



Human Rights
Monitoring Institute

Letter of rights in Lithuania: regulation and practice

National report

2017

About HRMI

Human Rights Monitoring Institute is a non-governmental, not-for-profit public advocacy organisation in Lithuania. 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. The team of HRMI lawyers and public policy experts carries out research, drafts legal and policy briefings, compiles reports to international human rights bodies, undertakes strategic cases before domestic and international courts, provides expert consultations and legal services, engages in national and international projects, delivers conventional and distance trainings to law enforcement officers and other professionals.

HRMI's main areas of activity: rights of suspects and accused, rights of crime victims, prohibition of discrimination, protection of privacy and digital rights, freedom of expression.

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The Human Rights Monitoring Institute would like to thank the police officers and defence lawyers who volunteered their time and experience to participate in the research surveys.

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This publication has been produced with the financial support of the Justice Programme of the European Union. Its contents are the sole responsibility of the Human Rights Monitoring Institute and can in no way be taken to reflect the views of the European Commission.



Project coordinated by the Hungarian Helsinki Committee

Contents

Executive summary.....	3
Introduction and methodology.....	4
Country overview.....	5
Regulation.....	6
Practice.....	9
Improving the letter of rights.....	12
Conclusions and recommendations....	14
Standard letter of rights.....	15

Executive summary

Executive summary

This research report is one of 5 national reports under a European Commission-funded project carried out in 5 EU member states.

On 22 May 2012 EU Directive on the right to information in criminal proceedings was adopted. It aims to ensure adequate access of suspects and accused to information about their procedural rights and suspicions raised against them. A material part of the Directive is the letter of rights – a written list and description of suspects' and accused rights, which must be served to every suspect or accused on detention.

On 2 June 2014 the Directive's transposition term ran out. In this research we sought to assess how the Directive's provisions were transposed to Lithuanian law, and how they are applied and the letter of rights is handled in practice. Additionally, we aimed to assess whether and how the current of letter of rights should be updated to better serve its function.

Research was conducted by a combination of in-depth desk review of legislation, and surveys with 2 groups of criminal justice practitioners – police officers and defence lawyers, 22 of each – who have extensive experience in criminal proceedings and engage suspects and accused on a daily basis.

Key findings were as follows:

1. Most of the EU Directive on the right to information in criminal proceedings provisions have been transposed.
2. The letter of rights uses complex and legal language to describe suspect's rights, thus making it difficult to understand to anyone without a legal background. It is also served along a large number of different documents which makes it harder for a suspect to focus on it. The letter and other documents served before first questioning should be reviewed and updated to increase their accessibility.
3. Practitioners', both police and lawyers', survey results indicate that the letter of rights is of mediocre level of accessibility, and there is room for improvement. Practitioners also believed that suspects were rarely attentive when reading the letter of rights.
4. Police officers rarely take an active role in ensuring that suspects understand the letter of rights, such as providing oral explanations or testing if a suspect has actually understood their rights. Such practice should be introduced and encouraged as routine exercise.

Introduction and methodology

Introduction

On 22 May 2012 Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings was adopted. The Directive aims to ensure adequate access of persons suspected or accused of crime in EU member states to information about their essential procedural rights, as well as suspicions or accusations raised against them.

A salient feature of the Directive on the right to information in criminal proceedings is the establishment of the letter of rights. The letter of rights is a written list and description of fundamental procedural rights enjoyed by suspects and accused in criminal proceedings. Under the Directive, the letter is to be served to every suspect and accused upon their arrest or detention. Having an accessible document to refer to for their rights throughout the proceedings gives suspects and accused a real chance to exercise them. Thus, introduction of the letter of rights is a milestone in the path to a fairer criminal proceedings in the EU.

This research focuses on implementation of the letter of rights in Lithuania and seeks three goals. First, to examine how well and to what extent the relevant provisions of the Directive on right to information in criminal proceedings have been transposed to national law. Second, to assess how those provisions are applied and the letter of rights performs in practice. And third, to assess whether there is a need to update the letter of rights used in Lithuania, and how it should be modified.

The research is part of a larger project, co-funded by the European Commission, involving analogous research being carried out in 4 more EU member states – Bulgaria, France, Hungary, and Spain. All of these individual researches have the same goals and use similar methodologies, adapted to the specifics of each country, to achieve comparable results between the 5 member states. The comparative study will be published in separate report.

It is important to note that this research report does not concern the use of letter of rights in European Arrest Warrant cases. The Prosecutor General's order which established the letter of rights in EAW cases was adopted after the collection of data for this research has been completed. As a consequence the practice of using the letter of rights in EAW cases was not considered while carrying out the research.

