

# Accessible Letters of Rights in Europe 2017

National Report. Spain

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# **Accessible Letters of Rights in Europe**

National Report | Spain

The documentary and empirical research in Spain was carried out by Rights International Spain.

The analysis of legal language in the official letters of rights and the drafting of an alternative version, in comprehensible language, was performed by Rights International Spain with the assistance of Professor Doctor Cristina Carretero González, at the Universidad Pontificia de Comillas.

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## 1. Introduction

This report has been developed in the context of the “*Accessible Letters of Rights in Europe*” Project. The Project is regional in scope and has been carried out in five Member States of the European Union (Hungary, Bulgaria, France, Lithuania and Spain), under the coordination of the Hungarian Helsinki Committee based in Hungary, in alliance with Apador (Bulgaria), Fair Trials Europe (Belgium), Human Rights Monitoring Institute (Lithuania) and Rights International Spain (Spain).

The objectives of the “*Accessible Letters of Rights in Europe*” Project are (i) to examine how the requirement for suspects or accused persons to be given information on their rights in simple and accessible language translates in practice, and (ii) to identify the existence of good practices in this field that could be replicated in other States of the European Union.

Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (the “Directive”), recognises the importance of giving suspects or accused persons access to case materials, as well as information on their rights and the accusations made against them. The right to information is an essential pillar of the right to a fair trial and without it, other rights recognised by law would in practice be illusory.

This report looks at Spain<sup>1</sup> and is one of the five national reports prepared in the context of the “*Accessible Letters of Rights in Europe*” Project. It is the result of research that has been carried out in accordance with the same methodology used by the rest of the participant organisations and that has included desk research, analysis, questionnaires and semi-structured interviews with the main professionals involved in criminal proceedings and with arrested persons. In line with the objectives of the Project, this report contains the results obtained from the research, addresses the factors that affect the understanding and effective exercise of the rights recognised in the Directive and includes a series of recommendations.

The information and results obtained in this report and in the other national reports will provide the basis for the preparation of a regional comparative report which is also due to be drafted as part of the “*Accessible Letters of Rights in Europe*” project.

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<sup>1</sup> According to the Spanish National Statistics Institute, the population of Spain, in October 2016, was 46,438,422 persons. According to Interior Ministry data, a total of 2,036,815 criminal offences were committed in 2015 in the country as a whole, for which the Ministry offers the figure of 380,244 arrests and charges, although without any further breakdown (it is possible to be charged without being arrested). Source: Interior Ministry <http://www.interior.gob.es/documents/642317/6115341/ANUARIO+2015+CRIMINALIDAD+Y+SEGURIDAD+CIUDADANA.xlsx/fb12250f-1a77-46ce-b07d-77147f70fe9b>

## **2. Methodology**

### **2.1. Desk review**

The research team carried out extensive desk research covering Spanish procedural legislation, instructions, circulars and official documents referring to the regulation of information on the rights of suspects or accused persons. This desk research was completed with a review of case law and legal scholars' opinions.

### **2.2. Semi-structured interviews with the relevant actors**

In addition to the desk research, the research team carried out a series of electronic surveys and semi-structured interviews with the main protagonists involved in information on rights for suspects or accused persons.

The interviews were carried out using questionnaires prepared by the regional coordinator and provided to all the organisations involved in the development of the comparative study. The questionnaires were first translated from English into Spanish and subsequently adapted to the particular circumstances of Spanish legislation and procedural practices and the specific conditions of each group of relevant protagonists.

### **2.3. Preparation of an alternative letter and testing with arrested persons**

After analysing the content of the official letters of rights seen in the context of this Project and the data gathered in the empirical research, we have produced an alternative accessible-language version of the letters of rights for arrested persons used at police stations and at court, as well as of the letters of rights used at court for suspects who have not been arrested. In the process of drafting these alternative versions, we have collaborated with Professor Cristina Carretero González, an expert in accessible legal language from Universidad Pontificia Comillas.

### **2.4. Ethical issues**

The guiding principles of the research were the following: (i) informed consent: interviewed persons were informed of the content of the project and the treatment of the information obtained in the interviews, and were required to give prior written authorisation to participate in them; in all cases, the transcriptions of the interviews were verified and approved by the persons interviewed; (ii) data protection: the data obtained in the course of the research was treated confidentially, stored securely and the anonymity of the participants vis-à-vis third parties and hierarchical superiors in relation to the affirmations made in the interviews was guaranteed; (iii) proper use of data: the data obtained during the interviews carried out for this research will only be used in the context of the research and authorisation must be obtained for any alternative use.

## 2.5. Selection of interviewees and approach hypothesis

### a) *Territorial criterion*

The following factors were taken into account when designing the sample: firstly, that the regional High Courts have jurisdiction to adopt forms of letters of rights used in court in the respective Autonomous Regions and, secondly, that some Autonomous Regions have their own police forces. Considering that both factors can have an effect on the existence of divergences in how information on rights is provided to arrested and accused persons, a territorial criterion was used in selecting the sample. As a result, interviews were carried out in the Region of Madrid, the Basque Country and Catalonia.

### b) *Specific criteria for the selection of interviewees*

We started out with an initial identification of the professionals who are directly involved in the provision of information on rights to suspects or accused persons; namely, judicial police officers, court clerks, investigating judges and practicing lawyers. In the case of the former, it was considered necessary to obtain the perspective of the national police force (Policia Nacional), with jurisdiction nationwide, as well as that of the Basque regional police force (Ertzaintza), the Catalanian regional police force (Mossos d'Esquadra) and at least one local police force.

With a view to analysing the particular circumstances of information on rights for suspects or accused persons who do not understand the official language in which information is provided, translators and interpreters were included in the sample.

It was also considered necessary to include the perspective of persons who had been arrested in the last year and a half, following the transposition of the Directive, as recipients of the information, in order to contrast their impression with that of the rest of the protagonists involved.

### c) *Preparation of the final sample*

A total of thirty-two protagonists were recruited:

- Seven practicing lawyers, working mainly on criminal cases, all practicing in the Region of Madrid, with wide-ranging experience (over 40% of the sample have been practicing for twenty years), five women and two men. The questionnaire was sent to them via electronic means.
- Six interpreters working exclusively in the criminal justice system, in the Region of Madrid, Valencia, Valladolid, Palma de Mallorca and Albacete, with wide-ranging

experience (83.3% of the sample had been working for between ten and twenty years), all women. The questionnaire was sent to them via electronic means.

- Five investigating judges, three in Catalonia (Barcelona and Granollers) and two from Madrid, all with wide-ranging experience (80% of the sample had been working for between ten and twenty years); three women and two men. They were interviewed in person.
- Two court clerks in two investigating courts in Granollers, with between five and ten years' experience; one woman and one man. They were interviewed in person.
- Eight police officers: two from the Ertzaintza, two from the Mossos d'Esquadra, two National Police officers and two members of the Badalona Urban Police Force, with a length of service in their respective forces of between twelve and thirty-two years; two women and six men. They were interviewed in person, with authorisation from their respective Commissioners.
- Four persons arrested in the last year, following transposition of the Directive; all arrested in Madrid, in the police stations of three different districts; one woman and three men. They were interviewed in person.

This sample ensures the participation of sufficient number of relevant actors, which makes it possible to extract significant results from the research, although it cannot offer relevant statistical data.

#### *d) Working hypothesis*

The main question addressed in this research is whether information on rights is easily comprehensible for suspects and accused persons. We must analyse three aspects in order to respond to this question: 1) is the language used, both in the letters and the information provided verbally, sufficiently clear?; 2) is the language provided to suspects or accused persons appropriate for the purpose of facilitating the effective exercise of their rights? and 3) are there factors that affect comprehension?



### 3. Directive 2012/13/EU of 22 May on the right to information in criminal proceedings

Directive 2012/13 establishes the duty of the competent authorities to inform suspects or accused persons of their rights and the accusations made against them. This includes the right to receive the necessary and essential information to be able to prepare their defence and safeguard the fairness of the proceedings, information that must be supplied in simple and accessible language, adapted to the particular needs of each person, with special attention to cases of vulnerability. The Directive envisages the following rights:

- Right to information of suspects or accused persons (Articles 3 and 6): they must receive, either verbally or in writing, as promptly as possible, and always before their first official interview, information on the criminal offence of which they are accused, in such detail as is necessary to enable effective exercise of the rights of the defence. They will be given at least a description of the facts – including, where known, time and place – and of the participation of the suspect or accused person in them, as well as information on the possible criminal offence committed. Moreover, they will be given information on the right of access to a lawyer, any entitlement to free legal advice and the conditions for obtaining such advice, to be informed of the accusation, to interpretation and translation and the right to remain silent. This information will be given in comprehensible and appropriate language and will be updated if any changes occur during the proceedings.

- Right to information of arrested persons (Article 4): they will be given, promptly, in writing, in a language they understand and in simple terms, a letter with the rights they possess and will be allowed to keep said letter of rights during arrest. In addition to the procedural rights mentioned above (Article 3), additional information must be included on the specific grounds for the arrest, including the criminal offence he/she is suspected or accused of having committed (Article 6.2), the right of access to the materials of the case (Article 4.2.a) the right to have one person informed and consular authorities in the case of foreigners (Article 4.2.b), the right of access to urgent medical assistance (Article 4.2.c), the maximum number of hours or days suspects or accused persons may be detained before being brought before a judicial authority (Article 4.2.d) and the possibility of challenging the lawfulness of the arrest, obtaining a review of the arrest, or making a request for provisional release (Article 4.3).

- Right of access to the materials (Article 7): documents related to the specific case which are essential to challenging effectively the lawfulness of the arrest or detention, must be promptly made available to arrested persons or to their lawyers. Moreover, they must be given access to all material evidence in due time, including documents and, where appropriate, photographs, recordings, etc., which enable them to effectively exercise their right of defence. This access must be free of charge and a court can only refuse it, on an exceptional basis, when it involves a serious threat to the life or fundamental rights of another person or where strictly necessary to safeguard an important public interest, guaranteeing the right to appeal this refusal in any event.

The Directive also envisages that those responsible for the training of judges, prosecutors and judicial staff who participate in criminal proceedings will ensure appropriate training is provided to operators with regard to the objectives of the Directive (Article 9).

As part of this project, all professionals interviewed were asked whether they had received specific training on Directive 2012/13/EU. All the police officers contacted replied that they had received face-to-face training organised by their respective forces. Meanwhile, the judges and court clerks interviewed confirmed that they have not received any training on this Directive, or on its incorporation into domestic law. Some responded that they had “self-trained” on this topic.

#### **4. Procedural rights and guarantees of suspects or accused persons in criminal proceedings in Spain**

##### **4.1. Spanish criminal procedure: a brief outline**

Criminal proceedings can be initiated in Spain by means of a report<sup>2</sup>, a complaint, a police statement –with or without prior arrest–<sup>3</sup>, or ex officio by the Public Prosecutor<sup>4</sup>.

The police can make arrests on their own initiative<sup>5</sup> or in accordance with a court order<sup>6</sup>. The arrest must be carried out by judicial police<sup>7</sup>, and in Spain the forces with this power are the National Police Force, the Civil Guard, the regional police forces<sup>8</sup> (Ertzaintza in the Basque Country, Mossos d’Esquadra in Catalonia, Regional Police Force in Navarre and General Police Force in the Canaries) and the local police forces.

Upon arrest, the information on the rights of the arrested person is given verbally at the time of arrest, and is formalised in writing, by giving him/her a letter of rights on arrival at the place of detention<sup>9</sup>. Subsequently, in the presence of a lawyer and prior to an official interview with the police, the information on rights is reiterated. When the arrested person is brought before the judge, he/she is again informed by the court clerk before making a statement to the court. In the case of suspects or accused persons who are not arrested, the information on rights is given before the first official interview with the investigating judge, performed by the court clerk<sup>10</sup>.

