AN ASSESSMENT OF HOW RIGHTS ARE READ AND EXERCISED AT A POLICE STATION

Abstract

The European Union (EU) has recently reinforced its directives on the legal safeguards that should be guaranteed for individuals in police custody. This reform process has underlined the importance of detainees being informed of the exact reason for their detention and their procedural rights. This study explores the process by which police inform individuals of their rights in Spain now that implementation of the new European rules is mandatory. Our findings suggest that the police meet their obligation to read the detainee's rights but fail to ensure that these rights are understood. In addition, it has been found that the different individuals involved, that is, detainees, police officers and lawyers, have different expectations about the process of detention, which, on occasions, severely complicates the observation of some procedural safeguards.

Keywords: police custody, right to information, detainees, professional culture, right to legal counsel

In 2009, the Council of the European Union adopted a program of reform of procedural rights of suspects and accused persons in criminal proceedings, known as the procedural rights' roadmap. The rationale was to enhance trust and facilitate mutual recognition of judicial decisions as much as the need to ensure the right to a fair trial enshrined in Article 6 of the European Convention for the Protection of Human Rights. The Council identified five priority areas of fundamental rights: translation and interpretation; information on rights and information about charges; legal advice and legal aid; communication with relatives, employers and consular authorities; and the need to develop specific provisions for vulnerable suspects. The EU roadmap has thus far given rise to six Directives: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; Directive 2012/13/EU on the right to information in criminal proceedings; Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings, Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings; Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings and Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings. The Member States were given a transposition deadline to implement the EU legislation in their national laws, being obliged to amend their national systems of criminal procedural law to meet

the European standards. However, legal transposition may not be enough to ensure its practical and effective implementation (Mols, 2017). Empirical research has shown there is a great divide between the law in books and law in action (Nelken, 1984): This gap could be especially problematic in complex and sensitive areas, such as the procedural rights of those detained and interrogated by the police, arguably the most critical stage of criminal proceedings (Blackstock et al., 2014). In this paper, we wish to explore how the new EU standards are implemented in Spain. Specifically, an exploratory, mixed-methods analysis was performed to investigate how, in practice, detainees are informed of their rights and how these rights are exercised while in police custody. First, we briefly explain how the EU roadmap has been implemented in Spain and conduct a detailed review of how the right to information is dealt with in police custody. We then present our research and results, which are discussed in the light of other recent empirical studies.

1. Implementation in Spain of the EU roadmap

To date that research was conducted, Spain had undertaken the legal transposition of the first three directives, although it is worth noting that major reforms have not been required. The Spanish criminal procedure code was already sensitive to the question of procedural safeguards. When Spain began its transition to democracy, it developed a rights-based criminal procedural legislation that, inter alia, attempted to limit police powers. Spanish society and the new democratic institutions were aware of the excesses of the police during the dictatorship and, hence, policy makers were highly sensitive in this regard. Nevertheless, the EU roadmap has involved revising some of these safeguards, with several reforms being carried, with certain elements not yet having been implemented

Briefly, according to Spanish Procedure Law, the right to interpretation and translation is generally compliant with the provisions of the Directive, as it seeks to ensure access to interpretation at the earliest stage of the arrest. However, a new law passed in 2015, which reformed the existing legal framework to comply the Directive's requirements, has not developed a standardized procedure to determine whether the suspect speaks and understands the language of criminal proceedings and it has not been established who will ultimately be responsible for verifying any difficulty in understanding. Furthermore, the Official Register of Judicial Translators has not yet been created, despite the legal obligation to do so and its importance in ensuring the quality of the service provided.

Likewise, the Spanish law on access to information on rights complies almost entirely with the provisions of the Directive. Thus, suspects must be informed of their rights and the charges against them, orally and in writing. Written information is provided by a "letter of rights", a standardized form functioning as a checklist (Spronken, 2010). However, concerning access to case materials

and documents at police stations, the transposition of the Directive is inadequate. The criminal procedure law refers to "access to essential elements", instead of documents, as provided for in the Directive. In addition, the guidelines issued to police forces contain a narrow interpretation of the information to be disclosed to detainees and their lawyers (Cape, 2018).

Finally, the directive has strengthened the rights of criminal suspects to obtain effective legal aid at the earliest stages of proceedings. As mentioned, Spanish law was already sensitive to this,[1] and hence suspects cannot waive their right to a lawyer. Moreover, legal advice is free for detainees without sufficient economic resources. Nevertheless, the directive has given a new impetus to improving effective access to legal advice. Thus, a novelty of the new reform of the law is the right to lawyer-client consultation in a private meeting without time restriction and, in spite of the difficulties stated above, lawyers have the right to request information about the evidence against the suspect.

2. The right to information in police custody

In accordance with Directive 2012/13/EU, detainees should be promptly provided with a Letter of Rights, written in a language they understand and drafted in an easily comprehensible and simple manner. They must be allowed to keep it in their possession throughout the time they are detained. In addition, they must be informed of the criminal act they are suspected or accused of having committed and the exact reasons for their detention (Art. 6.2). It should also be ensured they have the right of access to the materials of the case (Art. 4.2.a), the right to inform of their detention to one person and the consular authorities if they are of another nationality (4.2.b), and the right to urgent medical assistance (Art. 4.2.c.). Furthermore, they should be informed of the maximum period of time they may be deprived of liberty before being brought before a judicial authority (Art. 4.2.d) and the possibility of challenging the detention, requesting a review or provisional release (Art. 4.3). Although many of these safeguards were already enshrined for many European countries in their domestic legislation, one of the foremost novelties is the importance the Directive gives to the information being provided swiftly and, above all, being comprehensible to the detainee. Hence, the text insists on the use of accessible documents that are easy for individuals in police custody to understand.