Methodology

The research for this report was done in two parts. The first was a desk review of the Directive's transposition to Lithuanian law, and involved extensive analysis of legal documents – legal codes, laws, sub statutory acts, and case-law. The second, assessment of practice, was done by conducting anonymous surveys of criminal justice practitioners – police officers and defence lawyers. Both are involved in day-to-day work with suspects and accused, from the outset of their inclusion in the proceedings, and have a first-hand experience of how the letter of rights is handled.

The surveys were conducted in October-December 2016. They included 22 police officers and 22 defence lawyers from different parts of Lithuania and of varied experience, ranging from a year to well over 20 years. Survey participants were asked both to share their experience of how the letter of rights is used in practice, and to weigh in on how useful they think it is, and what could be done to improve it.

Results of both groups' surveys were compared and analysed to assess practical implementation of the letter of rights in Lithuania, and prepare suggestions for its improvement. As a follow-up to this report, HRMI, with consultation from relevant experts, will be preparing a variant letter of rights, which seeks to build upon and improve the one currently used.

Country overview

The Republic of Lithuania operates under a civil-law system. The majority of criminal law related issues are covered by two sets of codified laws – the Criminal Code and the Code of Criminal Procedure, both of which came into force in early 2000s after a complete reform of the criminal justice legal framework.

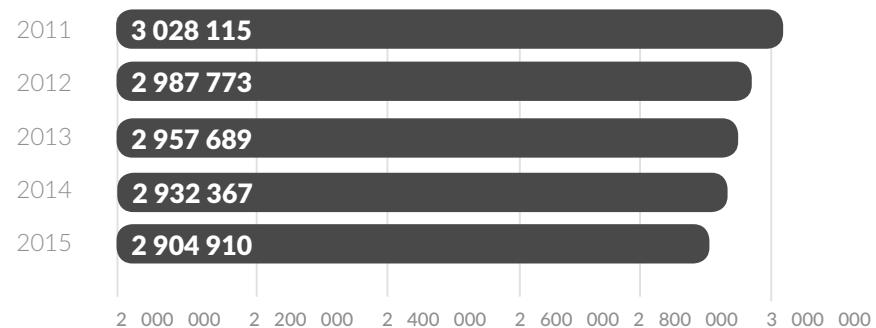
The first stage of a typical criminal procedure is the criminal investigation, called “pre-trial investigation” in the Code of Criminal Procedure, which is usually conducted by police officers, and in some instances – officers of other investigating institutions. They are jointly referred to as pre-trial investigation officers in the Code of Criminal Procedure. 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.

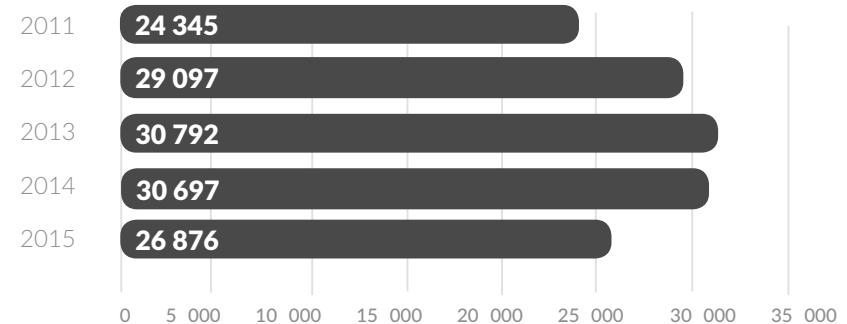
The person suspected of a crime or crimes is called a “suspect” during the pre-trial investigation phase. When the investigation is concluded, the suspect turns into an “accused”, and is called so throughout the trial stage.

Statistical indicators

Average population in Lithuania in the last 5 years:¹



Numbers of registered suspects in the last 5 years:²



1 Statistics Lithuanian, <http://osp.stat.gov.lt/>

2 Information Technology and Communications Department under the Ministry of Interior, <http://www.ird.lt/statistines-ataskaitos/>

Regulation

Transposition of the Directive on the right to information in criminal proceedings

On the 2nd of June 2014 the transposition term for the Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings ran out. The transposing EU members had to adopt all national legislation required for the Directive's implementation.

The Directive on right to information in criminal proceedings establishes the minimum required standards for protection of suspects' and accused persons' procedural rights. In the Lithuanian legal system, all of the procedural rights enjoyed by suspected or accused person in the criminal investigation and the following trial are laid out in the Code of Criminal Procedure. Accordingly, transposition of the Directive's provisions mostly concerns amendments to the Code of Criminal Procedure.

