



ProRPC
STRENGTHENING PROCEDURAL RIGHTS IN POLICE CUSTODY

From law to practice:
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POLICE CUSTODY

Right to information

FACTSHEET



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Project description

Authors

The Factsheet was developed in the framework of the EU Project 'From law to practice: Strengthening procedural rights in police custody (ProRPC)' implemented by the Ludwig Boltzmann Institute of Fundamental and Human Rights (LBI GMR, Austria), in cooperation with APADOR-CH (Romania), Fair Trials Europe (Belgium), the Irish Council for Civil Liberties (Ireland), and Rights International Spain (Spain) from December 2020 to March 2023. The Factsheet was published in February 2023.

The Factsheet was written by Nora Katona and Giuliana Monina of the LBI GMR. It was edited by Hauke Benjes-Pitz of the LBI GMR. The chapter on the regional challenges draws heavily on the work of Fair Trials Europe, who conducted in depth regional research in the framework of this Project.

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Information about the Project and Factsheet

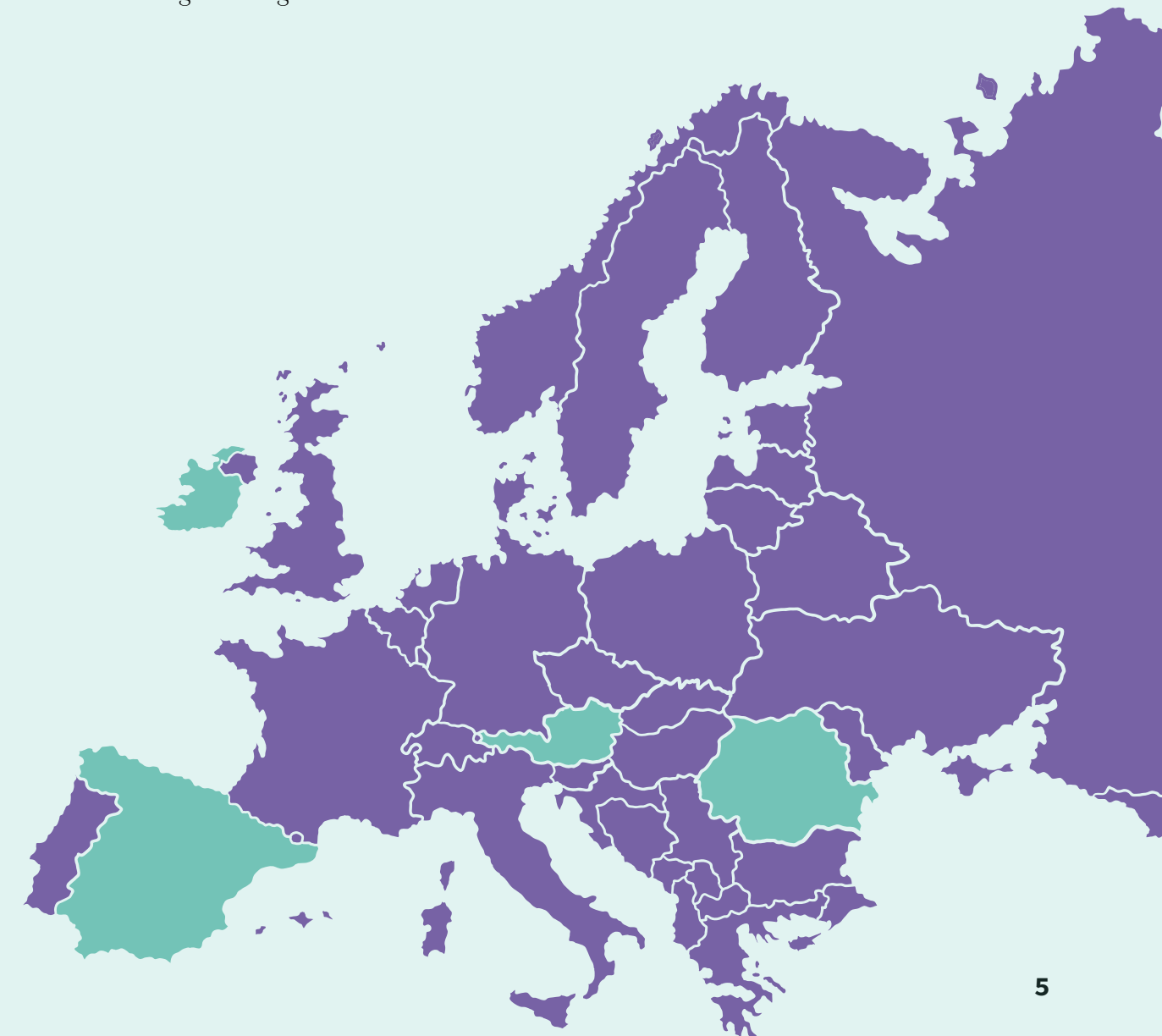
The Factsheet highlights the relevance of the right to information during the criminal investigation phase. It reflects on identified challenges and discusses promising practices. The goal is to respond to the question WHAT can be done to strengthen procedural rights. To this end, the Factsheet unpacks the key elements of the promising practices and attempts to identify lessons learnt. Thereby, the Factsheet not only describes the promising practices, but also investigates three main questions:

- What are the main benefits of the promising practices?
- How did the promising practices come about (e.g. What triggered their implementation? What were the challenges faced beforehand?)
- What are the remaining challenges in the implementation of the promising practices?

The Factsheet is intended for all criminal justice actors and advocates who are interested in reforming their national system. The research on the promising practices focused especially on the practices of four EU Member States: Austria, Ireland, Spain, and Romania. Additional practices and examples from other EU Member States were gathered via regional consultations as well as the regional research conducted by Fair Trials Europe.

As each practice came about in a specific national context, in order to successfully replicate them, it will always be important to tailor them to the national contexts, dynamics and cultures. Yet we hope that disseminating information on the reform processes occurred in other countries can offer useful inspiration to strengthen procedural rights and overcome existing barriers.

Other factsheets of the series cover the areas of access to a lawyer, legal aid, and audio-visual recordings. The factsheets should be read in combination with the final report that provides insights into HOW the envisaged change can be achieved.



Project definitions

Right to information

The right to information, as outlined by Art 3 of the Right to Information Directive, consists of the right of the suspect or accused person to be informed, orally or in writing, in simple and accessible language, taking into account any particular needs of the suspect, of their procedural rights, namely the right to access to a lawyer, to any entitlement to free legal advice and the conditions for obtaining such legal advice, to be informed of the accusation, to interpretation and translation, and to remain silent.

