possibility to hire a lawyer at a later time.

4.4 How legal advice and assistance is provided (telephone/face-to-face)

Legal aid for arrested persons is provided exclusively with the direct participation of a lawyer. The existing legal acts do not provide the opportunity of a telephone consultation.

218 Criminal Procedure Code, Art. 52(2).

219 Directive on the right of access to a lawyer, Art.13.

220 Interrogation No. 18.

4.5 The initial lawyer/client consultation

Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to interrogation by the police or by another law enforcement or judicial authority (Directive on the right of access to a lawyer, Art.3(3), paragraph a).

All the interviewed lawyers have indicated that after the Criminal Procedure Code directly established the possibility to communicate with the arrested or detained suspect in private, they no longer encountered situations where they would not be allowed to exercise this right or the duration of consultations would be strictly limited. The lawyers also stated that they understood that strict procedural deadlines obliging the investigators to question arrested suspects within 24 hours and apply to court within 48 hours requesting pre-trial detention objectively limit the possibilities to delve deeper into the details of the case.

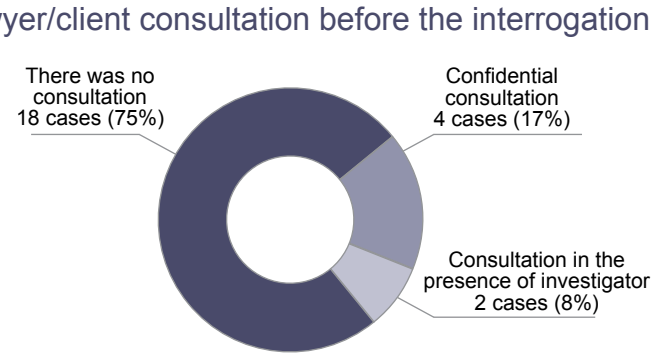
Interview with the lawyer No. 4: *Of course it is somewhat physically challenging to do everything within those two days. Because the person still has to be taken in for interrogation until he finds himself a lawyer. You must do everything very precisely and quickly, and you cannot spend too much time with that person because he must be questioned. If pre-trial detention is involved, then you must also go to court. <...> it is important to come to an agreement with the client, explain all the essential details to him and, finally, to determine his position – yes or no. At first, either you confess or not confess, were you pressured or not pressured, whether you will provide or not provide evidence. To what extent will the evidence be given if the person decides to give evidence at all. Because there is probably no sense in trying to examine all the details, as the lawyer will not have enough time to collect all the documents or examine the situation within the first 48 hours. The lawyer will only know what the client tells him.*

Interview with the lawyer No. 5: *A lot of things also depend on the lawyer, because how can you pressure a person to say everything within five minutes. If you give me only five minutes to talk, then I will say that we will not give any evidence. So, in part, you are also not allowing to be pressured by the investigator. So allowing, for example, to talk for ten minutes only is not really acceptable - we talk as long as it is necessary. Perhaps there can be some practical issues, like that working hours are coming to an end or something. But otherwise I could not say that there is some kind of a trend or a system [to limit the length of consultation].*

During the observed interrogations, there were only two cases where lawyers asked for the possibility to talk with the arrested suspect in private prior to the interrogation.[221] In both of these cases, investigators had no objections and left

221 Interrogations No. 34, 55.

the interrogation room together with the observer, leaving the lawyer alone with the suspect. There were also two more cases where investigators themselves suggested the lawyers to talk with the suspects in private.[222] Such consultations lasted 5 – 10 minutes. A situation was also observed in two cases, when a brief 1-2 minute consultation between the lawyer and the suspect took place with the investigator being present in the same room.[223]



Interrogation No. 47, a 17-year old girl is questioned
A legal aid lawyer came and asked the investigator to tell him the age of the suspect. He did not greet the suspect.
It appears that the lawyer is displeased that he was appointed for this interrogation, because he had to participate in another interrogation. He tells the investigator to sort out this matter by contacting the [State-guaranteed Legal Aid] Service, because 'this is not the first time'.
The investigator serves the notification of suspicion to the suspect: 'This is a notification of suspicion, read and sign it. This will not mean that you admit of committing the offence".
The lawyer clarifies: 'After you read it, you shall have the right to talk to a lawyer before the interrogation".
After the suspect reads the notification, the lawyer says: 'We can talk for a few minutes, if you want to'. He explains that it is better not to give evidence today. The lawyer says this in the presence of the investigator and the observer who are in the same room.
The suspect decides to follow the lawyer's advice and not to give evidence. The investigator asked no more questions, except 'What are the motives of your decision?'.
Suspect: I don't know.
Lawyer: She exercised her right, no motives are necessary.

222 Interrogations No. 6, 42.

223 Interrogations No. 47, 52.

Interrogation No. 52, a 60 year old man suspected of violence against his wife is questioned
A legal aid lawyer comes and explains to the suspect that the suspect will not have to pay for his services. The lawyer discusses a strategy with the suspect in the presence of the investigator advising that it is better to talk, reveal all the circumstances and details of what happened before the event, etc.

In three observed cases, the investigator or the lawyer informed the suspect about the possibility to consult privately with a lawyer, however the suspect did not wish to exercise this right.[224]

Even though the collected data suggests that, upon the request of the lawyer, a possibility to consult a lawyer in private before the interrogation is granted, there might be some doubts concerning the confidentiality of such consultations. During their interviews, the lawyers indicated that pre-trial investigation institutions do not always have appropriate rooms to ensure the confidentiality of communication between the lawyer and the suspect. Legal consultations are often provided in the hallways of police stations or in the interrogation rooms where sometimes a possibility of video and audio recording exists. This issue was particularly highlighted when talking about the interrogations that were carried out by Special Investigation Service officers, investigating possible cases of corruption.

Interview with the lawyer No. 4: *Let's imagine that there is an interrogation in the Special Investigation Service. [...] Where could you talk with the client within the premises of the Service without the risk of being recorded with some sort of a device? I would certainly not want to talk there, because I personally know at least one police officer who had a camera in his office. And he would record everything. Of course, you cannot use such information directly, however, possibilities are wide for using such information indirectly.*

Interview with the lawyer No. 5: *Of course, at least for me, there's always this fear concerning control of communication. Will the conversation which takes place in the police station remain between you and your client, or is there an additional ear listening.*

These concerns indicate that it is important to introduce organisational solutions in order to ensure the confidentiality of communication between a lawyer and his or her client.

224 Interrogations No. 45, 46, 48.

4.6 The role played by lawyers during police interrogations

As mentioned when presenting the legal regulation, in Lithuania the possibility of a lawyer to effectively participate in the proceedings is ensured by the provisions of the Criminal Procedure Code which establish the lawyers' right to ask questions, request for clarifications, make statements, read the protocols and comment on their contents during interrogations and other procedural actions.[225] In addition, the lawyer has both the right and the obligation to provide his or her client with the necessary legal aid and use all lawful measures in order to find out exculpating circumstances or mitigate his or her liability.[226]

The interviewed lawyers stated that they had not faced situations where they would be precluded by investigators from exercising procedural rights, although sometimes investigators react hostilely to the active role of the lawyer. In general, the lawyers' experiences in communicating with investigators are different.

Interview with the lawyer No. 3: *They talk to us, lawyers, respectfully. They treat us with respect and there are no problems. But maybe it also depends on situations. Different things could happen, if I were 'inconvenient'. Yet, we try to respect each other. [...] I can perfectly imagine that there might be situations when you try to stop the client when he says something, and encourage him to exercise the right to remain silent. Then the situation may be difficult.*

Interview with the lawyer No. 2: *In the police station I faced such a situation. The investigator was tough, although the case was not very serious. So, when I started to explain the rights to the suspect, she told me, 'Shut up, the time is already planned, leave the room'. Then I explained her the obligations of the investigator according to the procedural law, and she turned to my client and said, 'You know, I would suggest you to ask for a legal aid lawyer, you are paying big money which does not pay you off. Everything will be covered by the state and it will be fine to you'. Then I asked the investigator: 'To whom would it be fine? To him or to you?' So, there are cases like this.*

It was emphasized that many things depend both on investigators and on the lawyers, and also on how firmly the lawyer adheres to the principal position on circumstances that are important for defence.