On the whole, the Code of Criminal Procedure contained most of the rights listed in the Directive, before the latter's transposition: the suspect or accused had the right to be informed about their procedural rights, as well as suspicions or accusations against them, right to access case materials, right of access to a lawyer and others.

However, several of the rights contained in the Directive were not explicitly indicated in the Code of Criminal Procedure, but rather implied, for example, the right to remain silent.³ The Code also contained restrictions on the suspect's right to access case materials which differed from the one in the Directive. Finally, the Code did not envisage a written letter of rights, which, under the Directive, had to be provided to every suspect or accused person on arrest.

There were two sets of Code of Criminal Procedure amendments adopted to transpose the Directive. The first amendments were adopted in May 2014.⁴ They

³ Before the amendments, a suspect or accused had a "right to give evidence", i. e. giving evidence was optional, and a right to remain silent could have been reasonably extracted from this.

⁴ Law on amendments of the Code of Criminal Procedure articles 21, 22 and annex (Baudžiamoji proceso kodekso 21, 22 straipsnių ir priedo pakeitimo įstatymas), No. XII-891, 15 May 2014.
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9ca4b882df5211e3a0be833418c290fb>

added some of the suspects' and accused person's rights contained in the Directive to the Code of Criminal Procedure in more express terms – right of access to urgent medical assistance, right to have consular authorities and one person informed, right to remain silent, and right to know the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority. These amendments served to formally transpose the Directive.

The second set of amendments was adopted in June 2015.⁵ These were not formally intended to transpose the Directive's provisions, but they contained an important suspect's right under the Directive, not included in earlier amendments – the right to access case materials, on which prosecutor's request to court for order of pre-trial detention is based.⁶

In addition to the Code of Criminal Procedure amendments, an important Prosecutor General's order was passed in December 2014.⁷ The Order established a new "notification of suspicion form", which is served to every suspect. One of the standardised annexes to this form – "Annex to the suspect's rights clarification protocol" – is the Lithuanian equivalent of the letter of rights envisioned in the Directive (copy attached at the end of this report). Also on 28 February 2017 Prosecutor General approved the equivalent forms, essentially the letter of rights, for European Arrest Warrant cases.⁸ However, unlike the regular letter of rights, these latter forms are in Lithuanian only.

Both of these documents were drafted internally, by the Prosecutor General's Office without public external consultations.

⁵ Law on amendments of the Code of Criminal Procedure articles 121, 123, 125, 126, 127, 130, 131 and 181 (Baudžiamoji proceso kodekso 121, 123, 125, 126, 127, 130, 131 ir 181 straipsnių pakeitimo įstatymas), No. XII 1878, 25 June 2015
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/fee128e21fec11e585eaba374ef4b409>

⁶ Code of Criminal Procedure, article 121 para. 2

⁷ Prosecutor General's order No. I-288, 29 December 2014
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a967f6d0906f11e48028e9b85331c55d>

⁸ Prosecutor General's order No. I-55, 28 February 2017
<https://www.e-tar.lt/portal/lt/legalAct/88c65c40fe8711e68034be159a964f47>

Providing the letter of rights

Under the Lithuanian criminal procedure, every participant of the proceedings, including suspects and accused, must be informed about their procedural rights.⁹ The obligation to explain these rights falls on investigating officers (usually – police officers), prosecutors and judges.

Suspects must be provided with this information in writing, in addition to any other form, together with a written notification of suspicion against them.¹⁰ Specifically, suspects must be served with the "Annex to the suspect's rights clarification protocol", which is a standard form approved by the Prosecutor General.¹¹

This document serves as the Lithuanian equivalent of the letter of rights under the Directive on right to information, and must be provided to all arrested and detained persons (see end of this report for a copy). However, the right to receive the letter of rights is wider under the Lithuanian criminal procedure than under the Directive – the Letter is served to all suspects, not merely those who have been arrested.

The letter of rights must be served before the first questioning of the suspect. There is no time or term set in the legislation, for how long the suspect should be allowed to read the Letter. However, as this document is served to the suspect, it should not be taken away from the suspect, and they should be allowed to use it throughout the criminal procedure.

When criminal proceedings reach the trial stage, and the suspect becomes an accused, their procedural rights must also be explained to them orally by the judge at the beginning of the court proceedings.¹² Written documents on the rights of the accused are not provided in court.