The effort required of police forces in this reform is underlined by evidence that the informing of rights is more theoretical than practical. The scant research in this sense suggests that detainees do not fully understand all the rights included in such declarations (Snook, Luther, Eastwood, Collins & Evans, 2016), with the main obstacle to comprehension being the grammatical

[1] Arguably, the *Salduz case* and the following cases had no impact on Spanish legislation and only the EU roadmap (compulsory) promoted the new reforms.

complexity of police documents, which demands readers have seventh grade or university level studies (Snook et al., 2016)), something that is untrue of many detainees. In addition, the fact these documents are replete with legal terms and the rights are read at great speed (Snook et al., 2016) prevents detainees from understanding and processing the information they are provided with, especially if it is their first experience of criminal procedure (Bryan, Freer & Furlong, 2007).

Not only to be considered is the technical difficulty but also the stress itself generated by the detention, which potentially generates a state of tension and anxiety that may affect the detainee's level of comprehension (Skinns, 2009). This difficulty is exacerbated when the detainee is in a state of intoxication or suffers some type of pathology (Rights International Spain, 2017).

Research has also shown that using simplified Letters of Rights or ones drafted in more straightforward legal language does not necessarily guarantee better understanding. Indeed, providing accessible texts written in plain language has been found to be more useful (Bencze, Kádár, Koltai & Moldova, 2017). There is no consensus, either, on the best strategy to ensure proper information of rights. Some studies have found a greater percentage of comprehension if detainees listen to their rights being read rather than reading them themselves (Snook et al., 2016), while other studies have found no significant differences according to the method used (Bencze et al., 2017).

Finally, it has been shown that in Spain the system police officers use to check detainees have understood their rights lacks effectiveness, given that it consists of no more than asking them whether they have understood the information, to which detainees tend to automatically reply affirmatively when this is not actually the case (Zuloaga, de Miguel & Ortubay, 2017). This conformity is attributed to detainees answering what they think is expected of them, as admitting they have failed to understand may make them feel embarrassed, delay the process or frustrate the police (Skinns, 2009).

3. Methodology

3.1. Study design

To meet the aims proposed, we developed a descriptive, exploratory study using the following techniques as data collection methods: i) non-participant observation of statement taking in a Spanish police station, and ii) semi-structured interviews with the professionals involved (police officers and lawyers).

3.2. Observation method: procedure and analytical approach

This research used structured, or systematic, non-participant observation. However, we first conducted a one-session pilot study using open observation. We then implemented a provisional record sheet over three sessions. Once the information collected in these four sessions was

analysed, we designed the final observation coding sheet. Specifically, we gathered information on sociodemographic characteristics (age, sex, nationality and any special circumstances of the detainees), the nature of the detention (type of offence, number of detainees, police officers involved), the actual informing of rights (procedure and rights presented) and detainee behaviour.

As well as completing the questionnaires in each daily session, field notes were taken to collect further information to contextualize the observations. These notes are referenced in the text using the initialism FN.

The information from the quantitatively analysed variables was triangulated with that from the field notes. Thus, the quantitative analysis served to objectivise, identify, and describe the reality of the detention process. Furthermore, the non-standardized information allowed us to delve a little deeper into certain issues, corroborating and complementing some of the findings.

3.3. Interviews: procedure and analytical approach

To check the information gathered by means of the observations, we decided to conduct semi-structured interviews with police officers and lawyers, the professionals involved in the detention. These interviews comprised ten questions on sociodemographic factors (sex, age, work experience …), their role during the detention, their perception of how the information on rights was provided, and their level of knowledge and opinion about the new procedural reforms implemented under the EU.

To analyse these interviews, the thematic analysis method was followed (Braun & Clarke, 2006). First, we transcribed the interviews, and then read the content several times, noting down initial, general ideas. Second, we coded the content and compiled the most significant aspects of the material, and then elaborated a thematic "map" of the analysis (grouping the content into overarching themes and sub-themes). Third, each theme was carefully analysed, identifying the definitions and ideas each interview provided on the particular theme. Finally, we selected and analysed the text segments selected to extract the most useful information therein.

3.4. Research procedure and ethical questions

In order to conduct the present study, we obtained the corresponding authorisation from the provincial police headquarters and the public prosecutor's office. The study was also approved by the Research Ethics Committee of the University.

The observation phase was conducted over three months (27-09-17 to 26-12-17) at a national police provincial headquarters. Two researchers took turns in observing the statement taking for detentions in the morning and afternoon, from Monday to Friday, witnessing a total of 74 detentions of the 248 made over this period. To this end, when a detention occurred, a police

officer called the researcher, who was waiting in another room, so they could witness all the corresponding actions. During the study period and within the hours mentioned, 112 detentions took place. Of these, 38 (33.9% of the total) could not be observed for various reasons: police officers' reluctance to alert the researchers of a detainee's arrival (20), police officers' refusal to let us observe certain detentions due to the threat of physical danger or to the detainee being a minor (3), and the simultaneous occurrence of detentions making it impossible to observe both (15).

Once the researcher was advised of the detention, the detainee was informed of the research and was given an informed consent form to read and sign if they accepted the researcher's presence. We also requested the detainee's agreement to a subsequent interview in another location, so as to learn their perception of their detention and the extent to which they had effectively been informed of their rights. However, none of the detainees agreed to arrange a meeting as they all argued they were uncomfortable speaking about what happened.

Finally, following the observation process and once the preliminary analyses were complete, we conducted the semi-structured interviews with the professionals involved, for which the corresponding informed consent was obtained. The ten interviews conducted lasted an average of 54 minutes.

3.5. Participants

As mentioned, we observed the taking of statements from 74 detainees, which represents 29.8% of the detentions conducted during the observation period. Observations were performed until saturation was reached, in other words, until we found that further observations provided no new data (Guest, Bunce & Johnson, 2006). Most individuals whose detention was observed were men (91.9%), aged between 14 and 81 years (mean age=34 years).