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<sup>2</sup> Regulated in Articles 259-269 of the Criminal Procedure Act (LECrIm).

<sup>3</sup> Arrest is regulated in Articles 489-501 LECrIm.

<sup>4</sup> Articles 105 and 308 LECrIm

<sup>5</sup> The conditions of arrest are set out in Article 492 LECrIm.

<sup>6</sup> Judicial arrest is regulated in Article 494 LECrIm.

<sup>7</sup> Regulated in Article 126 of the Spanish Constitution and in Articles 29 to 36 of the Security Forces Act (*Ley Orgánica 2/1986, de 13 marzo, de Fuerzas y Cuerpos de Seguridad*).

<sup>8</sup> Article 547 of the Judiciary Act (*Ley Orgánica del Poder Judicial*) states that judicial police authority is held “when requested to exercise it, by all members of the Security Forces, whether answerable to the central Government, that of the autonomous regions or local entities, within the remit of their respective competences”.

<sup>9</sup> See Section 5.1.1. of this report and Article 520.2 LECrIm.

<sup>10</sup> Article 775 LECrIm.

Criminal proceedings are comprised of three separate stages: (i) the investigation stage<sup>11</sup>, led by the investigating judge, in which the procedures aimed at determining the existence of the offence and the identity of the perpetrator are carried out (statements by the accused person and the victim, witness statements, identification procedures, etc.); (ii) the intermediate stage, in which the specific accusation is made<sup>12</sup>; and the criminal stage, by the body responsible for judging and sentencing, which takes place in an oral hearing<sup>13</sup>.

## 4.2. Specific rights of suspects and accused persons granted in Spanish Law

The Directive was transposed into the Spanish legal system by means of Organic Act 5/2015<sup>14</sup>, which amended the Criminal Procedure Act (LECrIm) and the Judiciary Act<sup>15</sup>, thus incorporating new rights for suspects or accused persons into Spanish law as well as certain new developments in terms of the procedure of supplying information on rights.

The rights of suspects or accused persons in criminal proceedings are regulated in the LECrIm<sup>16</sup>. Article 118.1 lists the rights that all persons have in criminal proceedings, from the moment proceedings are brought against them until conclusion of the same. Article 520.2 specifically regulates the rights of arrested persons; that is, those they can exercise while detained.

**4.2.1.- The right of access to a lawyer** (Article 17.3 of the Constitution<sup>17</sup>, Article 118.1 d) and 520.2 c) LECrIm): the LECrIm requires the presence of a lawyer as of the moment of *“arrest or as of the point in the proceedings when a particular person is charged with an offence”*<sup>18</sup>, meaning that the police, the Public Prosecutor’s Office or judicial authority will have to ask the Bar Associations to appoint a lawyer, if the arrested person does not designate one of his/her own choosing.

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<sup>11</sup> Volume II, Title IV LECrIm, Articles 299-325.

<sup>12</sup> Volume III, Title I LECrIm.

<sup>13</sup> Volume III, Title III LECrIm.

<sup>14</sup> Organic Act 5/2015 which amends the Criminal Procedure Act and Organic Act 6/1985, of 1 July, on the Judiciary, in order to transpose Directive 2010/64/EU, of 20 October 2010 on the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of 22 May 2012, on the right to information in criminal proceedings.

<sup>15</sup> Organic Act 6/1985, of 1 July, on the Judiciary.

<sup>16</sup> Instruction 12/2007, of 14 September, of the Secretariat of State for Security on the conduct required of the members of the Security Forces of the State in order to guarantee the rights of arrested persons or in police custody establishes that arrested persons must be informed of the rights contained in Article 520.2 LECrIm. We should point out that the Instructions of the Secretariat of State for Security are not available on any website of an institutional nature linked to the Interior Ministry. The search for the Instructions was performed using search engines, which provided a link to the website of the Ombudsman:

[https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEWj22uG77PDQAhXoq1QKHR7QCUYQFggoMAI&url=https%3A%2F%2Fwww.defensordelpueblo.es%2Fwp-content%2Fuploads%2F2016%2F02%2FINSTRUCCION1.pdf&usg=AFQjCNEpHPXrvDMPDeOOPJHZTIIBIEoTw&sig2=912wv8RAXm6\\_vU1uARj4Jg](https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEWj22uG77PDQAhXoq1QKHR7QCUYQFggoMAI&url=https%3A%2F%2Fwww.defensordelpueblo.es%2Fwp-content%2Fuploads%2F2016%2F02%2FINSTRUCCION1.pdf&usg=AFQjCNEpHPXrvDMPDeOOPJHZTIIBIEoTw&sig2=912wv8RAXm6_vU1uARj4Jg)

<sup>17</sup> Article 17.3 of the Spanish Constitution states that *“arrested persons are guaranteed the assistance of a lawyer during police and judicial proceedings, in the terms established by law”* and Article 24.2 includes legal defence as part of the right to due judicial protection.

<sup>18</sup> Article 767 LECrIm.

The functions of the lawyer during legal assistance at the police station are set out in the LECrim and are<sup>19</sup>: (i) ensuring that the arrested person is informed of his/her rights and, if necessary, request that they be given medical assistance; (ii) intervening in questioning, in the subsequent taking of a statement and the procedures for identification or reconstruction of the facts; (iii) informing the arrested person of the consequences of giving or withholding consent for the performance of the procedures requested; (iv) holding a private interview with the arrested person before he/she makes a statement to the police, the public prosecutor or judicial authority<sup>20</sup>. This prior interview is one of the innovations introduced by the transposition of the Directive.

The right of access to a lawyer cannot be waived<sup>21</sup>, except in the case of road traffic offences<sup>22</sup>. The consequence of this is that statements made by the accused person without the presence of a lawyer must be considered null and void and not taken into account when a sentence is handed down convicting him/her<sup>23</sup>, as the statement will be considered unlawful evidence<sup>24</sup>.

**4.2.2.- Right to free legal advice and to be informed of the conditions for obtaining it** (118.1 e) and Article 520.2 j) LECrim): the regulations on the right to free legal advice and conditions for obtaining it are set out in the Legal Aid Act (*Ley 1/1996 de 10 de febrero, de Asistencia Jurídica Gratuita*).

**4.2.3.- The right to be informed of the accusation** (Article 17.3 of the Spanish Constitution<sup>25</sup>, Article 118.1 a) and Article 520.2 LECrim): all suspects will be informed of the facts on which the accusation is based “*as of when they are notified of the existence [of the criminal proceedings], they have been arrested or the subject of any other interim measures or when the decision to prosecute them has been taken*” and “*without unjustified delay*”<sup>26</sup>. In the case of arrested persons, the information on the accusation and the facts that led to their arrest must be supplied “*immediately*”<sup>27</sup>, albeit it is not clear from reading the law whether the information must be supplied at the moment of arrest or following arrival at the police station. Case law has stressed the importance of immediacy in relation to information on rights<sup>28</sup>.

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<sup>19</sup> Article 520.6 LECrim.

<sup>20</sup> Article 775 establishes, in relation to suspects or accused persons, that “*they will be allowed to speak with their lawyer in private both before and after making a statement*”. As this is one of the innovations introduced by the Directive, it is not surprising that case law has not yet recognised this right (Supreme Court Judgments 539/1998, of 11 May, Point of Law Six; 1500/2000, of 4 October, Point of Law One); Circular 1/2003, of 10 April from the State Public Prosecutor did not recognise it either. It has however been cited by several legal scholars (Gimeno Sendra, V. “*Los procesos penales. Comentarios a la Ley de Enjuiciamiento Criminal*”. S.A. Bosch, 2002, pp. 203), who consider that, insofar as the information on rights must allow the arrested person a primary exercise of the right of defence, it must be prepared in the first interview prior to the statement at the police station.

<sup>21</sup> Supreme Court Judgment 2563/1992, of 30 November, Point of Law One.

<sup>22</sup> Article 520.8 LECrim

<sup>23</sup> Supreme Court Judgment 886/2004, of 5 July, Point of Law Three, among others.

<sup>24</sup> Article 11.1 Judiciary Act.

<sup>25</sup> Article 17.3 of the Spanish Constitution states that “*all arrested persons will be informed immediately, and in a manner that is comprehensible to them, of their rights and the reasons for their arrest*”.

<sup>26</sup> Article 118.1 a) LECrim.

<sup>27</sup> Article 520.2 LECrim.

<sup>28</sup> Supreme Court Judgments num. 1667, of 29 November 1984, Point of Law One; 943/1997, of 30 June, Point of Law One; 1511/2003, of 17 November, Point of Law One.

At the first appearance before the investigating judge, the court clerk will inform the investigated person of his/her rights, in particularly of those set out in paragraph 1 of Article 118 LECrim. The law<sup>29</sup> also stipulates that the investigating judge will inform the suspect or accused person, in the most comprehensible manner possible, of the facts of which he/she is accused. When there are significant changes in the object of the investigation and in the facts of which the person is accused, the court will inform the suspect or accused person “promptly”; this information will be supplied to his/her lawyer in writing<sup>30</sup>.

**4.2.4.- The right to interpretation and translation** (Article 118.1 f) and Article 520.2 h) LECrim): this is considered an essential part of the right of defence and the right not to be deprived of one’s right of defence<sup>31</sup>. The LECrim establishes that if the accused person does not understand the language or is deaf or dumb<sup>32</sup>, an interpreter will be designated<sup>33</sup>, choosing “*from among those qualified as such and, if none are available, from among the teachers of the corresponding language*”, and failing that, “*any person who speaks the language*”<sup>34</sup>, also establishing the possibility of the designation of a sign language interpreter<sup>35</sup>.

This right is recognised in relation both to foreigners and Spaniards who do not understand Spanish<sup>36</sup>, insofar as the central element for recognition of the right is not the foreign nationality of the accused person but their inability to understand the language<sup>37</sup>.

**4.2.5.- The right to remain silent** (Article 17.3 of the Spanish Constitution, Article 118.1 g) and Article 520.2 a) LECrim): considered part of the right of defence<sup>38</sup>, case law shows us that exercise of this right does not extend to the rejection of other investigative procedures<sup>39</sup> and, despite the fact that silence cannot generate negative effects for those who opt to exercise this right, the Supreme Court has considered that “*the silence of the accused person exercising his/her right can be taken into account when the body of evidence against him/her calls for an explanation of the facts on his/her part*”<sup>40</sup>.

**4.2.6.- The right not to incriminate oneself** (Article 520.2 b) LECrim): this is established as a different right to the right to remain silent<sup>41</sup>. Case law has interpreted that an act of self-incrimination (confession) will only be considered lawful evidence if it is shown that it was made

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<sup>29</sup> Article 775.1 LECrim.

<sup>30</sup> Art 775.2 LECrim.

<sup>31</sup> Constitutional Court Judgments 5/1984 of 24 January, Point of Law One; 74/1987, of 25 May, Point of Law Three; and 30/1989, of 7 February, Point of Law Three.

<sup>32</sup> Article 398 LECrim.

<sup>33</sup> Article 440 LECrim.

<sup>34</sup> Article 441 LECrim.

<sup>35</sup> Article 442 LECrim.

<sup>36</sup> Constitutional Court Judgment 74/1987 of 25 May, Point of Law Three.

<sup>37</sup> Supreme Court Judgment of 9 October, Point of Law Four.

<sup>38</sup> Constitutional Court Judgment 161/1997, of 2 October, Point of Law Five.

