




Right to information under Directive 2012/13/EU

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High Criminal Court of Republic Croatia

- Common standards set by the directive
- Case law of the European Court of Human Rights within the scope of the Article 6 of the Convention
- Relevant domestic criminal procedural law



Directive 2012/13/EU on suspects' and accused persons' rights to information in criminal proceedings and the accusation against them



European arrest warrant

History

Right to information

- ❖ On 29 November 2000 the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters
- ❖ On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights
- ❖ On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm Programme

Charter of Fundamental Rights of the European Union

European Convention for the Protection of Human Rights and Fundamental Freedoms

Legal basis

Common minimum rules

Directive 2012/13/EU

Why

- Should lead to increased confidence in the criminal justice systems of all Member States,
- Should lead to more efficient judicial cooperation in a climate of mutual trust.

Where

- Such common minimum rules should be established in the field of information in criminal proceeding

Directive should therefore apply only to the proceedings before court.

The right to information about procedural rights.

The competent authorities should inform suspects or accused persons promptly of their rights.

This Directive lays down minimum rules with respect to the information on rights of suspects or accused persons.

Whom this concerns, about what, who is in charge



- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed of the accusation, in accordance with Article 6;
- (d) the right to interpretation and translation;
- (e) the right to remain silent

Right to information about rights

Where suspects or accused persons are arrested or detained (criminal proceedings, suspects or accused persons are deprived of liberty) information in written Letter of Rights.
Right of suspects or accused persons to have another person informed about their arrest or detention.
The right of translations or interpretation into a language that they understand.

Arrested or detained (deprived of liberty)

Persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition.

All the information on the accusation (accusation change) necessary to enable them to prepare their defense and to safeguard the fairness of the proceedings given promptly:

The facts, time and place, possible legal classification of the alleged offence

The latest information before their first official interview by the police or another competent authority.

Particular attention to :

Available to suspects or accused persons or to their lawyers at the latest before a competent judicial authority (Documents, photographs, audio and video recordings- files), be provided free of charge, competent authorities should take note of this .

Access to the materials - evidence, as defined in national law.

This right may be refused, in accordance with national law, where such access may lead to a serious threat to the life or fundamental rights of another person or where refusal of such access is strictly necessary to safeguard an important public interest

Case file

Obligation to provide suspects or accused persons with information about their rights in simple and accessible language (by a Letter of Rights)

Right to written information about rights on arrest provided for in this Directive should also apply, *mutatis mutandis*, to persons arrested for the purpose of the execution of a European Arrest Warrant.

This Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defense.

Information in simple way

- (a) The right of access to the materials of the case
- (b) The right to have consular authorities and one person informed
- (c) The right of access to urgent medical assistance
- (d) The maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority

Letter of Rights


The training for judges, prosecutors, police and judicial staff involved in criminal proceedings.

Nothing in the Directive minimizes any of the rights or procedural safeguards that are ensured under the Charter, the ECHR, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Indicative model Letter of Rights

Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant

Official Journal of the European Union 1.6.2012



Interpreted in the case-law of the
European Court of Human Rights

When does the obligation to inform suspects and accused persons about their rights arise?

Adolf v. Austria, No. 8269/78, 26 March 1982

Deweere v. Belgium, No. 6903/75, 27 February 1980

Eckle v. Germany, No. 8130/78, 15 July 1982

Engel and Others v. the Netherlands, No. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976

Providing information on procedural rights upon arrest (Article 4)

Extent of information provided

HB v. Switzerland, No. 26899/95, 5 April 2001

Form of information provided

Panovits v. Cyprus, No. 4268/04, 11 December 2008

Saman v. Turkey, No. 35292/05, 5 April 2011



ECtHR



Promptness of information provided

Murray v. the United Kingdom, No. 14310/88, 28 October 1994

Providing information on the accusation (Article 6)

C-216/14, Criminal proceedings against Gavril Covaci, 15 October 2015

Form and extent of information provided

The right of access to case materials (Article 7)

Type of material evidence that can be accessed and form of access

Kremzow v. Austria, No. 12350/86, 21 September 1993

Applicable grounds for refusal and their review

Rowe and Davis v. the United Kingdom [GC], No. 28901/95, 16 February 2000

Kremzow v. Austria, No. 12350/86, 21 September 1993

Vulnerable persons (Article 3(2))

Accommodating needs of persons with hearing impairments

Timergaliyev v. Russia, No. 40631/02, 14 October 200

Case Law

Criminal Procedure Code (Narodne novine 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 126/2019)

The instruction on the rights :

- a) why he is suspected or accused and the circumstances from which the grounded suspicion arises against him, if he has not previously received a decision on enforcement of the investigation,
- b) that he is not obliged to his defense or answer questions,
- c) has the right to inspect the file,
- d) that he has the right to use his own language, the language that speaks and understands and the right to an interpreter
- e) that he has the right to take a defense counsel of his choice or that he will when provided by this Act, appoint a defense counsel ex officio duties or at the expense of budgetary funds if according to their own property cannot cover the costs of defense.

National legislation in Croatia

- a) Search warrant,
- b) Invitation for the first examination,
- c) Decision on conducting the investigation,
- d) Summons for an evidentiary hearing,
- e) The notification referred to in Article 213, paragraph 2 of this Act,
- f) Decision on pre-trial detention,
- g) Identification order,
- h) Order on expertise towards the person of the defendant.

The instruction on rights must be delivered to the defendant with:

The body carrying out the action ex officio checks whether the defendant has received instruction from rights before starting the action and if he finds that the letter of rights have not been served, she will stop acting, order first delivery of letter, and only then proceed with the procedure.

If the state attorney or the body conducting the action finds that the instruction on rights the defendant received earlier will establish this official note in the file and will not resubmit the instruction

Checking wheter the defendent received letter of rights

After the delivery of the decision on conducting the investigation, the defendant who considers that he has been denied or violated against the law certain right, may file a written objection to the state attorney. The State Attorney shall immediately, and no later than within eight days from the day of receipt of the objection to make a decision. If State Attorney does not accept the objection within that period, he will submit it to the judge investigations that will immediately, and no later than eight days from receipt to decide on the objection. If the investigating judge accepts the objection it is possible to exercise a certain right or to enforce that repeating the action, will order the Attorney General to accomplish this rights or carrying out or repeating an action in a certain deadline.

Written objection of defendant

The body conducting the interrogation shall ask the defendant before the first examination of whether he had received written instruction on rights and if so, will be satisfied that the defendant understood the rights.

If the defendant had not received a written instruction on his rights before, they shall be served, and if the defendant did not understand the instruction, the body shall instruct the defendant on rights.

Receipt of instruction and all other actions in this regard will be recorded.

The defendant, will be invited to expressly state whether to take defend counsel of their choice.

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The first examination



Thank you

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judge