Additionally, ten professionals were interviewed (5 lawyers and 5 police officers), who were selected in such a way as to ensure the most heterogeneous profile possible as regards sex, age and work experience. Although the sample was not representative from a statistical perspective, from a substantive standpoint it was, and it met the aims of the study (Corbetta, 2007).

3.6. Limitations of research

This research presents certain limitations owing to the design of the methodology used. First, the researchers that observed the activity in the police station were unable to witness detentions involving two specific types of police groups, narcotics (except four particular detentions) and cybercrime, as these were groups conducting "sensitive" investigations that might have been compromised by our presence. Second, we were unable to witness the particularities of weekend detentions. The presence of fewer officers and the specific nature of these detentions, which usually occur at night and *in flagrante delicto*, advised against our participation due to the risk of

physical harm to observers. Third, as mentioned, we were only able to observe one of the three moments in which detainees are informed of their rights. This occasion is one of the most significant as it occurs during the taking of the statement in the presence of the lawyer and is conducted more slowly and with greater calm. However, it is also true that after some weeks, it became clear that by this point, many of the rights had already been explained in detail in previous stages, and more importantly, had already been exercised. Consequently, we thought it appropriate to compensate for this lack of information on the exercise of the right to information while in police custody by conducting interviews with the individuals involved. As previously explained, the triangulation of the information provided by the professionals allowed us to clarify many of the unobserved situations. We also attempted to invite the detainees who had been observed to participate in a subsequent interview, but none accepted the invitation. Although they gave a variety of reasons, they all seemed eager to get away from the police station, and even some weeks later were still reluctant to speak about their experience; some due to a sense of shame, others due to mistrust and others through lack of interest.

Finally, it should be noted that this research was conducted at a provincial police station in a city with a lower crime rate than that of the country as a whole,[2] and although this analysis has no intention of generalising the findings to the national arena, we would ask the reader to take this into account when considering the scope of the findings.

4. Research findings

In Spanish police procedures, detainees are officially informed of their rights when their statement is taken. However, individuals in police custody receive information on their rights much earlier. As soon as they are arrested, the police are obliged to orally inform detainees about the acts they are suspected of committing and their rights. Upon arrival at the police station, the police routinely give suspects written notification of their rights, who are asked whether they wish to exercise some or all of such rights. Subsequently, in the presence of their lawyer and before the statement is taken, the police officer reads the Letter of Rights again. It is worth underlining that the police read out the entire Letter of Rights on the three possible occasions where such information can be given.

Accordingly, for the description of our results, we will differentiate between the data obtained during the research on the giving of information on rights and the possible exercise of such rights

[2] According to the data available on the portal of the Ministry of the Interior and the Spanish National Statistics Institute, the average rate of detention at national level in 2018 is 7,228 and that of the population in question is 3,661.

before and during the statement, which constitutes the formal act of informing of rights and which, in addition, could be observed as part of our research.

4.1. Right to information in the first police actions

All the police officers interviewed agree that when detainees are arrested in the act, information on rights is delivered swiftly as the priority is to immobilise the individual in question and ensure the physical safety of everyone involved: victim/s, detainee/s and police officer/s (Pol_1, Pol_2 y Pol_3). At this point, efficiently detaining the person (from a police perspective) is prioritised over giving them detailed information on their rights, "*whether they've understood it properly or not, I have to get on and they'll understand their rights the second or third time they're read*" (Pol_3, p.339).

Once the detainee has been transferred to the police station, or once they have arrived at the station as the result of a previous summons to attend, they are once more informed of why they are being detained and they are verbally read their rights under Article 520 of the Spanish Code of Criminal Procedure. To this end, the police use a copy of the Letter of Rights published on the SIDENPOL (Police Development System) website, which varies and is updated in line with any new legislation (Pol_5). This reading of their rights "*is a summary*" (Pol_5) and the professionals interviewed reported they focus on explaining the rights to be exercised at the initial detention, that is, the right to name a lawyer, to receive medical assistance, to make a telephone call, to inform their family, and when necessary, to request the assistance of an interpreter. This will be discussed below.

Our research revealed that 10.8% of detainees exercised their right to medical assistance, which, as explained in the interviews, in the case of the police station in the study, involved going to the city's general hospital rather than a doctor visiting the station. Some of the lawyers explained that one of the first questions they address is to ask whether the detainee feels physically well or they think they need the assistance of a doctor, finding in many cases that their client has already been examined by a healthcare professional (Law_3). However, they also mentioned that in more than a few cases police officers try to deter the detainees, telling them that if they are taken to the doctor, they will have to be handcuffed, and that the detention will last longer than necessary (Law_1). This was confirmed by one of the police officers who said that when they explain this "*any physical discomfort usually vanishes*" (Pol_5) and that in their opinion, detainees "*use the medical issue to get out the police station*" and think that going to the doctor is "*a half-hour break*" (Pol_5). We also found that administration of medication is a complex issue as the police officers in charge of the detainee need a doctor's prescription to be able to provide any medicine.

During the statement taking, some detainees were observed to complain that they had told the officers guarding them that they had a headache and had not been given any medication (FN 36).