<sup>39</sup> Constitutional Court Judgments 37/1989, of 15 February, Point of Law Eight; 161/1997 of 2 October, Point of Law Six.

<sup>40</sup> Supreme Court Judgments 450/2007, of 30 May, Point of Law Sixteen; 600/2007, of 11 September, Point of Law Forty-Three, among others.

<sup>41</sup> Article 520.2 a) LECrim.

after the accused person had been informed of his/her constitutional rights, in the presence of a lawyer and if the police officer who took the statement appears in court and corroborates the self-incrimination<sup>42</sup>. In any event, self-incrimination requires two additional factors: (i) the investigating judge must continue the investigation until he/she is convinced of the veracity of the confession and the existence of the offence<sup>43</sup> and (ii) the self-incrimination cannot be the only evidence on which the conviction is based<sup>44</sup>.

Meanwhile, Instruction 12/2007, of 14 September, from the Secretariat of State for Security<sup>45</sup> establishes that police officers must guarantee the spontaneity of the statement, not admonishing or reprimanding the arrested person for what they have declared.

**4.2.7.- The right of access to the materials of the case file** (Article 118.1 b) and Article 520.2 d) LECrim): Article 118.1 establishes that *“the parties involved may be informed of the proceedings and intervene in all the procedures of the same”*<sup>46</sup>. Moreover, and for arrested persons, Article 520.2 d) recognises the *“right to have access to those elements of the case that are essential for challenging the lawfulness of the arrest or deprivation of liberty”*.<sup>47</sup>

**4.2.8.- The right to have consular authorities and one person informed of the arrest** (Articles 520. 2 e) and g) LECrim): this is a right that is only recognised in the case of arrested persons. Article 520.2 e) establishes the right to have a relative or another person informed of the arrest and the place of custody. In practice, this communication is not made by the arrested person, but by the police officers. Article 520.2 g) recognises the right to be visited by a consular authority and to communicate with him/her.

**4.2.9.- The right to make a phone call to a person of one’s choosing** (Article 520.2 f): this right has been introduced as a result of the transposition of the Directive, regulated as a different right to having the officers inform a third party of the arrest.

**4.2.10.- The rights of access to urgent medical assistance** (Article 520.2 i): case law establishes that the object of the right is the protection of the physical integrity of the arrested person against possible aggression during arrest, as well the preparation of certain means of defence,

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<sup>42</sup> Supreme Court Judgment 220/2006, of 22 February, Point of Law One.

<sup>43</sup> Art. 406 LECrim and Supreme Court Judgments num. 59 of 15 January 1988, Sole Point of Law; num. 111, 20 January 1989, Point of Law One.

<sup>44</sup> Supreme Court Judgment 179/1999, of 13 February, Point of Law One.

<sup>45</sup> See footnote no. 16.

<sup>46</sup> See also Article 302 LECrim.

<sup>47</sup> The 15 of July 2015, the National Coordination Commission of the Judicial Police agreed that “those elements of police proceedings essential to challenge the legality of the detention consist exclusively in the information that is fundamental to appeal or to assess the appropriateness of the detention and that have to be provided to the arrested person or to his lawyer and are the following: a) place, date and hour of the detention, b) place, date and hour of commission of the offense, c) identification of the offense motivating the detention, d) factual indications that the arrested person participated in the offense (very generic indications, for example: identification by several people but without specifying who identified him; statement of witnesses, without specifying who the witnesses are; fingerprints, etc.)”. The full text of the minutes of the meeting held on July 15 can be downloaded at:

[https://www.icab.cat/files/242-494223-DOCUMENTO/Acta\\_reunion\\_Comision\\_Nacional\\_coordinacion\\_policia\\_judicial.pdf](https://www.icab.cat/files/242-494223-DOCUMENTO/Acta_reunion_Comision_Nacional_coordinacion_policia_judicial.pdf)

and the right is not satisfied by simply informing the arrested person of its existence, but by providing means to make it possible to be exercised<sup>48</sup>.

**4.2.11.- The right to be informed of the maximum length of detention** (Article 520.2): Article 17.2 of the Spanish Constitution and 520.1 LECrim establish that the arrest will last no longer than is strictly necessary to clarify the facts and, in any event, will not exceed seventy-two hours. There is however some controversy on the regulation of the maximum length of detention<sup>49</sup>, because Article 496 LECrim envisages that detention will not exceed 24 hours. Nevertheless, the Supreme Court considers that the period of 72 hours envisaged in the Constitution prevails<sup>50</sup>.

Instruction 12/2007, of 14 September, from the Secretariat of State for Security<sup>51</sup> establishes that *“in those cases in which, once the procedures have concluded, there are special circumstances derived from the investigation that require –without exhausting the term of 72 hours– the moment the arrested person is brought physically before the Judge to be delayed, the instructions of the Judge will be followed at all times”*.

In any event, if the maximum period of detention is exceeded a plea of habeas corpus can be brought and the Constitutional Court has considered that any detention must have a limited duration and cannot be established on a discretionary basis by the governmental authorities<sup>52</sup>.

**4.2.12.- The right to challenge the lawfulness of the detention** (Article 520.2): the arrested person will have to be informed of the right to bring a plea of habeas corpus<sup>53</sup>, which applies in four scenarios: (i) an arrest without the legal scenarios or procedural formalities for arrest; (ii) when the person is being unlawfully interned in an establishment; (iii) when the person is detained for a longer period than that established by law; (iv) violation of constitutional or procedural rights during detention.

### **4.3. Practical aspects of information on rights for suspects or accused persons**

With regard to whether **information on rights has to be supplied orally or in writing**, the Criminal Procedure Act only envisages that the information on rights is provided to arrested persons in writing (Article 520.2). There is no regulatory provision stating that the suspect or accused person **must have sufficient time to read the letter**.

<sup>48</sup> Supreme Court Judgment 1237/2001, of 25 June, Point of Law One.

<sup>49</sup> Several authors have supported proposals to reform the maximum period of detention, reducing it to 24 hours, insofar as they consider it a guarantee for arrested persons (Gimeno Sendra, V. “Derecho procesal. El procesal penal”. Colex, Madrid, 1996; García Morillo, J. “El derecho a la libertad personal”, Tirant lo Blanch, Valencia, 1995. pp. 134) and that the majority of police procedures do not require so long (Andrés Ibáñez, P. “Jueces y policía: acerca de la distribución del trabajo represivo”. Revista de ciencias sociales, nº79, 1987, pp.109-110).

<sup>50</sup> Supreme Court Judgments, num. 2423, of 11 October 1988, Point of Law Two; 457/1999, of 19 June, Point of Law Ten.

<sup>51</sup> See footnote 16.

<sup>52</sup> Constitutional Court Judgments 174/1999, of 27 September, Point of Law Four; and 179/2000, of 26 June, Point of Law Two.

<sup>53</sup> Regulated in Article 17.4 of the Constitution and in the Habeas Corpus Act (*Ley Orgánica 6/1984, de 24 de marzo, de Habeas Corpus*). It can only be filed by the arrested person and his/her direct relatives, the Public Prosecutor, the Ombudsman, the Investigating Judge (Article 3 LO 6/1984, of 24 March) and by the lawyer (Constitutional Court Ruling 55/1996, of 6 March).

As for the **language used to inform on rights**, the LECrim<sup>54</sup> establishes that *“the information referred to in this section will be supplied in accessible and comprehensible language. In this regard it will be adapted to the age of the recipient, his/her degree of maturity, disability and any other personal circumstance that may alter his/her capacity to understand the scope of the information being provided”*. Nevertheless, there is no public, accessible source containing a protocol specifying how the language should be adapted in this regard. Likewise, case law does not specify what should be understood by accessible language, or supply examples, apart from stressing that the information must be supplied in a *“comprehensible manner”*<sup>55</sup>. However, an analysis of the letters of information studied in the context of this research shows that they all use **legal language**, as they all cite the text of the Criminal Procedure Act verbatim.

It should be highlighted that there is no **single model of the letter** that is common to all police forces, nor a single model of the letter used in all courts. Each police force uses its own information letter, although they do use common criteria established by the National Coordination Commission of the Judicial Police. As for the letters with information on rights used at the Investigating Courts, the Ministry of Justice has prepared a standard form that can be adapted for each court. In the Autonomous Regions with devolved power in the area of Justice, the Justice Departments charge the respective Regional Courts of Justice which create *“form commissions”* responsible for drafting the letter of rights to be adapted by each court, among other things.<sup>56</sup>

As for the **content of the letters**, a look at the ones we have had access to in the context of this investigation shows that they all include the rights recognised in the Criminal Procedure Act and mentioned in section 4.2. of this report. However, we were able to confirm that the forms do not include a reference to the prior interview with a lawyer or the conditions for obtaining free legal advice<sup>57</sup>, or indeed the specific scenarios in which a plea of Habeas Corpus can be brought and the procedure for doing so.

With regard to the **language in which the information is provided**, and only in the event there is no letter on rights translated into a language that the person understands, the person in question must be given the information orally by an interpreter and subsequently, without delay, he/she must be given a translation of the letter of rights<sup>58</sup>. The LECrim does not specify in

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<sup>54</sup> Articles 118.1, 520.2 and 520.2 bis LECrim.

<sup>55</sup> Constitutional Court Judgment, 127/2000, of 16 May, Point of Law Four; Supreme Court Judgments 1511/2003, of 17 November, Point of Law One; Madrid High Court Judgment, 3/2011, of 14 February, Point of Law Two.

<sup>56</sup> The information set out in this paragraph was supplied to us verbally in the interviews carried out in the context of this project.

<sup>57</sup> The only exception is the letter of information on rights of investigated persons at Violence against Women Court no. 1 in Barcelona, which includes an express reference to the conditions and requirements for obtaining free legal advice; see footnote 70.

<sup>58</sup> Article 520.2 LECrim.



what language versions of the letter should be available and there is no mention of the provision for translation into minority languages<sup>59</sup>.

As for the **right for arrested persons to keep the letter of rights during detention**, the LECrim<sup>60</sup> establishes that *“the arrested person will always be allowed to keep the declaration of rights with him/her throughout the period of detention”*.

Finally, in relation to the **possibility of reporting the infringement of the right to receive information on rights**, there are no express regulatory provisions to that end<sup>61</sup>, although the general provisions that allow for challenges to judicial decisions that restrict the right of defence, including the right to information on rights, will apply. It is possible, moreover, to report the police officer who denies the person access to the information invoked in Article 537 of the Criminal Code<sup>62</sup>, for an offence committed by a public servant against an individual right<sup>63</sup>. Case law has, in some cases, considered the lack of information on rights to constitute unlawful evidence, deciding that the act must be cancelled and not taken into account for convictions<sup>64</sup>.

#### 4.4. Special situations

There are two special scenarios in which the regulation on rights undergoes a significant modification. However, these situations fall outside the remit of this study, so we will not be developing or analysing them in any detail.

**Waiver of the right to a lawyer at the police station:** there is just one case (Article 520.8 LECrim) *“if [the] arrest is for acts that are exclusively classed as road traffic offences, provided that the information provided was clear, sufficient and in comprehensible language on the*

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<sup>59</sup> There are no letters available from official public sources. We found translations on the Internet on police forums, private spaces whose authenticity we were unable to verify. As we will see in section 5 of this report, not all police forces have translations in the same languages.

<sup>60</sup> Article 520.2 LECrim.

