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Key issues of the right to information under Directive 2012/13/EU

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Nature of the Directive I

- Measure B- Information on Rights and Information about the Charges

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

- 45 recitals, 14 articles, Annexes I and II



Nature of the Directive II

- Strasbourg standards as minimum
- Charter applies
- Transposition date 2 of June 2014



Applicability

- Since a person is made aware by competent authorities that he/she is suspected or accused of having committed a criminal offence > does not depend on arrest: *Zaichenko v. Russia*
- Until final determination of guilt.
- In EAW proceedings from arrest of a requested person.
- Witnesses?
- Minor offences see Article 2 paragraph 2 (Engel criteria?).



Right to be informed about procedural guarantees

- Suspects and accused persons have to be informed promptly about at least:
 - the right of access to a lawyer;
 - any entitlement to free legal advice and the conditions for obtaining such advice;
 - the right to be informed of the accusation;
 - the right to interpretation and translation;
 - the right to remain silent (privilege of self-incrimination?).
- Orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.



Right to be informed about procedural guarantees upon arrest I

- Letter of Rights has to be provided to arrested and requested persons and allowed to keep.
- The Letter of Rights has to contain additional information on:
 - the right of access to the materials of the case;
 - the right to have consular authorities and one person informed;
 - the right of access to urgent medical assistance; the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority;
 - possibility, under national law, of challenging the lawfulness of the arrest, obtaining a review of the detention, or making a request for provisional release.
- Simple and accessible language (including translation) > Annexes I and II



Right to be informed about procedural guarantees upon arrest II

- The right to review the lawfulness of arrest does not simply require information about the possibility to appeal a detention order and the related procedural conditions. It also implies the opportunity for the arrested person to know the reasons for his detention and have access to the case file within adequate time, in order that the right to review the arrest warrants be effectively exercised according to the principle of equality of arms (*Schöps v. Germany*, § 44).



Right to be informed about charges I

- Initial stages: suspects or accused persons have to be provided with information about the criminal act they are suspected or accused of having committed promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence (factual aspects). Recital 28 – at least before the first official interview.
- *Covaci*, C-216/14, *Ianos Tranca and Others*, C-124/16, C-188/16 and C-213/16
- When arrested: reasons for arrest (legal and factual aspects, promptly).



Right to be informed about charges II

- Later stages (at least on submission of the merits of the accusation to a court): detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person (factual plus legal aspects).
- Any changes in charges have to be communicated to a person promptly where this is necessary to safeguard the fairness of the proceedings.



Right to access to case file I

- Upon arrest: documents which are essential to challenging effectively the lawfulness of the arrest or detention (Article 7 paragraph 1).
- In any case, but no later than upon submission of the merits of the accusation to the judgment of a court: material evidence, whether for or against a person in order to safeguard the fairness of the proceedings and to prepare the defence (Article 7 paragraphs 2 and 3).
- What about any other important stage – e.g. questioning?



Right to access to case file II

- Derogations:

By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.



Right to access to case file III

- *Piechowicz v. Poland* (§ 203): „ Any restrictions on the right of the detainee or his representative to have access to documents in the case file which form the basis of the prosecution case against him must be strictly necessary in the light of a strong countervailing public interest. Where full disclosure is not possible, Article 5 § 4 requires that the difficulties this caused are counterbalanced in a way that the individual still has a possibility effectively to challenge the allegations against him...”



Right to access to case file IV

- *Jasper v. the UK* (§ 52): „Only such measures restricting the rights of the defence which are **strictly necessary** are permissible under Article 6 § 1 (see the *Van Mechelen and Others v. the Netherlands* judgment of 23 April 1997, Reports 1997-III, § 58). Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights **must be sufficiently counterbalanced** by the procedures followed by the judicial authorities (see the above-mentioned *Doorson* judgment, § 72 and the above-mentioned *Van Mechelen and Others* judgment, § 54).“



Verification and remedies

- Recording (Article 8 paragraph 1)
- Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive (Article 8 paragraph 2).
- Should that be all?



Thank you for your attention. Questions?