Interview with the lawyer No. 4: *Interesting things happen when the interrogation record is being read; everything depends on the investigator. There are very*

225 Criminal Procedure Code, Art. 48(1) and Art. 178(5).

226 Criminal Procedure Code, Art. 48(2).

benevolent investigators who agree to make amendments while others fight for their wordings till the end. And these wordings are far from the requirement set by the Code to write down everything as literally as possible. The words of the suspect are converted into legal terms. [...]

In most cases we manage to reach an agreement, and the active lawyer will always say that 'if you fail to revise the record according to the words of this person, I will make a hand-written note and if you object this, I will appeal'. It is clearly a conflict, but... [...] So, I would like to emphasize that there are very different investigators and the success of defence depends on the type of the person conducting the interrogation mostly. Such conflicts during interrogations are not helpful to the suspect, as everyone is stressed and summa summarum it is not a high-quality interrogation.

4.7 The quality of legal advice and assistance

The role of the lawyer in the criminal proceedings should be active and this is presupposed by CPC provision that obliges the lawyers to use all lawful defence means and techniques.[227]

The Code of Ethics for Advocates in Lithuania establishes that when the client pleads guilty but the advocate, having assessed all evidence, thinks that the client's guilt is not proven or is doubtful, the advocate must hold a position independent from that of the client.[228]

Researchers carrying out the research observed 22 full interrogations with a participation of a legal aid lawyer and one interrogation with a participation of a private lawyer.

The privately hired lawyer was an active participant of the interrogation, asked the suspect additional questions and emphasized certain circumstances. The legal aid lawyers were more or less active in 8 cases, i.e. they helped the suspect to formulate his or her thoughts, asked for clarifications and requested to include certain circumstances in the protocol of the interrogation.[229]

An example is provided below where the interrogation went particularly smoothly and the legal aid lawyer actively exercised his procedural rights in order to aid the suspect.

227 Criminal Procedure Code, Art. 48-2(1).

228 Code of Ethics for Advocates in Lithuania, Art. 10(13).

229 Interrogations No. 2, 5, 23, 34, 47, 48, 52, 54.

Interrogation No. 34, a 35-40 year old man suspected of resisting police officers is questioned

While waiting for the legal aid lawyer, an interpreter reads the letter of rights to the suspect.
The lawyer arrives soon, and, while the investigator is entering the necessary data of the lawyer into the system, the interpreter reads the notification of suspicion to the suspect. The suspect signs the notification after the lawyer assures him that his signature is only a confirmation that he was informed about the suspicion.
The lawyer asks to be given some time to talk privately with the suspect.
The investigator immediately agrees and leaves the room together with the interpreter and the observer, leaving the lawyer alone with the suspect. The investigator does not limit the consultation time and waits patiently by the door until the lawyer invites her back in and allows her to continue the interrogation. The consultation lasts around 10 minutes.
Everyone returns to the room and the interrogation is continued. The investigator carries out the interrogation in Russian, while the lawyer is intervening in Russian language as well. Sometimes the interpreter helps to find necessary formulations. It is obvious that the consultation with the lawyer was useful for the suspect, because he often looks at his lawyer when talking, to which the lawyer nods with approval. The lawyer makes several useful interventions, including by clarifying questions posed to the suspect and pointing the importance of certain circumstances, mentioned by the suspect.
The interpreter reads the drawn up record aloud (by immediately translating it). Several areas are clarified by the suspect and the lawyer.
After printing the record, the investigator immediately gives it to the suspect, however the lawyer requests for the document to be read by him first. The lawyer carefully reads the record, has no comments on it and only then gives it to the suspect to be signed.
At the end of the interrogation, the lawyer offers to call the suspect's wife, so that she could come meet him (since the suspect will only be given his phone back later).

In the remaining 14 cases, however, the role of the legal aid lawyer was rather formal, i.e. he or she was simply present in the room during interrogation and did not show any initiative to advise his client. In one case, the observer asked the legal aid lawyer whether he would not object to her being present in the interrogation, to which the lawyer answered: 'I make no decisions here, everything depends on the investigator. I'm just an observer, just like you'.[230]

Interrogation No. 18, a foreigner suspected of shoplifting is questioned

The suspect asks the legal aid lawyer whether pre-trial detention can only be ordered by court. 'Babble less', answers the lawyer in Russian. The suspect: 'So I can't even ask my lawyer whether detention can only be sanctioned by the court?'. The lawyer confirms that arrest is possible only for up to 48 hours, and that further detention must be sanctioned by court.

230 Interrogation No. 19, additional notes.

Interviewed investigators and lawyers were also critical concerning the quality of services provided by the legal aid lawyers.

Interview with the investigator No. 1: *For me it's really unacceptable. Of course, it is not the situation with all of them [legal aid lawyers]. But there are lawyers above seventy or eighty years of age, who come and cite Soviet codes. It's really embarrassing.*

Interview with the investigator No. 4: *There are some legal aid lawyers who are no use to the suspect at all. They are only useful for the investigator.*

Interview with the investigator No. 5: *It is normal that if a person receives a fixed monthly salary and runs from interrogation to interrogation, we cannot hope for high performance. Usually such a lawyer sits somewhere near the door and watches that there be no beatings or pressure. Interrogation ends, he signs and goes away.*

Interview with the lawyer No. 2: *It might not be ethical for us to talk like this but I have publically stated that for several times before and so I will allow myself to say that again: legal aid lawyers are not effective at all. Being present just 'for the mere presence' does not guarantee the rights and legitimate interests of the suspect. [...] These lawyers claim that their purpose is not to interfere with the investigation.*

The researchers also recorded three instances, where legal aid lawyers participated in two interrogations simultaneously and therefore they could not be present for the whole duration of the questioning.[231] In one case, which is described in more detail further (interrogation No. 24), the lawyer left the questioning for 20–30 minutes to participate in another interrogation. The other two cases are presented below:

Interrogation No. 5, a 25-year-old man suspected of violence against his wife is questioned
The investigator explains to the observer that she had called a legal aid lawyer, but the lawyer was 'taken' by the colleague who carries out an interrogation in an adjacent room.
[...] The legal aid lawyer came approximately after two thirds of the questioning. The lawyer offered the investigator to fix the time of the beginning of the interrogation after the end of the previous interrogation, as otherwise 'there might be problems' if the time of the interrogations overlaps. The investigator answered that she had understood it.

Interrogation No. 23, a 30-year-old man suspected of murder threats is questioned
At the beginning of the interrogation the notification of the suspicion and a list of main procedural rights is translated for the suspect. Both the investigator and

231 Interrogations No. 5, 23, 24.

the legal aid lawyer ask for several times on whether the suspect agrees to give evidence. He is assured that he is not obliged to do that. The suspect claims that he will give testimony, as he has nothing to hide and wants to tell about the events that have taken place. He does not acknowledge his guilt.
The same legal aid lawyer participates in two interrogations, thus, after realising that the suspect really wants to give testimony, the lawyer leaves the interrogation and returns only at the end of it when it is necessary to sign the record.

Such situations prove that sometimes the participation of legal aid lawyers in interrogations is just an illusion of representation and defence. Cases when the lawyer participates in an interrogation only formally or participates only in part of the interrogation violate the right of the suspect to the effective defence, as the suspect both has no real legal aid ensured and his or her situation might be even further complicated. For example, the courts investigating the claims of the accused on violations incurred during the pre-trial investigation (improper interpretation, illegal actions of the investigator) usually take into account whether the lawyer was present, and whether the lawyer raised the issue of the breach of procedural rights. Thus, formal participation of a lawyer in the interrogation may make it more difficult for the suspects and accused to prove violations of their procedural rights. Moreover, investigators, knowing about the formal attitude of the legal aid lawyers to representation of the interests of the suspect, may prefer inviting to the interrogation a legal aid lawyer instead of a private lawyer requested by the suspect.