<sup>61</sup> The Supreme Court has considered that the lack of information on rights for an arrested person could be remedied by having the investigating judge read them to him/her (Supreme Court Judgment 364/2003, of 13 March) or, in the event the omission occurs before the criminal court that must issue a judgment, the situation would be considered remedied by having the rights read at the investigation stage (Supreme Court Judgment 1097/1996, of 23 December).

<sup>62</sup> Article 537 of the Criminal Code punishes public servants who *“prevent or hinder the right to the presence of a lawyer for the detained person or prisoner, procure or favour the waiver of the right to said presence or fail to immediately inform the person in question of his/her rights and the reasons for his/her arrest in comprehensible terms”*

<sup>63</sup> There have only been a dozen judgments in relation to this offence, the majority by Courts of Appeal (Castellón 49/1999, of 15 June; Ourense 47/2001, of 3 October; Málaga 18/2003, of 7 March; Córdoba 147/2005, of 11 July; Madrid 303/2009, of 14 May, among others), which would indicate that it is an offence with scant practical application.

<sup>64</sup> Pursuant art. 11.1 of the Organic Law 6/1985 on the Judiciary, *“evidence obtained directly or indirectly in breach of fundamental rights or freedoms will not be admissible”*; art. 238.3 provides that *“Procedure acts will be null and void (...) when the basic rules of procedure have not been observed provided that this may have caused defencelessness”*. Supreme Court Judgments of 29 November 1984, Point of Law One; 743/2000, of 28 April, Point of Law One; 498/2000, of 27 March, Sole Point of Law; 265/2007 of 9 April, Point of Law Three; 61/2011, of 17 February, Point of Law One.

*content of said right and the consequences of waiving it. The arrested person may revoke the waiver at any time”<sup>65</sup>.*

**Incomunicado detention:** this may be ordered with a view to avoiding serious consequences for the integrity or freedom of a person or when it is a question of preventing the criminal proceedings being seriously compromised<sup>66</sup>. In these cases, the investigating judge may deprive the arrested person of the right to appoint the lawyer he/she chooses, to communicate with third parties, to hold a private interview with his/her lawyer or for the arrested person or his/her lawyer to have access to all procedures, except for those that are essential in order to challenge the lawfulness of the arrest<sup>67</sup>. Likewise, the duration of the detention may be extended up to a maximum of five days<sup>68</sup>.

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<sup>65</sup> Judgments of the Courts of Appeal of Barcelona, 15 July 2004, Point of Law One, and Lugo, 132/2006, of 7 April, Point of Law Two.

<sup>66</sup> Article 509, 520bis 2) and 384bis LECrim

<sup>67</sup> Article 527 LECrim.

<sup>68</sup> Article 520 bis 1 LECrim.

## 5. Results of the empirical research carried out in this Project

### 5.1. How is information on rights provided

#### 5.1.1. When and how is information on rights provided

- *At the police station*

All the police officers interviewed stated that arrested persons are always informed of their rights and the reasons for their arrest on at least three occasions when in police custody.

Information is first given by officers immediately, at the time and place of arrest. However, interviews with arrested persons only partially confirm this; two of the persons interviewed denied that they had been informed of their rights at the time of arrest and others affirmed that the information received had been superficial: *“at the time of arrest, in the car, they told me ‘you have the right to a lawyer’, they told me I could imagine what it was about (...) and that was all, I don’t think they told me the offence”* (LoR30); *“no, I find it a bit hard to remember, but I don’t think so. They told us that we had been arrested and that we were entitled to a lawyer and a couple of other things, but very brief, it wasn’t like later at the station”* (LoR29).

When the arrested person arrives at the station, the officers again inform him/her of the reasons for the arrest and of his/her rights, with the information procedure being formalised by the reading of the letter which is signed by the arrested person. Here, an officer explained that this can even take place before arrival at the station, *“in the police car itself, or at the residence, if that is where the arrest took place, the letter is filled in by hand”* (LoR24).

Finally, in the presence of a lawyer and before an official interview is held, they are once again informed of the reasons for the arrest and of their rights. Some officers state that this third information procedure is comprehensive, with the arrested person being read each of his/her rights, while others admit that on occasion the full information is not repeated, and they refer them to the earlier reading (LoR25, LoR26, LoR22, LoR21), something that is confirmed by the arrested persons interviewed: *“[in the presence of the lawyer] he did not read them to me, he said ‘you have been told this already, haven’t you?’”* (LoR30).

- *At court*

The information on rights is given before the arrested or investigated person makes an official statement. The rights are generally read by the court clerks, although some investigating judges interviewed stated that on occasion they themselves give the information on rights: *“I sometimes do it, but it is usually for practical reasons, I am in the questioning room when the arrested person is brought up, or when I enter the court and the rights have not been read to the investigated person. In those cases I do it myself because I like doing it”* (LoR3).

### 5.1.2. Information on rights in the case of persons who do not speak Spanish

When the arrested person does not understand or cannot express themselves in Spanish, they are given a letter of rights in their language. However, the list of languages available is limited and varies depending on the police force.<sup>69</sup> Therefore, when the letter is not available in the language that the arrested persons understands, the officers call an interpreter who, either in person or by telephone, provides an oral translation of the information on facts and rights. Thus, one of the officers gave an example of an arrested person who *“spoke French but could not read it; we called Ofilingua to inform him of his rights by telephone”* (LoR25).

However, the translated letters only contain the information on rights; they obviously cannot explain the facts that have given rise to each specific arrest which means that, in these cases, the arrested person will not receive information on the facts until the interpreter who will assist him/her at the official interview arrives, together with the lawyer.

The interpreters interviewed are very critical of the quality of the written translations of the letters of rights: *“the Spanish police forces sometimes use letters of rights translated using Google Translate (...) and the translation makes no sense whatsoever”, “it is possible that with languages such as English better results are obtained, but with languages like Urdu or Hindi the translation is terrible, but the officers do not seem to care”* (LoR 14). They stress that *“these translations should be done by a professional; they should be thoroughly corrected and supervised, and they should even be trialled in order to measure the degree of understanding by an average arrested person. It is not sufficient to have whoever is around translate and forget about it”* (LoR16).

### 5.1.3. Right to keep a copy of the Letter of Rights

Pursuant to the provisions of Article 520.2 LECrim, arrested persons can keep a copy of the letter of rights with them during detention. When asked about this, police officers replied unanimously that the copy of the letter is not kept by the arrested person, it is left with his/her personal effects. They explain that this is for reasons of security, arguing that they do this in order to *“protect the integrity of the arrested person”* (LoR20) and *“avoid self-harm or harm to others”* (LoR19) using the sheet of paper. They state that the arrested persons are allowed to consult the letter when they need to: *“if they ask for it, they are allowed to consult it”* (LoR21).

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<sup>69</sup> According to the information received from the officers interviewed, the National Police Force has letters of information translated into 17 languages: English, French, German, Albanian, Arabic, Chinese, Korean, Croatian, Italian, Japanese, Lebanese, Polish, Portuguese, Romanian, Russian, Turkish and Ukrainian; the Ertzaintza has letters of information translated into 6 languages: French, English, Romanian, Italian, Portuguese and German.

The personal effects of the arrested persons are placed in a self-seal bag. According to one officer, *“each time the bags are opened, it has to be recorded on the custody sheet”* (LoR26) and adds that she always orders that the copy of the letter *“be stapled to the bag, so that they do not forget it and it is not necessary to open the bag or write on the custody sheet every time the arrested person wants to consult it; it is a far safer system, it is necessary to ensure the chain of custody as much as possible”*.

However, of the arrested persons who were interviewed, only one said that the letter was left with their personal effects, while the rest stated that the letter was not with their personal effects when they were returned upon their release: *“I didn’t know I was entitled to that, I didn’t have it at any time; we were allowed to read it and had to return it. My bag did not contain the letter. It was read to me (...) but I never physically had it”* (LoR29); *“no, I didn’t have it in the cell, it was given to me when I was in the intelligence department and then it was taken away. It was not in the bag with my things. I am sure of it”* (LoR30).

#### **5.1.4. Information provided in writing or orally**

According to the results of the interviews with officers and arrested persons, standard practice when giving information on rights at the police station is that the officers read the letter to the arrested persons and then give them time to read it for themselves before signing it. Only one officer stated that he does not read the letter to the arrested persons, but gives it to them directly so they read it themselves and then asks them if they have understood it or need any kind of clarification (LoR22).

Some of the officers interviewed add that they tend to include explanations when reading the letter, using a more everyday language than that of the official document, which, as they see it, helps the arrested persons understand it *“because we explain it to them in words they understand: ‘your fingerprints were found at the scene of the robbery’; that is easier to understand than ‘by dactyloscopy’* (LoR25).

Arrested persons agree that what is relevant for them is that the information is explained to them, stating that they understood their rights better *“when explained to me by [their lawyer], the letter is hard to understand”* (LoR27); *“I didn’t understand much, but I think when they were explained to me by [the lawyers] because you don’t trust anyone and you’re pissed off, you’re not really in a frame of mind to understand much”* (LoR28).

The interpreters agree that, in the absence of explanations, reading the information on rights does not facilitate understanding: *“sometimes they are simply given the sheet of paper, and nothing more, and it is the interpreter who has to translate it on the go, ask that they sign it and, of course, they often have doubts. I have often got the impression that they don’t really understand the scope of the act”* (LoR16).

As for the information on rights at court, the court clerks tend to read the letters. Meanwhile, those investigating judges who personally give the information on rights to the investigated and arrested persons state that they do not read the letter and instead explain each right and its scope: *“I don’t read them the letter, I tell them their rights, the facts and the offence regarding which they are being investigated. I explain it in colloquial terms. For example, in the case of the right not to make a statement, I tell them that not making a statement will not be detrimental to them and that they are entitled to request to be allowed make a statement as often as they like during the investigation”* (LoR32).

#### **5.1.5. Double check**

All the professionals interviewed were asked whether they have a system of verification for ensuring that the suspect or accused person has understood the information on rights.

They all agree that the only way of checking they use is by asking the person if they have understood. *“If I am not convinced, I read them personally and start a debate with him until, from his replies, I am convinced that he as understood me”* (LoR3), explained one investigating judge.

The officers state that *“there is no general guideline, it is something that is subjective and is left to the discretion of each officer”* (LoR19) and that *“you can tell [that the arrested person has not understood] when he is passive, for example, unresponsive, and you ask again until you are sure he has understood, using the most appropriate words for the intellectual capacity of that person”* (LoR24).

Other professionals also stress how the non-verbal language of the suspect or accused person can indicate a lack of understanding. Thus, one interpreter stated that *“I normally realise that they don’t properly understand the rights because (...) the arrested/accused persons are solemn, despite the fact that they are nodding”* (LoR18). A court clerk explained that *“I ask them, I look them in the face, I adapt the tone to the person”*, but concluded that *“it is impossible to be sure”* (LoR4).

#### **5.1.6. Remedies in the event of violation of the right to information**

Lawyers, investigating judges and court clerks were asked what measures they adopt in those cases in which the suspect or accused person has not been informed of his/her rights.

The lawyers indicate that they record the failure to provide information on rights in the statement, whether at the police station or at court (LoR10 and LoR11).

If the arrested person has not been informed of his/her rights at the police station, the court clerks and the judges stated that *“this is remedied with the information on rights given at court before giving a statement”* (LoR32).