Difficulties also appear when the detainee is a foreigner without a good command of Spanish. Some police officers think that foreigners exercise the right to an interpreter as a "*ruse […] to complicate or delay the detention*" (Pol_3, p.305 and 307) although this appears to make little sense since, as the interviewer recognises "*in the end it makes things worse for them, I suppose*" (Pol_3, p.307). Most are of the opinion that *"if it can be avoided, all the better, but if not, we call an interpreter*" (Pol_3, p.309). During the course of our research, an interpreter was required in 77.7% of the cases in which the detainee was not a Spanish speaker. Nonetheless, we found there was no established procedure to ensure comprehension, with the police officers' perception being that most of the foreigners they arrest understand the language, "*they say they don't understand Spanish … but you know they do*" (Pol_3, p. 265). However, as stated by a lawyer, there is a difference between understanding nothing and having a proper command of the language, "[*an interpreter] should be required when you can see that the detainee doesn't have a perfect command of the language*" (Law_5, 728). However, the professionals' opinion of the interpreters' work is not always positive, with one lawyer considering that "*it sometimes leaves much to be desired […] you don't know whether [the interpretation] is of acceptable quality*" (Law_5, p. 736 and 744). One police officer clarifies that, in his experience, there are two types of interpreters, some who can be trusted and have years in the profession, where there is a relationship between what you say and what they translate, and others who you mistrust, "*You can't establish whether they're doing it properly, but you say something and they start speaking and interfere in the statement. You know because [the detainee] has told you things before and when the interpreter arrives, their statement changes completely*" (Pol_5). This mistrust is shared by the lawyers, one of whom admits that when the interpreter is present, the detainees "*don't even look at you … they stop trusting you*" (Law_1, p. 430). An added difficulty is that the interpretation service is provided by a subcontracted company and, on occasions, the assistance is by telephone, meaning that "*everything is very distant […] really complicated*" and the inadequate technology leads to breakdowns in communication (Law_3, p. 993-1007, also Law_1).

Another right of which detainees are usually informed at the moment of detention, and hence we were unable to observe, is the right to make a phone call. However, we did subsequently learn during observation of the statement taking that 6.75% had exercised this right. Nonetheless, the professionals interviewed told us there was no specific phone from which to make such calls, and on occasions, for reasons of hygiene, detainees are asked to say who they would like to call and the professionals themselves make the call (Pol_4, p. 190-206), or otherwise they might let the detainee make the call from their own mobile device (Pol_5). We were also told that sometimes detainees do not exercise this right at the beginning of the detention but then when giving their

statement they say, "*so, now I want to call […] because it occurred to them when they were in the cells*" (Pol_2, p. 962-966)

Finally, in this prior stage, the most important right which is informed about and safeguarded is the right to legal counsel. The detainees in this research largely (89%) opted for the right to a public defence counsel, with detainees less frequently asking for private counsel, a right exercised by only 4% of detainees. Moreover, in 7% of the detentions no lawyer was present as these were court-ordered detentions. This scenario is entirely irregular. Despite the urgency of sending detainees to court, they should always have the assistance of their lawyers at the police station.

As we were unable to observe the initial process of informing of rights, there remains doubt about how the right to free legal assistance was explained. Some of the police officers interviewed reported explaining it but "*without great emphasis*" (Pol_4, p. 420), while others referred to the complexity of this right "*not even we understand all about free legal aid*" (Pol_2, p. 804). Furthermore, all the lawyers interviewed agree that detainees are not informed of this right either by police or lawyers as it is "*not the time*" (Law_1, 872, Law_4, p. 290). "*The detainee only wants to get out the police station, to be allowed to go home, so if you start saying […] you need to bring me your income tax declaration, they look at you as if …*" (Law_4, p. 298). The lawyers also recognise "*we provide the initial legal assistance but I don't know whether they have the right to free legal aid*" (Law_2, p. 510 y 512), "*we process the papers, but it's the Bar Association that makes the decision*" (Law_1, p. 880 y 884).

4.2. Right to information during the taking of evidence

As mentioned, although the right to information is implemented from the first moment the police act, all the professionals involved consider that statement taking is the key moment when detainees are informed again. On this occasion and in the presence of their lawyer, they are informed more calmly about the reasons for their detention and their corresponding legal rights. This is the stage of the procedure observed in the present research and about which we have most data, as described below.

All detainees must be informed of the criminal acts they are suspected of committing and why they have been deprived of their liberty. This occurred in 91.8% of the cases. In the four detentions in which the acts for which they had been arrested were not explained, the police began to take the statements in the presence of a lawyer and the detainees asked no questions about why they had been detained. In the observations conducted, the police officers were seen to give a brief description of the criminal offence with no further details, unless the detainees asked a question. In one particular case, for example, the detainee asked on three occasions about the meaning of

"*arbitrary enforcement of one's own right*" and why they had been detained for this reason (FN 29, p. 7).

After informing about the acts for which they are detained, the police officers inform the detainees about the possibility of a prior private, confidential interview with their lawyer, something which occurred in 60% of cases. The possibility of a prior interview was introduced in the 2015 reform, and has been well received by the lawyers in our research, as they consider it to be a key safeguard for detainees, where they can be advised, reassured and their doubts can be resolved at an especially delicate point in the process.

The law requires this prior interview be conducted in a dedicated space, which offers both physical and acoustic confidentiality. However, in this research we witnessed that, in practice, the interviews were conducted in the police station, in the corridor leading to the door of the judicial police's offices, either on some chairs forming a sort of waiting room, or in the offices themselves, sometimes in the presence of a police officer (FNs 18 and 39). For this reason, the lawyers were highly critical and complained that the interviews lack confidentiality, "*we try to go somewhere they can't hear us speak*" (Law_2, p.172), and defend the need for a quiet place especially reserved for this end. Two of the police officers interviewed said the building has a room for such interviews but it is not used due to problems of accessibility, as it is in the basement and incidents might occur when taking the detainees there and it is also frequently very cold (Pol_3 and Pol_4). Police officers consider the procedure ensures security and does not affect privacy. In their view, the fact a police officer is on guard nearby neither impacts nor changes the course of the interview, "*they go there (referring to a free office) and there's a police officer at the door and that's it … the officer doesn't have to listen to the conversation, there's enough privacy, but the door's open*" (Pol_1, p. 1038-1044). Other police officers complained about certain lawyers that "*steamroll their way in, as if they own the place, they interrupt you, get the detainee and throw you out the office so they can do the interview*" (Pol_5). Moreover, even though there is no time restriction on the lawyer-client consultation prior to interrogation, the consultations were very short: an average of less than 5 minutes.