Rights contained in the letter

In the "Annex to the suspect's rights clarification protocol", or letter of rights, provided to suspects, the following rights are listed and described:

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

This list of rights is essentially equivalent to the rights of which a suspect or accused must be informed under the Directive. On the other hand, the list of rights that must be explained to the accused by the judge at the beginning of the court proceedings is not regulated in any detail. However, the accused should have already received a written letter of rights in the pre-trial investigation stage.

Accessibility of the letter of rights

Under the Directive on right to information in criminal proceedings, the letter of rights must be drafted in simple and accessible language.¹³ However, neither the Code of Criminal procedure, nor sub-statutory acts regulate the manner in which suspects and accused should be informed about their rights. There are no legal requirements that the information be provided in clear, easy-to-understand language. There are also no requirements to ensure or to verify that the person informed about their rights actually understood the content of those rights.

On the other hand, if a person raised questions on their procedural rights, they must be answered under the general provision on duty to inform participants of proceedings on their rights, discussed in the beginning of this section.

The legislation does not provide for a simplified letter of rights for minors suspected of crime, or a duty for the investigating officers to take additional action in order to

⁹ Code of Criminal Procedure, article 45

¹⁰ Code of Criminal Procedure, article 187

¹¹ Prosecutor General's order No. I-288, 29 December 2014

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a967f6d0906f11e48028e9b85331c55d>

¹² Code of Criminal Procedure, article 268

¹³ Directive on right to information in criminal proceedings, article 4 para. 4

ensure that the minor understands the letter's contents. However, under the Code of Criminal Procedure in cases where the suspect is a minor the participation of a defence lawyer is mandatory.¹⁴ These same rules are also applied to some other vulnerable suspects – people with physical or mental disabilities, also people who do not speak the language of the proceedings, i.e. Lithuanian.

In addition to Lithuanian, the letter of rights is translated to five more languages that are most common in Lithuania – English, French, German, Polish, and Russian. These official translation were approved by the same Prosecutor General's order.¹⁵ Suspects, who do not understand Lithuanian or any of these other 5 languages, should be provided with a translation of the letter of rights to a language they understand. This is because the Letter is an annex to the notification of suspicion, and must be served alongside it,¹⁶ and under Lithuanian procedure, all procedural documents which are served to a suspect must also be translated to a language person receiving them understands.¹⁷

Remedies and waivers

Under the Directive on right to information in criminal proceedings, suspects or accused and their lawyers, as a remedy, have a right to challenge officers' or authorities' refusal to provide information under the Directive.¹⁸ Therefore the Directive requires that a suspect, who has not been provided with a letter of rights, has a right to challenge the failure to do so.

The Code of Criminal Procedure does not have a specialized procedure for challenging such procedural violations, therefore if a suspect does not receive the letter of rights before first questioning, the general procedure for challenging actions in pre-trial investigation should be applied. Under this procedure, investigating officer's actions and decisions, including failure to provide information, can be appealed to the prosecutor, prosecutor's actions and decisions – to a higher prosecutor, and the former's – to a judge.¹⁹ Questions on such procedural violations can also be raised later – when the case is being decided in court.

¹⁴ Code of Criminal Procedure, article 51

¹⁵ Prosecutor General's order No. I-288, 29 December 2014

<https://e-seimas.lrs.lt/portal/legalAct/lT/TAD/a967f6d0906f11e48028e9b85331c55d>

¹⁶ Code of Criminal Procedure, article 187

¹⁷ Code of Criminal Procedure, article 8 para. 3

¹⁸ Directive on right to information in criminal proceedings, article 8 para. 2

¹⁹ Code of Criminal Procedure, articles 62-65

However, the Code of Criminal Procedure does not provide a specific answer to what consequences should follow if a violation is found. On the one hand, if the violation is established during the pre-trial investigation, the officer can be obligated to carry out the required actions – serve the letter of rights. On the other, this not a suitable solution if the violation is established in the trial stage. In such circumstance evidence obtained in violation of procedure and rights of the defence should be considered obtained illegally, and as such be considered inadmissible, as only information collected by lawful means may be considered evidence under the Code of Criminal Procedure.²⁰

The Code of Criminal Procedure only has detailed provisions for waiver of one of the rights in the letter of rights – waiving a defence lawyer. The defence lawyer can be waived at any point in the proceedings, but only on the initiative of the defendant her or himself.²¹ This means that the suspect or accused cannot be advised, suggested or demanded to waive her or his lawyer. The Code of Criminal Procedure also establishes that waivers of some vulnerable suspects or accused – minors, people with physical or mental disabilities, people who do not speak Lithuanian – are not binding on the investigating authorities or the court, if there is reasonable ground to believe that this will compromise their right to defence.