Meanwhile, in the event the investigated person gives a statement at court without having been informed of his/her rights, some judges interviewed responded categorically that the statement would be null and void: *“of course, if he/she has been deprived of the right of defence (the clearest example is giving a statement without a lawyer, or without knowing in relation to what he/she is being investigated), without a doubt”* it would be declared null and void (LoR3); *“the other day we declared a matter null and void because a statement was given at the Magistrate’s Court, by injunction, without having read the rights”* (LoR32). However, another of the investigating judges interviewed replied that in that case the investigation procedure carried out without a prior reading of the rights *“could be repeated”* but *“without excluding it; I believe it is not for me to do as the investigating judge. The procedure would appear in the case file in duplicate and it would be for the sentencing body to decide”* (LoR2)

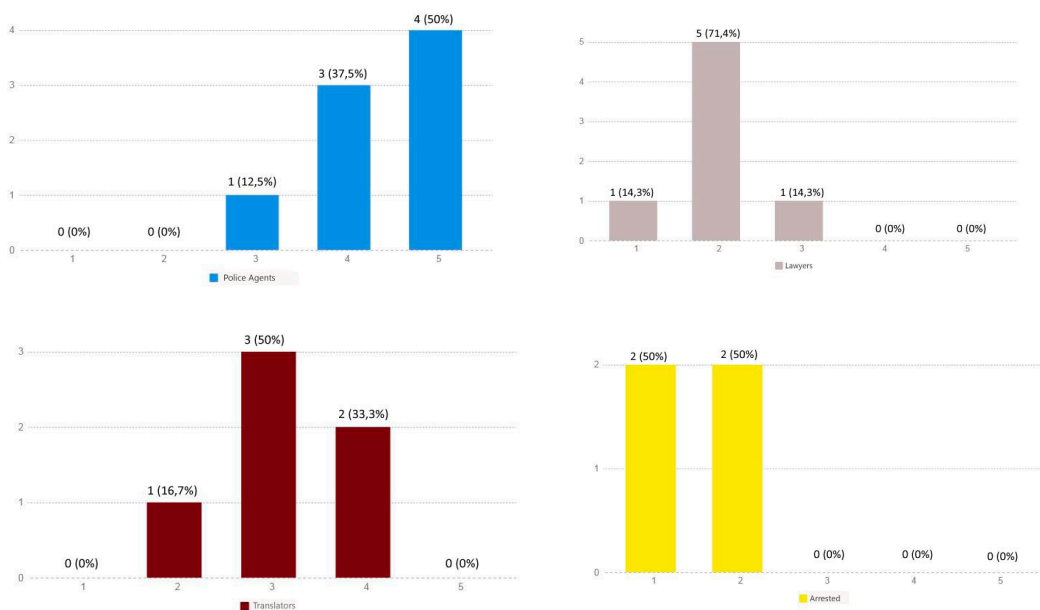
## 5.2. Accessibility of the letter rights

### 5.2.1. Degree of clarity of the letter of rights

Police officers, lawyers, interpreters and arrested persons were asked to rate the degree of clarity of the letters of rights for persons facing criminal proceedings for the first time from 1 to 5, where 1 is “the information is very hard to understand” and 5 is “the information is perfectly comprehensible”.

The comparative results of the ratings on the scale are set out in the following chart:

#### 1. Degree of clarity of the information in the letter



Source: Compiled by the author

The first conclusion reached from the replies to this question is that the suspects or accused persons acquire knowledge of their rights and the scope of the same with practice, due to prior experience of criminal proceedings and the exercise of specific rights, and not because the language used in the letter of rights is sufficiently clear.

As one court clerk stated, *“I would differentiate investigated persons with prior experience in criminal proceedings, as they already know their rights. Those who are facing it for the first time don’t even take in what they are hearing”* (LoR4).

This is also the opinion of the arrested persons: *“I understood more or less, because I am involved in activism, but someone who has never been arrested before doesn’t understand a shit”* (LoR27).

The fact that it is essentially the exercise of specific rights that enables suspects or accused persons to understand them is something that is also corroborated by an investigating judge who stated *“they know the right to a lawyer because one is appointed (...). As for the interpreter, as soon as we realise that the person is a foreigner, we ask directly in order to avoid subsequent delays”* (LoR3). One of the officers confirmed this; although she affirmed that *“the letter is explained in very clear terms”*, she qualified this by stating *“but it may be that I am used to it; with the first arrest they ask more about certain terms, for example the phone call, habeas corpus”* (LoR26).

The difficulty for those facing criminal proceedings for the first time to understand their rights is aggravated by the use of legal language and technical terms in the letters of rights. As one judge indicated, *“the wording of the documents is a form with difficult words”* (LoR1), a conclusion that is shared by arrested persons: *“look, at a moment like that, they put a piece of paper in front of you, written in double Dutch, it is not what you need. It’s like they give you a law or the BOE [Official State Journal] or something like that, you don’t understand anything. You’re at your wits’ end and don’t understand anything (...), they put a piece of paper in front of you for you to sign and you don’t understand it, you’re nervous and you want to go, and because you don’t understand you don’t want to sign anything”* (LoR28); *“it was clear to me, because I am a student at university, but someone who isn’t, wouldn’t understand anything. I understand that there is a legal language that is obligatory because of bureaucracy, but there are people who may not understand it because it uses legal terms that are not comprehensible”* (LoR29).

That lack of understanding of the language used, exacerbated in the event the person is facing criminal proceedings or an arrest for the first time, is decisive in deciding to exercise some rights, as is corroborated by one of the officers who stated that *“there are rights they would exercise if they understood them, such as habeas corpus”* (LoR22).

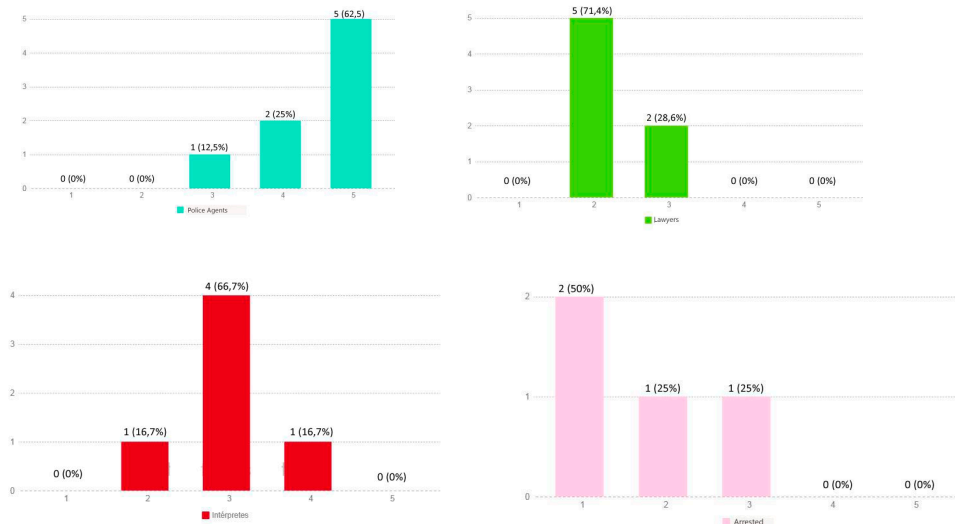
For this reason, we also asked police agents, lawyers, interpreters and arrested persons to rate from 1 to 5 to which extent the text of the letters of rights facilitates the exercise of the former,



where 1 is “the text does not facilitate the exercise of rights” and 5 is “the text fully facilitates it”.

The comparative results of the ratings on the scale are set out in the following chart:

## 2. Information sufficient to allow the exercise of rights



Source: Compiled by the author

In this regard, the interpreters state that *“if I remain silent (or not), what consequences do these rights have? That is, if I am examined by a police doctor, is it beneficial or detrimental to me? My sensation is that the reading of the rights, as they appear in the LECrim, is not sufficient to determine whether or not the exercise (or not) of those rights can be detrimental to the accused person”* (LoR13).

The lawyers also identified that the lack of clarity of the information supplied has a negative effect on the exercise of rights, for example *“the arrested person does not understand that he does not have to give a statement at court”* (LoR10).

The arrested persons themselves admit that they did not exercise some rights because they did not understand how they were to do so or the implications of exercising them: *“well, and about the doctor. Yes, of course, if I had been told how to do it and what it implies, whether it is worse for you because you stay longer or whatever, or that they tell you where they are taking you, who the doctor is, whether it is there or somewhere else, I don’t know. Look, I was scared and didn’t go for that reason”* (LoR28).

## 5.2.2. Problems understanding specific rights

### 1.- Right of access to a lawyer

The results of the interviews carried out show that there do not tend to be problems understanding this right on the part of suspects or accused persons. This may be due to the fact that it is a commonly-known right, as one of the arrested persons interviewed said *“that’s the typical one that everyone knows”* (LoR30).

However, if the arrested and investigated persons are generally clear on their right to have a lawyer present at their first statement, be it at the police station or at court, they do not always obtain sufficient information on the fact that this right includes having the lawyer present during other investigation procedures also. One court clerk stated that *“in relation to the right to a lawyer, no problem; but with regard to what specific procedures, this become more problematic”*; in the same way, an investigating judge remarked that *“as for the presence at the first official interview, that is understood; at later stages, they have more doubts”* (LoR32).

The arrested persons interviewed explained how, while informed of the right of access to a lawyer, exercise of the same was hindered, *“the second time I knew what the story was, but the first time they try to confuse you, they said ‘but who is this lawyer’”* (LoR27); *“they do inform us, yes, but we ask for a lawyer and he was not notified, and we were not given any explanation. They tell you you have the right, yes, but they made it difficult to talk to the lawyer we wanted to appoint, despite being available and notified. That is, exercise no. One thing is telling you you have the right but letting you exercise it is another matter. We were appointed a legal aid lawyer”* (LoR29).

Finally, the right to a prior private interview with the lawyer (Article 520.6 LECrim) does not appear on the letters of rights. Some police officers recognised this omission, *“It is not specified that they can have an interview with their lawyer prior to making a statement, but they are told this. They are details.”* (LoR26). However, lawyers and arrested persons interviewed say that it would be advisable that this right be clearly specified in the letters.

### 2.- Right of access to free legal advice

The majority of the professionals interviewed perceive that the information given on the right of free legal advice is insufficient.

The first reason is the failure of the letters themselves to mention the conditions for obtaining the benefit of free legal advice, according to several officers, *“the conditions for obtaining it are not explained, and the arrested person is not told if he/she will get it”* (LoR19), which in their opinion can cause problems later as *“people think it is free and then do not understand that later, depending on their income, they can be billed”* (LoR25).

The court clerks state that at court they do not generally explain *“the specific requirements for obtaining free legal advice, but it is made clear that the fact that the lawyer is a legal aid one does not mean that his/her services are going to be free of charge”* (LoR5). In fact, only the letters of information of one investigating court seen in the context of this research expressly mention the conditions for obtaining free legal advice, summarised and in clear and accessible terms.<sup>70</sup>

Arrested persons confirm the lack of sufficient information on this right, *“they tell you you can have a legal aid lawyer, but they don’t give you any further explanations on what it entails”* (LoR27); *“they don’t tell you anything. I wanted my own one, but if I think now and had asked for a legal aid lawyer, I wouldn’t know how to do it. Do you have to call? Where do you call?”* (LoR28).

The second reason for this lack of information on the specific conditions and requirements for obtaining free legal advice may be due to the fear of some professionals of not being able to explain it correctly, of misleading the investigated or accused person, as one police officer said, *“mind you, if the officers give too much information on this, they might be misinforming people”* (LoR26), and for that reason they tend to leave the matter to the lawyers, *“on the right to free legal advice, we say that the lawyer will explain it”* (LoR20). The same thing happens at many courts, *“in the case of free legal advice, it seems that we tend to delegate from one to another, in the courts we take it for granted that it is something the lawyer will explain”* (LoR32).

### **3.- Right to information on the accusation**

With regard to whether investigated and accused persons obtain sufficient information on the right to know the reasons for the arrest or the existence of criminal proceedings against them, the replies obtained vary considerably across the groups.