All through the research, we noticed constant tension between the police and lawyers and the influence of vested interests which meant relationships between these professionals were not always smooth. This is especially apparent in the access to the materials of the case, where everyone has their own version of what should be done and what the key elements of the new legislative reform involved. One of the lawyers, with more than 20 years' experience, said he had noticed no real difference since the reform, "*I've always gathered the information […] before I used to get it through informal channels and now they let me read it*" (Law_1, p. 374-381). However, other lawyers did complain about the permanent struggle with the police officer to obtain the information they believe necessary to properly defend their clients, saying "*the police*

are not happy about it" (Law_2, p. 582, also Law_3, Law_5). We observed this conflict on two occasions in which two (female) lawyers were denied access to statements (FNs 28 and 47). We observed that the lawyers typically requested information and were freely provided with the accusation, but no more. In fact, formal information on the right to access the statement was only given in one of the detentions observed.

In the interviews, we encountered two different standpoints, depending on the experience of the lawyers. On the one hand, the younger lawyers appear to view this practice as normal (Law_4, 580 and 598), and indeed state they are reluctant to insist the police officers provide them with more information as it might have negative repercussions for their clients. They said, for example, "*I know colleagues, who, if it occurs to you to complain … it's worse*" (Law_2, p. 926) or "*I've even felt […] my client's going to pay for this*" (Law_3, 2475). In their view, access to documents in the police station is a lost cause and they prefer to wait until the cases goes to trial, where they have access to the full statement, medical reports, the accusation and all the information they require, and of which they can make copies. On the other hand, however, the more experienced lawyers insist on the exercise of this right set out in the new law. One of those interviewed, who always acts as a private lawyer told us "*what I demand is the prosecuting evidence […] and in written form […] they don't like giving it to you (laughter) but it's the right thing […] the instructions from the bar associations is to as reveal all the irregularities we find in statements*" (Law_5, p. 98-108). Or as another experienced lawyer reports "*it's a permanent struggle […] but it's unacceptable for them to refuse, if it ever happens, and it has, it is reflected in the written record*" (Law_3, p. 2365 and 2471).

Once the detainee has been able to speak to their lawyer for a few minutes, the detention continues and the formal reading of rights begins. According to our observations, some rights are read or explained better than others and some are rarely or never read. While the detainee is almost always informed of their right to ask for a lawyer (90% of the cases), the right to request free legal counsel or the right to *habeas corpus*, which allows a person to report an unlawful detention, was not explained in any of the statements.

In most cases (63.5%) the police officers provided information on only a few rights (four or five) and in six cases of detention, the information given on rights was highly insufficient. In three of these, the statement was taken with the assistance of an interpreter and the police only informed the detainees of a few rights quickly and in colloquial language for them to be immediately translated. In the other three detentions, the police read no rights and only the statement was taken. Indeed, in one of the detentions observed, the police officer realised they had not informed the detainee of any of their rights and attempted to remedy this by reading some of them at the end of the session (FN 41, v. 5). Nonetheless, despite the rights not being carefully explained, all the professionals interviewed underlined the importance of these rights during the detention and the

need for police officers to read them correctly. As one police officer recognised, if this information were not provided, "*there'd be a loophole, which could lead to serious problems*" (Pol_3, p. 596).

Once more, there emerges a difference of opinions between the lawyers and police officers, with each believing that the main responsibility for informing of rights lies with the others, evidencing that these relationships are not always harmonious. Some of the officers interviewed refer to the limited involvement of lawyers who neither clarify nor explain the letter of rights to their clients in enough detail, "*they don't actually explain the rights, they don't go into the details*" (Pol_4, p. 692). The lawyers, meanwhile, claim that the police take the reading of rights as just a routine, "*they just want to get the reading over and done with as soon as possible*" (Law_5, p. 570). This reading is generally just a swift listing of their rights, but some lawyers demand the police conduct the process properly, "*if police officers read the Letter of Rights, then they should read it slowly and carefully, explaining things […] if not, nobody understands anything*" (Law_5, p. 434).

An equally important question emerged in the interviews, with both groups of professionals remarking that detainees generally took no interest in the reading of rights and adopted a passive attitude. This idea is supported by some of our field notes, such as, "*detainees are indifferent and passive…they just nod their heads*" (FN 30, v. 2). According to the police officers, the detainees "*couldn't care less, they just want to go*" (Pol_2, p. 988), which is supported by the lawyers who say, "*they don't care what you say […] they sign so they can get out*" (Law_2, p. 344). Police officers have a record book where they note down the moment when the Letter of Rights is handed over to be signed. This perception seems to contribute to the professionals regarding the process as a mere formality that has to be complied with.

Another conflict appears with regard to the right not to incriminate oneself. Strikingly, this right was one of the least frequently explained during the taking of evidence, on some 5% of occasions. Although this right is associated with the right to remain silent, they are actually different issues and police officers do not pay it the required attention. Nonetheless, for the lawyers, it is a crucial point they address in the prior interview, with practically all of them advising detainees not to make a statement in the police station (Law_2, Law_3, Law_4 y Law_5). They claim many of the detainees fail to tell the complete truth when giving their statement and may contradict themselves; they get nervous and tense and there is no benefit to be obtained from talking at that point in the proceedings (Law_2). It is preferable to declare in court when the lawyers can advise them after having consulted the complete police file (Law_5). However, if a detainee insists on making a statement while in front of the police, the lawyers attempt to advise them about what to emphasise and what to ignore or avoid speaking about (Law_4). Despite the general perception of all the professionals, especially of the police, being that detainees declare more in court than at the police station, since the implementation of the reform and the use of the prior interview, our

findings show no significant differences between having a prior interview with the lawyer and not making statements during questioning at the police station (X_2=1.373; g.l.=2; p≤0.503).

