



Understanding your rights in police custody

The European Union's model of Letters of Rights

Fair

Trials

“The right to information is a crucial building block of the right to a fair trial. Without it, other rights which exist in law are, in practice, illusory.”

Hungarian Helsinki Committee

What is the right to information?

The right to information in criminal proceedings ensures that every arrested person knows why they have been arrested and what evidence has been collected against them (access to the case-file). It also includes information on one's own rights in case of arrest, such as the right to remain silent or the right to consult a lawyer. Without this information, no one would be able to defend themselves and challenge the arrest.

What are we talking about here?

Here, we are concerned with the notification of rights to persons arrested or detained. Specifically, we are discussing a model developed in the European Union (EU) guaranteeing that all suspects or accused persons who are arrested or detained will be informed of their rights in writing, through a simple and accessible Letter of Rights.

This document presents the findings from an EU-wide study on this carried out by the Bulgarian Helsinki Committee, Fair Trials, the Hungarian Helsinki Committee (as project coordinator), Human Rights Monitoring Institute Lithuania, and Rights International Spain.

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What is the problem?

If people do not know their rights, they will not be able to exercise them. Even if they are notified of their rights, many people will not be able to fully understand them because custody is a high stress situation and because the language used is often complex and technical.

“If arrested, you cannot appeal your detention if you do not understand how you should do it, or that you’re even entitled to it. Knowing your rights during your detention is fundamental to a fair trial”

Plain language expert, Hungary

Moreover, police authorities too often try to make people waive their rights. For instance, many arrested people report that police officers try to dissuade them from calling a lawyer or remaining silent, saying that exercising these rights would show them in an bad light or extend their time in custody.

“Very often the police authorities try to motivate the persons arrested to waive their rights, especially the right to access a lawyer”

Criminal defence lawyer, Bulgaria

How is the issue addressed in the EU?

In 2012, the EU enacted Directive 2012/13 on the right to information in criminal proceedings. EU Member States were given until 2 June 2014 to adopt national legislation giving effect to the rights in the Directive.

The Directive requires that suspects and accused persons are provided promptly, both orally and in writing, with information concerning their rights.

This information needs to be delivered in simple and accessible language, taking into account any particular needs of vulnerable suspects or accused persons, such as minors, foreigners and people with mental disabilities.

As outlined in the table across the page, information on certain rights must be provided both orally and in writing, while other rights can be simply notified only in writing.

The EU's model of Letter of Rights

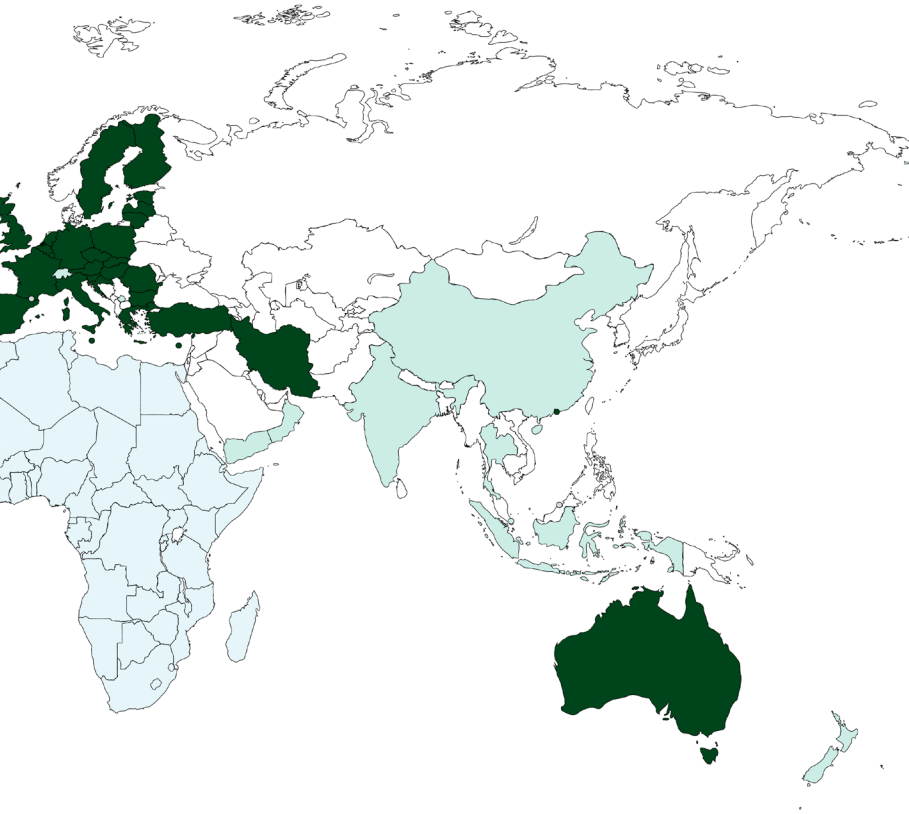
Right	Orally	In writing
Right of access to a lawyer	✓	✓
Entitlement to free legal advice	✓	✓
Right to be informed of the accusation	✓	✓
Right to interpretation and translation	✓	✓
Right to remain silent	✓	✓
Right of access to the materials of the case	✗	✓
Right to have consular authorities and one person informed	✗	✓
Right of access to urgent medical assistance	✗	✓
Information about the maximum time in police custody	✗	✓
Information about the procedures for challenging or reviewing the arrest or detention and seeking release	✗	✓