²⁰ Code of Criminal Procedure, article 20

²¹ Code of Criminal Procedure, article 52

Practice

Language of the letter of rights

The letter of rights used in Lithuania is a three-page document, organised into 12 sections, each covering a separate defence right, or several related rights. The sections do not follow a specific order or logic, however, rights, which are likely to be most important right after becoming a suspect – right to information about suspicions, right to access a lawyer, right to interpretation and translation – are described first in the document.

Descriptions of the rights vary in length – some are only afforded a couple of sentences, while others span 4 or more paragraphs. The language used to describe the rights is rather technical: although it does not refer to specific articles within the Code of Criminal Procedure, it does point, in a general manner, to the “procedure laid down in the Code of Criminal Procedure” on 5 occasions throughout the text. The letter also includes a lot of legalistic terms, such as “pre-trial investigation officer”, “pre-trial judge”, or “BPK”, abbreviation of “Code of Criminal Procedure” (in Lithuanian version only).²² These terms are not explained anywhere in the letter of rights.

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”. No examples or visual aids, such as illustrations, or graphs and charts are provided to make the information more easily accessible.

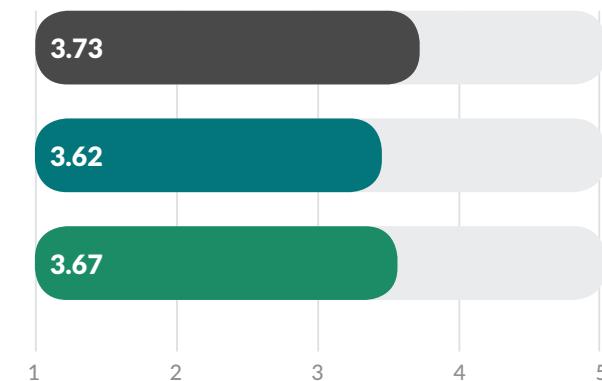
Taking into account the relatively complex nature of legal concepts behind defence rights, provision of information in such manner may be problematic where the requirement that the letter of rights be “drafted in simple and accessible language” is concerned. To get a better idea of this, in the course of the research we asked practitioners who deal with suspects directly – police officers and defence lawyers – to assess, based on their experience, how accessible and comprehensible the letter of rights is to suspects.

²² Interestingly enough, this is a lesser problem where the English version of letter of rights is concerned, as more general and less legalistic terms are used.

Practitioners' views on the letter's accessibility

The respondents rated the letter of right's level of accessibility and comprehensibility in a scale from 1 to 5, where 1 was “The letter is completely incomprehensible”, and 5 was “The letter is completely comprehensible”. The results provided in chart 1 below indicate that both police officers and defence lawyers tend to rate the letter of rights accessibility very similarly.

Chart 1. Letter of rights accessibility assessment



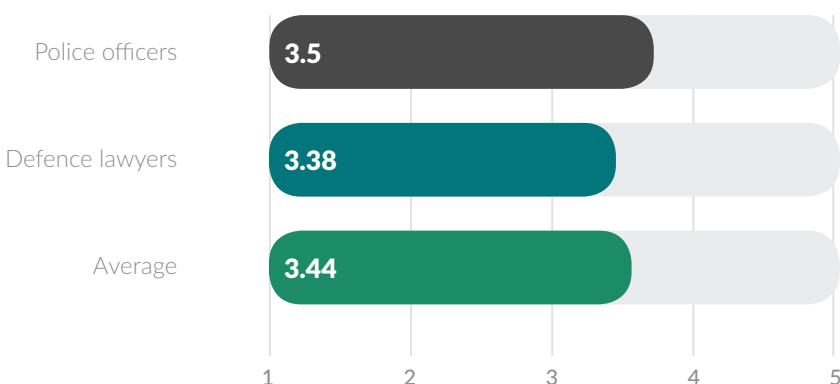
Answers of both surveyed police officers and defence lawyers were considerably varied, with most responses ranging in the 3-5 rating scale. These results seem to indicate that practitioners consider the letter of rights to be at an accessibility level of higher, but not a lot, above average.

A similar question was also asked of both groups to further gauge accessibility of the letter of rights – how well did the suspects, in the respondent's opinion, understand

the contents of the letter of rights? Again, the respondents were asked to rate this in a scale from 1 to 5, where 1 was "Don't understand at all", and 5 was "Understand completely".

As can be seen from the results in chart 2 below, this led to lower ratings than in the last question from both police officers and defence lawyers. Again the results show that both groups of practitioners rate the letter very similarly, at a slightly above average level of understandability.