One of our most interesting findings, however, is the existence of what some lawyers and police officers refer to as "*the freedom game*". Some of the lawyers believe the police officers try to force detainees to make a statement as this helps the investigation, "*they let them know that if they collaborate they'll be released…but that if they get stroppy…they'll have to stay there for a night, two nights or the weekend*" (Law_3, p. 410). In fact, the police officers recognise that for the investigation to go smoothly, it is to their interest to take the detainee's statement at the police station, "*I have my weapons, too, I say, OK, no problem…down to the cells […] you told me you were going to release me, yes, but if you give a statement, of course […] I want them to give evidence at the police station […] I want them to contradict themselves*" (Pol_3, p. 1100 y 1108, also Pol_5). And they freely recognise that for them "*the investigation is the main thing*" (Pol_3, 295).

The lawyers are highly critical of this part of the police's behaviour, with some of them openly accepting that "*at the police station, they're in charge […] they're on home ground and have certain powers*" (Law_1, p. 208 and 210). They almost all agree that such a game exists and that the police make self-interested use of their power to decide when to release the detainee. They claim "*an individual has to stay the night in the cells or is released because one's a foreigner and the other is…the son of whoever*" (Law_1, p. 168). Another lawyer suggests this game is a means to apply pressure to go forward in the investigation but actually "*the decision has already been taken*" (Law_2, p. 604, also Law_1).

Finally, during our research, the right to *habeas corpus* was only informed about in one detention. This right is not included in the Letter of Rights used at the police station, as stated by one of the police officers (Pol_5), which explains why the police officers did not inform about the possibility of exercising this right to the detainees. The lawyers also confirmed this (Law_1, p. 808, Law_2, p. 468, Law_3, p. 2073, Law_5, p.466), suggesting it was a residual right (Law_3, p. 2121) that is inconvenient for the police, prosecutors and judges, and the procedure involved is complex as it is difficult to prove and apply (Law_1, Law_5). Some professionals told us that there had been a version of the Letter of Rights with an explicit reference at the end to the right to report an unlawful detention, but "*it had led to a flood of habeas corpus*" (Pol_5), "*it became a trend*" (Law_5, p. 470). The way it was expressed in the Letter "*invited individuals to tick the box and apply for it*" (Pol_5), and so was removed. It is generally thought to be a highly technical question that should be exclusively dealt with by the lawyer "*when there really was habeas corpus, logically we followed it up*" (Law_3, p.2095).

Once the rights have been read, the police officer is obliged to give the Letter of Rights to the detainee, so they can read it immediately and sign it if they see fit. During the research, we found

that in 60% of cases, the police officer failed to give the detainee the Letter to read, simply showing them it and asking them to sign. Moreover, surprisingly, most detainees who were given the Letter of Rights did not read it (30% of the total), with only 10% of the total number of detainees stopping to read the document properly. The police confirm this, "*very few read it, they usually trust you*" (Pol_4, p. 330). In some cases, however, detainees have sometimes refused to sign the Letter, in which case, this is recorded in the statement so they cannot allege they have not been informed of their rights, "*it's one person's word against the other's*" (Pol_2, p. 410). Their not wanting to sign might be due to a lack of trust, as explained by the police "*they think you're deceiving them or that if they sign, they're committing themselves to something*" (Pol_4, p. 358). For this reason, they recognise the importance of the lawyer's work "*they trust the lawyer […] they see you, a police officer, as the enemy*" (Pol_4, p. 370 and 372).

It is worth noting that despite the law providing that the Letter of Rights shall be given to detainees for them to keep while they remain at the police station, during our observations, the Letter was not handed over to any of those suspected of a criminal act. In the interviews, it was explained that this condition is not complied with, in practice, for reasons of safety, as detainees might self-harm or cut themselves and the police cannot risk this happening while they are in their charge (Pol_1, Pol_3 and Pol_5). This, however, prevents compliance with the legal requirement of individuals being able to consult the information at any point of their detention.

Finally, although there is not legally recognized right of the detainees to have a subsequent interview with their lawyer, in 14% of the cases observed, this occurred. It is not usual, however, because, as mentioned by the lawyers and, as we saw during the research, the detainees "*can't wait to get out the police station*" (Law_3, p. 842).

5. Discussion and conclusions

We now proceed to discuss our results, distinguishing between two types of findings: those concerning the process of informing detainees of their rights and those related to the dynamics of the professionals' behaviour during the detention at the police station and which complicate the exercise of such rights.

5.1. Fair information and partial exercise of rights

Our research shows that, from the outset, detainees are given information on the reasons for their detention and their rights. However, in cases where the detainee is arrested, the reading of their rights is done orally and at great speed, just as a mere formality, which forms part of the ritual enacted, rather than an actual attempt to explain what is involved in being detained by the police and the impact on the exercise of their constitutional rights. Similarly, the information subsequently given on their rights in the police station before a statement is taken is again a

procedure implemented quickly "to settle things". It does, however, show the police are aware of the rights to be safeguarded at such a sensitive moment, and that, indeed, these rights are respected. Nonetheless, and assuming that the rights established in the Spanish Code of Criminal Procedure are safeguarded, there are certain aspects that could be improved, as Mols (2017: 301) suggests, legal transposition may not be sufficient to ensure its practical implementation.

For example, the description of the facts leading to the detention, was oral and very brief, frequently involving the use of technical language that did not facilitate understanding. Moreover, important details were often omitted (Skinns, 2009), which increased the detainees' uncertainty about how long they would have to stay at the police station and the evidence the police had about the offence they were alleged to have committed. These details are key in that they potentially affect the implementation of an effective defence strategy (Sukumar, Hodgson & Wade, 2016).

