

# The Right to Information in criminal proceedings

ERA Procedural safeguards in the EU Trier 8-9 December 2016

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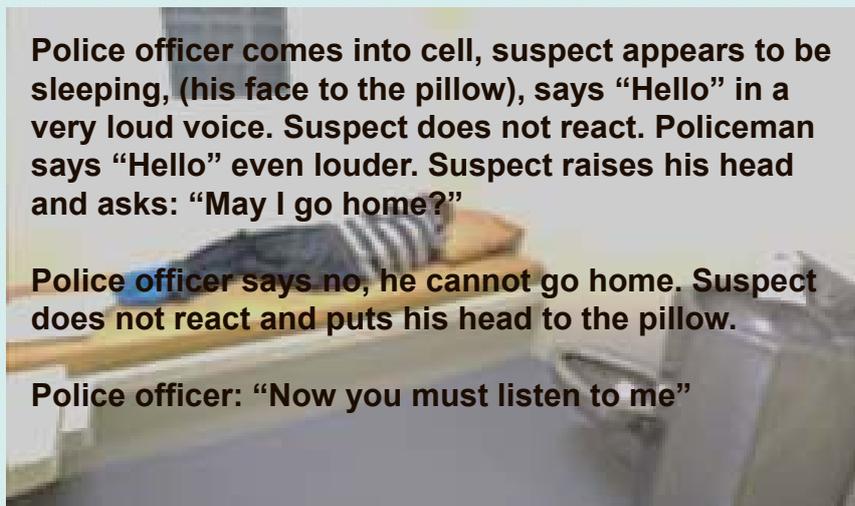
Co-funded by the Justice Programme of the European Union 2014-2020

## A scene of daily practice in a Dutch police station

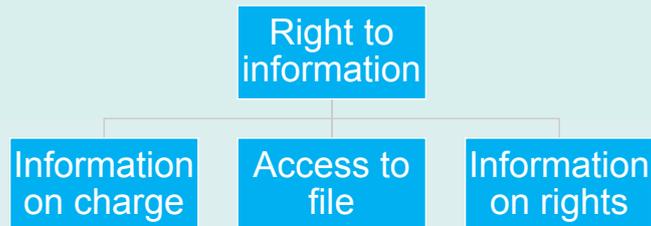
**Police officer comes into cell, suspect appears to be sleeping, (his face to the pillow), says “Hello” in a very loud voice. Suspect does not react. Policeman says “Hello” even louder. Suspect raises his head and asks: “May I go home?”**

**Police officer says no, he cannot go home. Suspect does not react and puts his head to the pillow.**

**Police officer: “Now you must listen to me”**



## Right to information in criminal proceedings



## Right to information in the ECHR

Information on charge: Art. 6 § 3a and Art. 5 § 2

- In order to prepare a proper defence  
ECtHR 9 June 2009, *Opuz v. Turkey*, No. 33401/02
- Challenge the lawfulness of detention  
ECtHR 30 August 1990 *Fox, Campbell and Hartley v. UK* No 12244/86
- Duty to inform rests on the prosecuting authorities  
ECtHR 19 December 1989, *Kamasinski v. Austria*, No. 9783/82 and ECtHR 25 March 1999, *Pelissier and Sassi v. France*, No. 25444/94/

## Information on rights in the ECHR

No general provision on information on rights

- Active attitude required of authorities to inform suspects on free legal aid  
ECtHR 10 August 2006, Padalov v. Bulgaria No. 54784/00 and ECtHR 27 March 2007, Talat Tunc v. Turkey No. 32432/96
- Duty to inform related to waiver of rights  
ECtHR 24 September 2009, Pishchalnikov v. Russia No. 7025/04
- Access to the file  
No specific case law as to the moment material evidence should be disclosed
- Right to silence and privilege against self incrimination  
ECtHR 18 February 2010, Ziachenko v. Russia, No. 7025/04

## Medical care and remedy to challenge legality of the detention

- Article 3 ECHR imposes positive obligation on authorities to ensure a persons health and well-being  
ECtHR 10 February 2004, Naumenko v. Ukraine, No. 58973/00
- Article 5 § 4 ECHR right to seek judicial review is applicable as soon as a person is deprived of his liberty  
ECtHR 13 February 2001, Garcia Alva v. Germany, No. 23541/94 and ECtHR 9 July 2009, Mooren v. Germany, No. 11364/03

## Right to information in other international sources

- Art. 14(3)(d) ICCPR “right to be informed of right to legal assistance”
- CPT-Standards
- European Prison Rules (art. 30)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (reports of CAT)
- UN Standard Minimum Rules for the Treatment of Prisoners