Notifications of rights

Oral or written (or both) information of rights provided to the suspect at any relevant stage of the investigation phase.

Letter of rights

In addition to the right to information as per Art 3 of the Right to Information Directive, suspects or accused persons who are arrested or detained are entitled to a Letter of Rights according to Art 4 of the same Directive, written in simple and accessible language, in a language they understand, containing information on the right to access the materials of the case, to have consular authorities and one person informed, to access urgent medical assistance, to the maximum number of hours they may be deprived of liberty before being brought before a judicial authority, on challenging the lawfulness of the arrest, obtaining a review of the detention, or on making a request for provisional release. In some jurisdictions, it is referred to as Notice of Rights and Entitlement. The letter of rights should be written or explained in child-friendly language to any child suspect or accused in criminal proceedings.

Interview

Refers to questioning by the police, prosecutor or an investigative judge. It may have the same meaning as interrogation and questioning in some jurisdictions.

Child

A child is any person below the age of 18 years, as provided by Art 1 of the UN Convention on the Rights of the Child (CRC). When referring to a child who is a suspect or accused person, the term child may extend to persons older than 18 in certain cases as established by the EU Directive (EU) 2016/800 of 11 May 2016.

Persons in a situation of vulnerability

Any person who, because of his or her specific situation or circumstances, requires specific care, attention or assistance.

Introduction

The right to information of suspects and accused persons in the criminal justice is of utmost importance as it functions as a ‘gateway right’. Under international standards, the right to information is anchored in three main obligations: the right to a fair trial, the right to liberty and security of persons and the prohibition of torture and ill-treatment.

Its benefits are manifold. Under the aegis of the right to a fair trial, the right to information aims to enable suspects and accused to prepare an effective defence and guarantee a trial based on the principle of equality of arms. Whenever the suspect is deprived of liberty, the right to information further strengthens the protection afforded by the right to liberty and security of persons, which requires authorities to inform the persons of the reasons for the arrest and of any charge against them, thus functioning as an important guarantee against arbitrary or unjustified deprivation of liberty. Last but not least, as maintained by the anti-torture bodies and especially the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the right to information – together with the rights of access to a lawyer, access to a medical expert, and notification of the detention to a third party – is a fundamental safeguard against ill-treatment and plays a crucial role in preventing potential abuse during the early stages of custody, counting among the most effective safeguards to prevent torture.¹

In practice, however, legal language can often be complicated and difficult to understand, especially when read in the stressful context of police custody. This is especially worrying considering that according to general statistics a considerable portion of the general population has a low literacy level.²

Yet the implications of the decisions made at these preliminary stages may have far-reaching consequences. For example, research shows that people with intellectual disabilities are internationally over-represented in the criminal justice system at the police custody stage. It further points to a high rate of waivers of rights among persons with intellectual disabilities, as well as a lack of understanding of rights, and false confessions. Persons with intellectual disabilities can feel “frightened and confused”, which can be related to the lack of accessible information and challenges in communication.³

1. Richard Carver and Lisa Handley (eds), ‘Does Torture Prevention Work?’ (Liverpool University Press 2016) p 633; CPT, ‘12th General Report’, CPT/Inf (2002) 15, para 44; SPT, ‘Country Report: Romania’ (2018) CAT/OP/ROU/1, para 29.

2. Statistics from Germany show that almost a third (32,6%) of the German population do not reach the reading competencies of B1 of the European reference framework see Anke Grotlüschen and others, ‘LEO 2018 – Leben mit geringer Literalität’ (University Hamburg 2019). The OECD Program for the International Assessment of Adult Competencies measured a low literacy level for 17,1% up to 28,3% of the adult population in Austria, Spain and Ireland, see Statistik Austria, ‘Schlüsselkompetenzen von Erwachsenen – Vertiefende Analysen der PIAAC-Erhebung 2011/12’ (2014) <https://www.statistik.at/fileadmin/publications/Schlüsselkompetenzen_von_Erwachsenen_Vertiefende_Analysen_der_PIAAC-Erhebung_2011_12.pdf> accessed on 5 December 2022; Instituto Nacional de Evaluación Educativa, ‘PIAAC Programa Internacional para la Evaluación de Competencias de la Población Adult 2013 – Volumen I: Informe español’ (2013) <<https://www.educacionyfp.gob.es/dctm/ince/internacional/piaac/piaac2013voll1.pdf?documentId=0901c72b81741bbc>> accessed on 5 December 2022; An Phríomh-Oifig Staidrimh – Central Statistics Office, ‘PIACC Survey Results for Ireland’ <<https://www.oecd.org/skills/piaac/Ireland.pdf>> accessed on 5 December 2022.

3. Gautam Gulati and others, ‘The collaborative development through multidisciplinary and advocate consensus of an accessible notice of rights for people with intellectual disabilities in police custody’ (2022) 83 IJLP p 2. <[https://www.](https://www.sciencedirect.com/journal/international-journal-of-law-and-psychiatry/vol/83/suppl/C)

Thus, it is crucial that all people who are questioned truly understand their rights. This includes persons who have been arrested and/or are facing detention and have received a Letter of Rights drafted in plain and accessible language. Moreover, considering that arrested people may well too often be children, people with intellectual and/or psychosocial disabilities, people experiencing poverty, people from racialised communities, migrants, people with addictions, authorities should be prepared to provide the information in a manner that is appropriate to their specific individual needs.⁴

<[sciencedirect.com/journal/international-journal-of-law-and-psychiatry/vol/83/suppl/C](https://www.sciencedirect.com/journal/international-journal-of-law-and-psychiatry/vol/83/suppl/C)> accessed on 5 December 2022.

4. On children see Arts 37 and 40 United Nations Convention on the Rights of the Child, adopted on 20 November 1989, entered into force on 2 September 1990 (CRC); CRC Committee, ‘General comment No. 24 (2019) on children’s rights in the child justice system’ (2019) CRC/C/GC24; CPT, ‘Report to the Austrian Government on the visit to Austria carried out by the CPT from 22 September to 1 October 2014’ CPT/Inf (2015) 34, para 26; poor implementation of their right to information has been comprehensively documented in the 2019 UN Global Study on Children deprived of Liberty, for an interactive version of the Study, see <https://nochildbehindbars.com>; on foreign suspects and accused persons, racialised communities and migrants see Fair Trials, ‘Racism in Europe’s law enforcement and criminal justice systems – a non-exhaustive compilation of evidence and resources for policy makers’ (2022) <<https://www.fairtrials.org/articles/publications/racism-in-europes-law-enforcement-and-criminal-justice-systems/>> accessed on 5 December 2022; Fair Trials, ‘Disparities and Discrimination in the European Union’s Criminal Legal Systems’ (2021) <<https://www.fairtrials.org/articles/publications/disparities-and-discrimination-in-the-european-unions-criminal-legal-systems/>> accessed on 5 December 2022; CPT, ‘Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT’, CPT/Inf (2018) 15, para 36-37; on persons with disabilities see Arts 9 and 13 Convention on the Rights of Persons with Disabilities (CRPD), adopted on 13 December 2006, entered into force on 3 May 2008; UN Special Rapporteur on the Rights of Persons with Disabilities, ‘International Principles and Guidelines on Access to Justice for Persons with Disabilities’ (2020).