As required by Spanish law, the information about rights is required not only to be given orally (in simple and accessible language), but also in writing. This research shows that the oral explanation is inconsistent (Skinns, 2009); the information provided is sometimes clear and sufficient but typically, the information is delivered very quickly, in very formal, legal language, and the officers do not check whether the detainee has understood. Moreover, written information is provided by a "letter of rights", a standardised form which functions as a checklist (Spronken, 2010) including all procedural safeguards, except habeas corpus, which inexplicably is not included. However, and as was found to occur in Scotland (Blackstock et al, 2014), no copy of this letter is given to the individual person, with the argument that they could harm themselves with it.

The right to legal counsel is swiftly complied with and all the detainees had access to a lawyer. Although practically all the detainees exercised their right to a public defender, the research reveals serious doubts about how the right to free legal aid is explained (Spronken, 2010). Rights International Spain (2017) underlines that the reading of rights does not refer to the required conditions for free legal counsel. This right is arguably one of the most technical of all. Moreover, the term itself may intuitively create the contrary idea to its actual scope, as, if the conditions of low income are not met, a detainee that is initially assisted by a public lawyer, thinking them to be a "free" lawyer provided by the State, will subsequently have to pay for their services. In the long run, this situation is negative for both parties. On the one hand, lawyers who provide the initial assistance may in some cases not be paid, and, on the other, detainees who do pay for the service will feel they have been deceived or wrongly informed, given that had they had all the information, they might have requested the assistance of a lawyer of their own choice.

In addition, the research revealed that the right to medical assistance in the case of injury or serious health problems was properly safeguarded. However, minor health problems affecting well-being were not attended to, as they were assumed to be ploys by the detainees. In this sense, we

understand that it is not for a police officer to judge such ploys but rather it is their obligation to take the detainee for medical assistance if requested. It should be a doctor that judges whether or not the complaint is contrived, because otherwise the officers might be exacerbating the detainee's physical distress. Clinical research has evidenced that detainees frequently lie in such cases and when they see the doctor, they only ask to be given sedatives, although on occasions the request for treatment is legitimate (Lepresle, Trapest & Chariot, 2017). Moreover, it is worth remembering that although the police might consider it a ruse, transferring the detainee, who is handcuffed, to the health centre, stigmatises and impinges on their dignity.

It was also found that the right to interpretation is only partially satisfied. As demonstrated in previous research in Spain (Aguilera, 2016; Fernández-Molina, Vicente & Tarancón, 2017; Rights International Spain, 2017 and 2018) and in other countries (Blackstock et al., 2014), there are two problems involved in safeguarding this right. On the one hand, the legal authorities have failed to develop a procedure to objectively determine when a foreign detainee requires the support of an interpretation service. It is not only a case of understanding Spanish but of whether the detainee has sufficient language skills to act competently. On the other hand, once an interpreter has been facilitated, the law requires the interpretation service to be of sufficient quality. In Spain, there is no register of independent and qualified translators and interpreters, but if lawyers mistrust the work of certain interpreters, they can, and must, appeal against cases of professional malpractice. Unfortunately, this does not happen. It seems that inertia and the need to be expeditious and avoid delaying proceedings leads professionals to see such situations as a burden to be borne and about which nothing can be done Fernández-Molina et al. (2017).

Finally, in contrast to the study conducted with the *Ertzaintza* (the autonomous police force for the Spanish Basque Country) (Rights International Spain, 2018), where practically none of the detainees used their right to a prior interview with their lawyer, this right was used in 60% of cases in our research. Nonetheless, the conditions in which these interviews were conducted did not fully satisfy the legal requirements, as the infrastructure and the system of work at the police station in question prevented the meeting being held in the best conditions and with the required confidentiality.

In short, our findings allow us to conclude that the police provide information on the detainees' rights, as required by law. However, this information is not exhaustive, is imprecise as regards the facts concerning why they have been detained, and on occasions is highly technical. Thus, the reading of rights is ensured but these rights are not necessarily understood (Rights International Spain, 2018). Consequently, the procedures do not fully satisfy the need for this information to be provided to detainees, who, in addition, tend to show a passive attitude and a strong desire for the detention to be over and done with as soon as possible, and so, make few demands (Skinns, 2009). In addition, it was found that police and lawyers consider the main responsibility for

informing and safeguarding detainees' rights lies with the other party, when, in fact, both are mandated to do so by law (Fernández-Molina et al. 2017, Mols, 2017).

5.2. The police station conflict

Apart from the above, the present research demonstrates the enormous difficulty of properly respecting the procedural safeguards in a scenario in which the legislation assumes that all the parties involved pursue a common goal, when, in fact, each of the parties aspire to different things. Matters are made worse when the parties, as in the case of lawyers and police officers, appear to act as enemies. Satisfying the requirements of legislation on the right to effective information seems to be an impossible mission, when the professionals involved, lawyers and police officers, are entrenched in their positions and with detainees whose passivity shows they are not much concerned about what these professionals have to say.

This research reveals that police officers and lawyers have various fronts open which come into play in every detention. It is worth noting that both parties use military terms to define the situation, speaking of "enemies", "battles", "weapons", "fight" or "order". On the one hand, we have the fight for access to the materials of the case. This battle, which could be said to have always existed, reached a turning point when Directive 2012/13/EU gave lawyers new powers to ensure the effective exercise of their defence and to allow them access to information compiled by the police during the investigation on the facts related to the alleged criminal acts and the evidence to be used in the criminal proceedings.

Our research found that that the norm is to allow the accusation to be read, but the police are reluctant to hand over any other essential documents. In addition, previous Spanish research has shown (Rights International Spain, 2018; European Lawyers Foundation, 2016; Zuloaga et al., 2017). that access tends to be limited to on-the-spot-consultation, with no possibility of making copies. These difficulties about evidence disclosure at the police station have occurred in other countries (Blackstock et al, 2014). Our results show that the police appear to feel uncomfortable with these new powers for lawyers because they can obstruct the investigation of the events, which, as they recognise, is what really matters to them, "*for me, the main thing is the investigation*". Given this difficulty, the police have opted to resist and compete in the struggle for information in every detention, being aware they are in a privileged position. Sukumar et al. (2016:201) similarly observe that the British police are largely free to decide when and how they present their evidence and strategically delay disclosing certain evidence until the interview in order to test the suspect's account.