During the observed interrogations, there was one situation when, despite the suspect's request to call a specific lawyer, a legal aid lawyer was invited:

Interrogation No.* 24, *a young man of around 23-25 years old suspected of violence against his mother is questioned
The suspect immediately asked 'Where is my lawyer? I asked you to call my lawyer [name, surname]'. The investigator replied that a legal aid lawyer will be present and that the important thing is to simply have some kind of a lawyer, because the suspect will only be questioned and then released. The legal aid lawyer also indicated to the suspect that this is simply a formality and the important thing is just that some lawyer is present.
During the interrogation, the suspect's evidence of the event was read to the suspect and he was additionally questioned on what happened. The lawyer left for around 20-30 minutes during the interrogation in order to participate in another interrogation, then returned afterwards. There was no active participation from the lawyer, who only explained to the suspect several times what he is signing. During the interrogation, the lawyer searched for the contact details of the lawyer mentioned by the suspect and offered to call him. She said that he has the right to choose and have as many lawyers as he wants - even four lawyers at once if he wishes. The suspect replied that this is not necessary and that he will call his lawyer himself after he is released. The suspect's rights or suspicion were not read to him during interrogation.

The circumstance that the lawyer specified by the suspect is not always called to the interrogation was also indicated by three interviewed lawyers. These lawyers claimed that they have faced situations when investigators from other than police institutions (Special Investigation Service, Financial Crime Investigation Service) avoided calling a private lawyer or the lawyer requested by the suspect and offered a legal aid lawyer instead.[232]

Interview with the lawyer No. 1: *There were cases when the person did not have a lawyer yet and they tried to convince him that the lawyer was not necessary and that they would provide him a state-guaranteed legal aid lawyer and that everything would be fine.*

For example, I had one of those cases when the client told me, 'My son was taken, could you to go there [...] the interrogation is in progress'. I called them and told, 'I want to defend him', and they answered me, 'The interrogation is already in progress, he requested a legal aid lawyer', and so on. I came to the interrogation, showed them the order and they answered, 'We have already completed the interrogation'.

[...] I asked them, 'Please show me the Record of notification of the right of access to a lawyer where he stated that he wanted to be defended by a legal aid lawyer'. By the way, before this I asked them, 'Where is that legal aid lawyer?' 'He is sitting there on the other side'. And he was there, scrolling through some case, while my client was being interrogated one on one. I told, 'Do you mean he is a lawyer? '

And they answered, 'This is it, advocate, we are done, only the signatures are missing'. If they had fulfilled this formality and had given him the record to sign, then the interrogation would have been completed. But he had told the things he really did not want to tell and if he had an opportunity to discuss it with the lawyer, he would have used the right not to give testimony about certain things.

Interview with lawyer No. 4: *There are also situations when a specific legal aid lawyer is proposed, not necessarily the lawyer who is requested by the suspect himself, his family members or other persons authorized by the suspect. And when the proposed legal aid lawyer comes, he advises the suspect to plead guilty.*

These findings call into question whether Lithuania will properly implement the Directive on legal aid that must be transposed by 25 May 2019.

Member States shall take necessary measures, including with regard to funding, to ensure that: (a) there is an effective legal aid system that is of an adequate quality; and (b) legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession (Directive on legal aid, Article 7(1)).

232 Interviews with the lawyers No. 1, 2, 4.

In this research, the reasons that cause improper quality of services provided by the legal aid lawyers have not been investigated. However, during the research that was carried out by the Human Rights Monitoring Institute in 2016/2017, the interviewed investigators, prosecutors and judges distinguished the following reasons of this problem: the excessive workload of legal aid lawyers, low salaries, the non-motivating remuneration system and the lacking mechanism for quality control.[233]

Those legal aid lawyers who provide legal aid services full-time (i. e. are not engaged in private practice) stated that their workload was too excessive, therefore, they could not devote enough time to study the case documents and to discuss the defence strategy with their customers, so the quality of their services was affected negatively. Moreover, remuneration for their services was not sufficient.[234]

According to the data of the State-guaranteed Legal Aid Service, in 2017, the average workload of the lawyers who provided legal aid services in criminal cases full-time was 19 cases per month. However, the monthly number of cases attributed to lawyers has varied in all five territorial divisions of the Service. In 2017, the lawyers from Kaunas division had the biggest workload (24 cases per month) and the lawyers from Panevėžys division had the smallest workload (12 cases per month).[235]

From 1 September 2017, monthly remuneration of lawyers providing legal aid services full-time was EUR 2,126.8 before taxes. This remuneration also covered being on-call outside working hours.[236] Certain time limits are imposed for completion of procedural actions, for example, not more than one hour may be spent to get acquainted with the material of one volume of the case and not more than one hour may be spent for preparation before every court hearing.[237] The maximum workload and the remuneration for exceeded working time are not determined.

In 2017, the average monthly workload of a lawyer who provided legal aid on demand was 6 cases (on average, 8 cases per month in Šiauliai and Panevėžys divisions and 4 cases per month in Vilnius division).[238]

233 Natalija Bitiukova et al., *Accessible Justice. The right to a lawyer and the right to legal aid in Lithuania*, Human Rights Monitoring Institute (2017), p. 33.

234 *Ibid*, p. 34.

235 Activity report of the State-Guaranteed Legal Aid Service for 2017, p. 63.

236 Government Decree No. 364 of 13 April 2016 'On the Approval of the Remuneration and Payment Rules for the Provision of the Secondary Legal Aid, Coordination and Conciliation Mediation', § 4 (with subsequent amendments), https://www.e-tar.lt/portal/lt/legalAct/8e8959500303 11e6b9699b2946305ca6/rrbPSnaixu

237 *Ibid*, § 5.

238 Activity report of the State-Guaranteed Legal Aid Service for 2017, p. 61.

From 1 September 2017, the hourly remuneration of the lawyers who provided legal aid on demand was EUR 13 before taxes[239] (to compare, hourly remuneration of privately hired lawyers ranges from thirty to several hundred Euros). The number of hours to complete certain procedural actions is fixed and depends on the severity of the crime. For example, 11 hours are assigned for the representation in a pre-trial investigation of persons suspected of very serious and serious intentional crimes and 5 hours are assigned for representation of persons suspected of all other crimes.[240] If these limits are exceeded, lawyers may contact the Service and request for additional remuneration but their working hours must be confirmed by the signature of the law enforcement official, judge or client.[241]

The presented data proves that the legal aid lawyers, especially those who provide legal aid full-time, suffer from a big workload and the pay rates for legal aid services are small. It is likely that these circumstances, at least partially, lead to formation of improper professional culture of part of the legal aid lawyers. The fact that the system for monitoring the quality of services provided by legal aid lawyers has not been created may also contribute to these circumstances.

The assessment of the quality of services provided by the legal aid lawyers is carried out only if an individual files a complaint to the State-guaranteed Legal Aid Service, Lithuanian Bar Association or the Ministry of Justice. For example, in 2017 the State-guaranteed Legal Aid Service received 383 complaints concerning services provided by the legal aid lawyers. 324 claims have been examined by the Service and 59 claims have been sent for examination to the Lithuanian Bar Association.[242] By the way, on the official website of the State-guaranteed Legal Aid Service there is no information on how to file a complaint concerning the (in)action of a legal aid lawyer.

To conclude, the improper quality of services provided by some legal aid lawyers is a serious systemic problem which undermines confidence in lawyers, legal aid and fairness of the criminal proceedings in general. This problem becomes even more acute given the fact that legal aid is granted to persons who are presumed more vulnerable for different reasons. Thus, in order to implement the requirements of the Directive on legal aid, solutions directed towards the causes of inadequate quality of legal aid services will have to be developed.

239 Under Paragraph 2 of the Decision of the Government No. 364 of 13 April 2016 "On the Approval of the Remuneration and Payment Rules for the Provision of the Secondary Legal Aid, Coordination and Conciliation Mediation" (with subsequent amendments), the Ministry of Justice, taking into account the economic indicators, should recalculate the remuneration on yearly basis.