International standards

On the international level, the right of arrested persons to be informed, at the time of arrest, of the reasons for the arrest and of any charges against them in a language they understand is enshrined in Articles 9(2) and 14(3)(a) of the International Covenant on Civil and Political Rights (CCPR). Complementarily, two specialised UN Conventions deal with the specific situation of persons with intellectual and/or psychosocial disabilities and children. The Convention on the Rights of Persons with Disabilities (CRPD) requires State Parties to take appropriate measures to ensure equal access to persons with disabilities, inter alia in regard to information and communications (Article 9 (1) (b) CRPD). The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities provide additional guidance. The Convention on the Rights of the Child (CRC) protects the right of every accused child to be informed promptly and directly of the charges against them (Art 40(2)(b)(ii)). Further specifications can be found in the CRC Committee's General Comment No 24, which states that "authorities should ensure that the child understands the charges, options and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons".⁵

Arts 5(2) and 6 of the European Convention on Human Rights (ECHR) contain the right of persons deprived of their liberty (whether due to arrest or detention)⁶ to be informed in simple, non-technical language that the person can understand the essential legal and factual grounds for the arrest, so as to enable them, if they so wish, to challenge its lawfulness as well as their procedural rights in criminal proceedings.⁷ Concerning children, the ECtHR held that criminal proceedings must be so organized as to respect the principle of the best interests of the child. It is essential that children charged with an offence are dealt with in a manner which takes full account of their age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote its ability to understand and participate in the proceedings.⁸ The authorities must take steps to reduce, as far as possible, the children's feelings of intimidation and inhibition and ensure that they have a broad understanding of the nature of the investigation, of what is at stake, including the significance of any penalty which may be imposed as well as of their defense rights and, in particular, of his/her right to remain silent.⁹ Child-friendly communication techniques can facilitate children's understanding of their rights.¹⁰

The EU Directive 2012/13/EU on the right to information in criminal proceedings (Directive on information)¹¹ built on and complemented these international standards, providing more clarity, some additional rights, as well as binding force and the possibility to be enforced.¹² One of the main novelties of the Directive is the explicit obligation to provide a written "Letter of Rights" explaining the rights of arrested persons.¹³ The Directive also provides that the requirement of "simple and accessible language" is interpreted taking the specific needs of the suspect into account.¹⁴ Thus, the Directive requires EU Member States to guarantee that suspected and accused persons are amongst others:

- Promptly informed of their procedural rights in simple and accessible language (Art 3);
- Promptly provided with a written Letter of Rights, which they shall be given an opportunity to read and shall be allowed to keep in their possession throughout the time they are deprived of liberty (Art 4 (1));

The EU Directive on children also enshrines the right to information. The Directive affirms that an information should be given in writing, orally or both, and in simple and accessible language, and that they be provided with a Letter of Rights pursuant to the Directive on information.¹⁵

5. CRC Committee, CRC/C/GC/24, para 48.

6. ECtHR, *Shamayev and Others v. Georgia and Russia*, App no 36378/02, 12 April 2005, § 413 and 414.

7. ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, App no 12244/86, 12245/86 and 12383/8630, 30 August 1990, § 40.

8. See ECtHR, *Adamkiewicz v. Poland*, App no. 54729/00, 2 March 2010, § 70; ECtHR, *Panovits v. Cyprus*, App no. 4268/04, 11 December 2008, § 67; ECtHR, *V. v. the United Kingdom*, [GC] no. 24888/94, 16 December 1999, § 86; ECtHR, *T. v. the United Kingdom*, [GC] no. 24724/94, 16 December 1999, § 84.

9. See ECtHR, *Martin v. Estonia*, App no. 35985/09, 30 May 2013, § 92; *Panovits v. Cyprus*, § 67; ECtHR, *S.C. v. the United Kingdom*, App no. 60958/00, 15 June 2004, § 29.

10. See Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice', 17 November 2010, 39 and 75.

11. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p 1–10 (hereinafter: Directive on the right to information). Excluded from an in-depth analysis in this factsheet are the aspects of informing a third party or a consular authority, as well as the access to case files.

12. Directive on the right to information, 1–10; See also Steven Cras and Luca De Matteis, 'The Directive on the Right to Information' (2013) 1 *Eucrim* <<https://eucrim.eu/articles/directive-right-information/>> accessed on 9 December 2022; on the added value of EU law see: Giuliana Monina and Nora Katona, 'Guidebook: Strengthening the rights of suspects and accused in criminal proceedings: the role of National Human Rights Institutions', December 2019, p 23ff.

13. Directive on the right to information, Arts 3 and 4.

14. *Ibid*, Art 3(2).

15. 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, OJ L 132, 21.5.2016, p 1–20 (hereinafter: Directive on children). Arts 4(2), 4(3) and Recital 18. See also European Union Agency for Fundamental Rights (FRA), 'Children As Suspects Or Accused Persons In Criminal Proceedings: Procedural Rights' (2022) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-children-procedural-safeguards_en.pdf> accessed on 9 December 2022.

Regional challenges

According to the 2018 implementation report of the European Commission, there were still difficulties in the implementation of the Directive on information, especially in those EU Member States where the right to information did not previously exist or was not as detailed. Challenges included, in particular, the Letter of Rights in criminal and European arrest warrant proceedings, the right to information about the accusation, and the right to access to materials of the case. The Commission warned that unless remedied, divergences may weaken the effectiveness of the rights provided by the Directive, jeopardising equal access to information across EU Member States.¹⁶

Previous research showed that the Directive on information has been mostly correctly transposed into law, but that there continue to be several challenges in its practical implementation.¹⁷ In the framework of this project, a survey circulated by Fair Trials through its network of criminal law practitioners confirmed it: even where the right to information has been transposed into law, many suspects and accused persons are still not effectively informed of their rights and thus not able to effectively exercise them.¹⁸

Numerous actors put forward concrete recommendations as to how the right to information should be improved.¹⁹ These include, inter alia: a) ensuring that Letter of Rights are drafted in a simple and accessible language; b) setting up mechanisms or guidance to ascertain whether the suspect and accused person understands their rights and the implication of a waiver; c) paying attention to situations in which suspects and accused persons may be disadvantaged through a language barrier, a lack of education or a physical, psychosocial or intellectual disability.