Ethnographic research might also explain this resistance as a reflection of police culture (Dehaghani, 2016; Loftus, 2010). The attitude of constant suspicion and mistrust is part of the essence of a good police officer, and so it is natural to be reluctant to share information for fear it

might be misused. In addition, their sense of mission and the powerful internal pressure for police officers to produce outcomes and be efficient, leads them to prioritise progress in the investigation over the need to ensure due process (Blackstock et al., 2014, Sukumar et al., 2016, Hodgson, 2015). Cape and Hodgson (2014) note this is a problematic characterisation of suspects' rights, which assumes that due process protections are good for the suspect and bad for the investigation.

In any event, this unequal situation is evident and recognised by all the agents involved; the lawyers themselves say, "*at the police station, they're in charge*". The interviews show that the younger lawyers consider the amount of information provided to lawyers depended on individual police officer-lawyer relationships (Hodgson, 2015) and sometimes do not insist because "*it's worse if you complain*". As Sukumar et al. (2016:202) point out "knowing the police's evidence is critical to deciding on an interview strategy for the client"; thus, when the police limit evidence disclosure, the suspects fail to be given a fair trial. For this reason, the more experienced lawyers prefer to fight and refuse to be denied their rights. They recognise this does not please the police, but they demand the right to information enshrined in the new law. This resistance from the most experienced lawyers has been observed in the Netherlands (Blackstock et al., 2014).

The second battle observed and which is related to various rights (those of remaining silent, not confessing guilt and the prior interview with a lawyer) is what some of the interviewees referred to as the "freedom game". Once more, the police use the powers they wield, in this case the power over timing (Sukumar et al, 2016), to their own benefit, in order to advance in the investigation. For the police officers, taking a statement from the detainees is of huge importance, as they can discover other individuals involved in the same criminal acts or pinpoint contradictions in the evidence given. Perhaps the fact the police officers so rarely inform the detainees of the right not to incriminate oneself may be because the lawyers have already advised them not to testify and remain silent in the previous interview. As Spronken (2010) notes, this right is linked to the right of access to a lawyer and is an issue the lawyers have to explain. The lawyer's presence ensures that the suspect's freedom to answer questions, give a statement or remain silent is respected (Mols, 2017). In any event, this is a legitimate interest but not one that should prevail over other fundamental rights, such as that of remaining in silence or not confessing guilt. Thus, in the midst of this complex balancing of powers and sensibilities, the police leverage the detainee's desire to be released "as quickly as possible" and the lawyer's lack of information on the investigation of the facts (Skinns, 2009). The police freely recognise that they "have their weapons" and use them to their own ends. On the other side of the trench are the lawyers, who, benefiting from the new safeguards provided for by the EU directive, use the prior interview to convince the detainee not to make a statement, even if they wish to do so (Hodgson, 2015). This occurs because the statement made by the detainee during questioning does not have probative value for the courts and, this, together with the lawyers' lack of knowledge of the evidence during questioning, leads

them to often advise silence as a strategy to gain more information and better prepare the defense case. Against this warlike backdrop, one side tries to debilitate the other; the police use their facilities for the prior interview, which is the only situation they have no control over, to ensure it is at least under their guard (Aguilera, 2016; European Lawyers Foundation, 2016), while the lawyers act like "steamrollers", systematically recommending not to make a statement without taking into account, on many occasions, the particular case.

Moreover, this scenario of warfare converges in the role of the main character, the detainee, sidelined and "wanting to go home" (Skinns, 2009), immersed in a passive attitude that ultimately creates adverse effects. On the one hand, the professionals consider the reading of rights to be irrelevant and so it becomes a mere formality to be complied with, while, on the other, the professionals focus on their own grievances and fail to devote part of their time to a detailed explanation of the detainee's rights and how they can be exercised to their benefit. While it is true that this passive attitude is largely a result of the emotional impact of the detention itself, the stress it generates and of the effect of the deprivation of liberty (*the pains of police detention*) (Wooff & Skinns, 2017), it may also be influenced by the other factors. First is the detainee's lack of understanding of what is happening around them due to the inaccessibility of the criminal justice system, with the professionals' technical discourse creating a sense of alienation (Snook et al., 2010). Second is citizens' perception of their poor opportunities to participate in the criminal system, the possibility to tell their own version of the events and give their opinion on what is happening (Jonathan-Zamir, Mastrofsky & Moyal, 2013). Finally, this passive attitude may reflect citizens' enormous trust in institutions in consolidated democracies and the unfounded belief that the rule of law works perfectly and their constitutional rights are uncompromised (Gilley, 2009).

The European roadmap has ultimately had a reduced impact on Spanish criminal procedure, largely because it was already sensitive with respect to procedural safeguards at the police station. We conclude that the reforms required to improve the enforcement of procedural safeguards for suspects is not limited to developing new laws. It is also necessary to incorporate new tools, e.g. accessible documents available in different formats, poster, audio, video (a good example of this is the project called "Let's be clear" for juvenile offender developed by a research group in Spain[3]); new procedures, e.g. to determine when a suspect does not have the language skills and an interpreter is needed. Likewise, it is necessary strengthen the training in order to transform the old occupational culture into a new culture that promotes the collaboration between police officers and lawyers. Finally, the training should be focused on encouraging procedural justice skills to improve the detainee's participation in this setting.

[3] More information can be found here. *Let`s be clear*. Retrieved February 11, 2021, from https://www.uclm.es/grupos/crimijov/transferencia/hablemos-claro

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