Chart 2. How well suspects understand letter of rights?



These results indicate that even though the level of accessibility and comprehensibility of the current letter of rights is not bad, there is definitely room for improvement. Addressing the letter's issues of complexity discussed above – using less technical and legalistic terms, simpler and shorter sentences – may go a long way towards making the letter of rights more accessible.

Manner of providing of the letter of rights

The manner in which information about rights is provided to a suspect may be key in whether that person understands it: a person who is being questioned is obviously under enormous stress, and additional explanations and verifications may go a long way towards ensuring that the person actually comprehends the contents of the information provided. That is why in the course of the research we also looked at how the provision of the letter of rights was handled in practice, starting with whether the letter of rights is actually given to the suspects.

All but one of the surveyed police officers claimed that the letter of rights is provided to suspects in all cases.²³ Similarly, two thirds of defence lawyers responded that the letter of rights is served in all cases, while the other third stated that it is provided in most cases. This is further confirmed by the Human Rights Monitoring Institute's earlier research, where it was also found that the letter of rights is indeed provided to suspects in practice.²⁴

Provision of the letter actually extends beyond the requirements of the Directive and may be considered a good practice to be followed: the letter of rights is given to all suspects, who are questioned, rather than just the ones who have been arrested or put into pre-trial detention.

Letter of rights translation

In addition to Lithuanian, the letter of rights is pre-prepared in 5 other languages – English, French, German, Polish, and Russian. While these are the most commonly encountered foreign languages in Lithuania, they are of course not sufficient to cover all occurring situations.

In the survey we asked participants how situations, in which a letter of rights in another language is required, are handled in practice. Of the 10 surveyed defence lawyers who have dealt with such cases, all indicated that the letter of rights is mostly translated orally by an interpreter. 9 surveyed police officers have encountered such cases, of them 7 also indicated that oral translation is provided instead of a written document, and 2 answered that the letter is translated orally and later – also in writing.

It should be noted that a practice of only providing oral translations contravenes the Directive's requirements. While providing oral translation of the document at the initial stage is an acceptable and welcomed practice, the Directive clearly requires that a written copy should be then provided at a later stage, without undue delay.²⁵

23 The single differing officer indicated that the letter of rights is provided in most cases.

24 "Direktyvos 2012/13/ES dėl teisės į informaciją baudžiamajame procese įgyvendinimo ataskaita", 2016, Human Rights Monitoring Institute, p. 13-14

25 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, article 4 para. 5

Time to read the letter of rights

When asked how much time the suspected person is actually given to read through the letter of rights, half of the surveyed police officers, and half of the surveyed defence lawyers responded with “up to 15 minutes”. The remaining half of responses is mixed: with several police officers and lawyers indicating more, several – less, and about a third of each claiming that the suspects are given as much time as they need. These results indicate that while there is some general tendency to afford up to 15 minutes to read the letter of rights, the actual practice varies considerably on case by case basis.

Both the police officers and the defence lawyers were mostly of the opinion that the time given to the suspects to read the letter of rights is sufficient: 20 out of 22 surveyed police officers answered that the time afforded was sufficient in all or most cases, as well as 17 out of 22 surveyed defence lawyers, while only 3 lawyers believed that too little time is given.

Suspects' attention to the letter of rights

The survey results indicate, however, that when the suspects read the letter of rights, they do not always do that very carefully, and perhaps afford it less attention than could be expected. Less than one third of defence lawyers and one fourth of police officers surveyed indicated that suspects read through the letter of rights carefully most or all of the time. Nearly half of the surveyed police officers (10 out of 22) and defence lawyers (9 out of 22) believed that suspects were rarely attentive when reading the letter of rights.

Survey results also show that suspects are not very likely to seek additional information about their rights from police officers. Only 3 out of 22 surveyed officers indicated that they often receive questions about the contents of the letter of rights, and nearly half (10 out of 22) stated they received such questions rarely or never.

This might be determined predominantly by suspects' unwillingness to request information from or to trust police officers. However, when the same question was posed to defence lawyers, the results indicated that suspects are barely more inquisitive with their own lawyers: over a third (8 out of 22) of surveyed defence lawyers indicated that they rarely or never receive questions about the contents of the letter of rights, and only 4 stated that they receive such questions often or always.

Police role in understanding the letter of rights

Finally, we wanted to check whether police officers take an active role in ascertaining that suspects are clear about their rights. To assess this, surveyed police officers were asked whether they provide additional verbal explanations along with the letter of rights. Half of the officers indicated that they provide such explanations most or all of the time. Others provided additional explanations only on occasional basis.