However, most EU Member States have yet to fully implement these recommendations and face several challenges in doing so as identified in the following.



Few attempts to ensure that procedural rights are effectively understood: The Directive requires that the suspect or accused person should be informed about their rights orally and/or in writing in an accessible manner. Research shows that even if the notification of rights is ensured, it is, in practice, sometimes only a formality. Few attempts are undertaken to ensure that the suspect or accused person effectively understands the rights and consequences of waivers.²⁰ Often, in fact, in court it must be proven that the information on rights was provided, not that it was understood.²¹

16. European Commission (EC), 'Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings', COM(2018) 858 final, 18 December 2018 (Commission Implementation Report). Since 2014, the EC opened infringement proceedings against seven Member States who had not communicated the necessary measures for transposition, namely Cyprus, the Czech Republic, Luxembourg, Malta, Slovenia, Slovakia, and Spain. All proceedings were closed between 2014 and 2018.

17. Ed Lloyd-Cape, 'Inside Police Custody 2: Comparative Report' (2018) 30ff <<https://www.iccl.ie/wp-content/uploads/2018/12/Inside-Police-Custody.pdf>> accessed on 9 December 2022; FRA, 'Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings', (2019) pp 23ff <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-rights-in-practice-access-to-a-lawyer-and-procedural-rights-in-criminal-and-european-arrest-warrant-proceedings.pdf> accessed on 9 December 2022.

18. The objective of the survey was to assess how the procedural rights guaranteed by the EU Directives were implemented in practice in police custody.

19. Ed Lloyd-Cape (2018) pp 92; see also FRA (2019) pp 11ff and FRA (2022) pp 32ff.

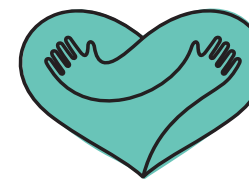
20. Ed Lloyd-Cape (2018) p 40; FRA (2019) pp 23ff.

21. Regional Consultation, Vienna.



Inaccessibility of the information provided in the Letter of Rights:

Where Letters of Rights are handed out to suspects or accused persons,²² they tend to be lengthy and complex, not drafted in accessible language, and often simply copied from the criminal procedure code or similar legislation.²³ Furthermore, in practice, suspects or accused persons are not always given an opportunity to read the Letter of Rights and worse, sometimes police officers actively discouraged them from exercising their rights.²⁴ As a result, suspects or accused persons may not understand the notification of their procedural rights, which ultimately leads to a violation of the right to a fair trial.²⁵ In some Member States, suspects or accused persons are handed the Letter of Rights to read, but are not always allowed to keep it in their possession,²⁶ or are provided with it only after the interview has started, or even when it has already been concluded.²⁷ Rarely are alternative formats used to convey the rights, especially to those who are in an especially vulnerable situation (e.g., children, persons with intellectual and/or psychosocial disabilities).



Children and adults in vulnerable situations:

Moreover, the needs of children and adults in vulnerable situations are not always taken adequately into account. Children run a higher risk of being overwhelmed and negatively impacted by the experience of criminal proceedings, and violations of their procedural rights can have devastating implications on their lives. Thus, their particular needs must be met in order to ensure their effective participation and that their rights are respected. However, in many countries, the Letter of Rights provided is often not adapted in a child-friendly language.²⁸ Lawyers often also lack training in the procedural adjustments necessary when representing suspected or accused children, such as adapting their communication so that the child understands the process and their rights.²⁹ Police officers generally do not receive such communication training either.³⁰ In addition, there is often no regulation or protocol dealing with notifying suspects or accused persons in

22. It was indicated by respondents to Fair Trials' regional survey that in some states, there is still no proper Letter of Rights provided to suspected persons before the interview. It was for example reported that in Bulgaria, rights are mentioned in the questioning protocol, which is only provided after questioning.

23. Ed Lloyd-Cape (2018) p 41; See also Fair Trials, 'Where's my lawyer – Making legal assistance in pre-trial detention effective' (2019) p 15 <<https://www.fairtrials.org/articles/publications/wheres-my-lawyer/>> accessed on 9 December 2022; Commission Implementation Report p 9f.

24. Ed Lloyd-Cape (2018) p 41.

25. Ibid.

26. Ibid, p 32ff. Eg in Lithuania or Spain (in the latter ostensibly on the grounds of safety).

27. Ibid.

28. All respondents to Fair Trials' regional survey indicated that in their country of practice, there was no version of the Letter of Rights adapted to children; See also Agne Limante et al, 'LA Child – Legal Aid for Children in Criminal Proceedings: Report on Current European National Frameworks' (2021) p 63 <<https://lachild.eu/the-projects/la-child/guidelines-on-legal-aid-for-children/>> accessed on 9 December 2022.

29. Fair Trials, 'Advancing the Defence Rights of Children – Manual for Practitioners' (2018) p 3 <https://www.fairtrials.org/sites/default/files/publication_pdf/ADRC%20Training%20Manual%20-%20Sep%202018.pdf> accessed on 9 December 2022. See also the findings from the 2021-23 CLEAR-Rights Project on legal assistance for children, led by terre des hommes <<https://childhub.org/en/series-of-child-protection-materials/clear-rights>>.

30. As confirmed by all respondents to Fair Trials' regional survey as regards their country of practice.

Promising practices on the right to information

vulnerable situations of their rights,³¹ and these persons report similar difficulties in understanding the information provided to them in criminal proceedings, as it is not adapted to their particular needs.³² In some jurisdictions, it is further not clearly regulated to whom the provisions apply and when, or their needs only have to be taken account if the person is arrested.³³ These factors prevent those persons from being provided with their rights under the Directives and from effectively taking part in criminal proceedings.

For example, research conducted in Ireland shows that 1 in 3 people in Irish prisons have an intellectual disability.³⁴ In addition, a study with participants from almost all universities in Ireland showed challenges and barriers for equal access to law in the following areas:³⁵

- **Recognition of disabilities:** Even highly trained professional may find it hard to determine whether a person has an intellectual disability (ID), which results in serious challenges in practice, also during police custody.
- **Communication:** There is systematic lack of training in communication, while communication is key.
- **Information:** There is no accessible format for persons with intellectual and psychosocial disabilities.
- **Support:** Responsible Adult Safeguards exist, but there is no data on how they are implemented, how often they are used etc.