EU Letters of Rights as a global model

The EU Directive on the Right to Information and the African Commission on Human and Peoples' Rights Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention (Luanda Guidelines) are the only international or regional instruments requiring the use of Letters of Rights in criminal proceedings. Unlike the EU Directive, however, the Luanda Guidelines are not legally binding and enforceable.

We surveyed 58 countries worldwide and found that Letters of Rights do not often exist outside the EU. This is why the EU should promote its model around the world.





Key



Countries studied where notification of rights in writing is mandatory.



Countries studied where notification of rights in writing is not required.



Luanda Guidelines countries.

Letters of Rights are working

Our study shows that Letters of Rights can have a positive impact on the understanding of rights by people arrested or detained by the police, particularly where the letters are simple and accessible, people are provided adequate time to read them and, ideally, have someone available to explain the rights to them who is not trying to encourage the person to waive their rights. In Ireland, for example, Letters of Rights are delivered and explained by a person independent of the underlying police investigation resulting in better informed suspects or accused persons.

“A suspect being placed in custody is a stressful moment for everyone. The emotional state of the suspect does not enable him or her to necessarily understand everything verbally. The Letter of Rights enables him or her to delve into it more, in particular during breaks and to change a decision taken quickly (the right to silence, to a lawyer, to contact the family, etc.).”

Police Officer, France

Where work is still needed

- Letters of Rights are not always delivered in practice to all relevant people. In some jurisdictions, like in Bulgaria, suspects do not receive any written letter because the national law does not recognise the status of a “suspect”.
- People are often not given enough time to read and understand the Letter. In Spain, for instance, some of the interviewed judges and interpreters said that the suspects or accused persons receive a lot of information in a short time, which makes it hard to assimilate it.
- In some EU countries not all rights are included in the Letter of Rights. For example, in France information is not provided regarding the right to legal aid.
- Written translations of the Letters of Rights are not always provided to people who do not understand the national language. In Lithuania, for instance, authorities only provide oral translations.
- Police authorities continue to try to dissuade people from exercising the rights set out in the Letter of Rights, especially the right of access to a lawyer and the right to silence.
- The biggest challenge, however, is the accessibility of the Letters of Rights. In most countries, the documents are too often written in legalistic terms, with complex sentences and confusing formatting, making it extremely difficult for laypeople to understand their rights. In others, the Letters of Rights are too simple, not providing sufficient information necessary to fully understand the rights.

How to make Letters of Rights more accessible

1 Use plain language. Plain language is about communicating clearly. In particular, a communication is in plain language if the language, structure, and design are so clear that the intended audience can: easily find what they need; understand what they find; and use that information.

2 Include essential information about all the rights set out in the Directive. This includes details about the implications of exercising the rights, such as the right to silence and the right to a lawyer.

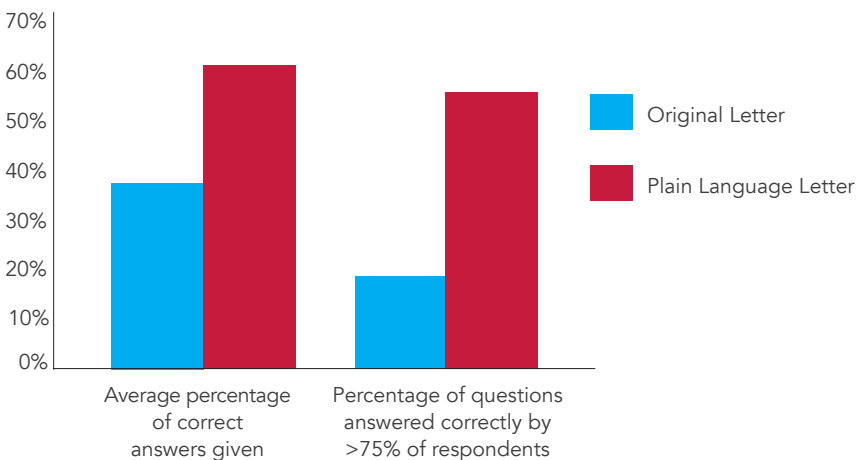
3 Involve a plain language expert and all the relevant stakeholders in the drafting process, including arrested people, police officers, judges and prosecutors.