Surveyed police officers were also asked whether they take initiative in ensuring that the suspected person understands the letter of rights, e.g. whether they quiz the suspect about the rights they have or their content. Results show that this is not a prevalent practice: only 2 responding police officers stated to be doing so on a regular basis. The definite majority (15 out of 22) of surveyed officers never or rarely took additional action to ascertain that the suspect understands the letter of rights.

The Directive does not specify that the authorities have to take steps to ensure that suspects understand the contents of the letter of rights provided to them. Nor are there such requirements in the Lithuanian legal rules on police activities. However, under the Code of Criminal Procedure, the investigating officer has a general obligation to explain the suspect's procedural rights to him or her, and ensure that they are possible to exercise.²⁶ Police officers' additional explanations and active role in ascertaining, whether the suspected person actually understands the rights he or she has, could go a long way towards ensuring that this requirement is more than a mere formality.

²⁶ Code of Criminal Procedure, article 45

Improving the letter of rights

Usefulness of the letter of rights

The primary purpose of the letter of rights is to assist suspected persons in understanding the rights they have in the criminal proceedings,²⁷ thus ensuring fairness of the criminal investigation and the trial that follows. Therefore we sought to determine how useful the letter of rights is to the suspects, in the opinion of practitioners, who interact with suspected persons on a daily basis, as well as what should be altered in the current letter of rights to improve its utility.

Survey participants were asked to rate usefulness of the current letter of rights in a scale from 1 to 5, where 1 was "Completely useless", and 5 was "Very useful". Both the surveyed police officers and defence lawyers were similarly pessimistic in their assessment.

The average of the ratings provided by police officers was 3.27. The surveyed defence lawyers rated it very closely, at the average of 3.29. These results indicate that while the letter of rights cannot be considered useless, steps should be taken towards making it a more useful, informative and accessible tool.

Chart 3. How useful is the letter of rights to suspects?



²⁷ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, para. 22 of the preamble

Clarifying the letter's language

One area for improving the letter of rights has already been addressed in a previous section of this report – that is the language itself used in the document. Suspects, most of whom have no legal education, trying to read through the letter of rights are likely to get bogged down by the long and complex sentences, many of which contain legal terms.

This should be addressed by clarifying the language of the document – opting for shorter and plainer sentences, and forgoing more complex legal terminology, while using more mundane terms instead. While such language may lack the precision of one usually employed in legal texts, this trade-off is more than worth it, if it means a suspected person can actually understand the contents of the document. A document, worded very exactly, yet incomprehensibly to anyone, but those trained in law, is unlikely to serve anyone in the end.

The need to revise the document's language was also indicated by some of the defence lawyers and police officers who participated in the survey. Almost a quarter (5 out of 22) of the lawyers commented that the letter of rights should be drafted in simpler language with less legal terms. 5 of the surveyed police officers expressed similar thoughts, and commented that the language of the letter should be simplified and the letter itself be shorter.

"The letter should be useful to the suspects first, therefore it shouldn't be drafted in legal language."
Defence lawyer

To get a better idea of which parts of the letter of rights are in need of redacting, we asked that the surveyed defence lawyers provide examples of the questions their clients have about their rights after reading the document. The most recurring question was whether the suspect can refrain from giving evidence, completely or for the time being. 6 surveyed lawyers provided examples of receiving such questions. The second most recurring question, put down by 3 lawyers, was whether the suspect is allowed to call

or otherwise communicate with family members or other close ones. These recurring questions are indicative of which parts of the letter of rights should be afforded extra attention to make them clearer and more informative, when reviewing the document's text.

Officers' role in helping understand rights

Another aspect that should be addressed is more active involvement of police officers in informing suspects of their rights. Police officers should provide additional verbal explanations along with the letter of rights to help clarify any questions the suspect may have, not merely serve the written document. Accordingly, suspects should be encouraged to ask police officers for explanations or additional information on how to exercise their procedural rights. The right and suggestion to pose additional questions could be emphasized in the letter of rights itself.

Additionally some procedure to verify whether the suspect actually understands his or her rights as a routine exercise, should be put in place, instead of merely requiring to sign copies of the received documents, as is the current practice. Active engagement by police officers with the suspect in explaining the latter's rights could help ensuring that the procedure of informing a suspect is not merely a formality, but a real step towards ensuring fairness of the criminal procedure.