31. Ed Lloyd-Cape (2018) p 41, which was confirmed by all respondents to Fair Trials' regional survey, who indicated that in their country of practice, there was no version of the Letter of Rights adapted to adults with language disorders or mental disabilities.

32. FRA, 'Rights of suspected and accused persons across the EU: translation, interpretation and information' (2016) p 96 <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-right-to-information-translation_en.pdf> accessed on 9 December 2022.

33. Commission Implementation Report.

34. Gautam Gulati and others, 'Intellectual disability in Irish prisoners: systematic review of prevalence' (2018) 14(3) IJPH 188.

35. Gautam Gulati and others, 'Challenges for people with intellectual disabilities in law enforcement interactions in Ireland; thematic analysis informed by 1537 person-years' experience' (2021) 75 IJLP <<https://www.sciencedirect.com/science/article/pii/S0160252721000121>> accessed on 9 December 2022.

In the next section promising practice examples will be displayed that were implemented in reaction to the identified regional challenges. The practices themselves or the way they were put in place are promising



Promising practice from Austria

Description of the practice

The concrete example illustrated in this factsheet concerns a computer-assisted legal instructions tool aiming to support police officers in the oral notifications of rights. The tool is called New Generation PAD ("Protokollierungssystem: Protokollieren, Anzeigen, Daten").

The New Generation PAD provides relevant legal text with a corresponding explanation in simple and accessible language, including information about the defendants' right to defend themselves or to remain silent and not incriminate themselves.

There are up to four instances in which suspects should be informed about their rights according to Austrian law: (a) the protocol of arrest (only in cases of arrest); (b) the Letter of Rights (only in cases of detention); (c) the summons for questioning and (d) the notification before the interview.

Consequently, the police officer documents the defendant's answer for each right and only then may the questioning start.

Benefits

The New Generation PAD attempts to improve the accessibility of the information provided to suspect and accused persons as well as set up a mechanism to ensure that procedural rights are understood. Although there was no clear consensus and several stakeholders also pointed at the remaining challenges (see below, 4.1.4), this research has identified the following aspects as overall beneficial.

The New Generation PAD facilitated the work of police officers in several ways:

- It unified all modules for different kinds of police work into one system;
- It contains not only the relevant information on the legal provisions, but also an explanation in accessible language that police officers need to read out loud to suspects;³⁶
- It includes additional information, links and documents (such as a Letter of Rights) that can be easily accessed by police officers.

36. Gerrit Zach, Nora Katona and Moritz Birk (2018) p 52.

The New Generation PAD was introduced in combination with training to ensure that police officers had the proper knowledge to navigate the system and that the highest professional standards of notification of rights was ensured.³⁷ The new tool was welcomed by police officers, who reported it to be of great support in explaining the significance of the rights to suspects in an accessible language. The notification of rights is often perceived as very complex by police officers and is not something they are thoroughly trained for.

The new system also introduced certain advantages for suspects and accused persons:

- The information on rights is no longer printed out and signed before questioning, as it was the frequent practice in the previous system. But it can be signed with the written transcript after questioning. This enables the police officer to go through the information with the suspect.
- Certain guarantees were put in place to ensure that circumventing notification rights is less likely, for example:
 - All mandatory notifications have to be made, answered and ‘ticked-off’ in the system, as the interview cannot otherwise be started. Additional rights (such as for children) are shown in form of a checklist to ensure that no information is forgotten.
 - The sequence of the reporting varies to ensure that a circumvention is less likely, and it is not possible to always tick the boxes in the same order.
 - The system records how long the notification of rights takes.³⁸

How it came about

Initially introduced in 2008, a new generation computer-assisted legal instructions tool was created in January 2018.

Before the new system was in place, research showed that the practice by the police was to print the notification of rights prior to the interview and request the suspect to sign it. It was reported by some police officers that they also additionally provided oral explanations. It was equally noted that some of the suspects simply signed the document without reading it, making the notification procedure a rather formalistic procedure. Moreover, at least 59 different versions of the instructions on the rights existed which, in combination with other factors (e.g. the amount of interviews), led to great dissatisfaction on the part of the police about the complexity and length of the notification of rights.³⁹ Additional training was not perceived as sufficient to overcome these challenges.⁴⁰ It was also noted that the notification was complex and that details were difficult to understand for persons without a legal background.⁴¹

In 2008, a new legal basis was created for investigative proceedings in Austria. Criminal procedure was broadly reformed. The prosecutor was made head of the investigation, which became a collaboration between the prosecutor and the criminal police.⁴² Furthermore, additional changes were made to

37. Materials received from the police.

38. Materials received from the police. For all points mentioned above, see also Gerrit Zach, Nora Katona and Moritz Birk (2018).

39. Gerrit Zach, Nora Katona and Moritz Birk (2018) p 52ff.

40. Exchange with a representative of the police.

41. Richard Soyer and Alexia Stuefer in Helmut Fuchs and Eckart Ratz (eds), Wiener Kommentar StPO (rdb Manz 2022) § 50 StPO, point 19.

42. See Gerhard Donhauser, ‘Die StPO-Reform und der liberale Rechtsstaat’ (2019) 4 JST 310; Rudolf Keplinger, ‘10 Jahre StPO Reform aus Sicht der Kripo’ (2019) JST 4 324. However, some points of criticism were raised by lawyers and researchers. The role of the police in investigation procedures has been critically noted, with the argument that it

transpose EU Directives into national law.⁴³

When the above mentioned amendments entered into force, the prosecution, judges as well as suspects and lawyers were expecting the police to provide suspects and accused persons with a (better) quality information about their rights.⁴⁴

The call for change came also from within the police. The adoption of a new tool was based on experiences gained in Liechtenstein. In 2014, as part of an internal suggestion scheme, a police officer approached the Austrian Federal Ministry of Interior with a project idea aiming at introducing the already implemented and proven practice of Liechtenstein in Austria. Hence, the Austrian example shows how promising practices can be transferred between States and how learning from each other can benefit all persons involved in criminal proceedings.

No legal change was required to implement the new tool, as the Austrian Criminal Procedure Code (CPC) already provides a sound legal basis for the right to information.⁴⁵ While the new system cannot replace the individual police officers’ skills and commitment, it can provide a solid support for the notification of rights.

Remaining challenges

Despite the positive developments brought about with the New Generation PAD, there are several remaining challenges.

The current system was developed by the police and is not publicly available, thus, its quality and impact on the understanding of suspects cannot be independently assessed. To ensure more transparency and improve the general public’s trust in the criminal justice system, the quality and accessibility of the notification of rights included in the system should be subjected to an external and independent evaluation and certified by easy language experts.