240 *Ibid*, § 14.

241 *Ibid*, § 11.

242 Activity report of the State-Guaranteed Legal Aid Service for 2017, p. 56.

4.9 Other practical aspects related to the right to effective defence

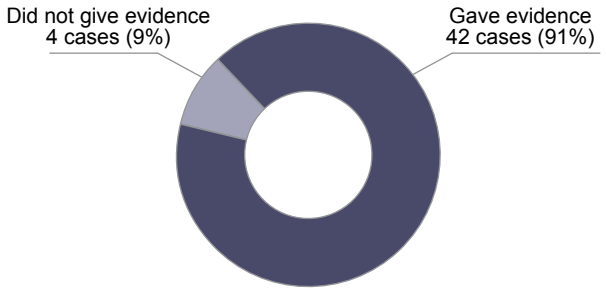
4.9.1 The right to silence

The Constitution prohibits to compel anyone to give evidence against himself,[243] while the Criminal Procedure Code establishes the suspect's right 'to remain silent and (or) refuse to give evidence on the criminal offence that he may have possibly committed'.[244] Investigators, prosecutors and courts are obliged to clarify this right to the suspect before the interrogation.[245]

The suspect's choice to remain silent does not serve as a ground to draw negative inferences. Also, the suspect cannot be held liable for providing false evidence.[246]

In 34 out of 54 cases, at the beginning of the interrogation, suspects were orally informed about their right not to give evidence or were asked whether they agree to give evidence. Out of 46 cases where researchers were allowed to participate during the entire interrogation, the right not to give evidence was exercised by 4 suspects, three out of which were advised to do so by the lawyer. Suspects gave their evidence in all the remaining cases.

GIVING EVIDENCE DURING THE FIRST INTERROGATION



There was only one case in the observed interrogations where the suspect was put under certain pressure to give evidence about the circumstances of the event.

243 Art. 31(3) of the Constitution.

244 Criminal Procedure Code, Art. 21(4).

245 Criminal Procedure Code, Art. 188(3), 272(1).

246 Supreme Court of Lithuania, ruling of 29 March 2011 in criminal case No. 2K-168/2011.

Interrogation No. 7, a 25 year old woman suspected of shoplifting is questioned

After finishing filling out the personal data certificate, the investigator asks the suspect in a loud voice 'Do you know your rights?' to which the suspect answers with a 'No'. Then, while looking at her computer, the investigator slowly and loudly reads the titles of the rights from letter of rights. The right to silence is omitted.

[...]

The investigator asks the suspect questions on the circumstances of the event, and some questions are leading (the investigator suggests her own version of events and asks 'is it so?', while the suspect sometimes agrees and sometimes disagrees). While asking questions, the investigator sometimes raises her voice and begins to slightly 'pressure' the suspect: if the suspect does not want to answer the investigator's questions, then the investigator immediately says 'if I'm asking you, you must answer'.

To summarise, during the observed interrogations no clear violations of the right to silence and the right not to give evidence were recorded. The majority of suspects chose to give evidence and answered all the questions posed by the investigators.

4.9.2 The right to communicate without undue delay with at least one third person

Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them (Directive on the right of access to a lawyer, Article 6(1)).

The Criminal Procedure Code establishes the right of the suspect under arrest to inform consular institutions and one person.[247] This right is realized when the official who has arrested the individual contacts a family member or a close relative of the suspect. If the suspect fails to name such person but requests to inform about his or her arrest, the investigator has to contact one of the family members or one of the close relatives of the suspect at his own discretion if any of those persons may be identified. If the suspect wants to notify another person, who is not the family member or the close relative, then the investigator informs such person only if, in the opinion of the investigator, it will not affect the success of the pre-trial investigation or the safety of family members or close relatives of the suspect under arrest. [248]

247 Criminal Procedure Code, Art. 21(4).

248 Criminal Procedure Code, Art. 140(7) and Art. 128.

When filling out the Record of arrest, personal data of a person to be contacted person (name, surname, phone number) have to be indicated in the section named 'statement of the suspect on informing his or her family member, close relative or another person about the arrest'.[249]

The Criminal Procedure Code also provides that the suspect under arrest should be given the possibility to contact his or her family member, close relative or another person *himself*.[250] The letter of rights contains a statement that 'The suspected person must be provided with a possibility to notify his/her family members or close relatives about his/her detention or arrest *personally*'[emphasis added].[251]

However, the interviewed investigators expressed different positions on the possibility of a suspect to personally notify a family member or a relative.

Interview with the investigator No. 1: *Of course, we do not give him a phone, we ask for the number and we make a call. […] Because some information might be transferred and it is nowhere stated that web should give a phone. From the moment of arrest, if we gave any item to the suspect, internal investigations should follow.*

Interview with the investigator No. 2: *I allow it [to notify in person], and if my employees ask me what to do, I tell them to allow this. Of course, it depends on what kind of person the suspect is and how he is behaving. But I allow them.*

Interview with the investigator No. 3: *I allow to call. There must be some humanity.*

Interview with the investigator No. 4: *The officers make a call, but we allow the suspect to find a number [in the phone]. There are also databases that can be used if the pre-trial investigation is in progress. There are police forces who can go and notify.*

Interview with the investigator No. 5: *[the suspect] tells the number and the investigator or another officer who fills out a Record of arrest, notifies the relatives.*

These interviews reveal that there is no uniform practice concerning the right of a suspect to notify a family member or a relative in person. Different police units and even different police officers within the same unit may apply different unwritten rules.

249 Form approved by the Order of the Prosecutor General No. I-288 of 29 December 2014.

250 Criminal Procedure Code, Art. 140(7) and 128.

251 Order No.I-288 of the Prosecutor General of 29 December 2014 "On the approval of the forms of criminal procedure documents" (with subsequent amendments) https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4

The observations also suggested that arrested persons do not always have the possibility to contact a close person personally. For example, after one interview the suspect informed the observer that he did not have the possibility to call anyone as, according to the police, he 'had already missed this opportunity'.[252] The situation when suspects do not have the possibility to contact their family members after their arrest are illustrated by the following excerpts from interrogations.

Interrogation No. 13, a 20-year-old man suspected of possessing drugs is questioned
Investigator: You do not qualify to have lawyer free of charge. Thus, if you want a lawyer, you will have to pay him.
Suspect: 'I want to talk to my parents. When they arrested me, they told me that they would allow me to call them later, but they did not allow me to.'
The investigator discourages the suspect to call and explains that the lawyer may be called later. 'You haven't read your rights carefully.' The suspect concedes.

Interrogation No. 17, a 20-year-old woman suspected of possessing drugs is questioned
The suspect requests to call her mother or sister because nobody knows that she is arrested and the officials did not allow her to call.
[...]
The suspect states that she wants to have a lawyer. The investigator looks displeased: 'Have you decided what you want?'
The suspect confirms that she wants a lawyer.
The investigator leaves the room to make a call, then returns and informs the suspect that she had contacted the suspect's sister. After returning, the investigator says that, for now, the suspect will have to return to her cell and wait for the lawyer, because it is unclear when will the latter show up.

Interrogation No. 44, a 50-year-old man suspected of drunk driving is questioned
The suspect asks for the possibility to contact his wife after the interrogation. The investigator asks whether the suspect had a phone at the moment of arrest. The suspect says yes, and the investigator states that the suspect might be released soon and the problem will be solved because he will have his belongings returned.

In any case, to ensure effective implementation of this right, an arrested person should be given the opportunity to ask that his or her family member or close relative be notified not only when the Record of arrest is being filled out, but also later. Because of stress, intoxication, confusion or shame the suspect at the moment of arrest may not indicate a person to be notified. Such situations should not deprive the suspect of the opportunity to exercise his right to notify his relative later on. Moreover, a suspect should be given the opportunity to notify such a person directly/ in person, unless an opposite decision is necessary to the circumstances.

252 Interrogation No. 4, additional observations.

4.9.3 The right of the lawyer to meet with the suspect or the accused in private before the court hearing and to participate in the court hearing effectively

The lawyers who have participated in the research stated that in most cases during the court hearing the lawyers are not allowed to sit next to the accused and the possibility of the lawyer to advise the accused is limited in this manner. According to one of the lawyers, this practice is referred to as 'a custom'.