The majority of police officers consider that sufficient information on the reasons for the arrest is given, *“they are given a description of the facts, that is why the letter was amended; they are not just [informed of] the legal classification of the offence”* (LoR23); *“I don’t talk about the classification of the offence, ‘fraud’, instead I explain, you used one of this person’s cheques and took a thousand euros”* (LoR25).

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<sup>70</sup> “The appointment of a legal aid lawyer does not mean it will be free of charge. The person has to qualify for the benefit of free legal advice, which implies presenting the corresponding application, the documentation required (payslips, bank accounts, certificates of ownership of assets and vehicles...) and meeting the legal requirements, to be precise, that his/her total gross annual income not exceed twice the Spanish Public Income Index (*Indicador de Precios de Renta de Efectos Múltiples* - IPREM), approximately and depending on one’s circumstances, 15,000 euros per annum. In principle, if your annual gross income exceeds said limit, you will not qualify for the right and will have to pay for the lawyer, which is also the case if you do not submit the appropriate form or documentation”; letter of rights used at the Court for Violence against Women no. 1 in Barcelona.

Meanwhile, the lawyers consider that the information on the specific facts given by police is minimal, *“they are not told why they are arrested, and if they are, they are just told the classification of the offence, which they often do not understand properly”* (LoR8).

The arrested persons agree that the information on the specific facts is minimal, not to say non-existent: *“they said to me ‘you know why you are here”* (LoR27), *“I understood because I knew what a charge of disorder was, but they do not tell you anything else. They write down ‘disorder and resisting arrest’ on a piece of paper and don’t tell you anything else. If you don’t know what the offence is about, forget it”* (LoR28).

#### **4.- Right to interpretation and translation**

According to the replies obtained from questionnaires and interviews, the information on this right is sufficient.

However, both lawyers and interpreters stated that the exercise of this right by suspects and accused persons can be affected by the poor quality of the translations of letters of information on rights (*“the Spanish police forces sometimes use letters of rights translated using Google Translate (...) and the translation makes no sense whatsoever”* (LoR14)) and the deficient preparation of some interpreters (*“the company hired by the Interior Ministry is not professional in the translators it sends, which affects the reading of the rights”* (LoR12)).

#### **5.- The right to remain silent**

Police officers, practicing lawyers and court clerks agree that suspects or accused persons obtain sufficient information on this right.

However, the replies from the judges interviewed indicate that they consider that a simple reading of the letter does not always provide sufficient information and for that reason some of them explain this particular right, its scope and consequences, personally: *“I always like to explain the content of the right not to make a statement and not to reply to some questions personally, even if they have already been informed by the lawyers. I want it to be clear that they are not obliged to reply and if they so wish they can refuse to reply and this does not mean that they are admitting the facts. I believe that by just reading the right they do not understand it properly, although after having an interview with the lawyer, he will propose this defensive strategy”* (LoR3); *“in the case of the right not to make a statement, I tell them that it will not be detrimental to them and that they are entitled to make statements as often as they like during the investigation”* (LoR32).

As for arrested persons, they stated that they did not receive sufficient information, *“I know these things because I have attended talks, but for a person who has never been arrested, I don’t think they are made very clear”* (LoR27). To be precise, they did not receive information on the consequences of exercising the right to remain silent, *“they did not explain the consequences of*

*making a statement or not doing so to me” (LoR29). Meanwhile, some of the persons interviewed stated that the officers tried to prevent them exercising this right, “they told us that we had the right to remain silent, but made it quite difficult for us, they asked us questions, if you kept quiet they became more derisive” (LoR29).*

## **6.- The right not to reply to questions**

Here again, police officers and lawyers consider that suspects or accused persons obtain sufficient information in relation to this right.

However, the officers indicate that comprehension of this right is due to advice from the lawyers, with the function of informing of the possibility of not replying to questions being offloaded to them. *“Now that there is a prior interview with the lawyer, he can explain it in greater detail beforehand” (LoR23) and as such they consider that “the information is very clear” (LoR24). The essential role of the lawyers in the comprehension of this right was also highlighted by a court clerk, who explained that “accused persons without precise lawyer’s instructions do not opt for partial silence” (LoR4).*

However, the arrested persons interviewed stated that they did not understand that they were entitled to only answer some questions: *“I didn’t know that, they didn’t explain that to me” (LoR27); “I had no idea. I don’t think my lawyer even told me that, because he only told me to keep my mouth shut. How about that, I didn’t even know you could answer some questions and not others” (LoR28).*

## **7.- The right of access to the case materials**

The professionals interviewed have a variable perception of the degree of clarity and sufficiency of the information supplied to suspects or accused persons in relation to this right.

The majority of lawyers and interpreters consider that sufficient information on this right is not given or obtained and that exercise thereof is hindered: *“it is refused by officers, who read the grounds for arrest” (LoR12), “there is no material access to the case file at the police station. The officers “tell you” what the story is, with a greater or lesser degree of specification” (LoR6).*

Meanwhile, police officers are unanimous in their affirmation that the information is clear and sufficient that there are never problems of understanding on the part of the arrested persons. In fact *“the problems tend to arise with the lawyers, not with the arrested persons” (LoR19), they say, and explain that “rather than understanding, it is a problem of interpretation, the lawyer interprets that he has to have access to the full case file, but the police interpret that the information should be limited to ‘the essential elements’, that is, the detailed information on the event, the reasons for the arrest, the indicia” (LoR24).*

The arrested persons interviewed agree that they were not informed of this right. *“Come on. I don’t know if they showed it to the lawyer, but no one told me anything. That’s not on the sheet of paper, is it?”* (LoR28); *“I think the lawyer must have seen it and told me what the story was, but they didn’t inform me”* (LoR30).

#### **8.- The right to receive consular assistance**

The majority of both police officers and judges and court clerks consider that the information on this right is sufficient and that the suspects or accused persons do not tend to have problems of understanding. *“If they understand that they are entitled to make a phone call, there is no reason why they should not understand that they are entitled to inform the consulate of their arrest”* (LoR3), argues one of the investigating judges.

Lawyers and interpreters are less optimistic, although their explanations do not enable us to conclude what kind of problems of comprehension exist in practice.

#### **9.- The right to have a person of one’s choosing informed of the arrest and the right to make a phone call**

In general, the professionals interviewed consider that the information on these two rights is sufficient and no problems of comprehension arise.

Police officers indicate that the exercise of the new right by arrested persons to personally make a call did initially give rise to certain logistical difficulties due to the lack of guidelines. On the one hand, agents point out that in some National Police Force stations it is not possible to make international calls, meaning that the arrested persons who want to call a number in another country cannot exercise this right. Meanwhile, some officers indicate that the maximum time of the call is not stipulated and consider that this should be clarified in order to duly inform the arrested persons, *“in relation to the time, the information is insufficient”* (LoR26).

The arrested persons interviewed stated that they were informed of the right to make a call and were able to exercise it. However, their replies also highlight the lack of common guidelines on how the call is made: *“they didn’t tell me how long the call was, it was all very random, my friend was allowed to make two calls”* (LoR 27); *“with whom yes, because you ask for it, but they don’t tell you how it is going to be, or how much time you have”* (LoR28).

Meanwhile, the arrested persons interviewed highlighted the lack of information on the right to have one person informed of the arrest, by means of a call made by the police and that, pursuant to the legislation in force, it is a separate right to the one to make a call personally: *“they didn’t tell us that they were two separate rights, to have a person notified and to make a call yourself. They didn’t explain the one about them calling, it was me who called”* (LoR29).

## **10.- The right to urgent medical assistance**

The set of interviews carried out showed that the information supplied to suspects or accused persons on this right (“you have the right to be examined by a police doctor or his/her legal substitute”) does not facilitate effective exercise of the same unless it is accompanied by explanations.

The police officers indicated that on occasion the arrested persons “*confuse what is urgent and related to the facts or the arrest*” (LoR22) with the possibility to see a doctor to consult him/her about existing issues. In practice, three of the police forces contacted (National Police Force, Ertzaintza and Badalona Urban Police Force) tend to transfer the arrested persons to a health centre outside of the police station in these cases. Meanwhile, at the Les Corts police station in Barcelona, the Mossos d’Esquadra have a doctor in-house who gives primary care and, depending on his assessment, the arrested person may be transferred to a hospital.

The arrested persons interviewed indicated that they did not receive sufficient information on how the right to be seen by a doctor is exercised and the implications of doing so. “*They told us we had the right to go to the doctor and that was it, nothing else. They didn’t explain where or how*” (LoR29); “*they asked me if I wanted to go to the doctor and I said no, because I didn’t know where they were going to take me and I was scared enough already, so I opted to stay with the others*” (LoR28). Some of the arrested persons mentioned that they were discouraged from exercising the right: “*the police officer himself said ‘whatever you like, if you want to spend an extra day in the cell, it’s up to you, and we said no’*” (LoR27); “*they say “do you want to go to the doctor?”, and if you say you do, they pressure you so that you don’t go. (...) the cop told me ‘whatever you like, but if your lawyer comes and you’re not here, you’ll be stuck here for three days’*” (LoR27).

## **11.- The right to be informed of the maximum length of detention**

On the whole, the replies obtained indicate that sufficient information on this right is not always given. While the letters of rights include a mention of the maximum legal term, the arrested persons are not told in each case how long they are going to be in police custody before being released or brought before the judge.

The police officers confirm that the arrested person is only “*informed in writing of the essential minimum and the maximum limit of 72 hours*” (LoR24).

The lawyers also highlight the lack of precise information on the duration: “*the arrested persons do not know when they will go, how long they have to be there, how long the lawyer is going to take, why he/she is coming*” (LoR8).

The replies of the arrested persons interviewed confirm that they were not given sufficient information on how long they were going to be detained: *“we were told nothing at all and we spent two nights there, until Monday”* (LoR28).

## **12.- The right to challenge the lawfulness of the arrest**

The information contained in the letters to which we have had access in the course of this research merely mentions the “right to request ‘Habeas Corpus’ as a procedure for challenging the lawfulness of the arrest”, without any explanation of how to do so or the legally required conditions or requirements.

From the replies to the police officers interviewed, it was clear that this is one of the cases in which the understanding of the right, its scope and the manner of exercising it, essentially depend on the prior experience of the arrested person (*“those who have already been arrested understand it, the rest don’t”* (LoR21)) and not on the clarity of the letter of information (*“it could be improved if the declaration set out the conditions for making a plea of habeas corpus”* (LoR22)).

The replies of the arrested persons interviewed confirm that they were not given sufficient information on this right: *“they simply do not inform you of that; I know about that because a friend was arrested recently, but that is how I found out about it”* (LoR27); *“I was going to make a plea of habeas, but because I recalled hearing about it in a talk, but I didn’t know how to do it and I was afraid of screwing it up, because Marisa said we could end up being here longer and that cops would get really angry if we gave them more work, so I didn’t ask for it. And as my lawyer didn’t say anything, I didn’t do it”* (LoR28).

### **5.2.3. Factors affecting understanding**

On the whole, the interviews carried out show that, beyond the language used in the letters of rights or by the professionals involved in this information procedure, there are factors that have a decisive effect on comprehension by suspects or accused persons of the information they are receiving.

The first of these factors was the existence of some kind of **illness** (*“mental or psychiatric problems are common as is drug addiction”* (LoR31)) or **drunkenness** (*“sometimes there are people who are completely drunk and it is impossible they understand anything”* (LoR32)).