In the New Generation PAD, some of the suspects in a most vulnerable position, such as suspects with psychosocial disabilities are not specifically mentioned and alternative formats for their needs (e.g. Braille, large print, pictograms, audio or video support) are currently not available.

The project consultations also showed that additional links should be added to the system, for example, a list of lawyers and on-duty lawyers. This would enhance the efficiency and expedite the notification of lawyers.

Further, lawyers, suspects and police officers agreed that the information in the Letter of Right is still too hard to understand, drafted in complicated, semi-academic language that is not accessible to many persons.⁴⁶

gives an executive organ like the police too much power, and especially during a stage which is widely regarded as a crucial phase of criminal proceedings (Gerhard Donhauser (2019) 318f). Some scholars argue that the investigation is now a matter of collaboration between prosecutor and the police which eliminates checks and balances (Wilfried L Weh, ‘10 Jahre StPO Reform und die unterbliebenen Reformen’ (2019) 6 JST 331.

43. 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, OJ L 297, 1 and the Directive on children..

44. Information provided by a representative of the police.

45. The fundamental legal provision regarding the information of the suspect is Austrian Criminal Code, Federal Law Gazette No. 60/1974 as amended by Federal Law Gazette I No. 112/2015 (Austrian Criminal Code), art 50.

46. Gerrit Zach, Nora Katona and Moritz Birk (2018) p 56 and findings from the project consultations conducted in this project.



Promising practices from other EU Member States

More generally, the concern was raised that, even with the implementation of the New Generation PAD, the possibility that the notification procedures remain a mere formality cannot be excluded. The new system was criticized on the grounds that the information about rights is sometimes executed very quickly and that the main concern is often to make sure that the information about rights is given in a formally correct way.⁴⁷ This risk was also acknowledged in a FRA report stating that “while the system can serve as a set of guidelines, it can also function as a pretext for inaction, as it can lead to law enforcement officers entering a kind of ‘autopilot’ mode and thereby disregarding the immediate context.”⁴⁸

In any event, the extent of some of the challenges described above can only be fully understood when looking at the broader procedural rights context in Austria, as challenges concerning the right to information are further exacerbated by the limited implementation of other procedural safeguards.

First, it remains difficult in practice to prove that suspects did not understand their rights.⁴⁹ In Austria, the Supreme Court has been rather conservative. If the transcript does not indicate communication difficulties, the Supreme Court seems to infer that the suspect did indeed understand.⁵⁰ This is so even if the information is not given in language that is appropriate to the intellectual abilities of the suspect.⁵¹ Moreover, despite the recent amendments linked to the transposition of the EU Directive on children, audio-visual recording – which would facilitate the verification of the notification of rights – is currently used only in limited cases for children⁵² and in no cases for adults.

Moreover, even if it can be proven that the suspect or accused person did not understand the information regarding the rights, the person’s questioning or their confession can still be used as evidence in most cases and challenging further evidence can be difficult in practice.⁵³

47. Ibid p 54.

48. FRA (2019) p 35.

49. Gerrit Zach, Nora Katona and Moritz Birk (2018) p 57; Austria, OGH (Supreme Court), decision 15 Os 112/15g, 11 November 2015.

50. Austria, Supreme Court, decisions 12 Os 67/16v, 26 January 2017; 15 Os 112/15g

51. Ibid.

52. According to the Austrian Juvenile Court Act, Federal Law Gazette No. 599/1988, § 37 subparagraph 1, the obligation to record questionings of children audio-visually stands if there is no lawyer, legal guardian, or person of trust to the child present unless this is technically impossible and postponing the questioning is not an option (see also § 36a on exceptions from recordings). On the right of child suspects to information, see also Helmut Sax, “Einsperren ist keine Lösung! Persönliche Freiheit als Kinderrecht – Alternativen zu Freiheitsentzug und Freiheitsbeschränkungen in Österreich“, 2023.

53. See e.g. Richard Soyer and Alexia Stuefer in in Fuchs and Ratz (2020) § 50 point 28f; Kurt Kirchbacher and Keglevic in Fuchs and Ratz (2020) § 152 point 1; Gerrit Zach, Nora Katona and Moritz Birk (2018) p 46.

Promising practice from Belgium: Redrafting the Letter of Rights in plain language, a multi-disciplinary effort

The practice from Belgium concerns the multi-disciplinary development of a new Letter of Rights in plain language, which is planned to be piloted in police stations in Belgium in 2023. The practice offers a helpful example on how to successfully start a reform of the Letter of Rights as well as how civil society organisations can contribute in this effort.

At the beginning of the process, Fair Trials and plain language experts, with the help of criminal justice stakeholders including lawyers, judges, prosecutors, police and representatives from the Ministry of Justice,⁵⁴ redrafted the Belgian Letter of Rights provided to suspected persons in police custody. This redrafting exercise went through a series of steps:

- A practical training module was created to raise awareness among lawyers and judges on the importance of plain language in criminal proceedings and to raise awareness how to use such language.⁵⁵
- The second half of the training was a group exercise in which participants, who had just learned about what plain language means, had to comment on and redraft the language used in the official Letter of Rights handed to suspects in police custody.
- Based on these exercises and discussions with criminal justice actors, Fair Trials and the plain language experts created a first alternate Letter of Rights, with the help of a graphic designer. The document became a colourful pocket-size leaflet that could easily be kept throughout the time of deprivation of liberty. On this document, only essential information was kept, redrafted using day-to-day vocabulary, and structured in short and simple sentences. Key words were highlighted and pictograms were used to facilitate understanding.
- The Letter of Rights was discussed at a roundtable organised with all participants in the training, as well as other criminal justice stakeholders. The Letter of Rights was finalised on the basis of the discussions at the roundtable.
- The revised Letter of Rights was then presented to the federal and local police to assess whether it was usable and relevant for them and matched the needs of both police officers and suspected persons. They welcomed the initiative and saw it as useful for the police themselves, who often struggle to find the appropriate language to explain peoples’ rights. However, they had concerns regarding the format, as they do not have the resources on the ground to print in colours and create foldable leaflets. Moreover, a wider team of representatives from the Ministry of Justice welcomed the initiative and noted the concerns raised by police officers on the ground.

54. Fair Trials, Version of the pilot alternative letter (in French) <https://www.fairtrials.org/app/uploads/2021/12/Declaration_de_vos_droits_BEFR.pdf> accessed on 9 December 2022. To compare see official Letter of Rights (in French) <https://justice.belgium.be/sites/default/files/2016-11_modele3_eu_fr.pdf> accessed on 9 December 2022.