Interview with the lawyer No. 1: *Only a small number of judges allow the lawyer to sit next to the accused. [...] In particular, under procedural law it is not established where the lawyer has to sit, and during the court hearing the accused must have the right to defend himself ensured. He is being questioned and wants to discuss certain aspects of the testimony. The accused may have questions. [...] In fact, during the court hearing the suspects' right to defence is very limited, i. e. they may not obtain legal advice during the hearing. If they have a request, they even cannot ask the lawyer when this request should be made. I consider that the lawyer should sit next to the accused in order to guarantee the right to effective defence. It is a very delicate problem to most of my colleagues who wish that the accused sits next to them.*

There are some judges, especially young ones, who allow this, but other judges object. I tell them 'I will sit here'. 'No, advocate, you must sit there'. I say 'According to what, where is it stated that I cannot sit next to my client?' And they answer: 'It is not stated anywhere, but it is a custom. If you will interfere with the hearing any longer, you will be fined'.

It was also noted that though the Criminal Procedure Code establishes the right of the lawyer to meet the accused person in private before the court hearing, in practice lawyers are not always granted such a possibility.[253]

Interview with the lawyer No. 2: *In most cases, when the accused is accompanied by the convoy, there is no possibility to communicate with him in private before the court hearing. He is brought directly, just before the hearing. And you tell to the judge that 'I need to talk to him'. The judge would answer: 'For how long? Is 5 minutes enough?' 'No, we need at least fifteen'. Then we have a verbal dispute and at the end there might be a possibility to talk to the accused. For example, in [name of the town] the judge did not allow to talk to the accused before the hearing saying 'there is no need to prepare him'. But I do not want to 'prepare', I want to clarify. In another court I got some time but I couldn't get rid of the convoy. The right to confidentiality was totally violated. The convoy did not move at all. Well, they are so instructed under the convoy rules but I consider that the court must make it possible for the lawyers to consult with the accused.*

253 Criminal Procedure Code, Art. 48-1(2).

It proves that regardless of proper legal regulation, in practice the right of the lawyer to effectively participate in the court hearing by representing the rights and interests of the accused might be aggravated. Such practices are not compatible with the right of the accused to exercise his or her rights of defence effectively.[254]

4.9.4 Positions of lawyers and investigators concerning possibility to introduce audio and video recording of interrogations

The research revealed that though the legal regulation mostly complies with the standards required by the EU directives on suspects' procedural rights, in practice those standards are not always observed. For example, a notice of suspicion or a letter of rights is not always served to the suspect, the request to invite a lawyer may not be granted or the quality of the legal aid may be unsatisfactory, etc. In case the suspect files a complaint concerning procedural violations during the interrogation, it may be very difficult or even impossible to establish the real circumstances.

For example, In Lithuanian case law, various circumstances of the case are considered when assessing the statements of the defendant that waiver of the right to a lawyer during the pre-trial investigation was not voluntary either because the person was not properly informed about the right of access to a lawyer, or because he or she was intoxicated and did not understand the consequences of such a waiver, or because he or she was pressured by investigators to waive the right to a lawyer. Usually the courts take into account the following circumstances:

- whether the suspect waived his or her right to a lawyer and whether the waiver was noted in the Record of notification of the right of access to a lawyer;
- whether there is evidence that there were circumstances in the case where lawyer attendance was mandatory;
- whether the suspect exercised his or her right to a lawyer at other stages of the investigation;
- whether there is evidence that the suspect waived his or her right to a lawyer not of his or her own accord, but rather due to the 'influence exerted by investigating police officers'.[255]

In order to assess the last circumstance, judges may summon investigators and question them on the circumstances of the waiver. However, as a judge who participated in the research carried out in 2017 by the Human Rights Monitoring Institute indicated, it was very difficult to ascertain the facts in such cases. 'The

254 Directive on the on the right of access to a lawyer, Art. 3.

255 See, for example, Supreme Court of Lithuania ruling of 2 February 2010 in the criminal case No. 2K-26/2010, cited from: Natalija Bitiukova et al., *Accessible Justice. The right to a lawyer and the right to legal aid in Lithuania*, Human Rights Monitoring Institute (2017), p. 19.

defendant's word is set against the investigator's claims and there is no further information as to what happened during the interrogation'.[256]

One of the measures to ensure procedural rights of the suspect and his or her lawyer during the interrogation could be introduction of audio-video recording of the interrogation. The record would become a valuable source of information for the investigation of the disputes on whether the suspect had the right to defence properly ensured or was he or she forced to waive a lawyer, to give testimony, and so on. It would also help to verify whether an interpreter was present in an interview or to deal with disputes concerning the quality of interpretation.

The possibility of mandatory recording of interviews was evaluated positively by all the lawyers who participated in the research. [257]

Interview with the lawyer No. 4: *Audio recording during the pre-trial investigation would allow answering the questions on whether the person was familiarised with his rights properly, whether everything was fully explained to him and whether the written record complies with the words of the person.*

Interview with the lawyer No. 5: *I think that audio and video recording would improve the situation. In court hearings it improves that culture and behaviour, as such. Sometimes the problem it is not even procedural violations, but the culture and behaviour. The behaviour matters a lot and with a recording, it would improve a bit.*

The investigators, however, expressed different positions on the issue.

Interview with the investigator No. 1: *That would be great. The record would show the real quality of the investigator's work, and we would know where to improve. And when there are disagreements, for instance the most common ones, where the suspect claims he was pressured and nearly beaten by the investigator. It would be great to have a recording. Now we have interview rooms for minors, where interviews are recorded, and it works perfectly. […] All the police officers want those recordings, all of them want it.*

Interview with the investigator No. 2: *It [the recording] wouldn't bother me personally, but it might bother the suspect. He might be afraid to tell too much. When a person knows a record is being made he gets tense, reacts differently. We have to inform a person that an audio or video recording is being made. Thus in some cases I would be against recordings. I mean cases where I want the suspect to speak more. Whereas in such cases like domestic violence – the recording would be fine with me.*

256 *Ibid*.

257 Interviews with the lawyers No. 1, 2, 3, 4, 5.

Interview with the investigator No. 3: *I wouldn't object such requirement, I think that recordings would even help our investigators, as there are a lot of unfounded complaints.*

Interview with the investigator No. 4: *I would welcome such a thing. From a practical perspective – all the investigators are afraid of video cameras. When you write a record of an interrogation, you mention only what's important. Whereas during the questioning you delve into details and so on. Probably the investigators would need some time to get used to this, to understand that it is not a form of spying on how they work and that video recording is not a big threat. Then it would be much easier for us in courts. Even if a suspect files a complaint, we would be safe, as it would be possible to watch the record and to see that, for example, both a lawyer and a statutory representative of a suspect were present. Cause earlier there were plenty of complaints that 'the investigator exerted pressure', though the suspect is a man more than two meters height and the investigator is a tiny woman. The only thing is that the investigators are very afraid of video cameras.*

Interview with the investigator No. 5: *I think there's no need for that. The investigator gets tensed, the suspect gets tensed. Usually interrogations are conducted in a colloquial language, afterwards everything is rephrased in formalistic terms and written in the Record of interrogation. It is not a secret that sometimes we have to remind the suspects about particular circumstances of the events, so as not to go with the suspect to the crime scene again, to take his evidence at the crime scene, etc. You give him a clue and he tells you everything smoothly and coherently. In my opinion, video recording never was very useful and will never be. Nobody by a hundred percent adheres to those perfect rules, written in the books. There are practical interpretations on how to do everything. And in our work, when you are told to make an audio recording, you get tensed, start making mistakes, forget to ask something.*

The interviews with the investigators revealed that some investigators understand positive aspects of audio and/or video recordings. Negative positions mainly resulted from viewing the recordings as a form of control over investigators' work and as a barrier for good contact with the suspect. Nevertheless, the 'barrier' effect might be mitigated by making recording equipment not outright visible. Whereas recordings of interrogations might provide data which would be useful not only for determining complaints, but also for identifying the areas for improvement and unification of practice, so that a gap between legal regulation and professional practices could be narrowed.