The **level of education** also affects comprehension, in particular the first time a person is facing criminal proceedings. As one arrested person explained, *“the language is relatively understandable for an average person, but not for an average person of the kind in the cells; there is a class bias. The average person who ends up in the cells has difficulty understanding”* (LoR29), a conclusion that is shared by some of the professionals interviewed, *“the vast majority of investigated persons belong to a social grouping with basic academic education”* (LoR31).



Thirdly, the suspects or accused persons receive **a lot of information in a short time**, which makes it hard to assimilate it. This factor has been flagged by several of the professionals interviewed, both judges (*“we give a lot of important and relevant information in a very short time”* (LoR32)), and interpreters (*“sometimes they have to assimilate too much information and they do not have the necessary time to do so”* (LoR17)). This can lead to situations where *“on occasion the arrested person (...) ends up saying that he understands, apparently with the intention of getting the procedure over with as quickly as possible”* (LoR15).

In addition to the above, we also have the matter of the information transmitted **not being presented as part of a broader process**, which makes it hard to understand the rights themselves and their scope. One of the lawyers explained this very clearly: *“the rights are stated as isolated elements, not as part of a process (...). The lawyer arrives (when, how long will he/she take), then I am taken to give a statement to the police (what do I have to do, not giving a statement is the same as admitting guilt...), then back to the cell and you are brought before the judge when a police van is available, or whenever they feel like it, basically. It is not explained as a linear process with a series of steps, which would help the person situate themselves”* (LoR8). This opinion is shared by some judges, *“it should be obligatory to inform properly (...) on the development of the process, its phases, the consequences of not notifying changes of address”* (LoR32).

Finally, the **nervousness and stress** during the arrest or declaration at court has a decisive influence on the comprehension of the information received. This is highlighted by police officers (*“when reading, given how nervous they are, they understand less”* (LoR20)), judges (*“they are people in stressful situations, they don’t understand what it means. We ask them if they have understood and, even if they say yes at the time, they later reflect on what happened and realise that they haven’t understood”* (LoR32)) and arrested persons: *“What do you think? (...) You’re nervous, they don’t tell you anything, not what they are looking for, (...) they don’t tell you when you will get out (...) it is not that there are factors, the fact of being there is the factor. You’re not in a fit state to understand anything”* (LoR28).

## 6.- Conclusions

The desk research carried out in this Project leads us to the conclusion that, first of all, the transposition of Directive 2012/13 into the Spanish legal system has been performed correctly, generally speaking.

Secondly, the desk research shows that neither the letters of rights for investigated and arrested persons, nor the instructions (from the Interior Ministry or the respective Departments of the Autonomous Regions) which regulate the rights information procedures are available from official publicly accessible sources. **The right to information exists from before arrest or investigation in criminal proceedings and the authorities must promote and facilitate awareness of the rights granted by the law in society in general.**

The empirical research carried out in the Project enables us to conclude that, **although the transposition of the Directive into procedural rules is correct, in practice the rights information procedure is not fully compliant with the provisions of the Directive and the Criminal Procedure Act.**

First of all, there is no single letter of rights, neither those used by the police, nor those used at court. The existence of multiple forms can generate significant differences in terms of the degree of detail and clarity of information received by suspects and accused persons, depending on the part of the State in which they are located, the police force that arrested them or the court before which the proceedings against them are brought.

Secondly, and with regard to the content of the letters of rights, they reproduce the text of the Criminal Procedure Act verbatim (Articles 118 and 520), as such, they are drafted in legal language. Moreover, it should be noted that the order in which the rights are listed in the letters, while in line with the order in which they appear in the Criminal Procedure Act, makes it hard to comprehend that they form part of a logical process and therefore fails to facilitate exercise of the same.

In addition to the above, the letters omit information that is relevant for comprehending the scope of the rights and exercise thereof. The letters used by the different police forces we have seen do not mention the right of arrested persons to have an interview with their lawyer before making a statement to police. On occasion, the right for the lawyer to be present or intervene in parts of the investigation other than the statement by the investigated or arrested person is not sufficiently clear. Neither do the letters contain specific information on the requirements for applying for and obtaining free legal advice. The wording of the letters does not facilitate exercise of the right to medical assistance. The requirements and procedures for bringing a plea of “Habeas Corpus” are not included in the letters either.

Thirdly, we were able to ascertain that in practice the legal requirement that arrested persons be allowed to keep a copy of the declaration of rights with them for the entire time they are in police custody is not being fulfilled. The option of keeping the copy among the arrested person’s personal effects does not enable them to consult the information at all times, which is precisely the aim of this requirement included in the Criminal Procedure Act.

Finally, the professionals who inform the investigated or arrested persons of their rights have to take into account a series of factors that affect their ability to understand and adapt the manner in which they perform this procedure accordingly. The suspect or accused person is given a huge amount of information, meaning that it is necessary to devote sufficient time to explaining it slowly and in detail. The vocabulary used in the oral information must be adapted to the level of education of the person to whom it is addressed, always looking to avoid legal jargon. In addition to the above, account must always be taken of the fact that the suspect or accused person will probably be nervous and this will hinder comprehension of the information and its scope, meaning that greater effort must be put into explaining it.

## **7.- Recommendations**

The following recommendations are made to the Ministry of Interior, the Ministry of Justice and the National Coordination Commission of the Judicial Police.

### ***First.- Public access to information on rights and instructions***

The letters of rights, both those used by the police and in court, and the instructions from the Interior Ministry or the respective Departments of the Autonomous Regions regulating the rights information procedure should be available from official publicly accessible sources.

### ***Second.- Standard form for letters***

Standard form letters of rights should be prepared for all State Security Forces and all Investigating Courts, with a view to avoiding differences in terms of the degree of detail and clarity of the information received by suspects or accused persons depending on the part of the State in which they find themselves, the police force that arrested them or the court hearing the proceedings against them.

### ***Third.- No legal jargon***

The language used in the letters of rights should be adapted to avoid technical terms.

### ***Fourth.- Modify the order in which the rights are listed***

The listing of the rights on the letters of rights should be consistent with the timeline of the exercise of said rights, so that it facilitates comprehension of the same as part of a process.

### ***Fifth.- Complete the letters with the information on rights missing from the current ones***

The letters of rights used by the State Security Forces should be amended to include the interview with a lawyer prior to making a statement. Arrested persons should be informed that they have this right and therefore of the option of asking their lawyer for this prior private interview. Unless this information is clearly supplied, the possibility of lawyers holding interviews with the clients would be left to the discretion of the former. Moreover, the letters should include more information on, among other things, the forms and conditions for obtaining free legal advice and the requirements for bringing a plea of "Habeas Corpus".

### ***Sixth.- Include explanations of rights and details on exercise of the same***

The letters of rights should include, together with the list of the rights, a brief explanation of the content and scope of the same, including the details necessary to facilitate exercise of the same.

### ***Seventh.- Permanent access for arrested persons to the letter of rights***

It is necessary to establish alternatives that offer arrested persons permanent access to information on rights, as stipulated in the Criminal Procedure Act. In order to reconcile this obligation with security requirements, we recommend that the centres where arrested persons are held in custody display posters with information on rights, particularly inside the cells, so that arrested persons have the information at hand during the time they are in police custody.

## ANNEX

### ALTERNATIVE LETTERS OF RIGHTS

The methodology of this Project includes the drafting of an alternative, accessible-language version of the letters used to inform suspects or accused persons of their rights.

For this reason, Rights International Spain has prepared an alternative version of: (i) the letters of rights for arrested persons used at police stations<sup>1</sup>; (ii) the letters of rights for arrested persons used at court; (iii) the letters of information used at court for suspects who have not been arrested.<sup>2</sup>

In the process of drafting these alternative versions, we have used the data gathered in the documentary and empirical research, as well as the guidelines supplied by experts in accessible language in the context of training organised in Budapest by the regional coordinator of the Project.

First of all, we have altered the order in which the rights are listed, with a view to facilitating comprehension thereof as part of a process; the official letters follow the order of the Criminal Procedure Act, which does not match the chronological exercise of the same.

Secondly, we have included explanations on the content, scope and manner of exercise of the rights, especially those in relation to which the empirical research has highlighted major difficulties of comprehension (the scope of the right to a lawyer, the requirements to qualify for legal aid, the right to apply for habeas corpus, etc.).

Thirdly, we have “translated” the legal jargon into plainer language. In doing so, we have collaborated with Professor Cristina Carretero González, an expert in accessible legal language from Universidad Pontificia Comillas. Professor Carretero, after analysing the official letters, identified some terms that were difficult to understand and replaced them with more understandable synonyms; she then tested these vocabulary changes with a sample of arrested persons at the Plaza de Castilla Courts in Madrid.

Taking the above into account, we have drafted the alternative versions included below. In the wording we have also made sure to use the second person (“you are entitled to...”), so that the recipient of the information feels it is addressed to him/her, which helps facilitate comprehension of the language.

These alternative versions prepared by Rights International Spain have been revised by Professor Carretero, who gave us her comments and made suggestions that we have taken into account when preparing the final version.

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<sup>1</sup> We used the standard form letter of rights used by the National Police Force as a base, after checking it against those of other police forces to which we have had access in the course of this investigation.

<sup>2</sup> For an alternative wording of the two types of forms used at court, we used the standard form letter of rights from Violence against Women Court no. 1 in Barcelona, after checking it against those of other investigating courts to which we have had access in the course of this investigation.

**[POLICE FORCE]**  
Unit or precinct

**POLICE REPORT No.**  
Sheet no.

**DECLARATION OF RIGHTS OF THE ARRESTED PERSON  
AND INFORMATION ON THE ACTS FOR WHICH HE/SHE HAS BEEN ARRESTED**

In [...], at [...] a.m./p.m. on [...] [...] [...], the officers of the [...] Police Force with professional document number [...] arrested Mr/Ms [...], born in [...], [...] [...] [...], son/daughter of [...] and [...], [*marital status*] and a [...] by profession, with address at [...], number [...], bearer of (National Identity Document/Foreigner Identification Number/Passport) [...] number [...], issued in [...], dated [...], due to his/her alleged participation in the events described below.

**1.- ACTS ON THE BASIS OF WHICH YOU HAVE BEEN ARRESTED**

- Place, date and time of arrest:
- Place, date and time of the act for which you have been arrested:
- Summary of the criminal act giving rise to the arrest and the offence in question:
- Circumstances indicating your participation in the offence:

You Mr/Ms [...] were already informed of your rights in understandable language

- at the time of arrest,
- as soon as possible after arrest, because you do not understand Spanish

Moreover, and for a second time, you are informed of the reasons for your arrest, the acts you are suspected of committing and the rights you have as an arrested person pursuant to the Spanish Criminal Procedure Act (Article 520).

**2.- RIGHTS**

**1) Right to a lawyer**

You have the right to have a lawyer come and advise you: you can request the presence of a lawyer of your choice or ask the Law Society to appoint a duty lawyer.

The Police will call the Law Society.

You may speak to your lawyer in private before and after making a statement at the police station. The conversations with your lawyer will be confidential.

You are entitled to have your lawyer present at other points in the investigation (for example, identity parade, DNA tests, search of your home or other place, etc.).

**2) Right to request legal aid**

The appointment of a duty lawyer does not mean that his/her advice will be free of charge. It will be if you are considered eligible for legal aid.

You will have to fill in an application form provided by the duty lawyer and, within a few days, present documents (payslips, bank account details, etc.). If your gross annual income is less than 15,000 euros, and you do not have any other assets (houses, cars, etc.), it is likely that you will be eligible for legal aid and will not have to pay the lawyer.

### **3) Right to be informed of the facts for which you have been arrested**

You have the right to be informed of the reasons for your arrest and of the facts and the offence of which you are suspected.