55. See <<https://www.rijksoverheid.nl/documenten/brochures/2017/03/03/je-wordt-verdacht-van-een-straftbaar-feit-engels>> accessed on 9 December 2022.

- On the basis of the police’s comments and concerns, the format of the Letter of Rights was revised with the help of a plain language expert and a graphic designer. The objective was to ensure that police would be able to print the Letter of Rights in police stations in A4 format. The Letter of Rights was created both in colour and in black and white. The content of the Letter of Rights remained similar, but was slightly amended in the course of further discussion with the police.
- In 2022, a working group comprising the Ministry of Justice, Bar associations representatives, magistrates, the federal and local police, a plain language expert and Fair Trials was created to pilot the alternate Letter of Rights in several police stations in order to evaluate its impact on the effectiveness of procedural rights. They are regularly meeting up to organise the practical aspects of the pilot that should kick off in the following months.
- Discussions are ongoing between the local police, the Ministry of Justice, bar associations and Fair Trials to pilot the new Letter of Rights in order to evaluate its impact on the effectiveness of procedural rights.

The success of this project lies in the fact that all stakeholders were empowered with training on plain language and involvement in redrafting the Letter of Rights from the beginning. Consensus between various stakeholders around the need for a new Letter of Rights and on the language used was steadily built from the inception of the project. Although the project comes from a private initiative (Fair Trials’ and plain language experts), members of the working group, and later the police themselves, became invested in the project and advocated for change.

There are, however, a number of remaining challenges. While a plain language Letter of Rights would facilitate comprehension for most suspected and accused persons, the language obstacle remains. It is thus necessary to make sure the document is translated into as many languages as possible and that interpreters are present in custody if necessary.

Similarly, the special needs of children and persons in vulnerable situations (persons with psychosocial and intellectual disabilities, blind or illiterate persons etc.) still need to be considered. Police officers and lawyers need to ensure that they understand their rights. In order to do so, it could be envisaged that the Letter of Rights is adapted to their specific situations. Another way could be to use simple and interactive videos to convey information on rights.

Moreover, as the project comes from a private initiative (Fair Trials’ and plain language experts), the redrafted Letter of Rights is undergoing a long process of consultations and piloting until it can be approved and used in police stations.

Promising practices from the Netherlands, Scotland and Spain: Making the information on rights available in a child-friendly manner

In the **Netherlands**, a plain version of the Letter of Rights especially designed for children is available and in use.⁵⁶ The appendix to the information sheet “You are suspected of criminal offence” contains pictograms and easy to understand information. The documents were developed by the Ministry of Justice and Security and published in March 2022.

56. See <<https://www.rijksoverheid.nl/documenten/brochures/2017/03/03/je-wordt-verdacht-van-een-strafbaar-feit-engels>> accessed on 9 December 2022.

In **Scotland**, reforms stem from public initiatives. Following the introduction of an updated Letter of Rights in January 2018, the Scottish Government launched a public consultation in 2019 to ensure its content, structure and language was accessible for all.⁵⁷ They received responses from organisations and individuals, who sometimes perceived the Letter of Rights as lacking clarity or containing conflicting information.⁵⁸ The Government then established a Working Group of key stakeholders (the police, prosecutors, lawyers, government representatives, and representatives from several NGOs) and linguistic experts, to advance reforms so that the Letter of Rights would properly capture the opinions expressed through the consultation process.⁵⁹ The Working Group discussed the possibility of producing a separate version of the Letter of Rights for children and young people alongside the standard letter that had been discussed. Previously, initiatives to provide children and young people with information on rights, for example in the form of a short and accessible guide, had already been developed by the Children and Young People’s Centre for Justice.⁶⁰

In **Spain**, as results of the “Let’s be clear” project, the University of Castilla – La Mancha in cooperation with UCLM, Grupo de Investigacion en Criminologia y Delincuencia Juvenil and JusTo developed an information package for each step of custody for children. Each package includes the following explanations: Who is Who - What will happen - My rights in clear. Each document exists in three formats: Comic, Video/ Audiovisual version and in written.⁶¹

The plain language tools and documents are currently not used in practice. The Civil Guards are considering to use it on the national level. While there is no empirical study or assessment of the usage of the video and comic in police stations, the documents were shown to children who could provide feedback in the development stage. A general assessment of the tools in practice would be considered as useful, also to assess the benefits for the police and other stakeholders. Moreover, the videos and comics could be used in schools as educational materials.

Promising practices from Ireland: Making the Letter of Rights accessible for persons with intellectual and psychosocial disabilities

In Ireland there are initiatives on the collaborative development through multidisciplinary and advocate consensus of an accessible notice of rights for people with intellectual disabilities in police custody.⁶²

The current initiative includes police officers from different ranks, representatives of people with disabilities, speech and language therapists, experts in communication, psychologists, ethicists, legal academics (specialist in evidence, professor of law), 3 people with intellectual disabilities. This research shows that persons with intellectual disabilities react best to pictures of real people instead of cartoons. In a best-case scenario, it should be a coloured picture. Moreover, information cannot be provided in isolation, and needs to consist of a two-way explanation, e.g. an explanation by the officer and a video/audio explanation. It has to be recognized that shortening the notification or Letter of Rights in itself is not sufficient to make it more accessible; rather the opposite is true if drafting accessible information for persons with intellectual disabilities. Consequently, the revised Letter of Rights is even

57. See <<https://consult.gov.scot/justice/letter-of-rights-for-scotland/>> accessed on 9 December 2022.

58. See <https://consult.gov.scot/justice/letter-of-rights-for-scotland/consultation/published_select_respondent> accessed on 9 December 2022.

59. See <<https://www.gov.scot/groups/letter-of-rights-for-scotland-working-group/>> accessed on 9 December 2022.

60. See <<https://www.cycj.org.uk/wp-content/uploads/2021/07/CYCJ-Know-Your-Rights-Guide-WEB.pdf>> accessed on 9 December 2022.

61. See <<https://www.uclm.es/grupos/crimijov/transferencia/hablemos-claro>> accessed on 9 December 2022.

62. Gautam Gulati and others (2022) p 2.



Key takeaways

longer. In addition, the revision of the Letter of Rights should be accompanied by training to enhance intellectual disability awareness.

Training for police developed by the research team headed by Prof Gautam Gulati focusses on the identification of suspects and accused persons in a vulnerable situation, effective communication, the provision of information and support to the detainee in a vulnerable situation. The research team has developed a Letter of Rights accessible for persons with intellectual disabilities and further steps are currently under discussion. Moreover, training modules were developed and implemented and the scope of target groups is planned to be adjusted and will possibly also include lawyers.