4.10 Conclusions

In principle, the legal regulation in Lithuania complies with the standards required by the Directive **on the right of access to a lawyer** and by the Directive **on legal aid.** Amendments to the Criminal Procedure Code that establish mandatory participation of lawyer when a person is under arrest, should solve part of the problems identified during the research, especially those related to improper informing about the right to have access to a lawyer and legal aid, and the pressure of investigators in order to make the suspect agree with the first interrogation without any participation of the lawyer. On the other hand, these amendments will not improve the quality of legal aid. At the same time, after the amendments enter into force, it will be important to ensure that the suspect's right to defend himself though a chosen lawyer is not violated. Consequently, situations when a suspects request to contact a particular lawyer is ignored and the legal aid lawyer is invited instead, should not be tolerated.

The identified practical problems related to effective implementation of the right to effective defence are the following:

- Information about the right of access to a lawyer and about the consequences of a waiver was provided by emphasizing legal costs and mostly looked like encouragement to waive the right to a lawyer.
- The lawyers requested by arrested suspects are not always contacted.
- The quality of services provided by some legal aid lawyers was not sufficient, i.e. the role of the lawyers in interrogations is formal, sometimes the same lawyer participates in two interviews simultaneously, etc. This does not ensure actual representation of the interests of the suspect and compromises the right to defence and trust in the fairness of the criminal proceedings.
- Despite a clear statutory provision, there is no uniform practise as to whether suspects should be allowed to notify their family members or close relatives personally. This results in denying such a possibility for some suspects without any specific reasons.
- Sometimes the lawyers are not allowed to communicate with the arrested or detained suspects in private before the court hearing or the time of consultation is very limited; moreover, obstacles are created to provide legal advice to the accused during the court hearing because the lawyer is not allowed to sit next to the accused.

One of the measures to ensure procedural rights of the suspect and his or her lawyer during the interrogation could be introduction of mandatory audio-video recording of the interrogation. The record would become a valuable source of information for the investigation of the disputes on whether the suspect had the right to defence properly ensured or was he or she forced to waive a lawyer, to give testimony, and so on.

5. CONCLUSIONS AND RECOMMENDATIONS

The legal framework in Lithuania complies with the basic standards of suspects' procedural rights enshrined in the EU directives. Guarantees of the fundamental procedural rights in criminal proceedings arise from the Constitution and are outlined in detail in the provisions of the Criminal Procedure Code. The suspects and accused persons are guaranteed the right to interpretation and translation, including, where necessary, interpretation of the communication with their lawyer. All suspects must be provided written information about their procedural rights, including the possibility to receive legal aid. The Criminal Procedure Code provides for an active role of a defence lawyer, establishing not only the right but also the obligation to use all legal means of defence. Suspects under arrest have the right to inform a family member or a close relative about the arrest, as well as to notify him/her personally.

In some respects, national laws establish a higher standard of procedural rights than the minimum required by the directives, i.e. the translation of the essential documents must always be made in writing and cannot be substituted with an oral translation, the letter of rights must be served to all suspects and no restrictions on the right to have a lawyer are provided.

The interrogations observed and interviews with specialists in criminal law – lawyers and investigators – revealed certain good practices, as well as practical problems. Due to limited scope of research – information was collected from 54 interrogations in three different police units under of one Chief Police Commissariat – the information collected does not allow to make conclusions as to the prevalence and scale of the identified problems throughout Lithuania. However, the collected data reveals tendencies and problematic areas of practice that deserve attention.

The observed interrogations, interviews with lawyers and with investigators have shown that in practice there are usually no major problems in ensuring that suspects are able to give evidence in their native language or a language they understand. Problems concerning interpretation quality are more frequent when interpretation in rarely encountered languages and (or) of complex legal language is required. Suspects are informed about the content of suspicion against them, and in most observed cases the investigators informed suspects about their right to remain silent and not to give evidence.

On the other hand, in practice sometimes the rights may be theoretical than effective.

The letter of rights is written in lengthy and complex sentences, citing the provisions of the Criminal Procedure Code, with references to the procedures established in the Criminal Procedure Code or other laws. As observations of interrogations have shown, investigators rarely provide further explanations about the content of procedural rights, apart from listing these rights. The letter of rights is served at the beginning of the interrogation along with several other procedural documents. Thus, the procedure of informing suspects about their procedural rights often becomes more of a formality with little practical use. A more accessible version of the letter of rights is served only to persons subject to a European arrest warrant.

The observed interrogations revealed that waiving a right to have a lawyer cannot be considered completely voluntary in all cases. In the absence of grounds for mandatory participation of a defence lawyer, information on the right to have a lawyer was usually provided very briefly, with the right to have a lawyer being presented as a mere formality and emphasizing that a lawyer will have to be paid. The obligation provided in the Criminal Procedure Code for the investigators to explain the consequences of waiving the right to a lawyer to a suspect was also carried out inappropriately, by only reassuring the suspect that it will be possible to invite a lawyer later. Such a way of providing information, especially when asking repeatedly whether a suspect indeed needs a lawyer, and/or indicating that with the participation of a lawyer the proceedings will last longer, might amount to pressure on a suspect to waive a lawyer. After the entry into force of the provisions on the mandatory participation of a lawyer in interviews with arrested suspects, situations when a suspect is pressured into refusing to have a lawyer should cease. On the other hand, the new provisions will not remedy the problem of legal aid quality.

Lawyers' right to access case materials during the pre-trial investigation is very limited, except for the information on which the prosecutor's request for pre-trial detention is based. This is because the prosecutor, under the Criminal Procedure Code, can refuse access to the case materials when such access, in the opinion of the prosecutor, could undermine the success of the investigation. As mentioned by lawyers interviewed during the research, prosecutors are widely using the discretion granted to them. Therefore, access to the full case file usually becomes possible only after the pre-trial investigation is completed. This might raise issues under the Directive on the right to information, where grounds for refusal to access case file are more limited.

Although the Criminal Procedure Code contains an extensive list of grounds for mandatory participation of a lawyer and investigators often appoint legal aid lawyers on other grounds, the role of legal aid lawyers in criminal proceedings is often only formal. In part of the interrogations observed the role of legal aid lawyers was limited to physical presence in the interrogation room or was passive. Only in one observed case, the legal aid lawyer requested to be allowed to talk with the suspect in private before the interrogation. In addition, three instances

were observed, where a lawyer participated in two interrogations at the same time, thus being present only in part of the interrogation. Interviewed lawyers and investigators were also critical about the quality of the legal aid services in criminal cases.

Cases when the lawyer participates in the interrogation only formally or participates only in a part of the interrogation, violates the suspect's right to an effective defence, as the suspect not only receives no legal advice, but his or her situation may also be aggravated. For example, the fact that a lawyer was present in the interrogation may make it more difficult for the suspect to subsequently prove violations of his procedural rights. Moreover, knowing about the formal attitude of legal aid lawyers to the representation of suspect's interests, investigators may prioritise inviting a legal aid lawyer instead of a lawyer designated by the arrested suspect. Thus, the inadequate quality of services provided by legal aid lawyers may indicate a systemic problem, which undermines confidence in lawyers, legal aid and fairness of the criminal proceedings in general.

The research also revealed problems in practical implementation of procedural rights, which resulted from a lack of clear procedures or from a negligent attitude towards the requirements of the Criminal Procedure Code.

Observed interrogations of suspects under arrest showed that different investigators structured the interrogations differently: some of them provided information about rights at the beginning of the interrogation, while others served all the documents, including the letter of rights, at the end of the interrogation. Some investigators asked whether the suspect agrees to give evidence, while others did not mention the possibility to stay silent or not to answer certain questions. In addition, interviews with investigators revealed that sometimes a notification of suspicion is served only to suspects who are willing to receive it.