4 Test the drafts of the Letter of Rights, using the testing model outlined across the page, incorporating the findings of the assessment into future drafts. An accessible Letter of Rights can require several trials to be as understandable as possible.

What happens when you do this

The Hungarian Helsinki Committee (HHC) reviewed the Hungarian letter of rights using plain language principles and a defence practitioner survey. A new letter was drafted to resolve identified accessibility issues. The draft was longer than the existing letter, providing more information on the rights, but used more accessible language and formatting.

To test the draft, HHC formed two groups of 200 persons with education levels matching the averages for Hungarian detainees. The first group was given the existing letter of rights; the second was given the new draft. Both groups were asked questions testing their understanding of the rights. The results showed a remarkable improvement in understanding thanks to the new draft.



Recommendations

Content of Letters of Rights

- Ensure that Letters of Rights cover at least all rights included in the EU Directive and any additional rights guaranteed in national law.
- Include explanatory language on the right to silence and the right to access to a lawyer, including information regarding the potential consequences or risks of waiving them.
- When drafting the Letter of Rights, use the methodology for stakeholder engagement, drafting and testing outlined in this document.
- Remove overly technical terms and legalese with the contribution of plain language experts and the inclusion of groups of people with lower levels of education.
- Use formatting to highlight key pieces of information. Better use of bullet points, bold and other methods to highlight critical text, as well as, more generally a clearer and more visually attractive format would aid understanding of the information provided on rights.

Delivery of Letters of Rights

- Guarantee that all persons who are suspected of or are being investigated for a crime receive a Letter of Rights irrespective of national legal definitions of a "suspect".
- Provide the Letter of Rights at the moment of detention and sufficiently prior to the first interrogation in order to give suspects time to read and understand it.

- Give the suspect the time and ability to consult with someone not connected to the investigation on the contents of the letter, extending the time currently guaranteed for initial interviews with lawyers (if any).
- Ensure that suspects and accused who are arrested or detained can keep the Letter of Rights throughout their detention so that they can read and review it in less pressured situations.
- Make the text of Letters of Rights publicly available and easy to access.
- Consider appointing a person neutral from police investigation to deliver and explain the letter of rights at the police station.
- Ensure that a procedure is in place to verify, as a routine exercise, whether the suspect actually understands his or her rights.

Remedies and Preventative Measures

- Make Letters of Rights binding and enforceable in national law, as in the EU Directive.
- Guarantee a remedy in national law for failing to provide a simple and accessible Letter of Rights.
- Provide training to police on the importance of the rights being notified, sensitizing them on why the rights are beneficial not only to the suspect but to the criminal proceedings as a whole.

Who we are



BULGARIAN
HELSINKI
COMMITTEE

Bulgarian Helsinki Committee [BHC]

BHC was established in 1992 as an independent non-governmental organization for the protection of human rights. The objectives of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularize human rights instruments.

Fair

Trials

Fair Trials

Fair Trials works for fair trials according to internationally recognized standards of justice. Our vision is a world where every person's right to a fair trial is respected. Fair Trials helps people to understand and exercise their fair trial rights; addresses the root causes of injustice through its legal and policy work; and undertakes targeted training and networking activities to support lawyers and other human rights defenders in their work to protect fair trial rights.



Human Rights Monitoring Institute, Lithuania [HRMI]

HRMI is a non-governmental, not-for-profit public advocacy organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are real and effective in practice. HRMI's activities include research, drafting briefings and reports to international human rights bodies, strategic litigation, expert consultations and legal services, and delivering trainings to law enforcement officers.



Hungarian Helsinki Committee [HHC]

The HHC is one of the leading non-governmental human rights organizations in Hungary and Central Europe. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defense to victims of human rights abuses by state authorities and informs the public about rights violations.



Rights International Spain [RIS]

RIS is a non-governmental and independent organization composed of lawyers specialized in international law. The organization's mission is the promotion and defense of human rights and civil liberties. RIS also works towards a better understanding and application of international human rights law.

“The right to a fair trial is one of the cornerstones of a just society. Without fair trials, innocent people are convicted and the rule of law and public faith in the justice system collapse. Fair Trials is a unique human rights charity that helps people facing criminal charges all over the world to protect this basic right and campaigns for fairer criminal justice systems.”

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