## Directive 2012/13/EU on the right to information in criminal proceedings 22 May 2012 (transposition 2 June 2014)

### Art. 2 Scope: criminal charge

- Derogation: minor offences
- EAW cases

### Art. 3 Information on rights:

- Access to lawyer
- Free legal advice
- Accusation (art. 6: reasons of arrest)
- Interpretation and translation
- Right to remain silent

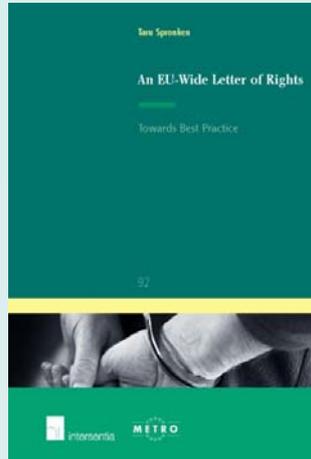
### Art. 4 Letter of Rights on arrest (deprivation of liberty)

- Access to file (art. 7)
- Inform consular authorities + one person
- Medical assistance
- Max number of hours detention before brought before a judicial authority
- Simple language (model)

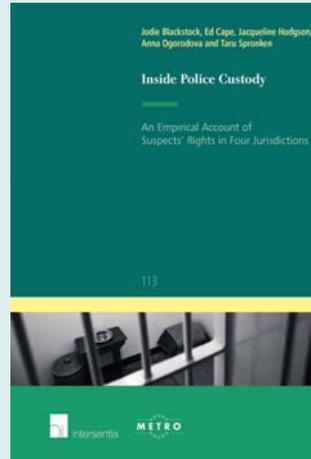
### Art. 7 Access material of the case

- Definition materials
- Materials essential to challenge lawfulness detention!
- Derogations
- Copies free of charge
- Right to challenge refusal

## Information on rights



2010



2014

## Letter of rights

*Advice of the charged person:*  
 According to Section 33 Para 1 of the Code of Criminal Procedure you have a right to express your opinion to all the facts that you are charged with and of the evidence thereof, but you are not obliged to testify. You may specify circumstances and evidence serving for your defence, lodge motions and lodge applications and legal remedies. You have a right to choose a defence counsel and consult him/her even during the acts performed by the authority competent for criminal proceedings. However, you cannot consult the defence counsel during questioning about how to answer already laid question. You may request to be questioned in the presence of your defence counsel and you may request the presence of the defence counsel during other acts within the pre-trial stage (Section 165 of the Code of Criminal Proceedings). If you are in the custody or serving a term of imprisonment, you may speak with the defence counsel without presence of a third person.  
 According to Section 92 Para 2 of the Code of Criminal Procedure you have the possibility to express yourself in detail to the charge, especially you can continuously describe the facts which are subject of the charge, state the circumstances which weaken or disprove the charge or offer the evidence.  
 According to Section 92 Para 3 of the Code of Criminal Procedure you may be asked questions to supplement the testimony or to remove the ambiguity, unclearness and contradictions. Questions must be posed clearly and without pretence of deceiving and false circumstances; it may not be indicated in these questions how to answer them.  
 According to Section 33 Para 1 of the Code of Criminal Procedure it may be allowed to you, before answering a question, to have a look at the written notes, which you must, if the person conducting the questioning requests so, submit to inspection to his of her.  
 According to Section 33 Para 2 of the Code of Criminal Procedure, if you attest to have not money enough to pay the defence costs, the presiding judge and in pre-trial stage the judge shall determine that you are entitled to free defence or defence for reduced fee. According to Section 33 Para 3 of the Code of Criminal Procedure you lodge a motion for decision on free defence or defence for reduced fee, including the attachments proving its justification, through the public prosecutor in pre-trial stage and through the court carrying out the first instance proceedings in trial-stage.

### Remember your rights:

1. You have the right to know why the police are holding you in custody.
2. You have the right to know what the police suspect you have done.
3. You have the right to speak to a lawyer in private before the police question you. You can also speak to a lawyer at any other time during questioning.

[...]

## **The importance of practicalities**

- **Precise regulations**
- **Check lists and prescribed words**
- **Language**
- **Timing**
- **Interpretation**

## **Genuine commitment to inform**

- Attitude of police *and* lawyers
- The pitfall of routine
- Understanding the position of the detained suspect
- Interrelation of rights

## Best Practice: E&W “custody suite”