One of the surveyed defence lawyers commented at length about the need to shift the investigating officers' mentality from an overly formal approach:

"Guaranteeing the rights of suspects and the accused is one of the main objectives that should be raised for the criminal investigation institutions, because it is at the primary stages of the proceeding where the person becomes a participant of the proceedings and receives a certain status and rights. This important task goes to the persons conducting the criminal investigation – officers, prosecutor. So while their attitudes are overly formal, the letter of rights will also remain that way. If the officer, prosecutor realises the importance of this task [...] and will carry out this procedural action not formally but genuinely, I believe, the letter will have a real purpose, will allow the suspects to realise their rights and exercise them."

Defence lawyer

Number of documents served

The number of procedural rights-related documents submitted to the suspect, and the confusing manner in which they are served also came under criticism by the survey participants. Three of the surveyed police officers commented that the number of different documents served should be reduced.

"In this matter and others the amount of red tape increases, and investigators have to fill out more and more papers. Perhaps we can reduce the amount of paper in cases and, for example, join this document to the protocol on the right to a defence lawyer."

Police officer

This criticism was echoed by one of the surveyed defence lawyers as well:

"The letter of rights should not necessarily be a separate document. [...] Now the suspects are often exasperated, they don't understand why they have to sign 4 different documents before questioning: notification of suspicion, explanation of right to a defence lawyer protocol [...], personal data certificate, the letter of rights protocol, and finally after that – the suspect's questioning protocol."

Defence lawyer

These may very well be valid points. If the suspect is served many documents at once, each dealing with complex legal subject-matter, and contents of some of which are overlapping, this might not serve their best interest. A large number of documents, each of which have to be signed, may be distracting and disorienting to a person, who is already likely to be under high stress from becoming a suspect in criminal proceedings. A reorganization of the document pack to be served to the suspect at the outset, and consolidation of overlapping documents may serve in allowing the person to better understand their contents.

Conclusions and recommendations

Conclusions

1. Most of the Directive on right to information in criminal proceedings provisions have been transposed to Lithuanian law.
2. In addition to Lithuanian, the letter of rights is pre-prepared in 5 other languages – English, French, German, Polish, and Russian. A written translation of the letter of rights is rarely provided to suspects who speak none of these languages, and authorities often choose to only provide oral translation in such cases.
3. Procedural implications for failure to provide the letter of rights to a suspect are not specified in procedural laws and are unclear.
4. The Lithuanian letter of rights provided uses long and complex sentences, and legal language do describe suspect's procedural rights. The letter may be difficult to read and understand for a person without a legal background. It is also served along a large number of different documents which is further detrimental to the suspect's ability to focus on the letter of rights.
5. Practitioners' survey results indicate that the current letter of rights is of mediocre level of accessibility, and there is room for improvement.
6. Practitioners believe that suspects were rarely attentive when reading the letter of rights, and receive relatively few questions about the letter's contents from the suspects during criminal proceedings.
7. Police officers rarely take an active role in ensuring that the suspect understands the content of the provided letter of rights, such as offering additional oral explanations or making sure that the suspect has actually understood the content of their rights.

Recommendations

1. Requirement to provide a translated letter of rights to a person who does not speak Lithuanian should be strictly observed in all cases, not only when a translation is necessary to a language in which the letter is pre-translated.
2. Amendments clarifying the Code of Criminal Procedure where procedural consequences of failure to provide information in criminal proceedings is concerned should be considered.
3. The Prosecutor General's Office should update the current letter of rights in order to clarify its language by using shorter and simpler sentences with less legal terms, and making the document itself briefer, to make the letter more accessible.
4. The updated letter should emphasize that suspects have right to request additional information and explanations about their procedural rights.
5. The Prosecutor General's Office should revise the documents served upon the suspect before first questioning, including the letter of rights, so as to combine overlapping documents and reduce their number, to avoid unnecessary confusion on the suspect's part.
6. Training and professional guidance should be provided to police officers handling suspects before and during first interviews, so as to enable and encourage them to provide explanations along with the letter of rights. Testing that the suspect has understood the contents of the letter of rights should be established as a routine exercise.
7. Drafting of a special, more accessible letter or letters of rights for vulnerable groups, such as minors or people with disabilities, should be considered by the Prosecutor General's Office. Institutions and organisations with relevant specific expertise in such areas should be involved in this process.

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 usually 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. If the suspected person wishes to notify about

his/her detention or arrest any other person, who is not the family member or the close relative, the pre-trial investigation officer or the prosecutor shall notify such a person only if, in the opinion of the pre-trial investigation officer or the prosecutor, this shall not prejudice the success of the pre-trial investigation.

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 endanger safety of his/her family members, close relatives or any other person.

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.