In the absence of a clear procedure on how a suspect's right to notify a close person about his or her arrest should be implemented, this right enshrined in the Criminal Procedure Code is only partially guaranteed in practice. Interviews with the investigators revealed that the police always notify a family member or close relative indicated by the suspect. However, despite a clear statutory provision, there is no uniform practise as to whether suspects should be allowed to notify their family members or close relatives personally. This results in denying such a possibility for some suspects without any specific reasons

Lack of qualified interpreters and translators capable of providing high quality interpretation and translation services in the criminal proceedings, as well as lack of a register of qualified independent interpreters and translators lead to difficulties in ensuring services' quality and sourcing interpretation and translation for languages that are rarely used in Lithuania.

During the court hearings, suspects and accused are sometimes not allowed to sit next to their lawyers, thus limiting the lawyers' ability to advise, explain the procedure, etc.

On the other hand, during the observations, examples of good practices, applied by investigators, have been observed as well. One such example could be offering the suspect the opportunity to ask questions, after the suspect has been served with the letter of rights and given time to read through it, thus increasing the likelihood that the letter's content will be understood. Another example is inquiring whether medical assistance is required when the suspect has medical problems. Informing the suspects about their right to refrain from giving evidence before beginning the interrogation, as was done by part of the investigators, should also be considered good practice.

Most investigators in the observed interrogations allowed suspects to read through the notification of suspicions against them without rushing, and some offered to answer their questions if something was unclear. Several interrogators also offered suspects the chance to consult with their lawyers in private before the interrogation. These examples, showing the professional attitude of investigators towards procedural rights of suspects, should be encouraged and become part of normal professional practice.

Recommendations

1. Adopt letters of rights compliant with the requirements of EU directives:
    a. Draft a new letter of rights for suspects, providing essential information on procedural rights in simple language, and emphasising that suspects have a right to ask for additional information and explanations from officers. We suggest taking into consideration the alternative text for letter of rights which was drafted by the Human Rights Monitoring Institute which was drafted in compliance with the requirements of the Directive on the right to information
    b. Draft a version of the letter of rights for minors, which includes the rights from the Directive on procedural safeguards for children who are suspects.
    c. Amend the letter of rights in European arrest warrant proceedings, and include the right to not consent to being surrendered to the requesting State.
2. Include provisions in the Criminal Procedure Code which would effectively ensure the right to defence and preclude uncertainties in practice:
    a. Establish a requirement to make audio and video recordings of interrogations. The recordings would be a valuable source of information in deciding arguments whether the suspect's procedural rights have been breached during interrogation, e.g. whether the defence lawyer and interpreter participated, whether pressure was exerted to waive the right to a lawyer, to give evidence etc.

   b. Establish the right of lawyers to sit next to suspected and accused persons during court hearings.
   c. Establish a requirement that prosecutors' decisions not to allow suspects or their lawyers to access the case file during pre-trial investigation must be based on specific grounds (and not only abstract quotes from the Criminal Procedure Code), which demonstrate the necessity for such restrictions.

3. To adopt sub-statutory acts and harmonize investigators' working practices:
   a. Establish a unified interrogation protocol, and specific time and ways to provide suspects with information on their procedural rights, as well as what documents and when must be served.
   b. Establish that officers filling out the Record of arrest should ask the arrestee whether he or she wants a specific lawyer. The details on the requested lawyer should be included in the record, so that the investigator receiving it could contact the lawyer when planning the interrogation. The official form of the Record of arrest should be amended accordingly.
   c. Clear rules for informing a third party about a person's arrest or for allowing the arrestee to contact a third party should be established, allowing the arrestee to request this not only when the Record of arrest is being filled in, but also later.

4. Adopt measures to improve the quality of interpretation and translation, and legal aid services:
   a. Establish a register of independent and qualified interpreters and translators;
   b. Research reasons for poor quality of legal aid services, and use the collected data to come up with solutions aimed at making the legal aid system more appealing for lawyers and establishing effective monitoring of service quality.

ANNEX 1

Form approved
by the Order
of the Prosecutor General
of the Republic of Lithuania
No. I-288 of 29 December 2014

ANNEX TO THE RECORD OF NOTIFICATION OF THE RIGHTS OF THE SUSPECTED PERSON

As provided for in Article 21 paragraph 4 of the Code of Criminal Procedure of the Republic of Lithuania the suspected person shall have the following rights:

1. A right to be informed about the suspicion.

The suspected person shall have the right to be notified, urgently, thoroughly and in the language he/she speaks or understands, about the nature of and grounds for the suspicions brought against him/her.

The notification of suspicion, the decision to recognise the person as the suspected person passed by a pre-trial investigation officer or a prosecutor, or the order to recognise the person as the suspected person rendered by a pre-trial judge must specify the criminal offence (place, time and other circumstances of commission of the offence) and the criminal law, which defines the said criminal offence, as well as the rights of the suspected person.

The new notification of suspicion must be served only if the essence of the suspicion has changed.

2. A right of access to a lawyer from the moment of detention or first interrogation.

The suspected person shall have the right to defend himself/herself in person or through a defence counsel of his/her own choice. This right shall be guaranteed from the moment of detention or first interrogation.

In the event the suspected person does not have sufficient means to pay for legal assistance, he/she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State.

The detained or arrested suspect shall have the right to meet his/her defence counsel in private. The number and duration of meetings between the suspected person and his/her defence counsel shall not be limited during the working hours of temporary detention or arrest facilities.

3. A right to interpretation and translation.

Criminal proceedings in the Republic of Lithuania are conducted in the state language.

The suspected person, who does not speak or understand the Lithuanian language, shall have the right to make statements, bear testimony and give explanations, submit applications and complaints, and to speak in court using his/her native language or any other language that he/she speaks or understands. In all the above mentioned cases, including in the event of being granted access to the case material, the suspected person shall have the right to be provided with interpretation services in the procedure laid down in the Code of Criminal Procedure.

The case documents, which must be served upon the suspected person in the procedure laid down in laws, shall be translated into the native language of the suspected person or into any other language that he/she speaks or understands.

4. A right to have consular authorities and one person informed.

Following the detention or arrest of the suspected person, the pre-trial investigation officer or the prosecutor, who has detained him/her, or the prosecutor who has attended the procedure of imposing arrest upon him/her must notify one of the family members or close relatives named by the suspected person. If the suspected person does not name any persons, but wishes that notification be given about his/her detention or arrest, the pre-trial investigation officer or the prosecutor must notify, at his/her own discretion, one of the family members or close relatives of the suspected person, if such a person is identified.

The pre-trial investigation officer or the prosecutor may refuse to notify, if the suspected person presents a well-reasoned explanation that such a notification may cause damage to the safety of his/her family members or close relatives.

The suspected person must be provided with a possibility to notify his/her family members or close relatives about his/her detention or arrest personally.

Following the detention or arrest of a foreign national, the pre-trial investigation officer or the prosecutor, who has detained him/her, or the prosecutor who has attended the procedure of imposing arrest upon him/her, shall immediately notify

the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detained or arrested suspect wishes, the diplomatic representation or consular authority of his/her state.

5. A right of access to urgent medical assistance.

Restriction of the suspected person's liberty or movement may not cause artificial barriers for the suspected person to receive immediate medical assistance in the general procedure. Immediate medical assistance shall be provided irrespective of the suspected person's nationality.

Immediate medical assistance shall be provided to the suspected person, who is detained or held under arrest, in the procedure laid down in the legal acts, which regulate the activities of detention or arrest facilities.

6. A right to know the maximum term in hours or days he/she may be deprived of liberty before being brought before a judicial authority.

The maximum term of temporary detention is 48 hours. This term shall be calculated from the moment of the actual detention of the person at the place of commission of the offence or at any other place.

The maximum term of detention is 18 months (12 months, when the suspected person is a minor). The term of detention may be imposed and later extended for no longer than the period of 3 months.

The term of detention, when the case has been referred to court, shall not be limited.

7. A right to testify or remain silent.

Making a testimony is the right, but not the obligation of the suspected person. If the suspected person decides to make a testimony he/she shall have the right not to answer certain specific questions.