Plain language and alternative formats do not devalue information contained in the letter of rights

During the project consultations, the dilemma emerged between the need to provide information as legally comprehensive as possible and the accessibility of such information for suspects, especially children and people with intellectual and/or psychosocial disabilities. The problem could be solved for example by providing the plain language Letter of Rights in addition to the more comprehensive version.

Nonetheless, one of the key takeaways of the project consultations and the findings emerging from the several pilot initiatives across Europe is that the use of plain language and/or pictograms does not devalue information, rather it makes it more likely to achieve its very aim: making suspects effectively aware of their rights.

To ensure that suspects are effectively provided with quality written and oral information in plain language, processes should be established which are informed by multidisciplinary, collaboration, suspects involvement, evidence based research and accompanied by regular and independent evaluations and capacity building

In the framework of this project, several promising practices across Europe were surveyed and analysed. As a result, we could identify the following key learnings:

- The process leading to the development of plain language information should be collaborative and driven by a **multidisciplinary** group of stakeholders, including plain language experts, police officers from different ranks, speech and language therapists, experts in communication, psychologists, ethicists, legal academics, representative of the ministry of justice and interior. This will ensure that all the relevant perspectives are considered from the beginning and that those stakeholders directly involved in the notification of rights feel heard and perceive the process as beneficial.
- **Suspects and representatives of persons who may be in a particularly vulnerable situation**, such as children and persons with intellectual and/or psychosocial disabilities should also be involved in the revision or development of written information or guidance documents for oral information. Their involvement will bring a better understanding of their current needs.

- At the moment, there is a **lack of information of the situation of people in police custody and their needs**, e.g. how many of them cannot effectively participate in the proceedings, due to intellectual and psychosocial disabilities, lack of adequate knowledge of the language, illiteracy, how many are in an especially vulnerable situation, how many suspects have access to a lawyer, how many suspects waive their rights and for what reason. This hampers an accurate assessment of the barriers to equal access to information and justice. Thus, more research and joint efforts between criminal justice actors and civil society could bring about a better understanding of the current needs.
- It is necessary to **increase the transparency and regularly evaluate** the internal guidance for the notification on rights and the Letter of Rights. The evaluation should include an external and independent expert. This will not only lead to higher professionalism in providing effective information, but also increase the general public's trust in the criminal justice system.
- The successful initiatives analysed in this project were also accompanied by **training for police** officers on the revised guidance materials, tools and letter of rights. Such training is key to raise awareness on the importance of the right to information as well as on its benefits for all stakeholders involved.

The right to information can only be truly strengthened if the whole system of safeguards is also reinforced

Enhanced and easy to understand oral and written information is crucial, yet neither the best guidance on how to provide oral information nor the best revised Letter of Rights alone will be sufficient to achieve an overall fair trial, if implemented in isolation. Rather, we consider the right to information as part of a delicate system of interdependent safeguards. Thus, the right to information can only be truly strengthened if the whole system of safeguards is reinforced too. In particular, it is crucial to also strengthen audio visual recording, access to a lawyer and legal aid.

At the same time, each of these guarantees must be provided at all stages of the proceedings⁶³. Consequently, the right to information should not be circumvented by giving the information to a legal representative or person of trust, as information should be provided in such a way that effective participation can be ensured. On the contrary, the mere representation by a lawyer or person of trust does not suffice to ensure effective participation. It is crucial to empower the suspect or accused.⁶⁴

To further strengthen the overall system of procedural rights, it is important that the European Commission should enter into discussions with the relevant authorities of Member States with a view to ensuring that:

- The respective Letters of Rights are drafted in simple and accessible language, fully comply with the requirements of the Directive, and are available in a range of languages. Ideally, the European Commission should provide templates for the Letter of Rights at an EU level by taking into account existing developments and examples across the EU thereby enhancing minimum standards.

63. But see the case law of the ECtHR referring to the overall fairness of the proceedings: *Beuze v. Belgium* [GC], no. 71409/10 and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others.

64. ECtHR, *Stanford vs the UK* (11 April 1994); ECtHR, *T vs the UK*, *V vs the UK*, Joint decision 16 December 1999, para 88; ECtHR, *S.C. vs the UK*; *Linder/Katona/Kolda*, Dignity at Trial (2018), 23.

- Mechanisms are put in place to ascertain whether suspected and accused persons understand the rights of which they are notified, and the implications of waiving their rights;⁶⁵
- In addition, it would enhance procedural rights and equal access to justice in EU Member States if the European Commission started to tackle the issue of appropriate and effective remedies for the violation of procedural rights, in line with Article 47 EU Charter and the principle of effectiveness and uniform application of EU law.⁶⁶

Ultimately, it is necessary to achieve a true shift in police culture and overcome those criminal justice systems that are still solely based on the obtaining confessional evidence or other information.⁶⁷ At the UN level, the guidelines on investigative interviewing offer an example as to how a reform process of police investigative methods should look like.⁶⁸ This “non-accusatory” model, based on the model of the police service of England and Wales of the early 1990s, brings a number of benefits among which dismantling the myth of the effectiveness of harsh interrogation methods (including ultimately torture), and replacing it with more effective methods of preventing, detecting, investigating and solving crimes. As highlighted by CPT, “this in turn has a positive impact on the outcome, fairness, efficiency and reliability of any subsequent criminal proceedings, and on how the general public perceives the police service”.⁶⁹

65. Ed Lloyd-Cape (2018) p 61.

66. Costa Ramos Vania, Michiel Luchtman, Geanina Munteanu, ‘Improving Defence Rights: Including Available Remedies in and (or as a Consequence of) Cross-Border Criminal Proceedings’ 2020 in *Eurocrim* 3/2020, <https://eu-crim.eu/articles/improving-defence-rights/>; Fair Trials, ‘Unlawful evidence in Europe’s courts: principles, practice and remedies’, October 2021 <https://www.fairtrials.org/articles/publications/unlawful-evidence-in-europes-courts/>.

67. See PEACE model used by the police in England and Wales, *Investigative interviewing* | College of Policing.

68. See *Principles on Effective Interviewing for Investigations and Information Gathering* (2021), *New Principles on Effective Interviewing for Investigations and Information Gathering* | Association for the Prevention of Torture (apt. ch); CPT on investigative interviewing and a necessary paradigm in police culture (2018), 28th General Report of the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment, p. 32 ff.

69. See CPT, ‘28th General Report’, CPT/Inf(2019)9, p. 32 <<https://rm.coe.int/16809420e3>>.