### **4) Right to be assisted by an interpreter and right to translation**

If you do not understand or speak Spanish, you are entitled to have an interpreter assist you. The services of the interpreter will be free of charge. The interpreter will translate what the Police and your lawyer say to you and help you communicate with them.

You are also entitled to have all important documents of these proceedings translated.

### **5) Right to remain silent and not respond to questions**

When the Police question you, you have the right to remain silent and not make a statement. You are also entitled to only reply to some questions and not to others.

### **6) Right not to incriminate oneself**

You are entitled to not to incriminate yourself and not to confess guilt regarding the offence on the basis of which you were arrested.

### **7) Right of access to essential documents**

You and your lawyer are entitled to see the essential documents you need to appeal the arrest if you feel you have been arrested unlawfully.

### **8) Right to have the Police inform another person or the Consulate of your country of your arrest**

You are entitled to have the Police inform a relative or another person of your choosing that you have been arrested. The Police will make this call.

If you are a foreigner, you are entitled to ask that the Police inform the Consulate of your country. You are also entitled to ask that the Consul of your country visit you while under arrest.

### **9) Right to make a phone call and speak to another person**

You are entitled to make a call to a person of your choosing and speak directly to him/her. You will be accompanied by a police officer while you do so. You are not entitled to call the victim of the offence for which you have been arrested.

### **10) Right to be seen by a doctor**

You have the right to see a doctor. If you feel unwell while detained, inform the police officers and they will take you to be seen by a doctor.

### **11) Right to be informed of the maximum length of detention**

When the Police have completed the necessary legal actions, you will be brought before the court.

The maximum duration of detention is 72 hours (three days).

### **12) Right to apply for "Habeas Corpus" and how to do it**

If you believe that the reasons for or conditions of your arrest violate your rights, you can apply for "Habeas Corpus", or ask your lawyer to do so on your behalf.

The judge on duty will decide whether or not your arrest is lawful.

Before adopting a decision, the judge may visit you at the police station or ask that you be brought to the court.

You have said that you want:

- To be assisted by lawyer Mr/Ms [...]
- To be assisted by a duty lawyer
- To be assisted by a [...] language interpreter
- To see the essential documents
- The Police to call Mr/Ms [...], who lives at [...] and inform that person that you are being detained at the [...] police station. The telephone number is [...]
- To call and speak to Mr/Ms [...], who lives at [...]. The telephone number is [...]
- The Police to inform the Consulate of your country that you are being detained
- The Consul of your country to visit you
- To visit a doctor
- To make a statement to the Police
- Not to make a statement to the Police and do so before a Judge.



**Investigating Court no. [...] in [...]**

## **INFORMATION ON THE RIGHTS OF THE INVESTIGATED PERSON UNDER ARREST**

I, Court Clerk at Investigating Court no. [...] in [...] hereby inform Mr/Ms [...] of his/her rights as investigated person arrested in these criminal proceedings pursuant to the Spanish Criminal Procedure Act (Articles 118 and 520 LECrim.):

### **1) Right to a lawyer**

You are entitled to have a lawyer of your choosing come and advise you. If the lawyer you choose is far away and cannot attend immediately, you are entitled to communicate with him/her by telephone or videoconference.

If you do not choose a lawyer, you will be assigned a duty lawyer to advise you. The Court will call the Law Society.

You can speak with your lawyer in private before and after making a statement before the Judge. Conversations with your lawyer will be confidential.

You are entitled to have your lawyer present at other points in the investigation (for example, identity parade, DNA tests, search of your home or other place, etc.).

### **2) Right to request legal aid**

The appointment of a duty lawyer does not mean that his/her advice will be free of charge. It will be if you are considered eligible for legal aid.

You will have to fill in an application form provided by the duty lawyer and, within a few days, present documents (payslips, bank account details, etc.). If your gross annual income is less than 15,000 euros, and you do not have any other assets (houses, cars, etc.), it is likely that you will be eligible for legal aid and will not have to pay the lawyer.

### **3) Right to be informed of the facts for which you have been arrested and are being investigated**

You have the right to be informed by the Judge of the reasons why you have been arrested and are being investigated, and of the facts you are suspected of having committed.

If the acts for which you are being investigated change during the investigation, you and your lawyer will be informed.

### **4) Right to see the essential documents**

You and your lawyer are entitled to see the essential documents you need to prepare your defence sufficiently in advance and before making a statement in any event.

### **5) Right to be assisted by an interpreter and right to translation**

If you do not understand or speak Spanish, you are entitled to have an interpreter assist you. The services of the interpreter will be free of charge. The interpreter will translate what the Judge, the Prosecutor and your lawyer say to you and help you communicate with them.

You are also entitled to have all important documents of these proceedings translated.

## **6) Right to remain silent and not respond to questions**

When the Judge or the Prosecutor questions you, you have the right to remain silent and not make a statement. You are also entitled to only reply to some questions and not to others.

## **7) Right not to incriminate oneself**

You are entitled to not to incriminate yourself and not to confess guilt regarding the offence on the basis of which you were arrested.

## **8) Right to have the Court inform another person or the Consulate of your country of your arrest**

You are entitled to have the Court inform a relative or another person of your choosing that you have been arrested. The Court will make this call.

If you are a foreigner, you are entitled to ask that the Court inform the Consulate of your country. You are also entitled to ask that the Consul of your country visit you while under arrest.

## **9) Right to make a phone call and speak to another person**

You are entitled to make a call to a person of your choosing and speak directly to him/her. You will be accompanied by a court officer while you do so. You are not entitled to call the victim of the offence for which you have been arrested.

## **10) Right to be seen by a doctor**

You have the right to see a doctor. If you feel unwell while in the Court or previously or have been injured during your arrest, say so and you will be taken to the Court's forensic doctor for a check-up.

In accordance with the Spanish Personal Data Protection Act (*Ley Orgánica 15/99, de 13 de diciembre de Protección de Datos de Carácter Personal*), I hereby inform you that your personal data has been included in the criminal proceedings file of this Court Office. This data may be shared with the Public Prosecutor's Office, other Courts and Tribunals and the rest of the parties to these proceedings. This data will only be used to comply with duties of the Court Office and under its responsibility; the data will be treated with maximum care.

After having been informed of your rights, you have said that you wish to:

- Appoint a lawyer:	NO	YES	Duty lawyer	NO	YES
- Be assisted by an interpreter:	NO	YES			
- Have your arrest notified:	NO	YES			
- Speak by telephone with a person of your choosing:			NO	YES	
- Be seen by a forensic doctor:	NO	YES			

In addition to the above, I hereby notify you that:

- **You must provide a postal address in Spain:** that will be the address where the Court sends letters or telegrams; if you do not have an address in Spain, you can provide the name and address of a person who will receive communications from the Court in your name. Please be aware that the summons to the trial will be sent to that address and that will enable the trial to be held even if you are not present if the sentence sought by the prosecution or the Public Prosecutor's Office is equal to or less than 2 years imprisonment or 6 years if the sentence is of another kind (for example, daily fines; Article 786 LECrim).
- **You must inform the Court if you change address or if you are going to be absent for a prolonged period of time** while the investigation is in progress and until you are notified of the trial date. If you change address and fail to inform the Court, you may be liable for a fine of between entre 200 and 1000 euros.
- **Whenever summonsed by the Court, you must attend in person** on the date and at the time indicated.

In witness whereof, the investigated person signs with me.

## **Investigating Court no. [...] in [...]**

### **INFORMATION ON THE RIGHTS OF THE INVESTIGATED PERSON**

I, Court Clerk at Investigating Court no. [...] in [...] hereby inform Mr/Ms [...] of his/her rights as investigated person arrested in these criminal proceedings pursuant to the Spanish Criminal Procedure Act (Articles 118 LECrim.):

#### **1) Right to a lawyer**

You are entitled to have a lawyer of your choosing come and advise you. If the lawyer you choose is far away and cannot attend immediately, you are entitled to communicate with him/her by telephone or videoconference.

If you do not choose a lawyer, you will be assigned a duty lawyer to advise you. The Court will call the Law Society.

You can speak with your lawyer in private before and after making a statement before the Judge. Conversations with your lawyer will be confidential.

You are entitled to have your lawyer present at other points in the investigation (for example, identity parade, DNA tests, search of your home or other place, etc.).

#### **2) Right to request legal aid**

The appointment of a duty lawyer does not mean that his/her advice will be free of charge. It will be if you are considered eligible for legal aid.

You will have to fill in an application form provided by the duty lawyer and, within a few days, present documents (payslips, bank account details, etc.). If your gross annual income is less than 15,000 euros, and you do not have any other assets (houses, cars, etc.), it is likely that you will be eligible for legal aid and will not have to pay the lawyer.

#### **3) Right to be informed of the facts for which you have been arrested and are being investigated**

You have the right to be informed by the Judge of the reasons why you have been arrested and are being investigated, and of the facts you are suspected of having committed.

If the acts for which you are being investigated change during the investigation, you and your lawyer will be informed.

#### **4) Right to see the essential documents**

You and your lawyer are entitled to see the essential documents you need to prepare your defence sufficiently in advance and before making a statement in any event.

#### **5) Right to be assisted by an interpreter and right to translation**

If you do not understand or speak Spanish, you are entitled to have an interpreter assist you. The services of the interpreter will be free of charge. The interpreter will translate what the Judge, the Prosecutor and your lawyer say to you and help you communicate with them.

You are also entitled to have all important documents of these proceedings translated.

#### **6) Right to remain silent and not respond to questions**

When the Judge or the Prosecutor questions you, you have the right to remain silent and not make a statement. You are also entitled to only reply to some questions and not to others.

## 7) Right not to incriminate oneself

You are entitled to not to incriminate yourself and not to confess guilt regarding the offence on the basis of which you were arrested.

## 8) Right to be seen by a doctor

You have the right to see the Court's forensic doctor for a check-up.

In accordance with the Spanish Personal Data Protection Act (*Ley Orgánica 15/99, de 13 de diciembre de Protección de Datos de Carácter Personal*), I hereby inform you that your personal data has been included in the criminal proceedings file of this Court Office. This data may be shared with the Public Prosecutor's Office, other Courts and Tribunals and the rest of the parties to these proceedings. This data will only be used to comply with duties of the Court Office and under its responsibility; the data will be treated with maximum care.

After having been informed of your rights, you have said that you wish to:

- |                                  |    |     |             |    |     |
|----------------------------------|----|-----|-------------|----|-----|
| - Appoint a lawyer:              | NO | YES | Duty lawyer | NO | YES |
| - Be assisted by an interpreter: | NO | YES |             |    |     |
| - Be seen by a forensic doctor:  | NO | YES |             |    |     |

In addition to the above, I hereby notify you that:

- **You must provide a postal address in Spain:** that will be the address where the Court sends letters or telegrams; if you do not have an address in Spain, you can provide the name and address of a person who will receive communications from the Court in your name. Please be aware that the summons to the trial will be sent to that address and that will enable the trial to be held even if you are not present if the sentence sought by the prosecution or the Public Prosecutor's Office is equal to or less than 2 years imprisonment or 6 years if the sentence is of another kind (for example, daily fines; Article 786 LECrim).
- **You must inform the Court if you change address or if you are going to be absent for a prolonged period of time** while the investigation is in progress and until you are notified of the trial date. If you change address and fail to inform the Court, you may be liable for a fine of between entre 200 and 1000 euros.
- **Whenever summonsed by the Court, you must attend in person** on the date and at the time indicated.

In witness whereof, the investigated person signs with me.

# Accesible Letter of Rights in Europe