8. A right to submit documents and items relevant to the investigation.

The suspected person shall have the right to submit, on his/her own initiative, the items and documents, which are relevant for the investigation or hearing of the case, to the pre-trial investigation officer, the prosecutor or the court, or, on the grounds laid down in the Code of Criminal Procedure, to file a request to the pre-trial investigation officer or the prosecutor and demand that such items and documents be obtained.

9. A right to submit requests.

The suspected person shall have the right to submit requests related with the pre-trial investigation to the pre-trial investigation officer, the prosecutor or the pre-trial judge. Such requests shall be examined, based on competence, in the procedure and within the terms laid down in the Code of Criminal Procedure and other legal acts.

10. A right to make challenges.

The suspected person shall have the right to raise an objection to the pre-trial investigation officer, prosecutor, pre-trial judge, lawyer, assistant lawyer, translator/ interpreter, expert and specialist on the ground and in the procedure laid down in the Code of Criminal Procedure.

The objection shall be made and reasoned in writing.

An objection to the translator/interpreter, expert or specialist shall be decided upon by a pre-trial investigation officer or prosecutor, who is conducting the pre-trial investigation. An objection to the pre-trial investigation officer shall be decided upon by a prosecutor. An objection to the prosecutor, lawyer and assistant lawyer shall be decided upon by a pre-trial judge. An objection to the pre-trial judge shall be decided upon by the Chairman of the District Court.

11. A right to have access to the material of the pre-trial investigation case.

At any time during the pre-trial investigation the suspected person and his/her defence counsel shall have the right to have access to the data of the pre-trial investigation case, except the data of the parties to the proceedings, which are kept separately from the material of the pre-trial investigation case, and to make copies of or extracts from the material of the pre-trial investigation case.

A written request to have access to the material of the pre-trial investigation case or to make copies of or extracts from the material of the pre-trial investigation case shall be submitted to the prosecutor. The prosecutor shall have the right to disallow to have access to all the data of the pre-trial investigation case or any part thereof, and to disallow to make copies of or extracts from the material of the pre-trial investigation case, if the prosecutor believes that such access would be detrimental to the successful outcome of the pre-trial investigation.

The prosecutor may not disallow access to all the data of the pre-trial investigation case, when the pre-trial investigation is completed and the act of indictment is being drawn up.

If the suspected person is held in custody, the right to have access to the data of the pre-trial investigation case and to make copies of or extracts from the material

of the pre-trial investigation case shall be granted to his/her defence counsel, and in the event of waiver of the defence counsel – to the suspected person.

While having access to the material of the pre-trial investigation case it shall be prohibited to make copies of the material of the pre-trial investigation case, wherein the data describe minor suspects and victims; private life of the parties to the proceedings; criminal acts against freedom of human sexual self-determination and inviolability; are entered in the records of procedural acts and the annexes thereof, when the information was obtained by applying the methods and means of collection of criminal intelligence information in accordance with the Republic of Lithuania Law on Criminal Intelligence or by performing covert acts of pre-trial investigation and the prosecutor has exercised the right to have access to the information in accordance with the Code of Criminal Procedure; when the information constitutes the state, service-related, professional or commercial secret. In such cases, making extracts from the material of the pre-trial investigation case shall also be prohibited.

12. A right to appeal against the actions and decisions of the pre-trial investigation officer, the prosecutor or the pre-trial judge.

The suspected person shall have the right to appeal against the procedural actions and decisions of the pre-trial investigation officer to the prosecutor, who organises and leads the pre-trial investigation. If the prosecutor dismisses the appeal, his/her decision may be appealed against to a superior prosecutor, and the decision of the superior prosecutor may be appealed against to a pre-trial judge.

The suspected person shall have the right to appeal against the procedural actions and decisions of the prosecutor to a superior prosecutor. If the superior prosecutor dismisses the appeal, his/her decision may be appealed against to a pre-trial judge.

The suspected person shall have the right to appeal against the procedural actions and orders of the pre-trial judge, except the orders that are not subject to appeal, to a superior court in the procedure laid down in the Code of Criminal Procedure.

ANNEX 2

APPROVED
Order by the Prosecutor General of the Republic of Lithuania Ref. No. I-55 Date: 2017-02-28

ANNEX TO THE RECORD OF NOTIFICATION OF THE RIGHTS OF THE PERSON SURRENDERED ON THE BASIS OF THE EUROPEAN ARREST WARRANT

You have been provisionally detained on the basis of the European Arrest Warrant and you have the following rights:

1. A right of access to a lawyer from the moment of provisional detention

You have the right to have a defence counsel of your own choice or provided by a pre-trial investigation officer or a prosecutor. Such right shall be guaranteed from the moment of your provisional detention.

You have the right to meet your defence counsel in private. The number and duration of meetings shall not be limited during the working hours of provisional detention and detention facilities.

If you are detained, before your surrender from the Republic of Lithuania, you have the right to request for a defence counsel to be appointed at the state that issued the European Arrest Warrant. Such request shall not suspend the procedure of consideration of the issue of your surrender from the Republic of Lithuania on the basis of the European Arrest Warrant and the surrender procedure if the order on your surrender from the Republic of Lithuania on the basis of the European Arrest Warrant is effective.

2. A right to interpretation and translation

If you do not know the Lithuanian language, you have the right to use the services of an interpreter into the language you can understand from the moment of your provisional detention, when communicating with the defence counsel and during the entire proceedings of execution of the European Arrest Warrant, also the right to be provided with a written translation of the European Arrest Warrant.

3. A right to be notified of the contents of the European Arrest Warrant

You have the right to be notified of the following: the authority that issued the European Arrest Warrant; the date of issuance of the European Arrest Warrant; the criminal offences for which the European Arrest Warrant was issued and their legal classification; the maximum term of imprisonment under the criminal laws of the foreign state.

If the European Arrest Warrant was issued for the purposes of execution of a sentence, you have the right to be notified of the term of imprisonment imposed by a judgement of the court of the foreign state and the remaining term of the unserved sentence of imprisonment. You have the right to address the Vilnius Regional Court and request provision of a copy of the court decision by which you were imposed with a sentence of imprisonment. Such request shall not suspend the procedure of consideration of the issue of your surrender from the Republic of Lithuania on the basis of the European Arrest Warrant and the surrender procedure if the order on your surrender from the Republic of Lithuania on the basis of the European Arrest Warrant is effective.

4. A right to give consent to surrender

You have the right to give consent to surrender by simplified procedure to the Member State of the European Union that issued the European Arrest Warrant.

Having given consent to surrender, you have the right to specify the following in writing:

- whether you consent to be surrendered only for the criminal offences, which are specified in the European Arrest Warrant (i.e. you do not renounce entitlement to the speciality rule);
- whether you consent to be surrendered for any other crimes committed before your surrender and for which your surrender was not requested (i.e. you renounce entitlement to the speciality rule).

If the European Arrest Warrant was issued for the purposes of execution of the sentence of imprisonment imposed against you and you are a citizen of the Republic of Lithuania or a permanent resident of the Republic of Lithuania, you have the right to request the Republic of Lithuania to take over the execution of such sentence.

5. A right to have one person and consular authorities informed

After your provisional detention or imposition of detention as the measure of coercion against you, at your request, you must be provided with a possibility to contact one family member, close relative or any other person of your choice.

If you are a citizen of another state, at your request, you must be provided with a possibility to contact the representatives of diplomatic representations or consular authorities of your state.

6. A right of access to urgent medical assistance

7. A right to be notified of the maximum term you may be deprived of liberty

The maximum term of provisional detention is 48 hours. This term shall be calculated from the moment of the actual provisional detention.

Within no later than 48 hours you shall be brought before the judge, who shall examine, in accordance with the procedure laid down in the Code of Criminal Procedure, the issue of imposition of detention and by rendering the order to impose detention shall determine a definite term of detention.

The maximum term of detention is 18 months (12 months, when the suspected person is a minor). The term of detention may be imposed and later extended for no longer than the period of 3 months.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Vilnius, 2018