

Submission Template

The right to interpretation and translation and the right to information in criminal proceedings in the EU

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Contents

Section A: The right to interpretation and translation in criminal proceedings	4
1. Right to interpretation	4
2. Right to translation of documents	13
3. Rights concerning both interpretation and translation	18
Section B: Right to information in criminal proceedings	22
1. Provision of information on the procedural rights	22
2. Letter of Rights	27
3. Right to information about the accusation	29
4. Right of Access to Case Materials	31
5. Cross-cutting issues: Languages, complaint mechanisms, recording & special measures	32

Introduction:

The right to interpretation

The right to interpretation is not specifically regulated as such among the set of fundamental procedural rights regulated under Article 24 of the Spanish Constitution (hereinafter CE). However, the Constitutional Court (hereinafter TC) has ruled that the right to an interpreter is covered under the fundamental right to defense and assistance by a lawyer as established in Article 24.2 CE (Constitutional Court Judgement, Civil Chamber, num. 171/2009, of July 9. Reporting Judge: Rodríguez-Zapata Pérez).

Very recently, Organic Act 5/2015, of April 27¹, has been approved and published in the Official State Gazette and incorporate important novelties. This new law modifies the Code of Criminal Procedure and Organic Act 6/1985, of July 1, on the Judiciary, in order to transpose Directive 2010/64/EU, of October 20, 2010, regarding the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of May 22, 2012, regarding the right to information in criminal proceedings. This new Act's first article will come into force one month after publication in the Gazette and the second article will come into force six months after publication in the Gazette.

¹ Spain, Organic Act 5/2015, de 27 de abril, that modifies the Code of Criminal Procedure and Organic Law 6/1985, of July 1, on the Judiciary, in order to transpose Directive 2010/64/EU, of October 20, 2010, regarding the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of May 22, 2012, regarding the right to information in criminal proceedings. Official State Gazette, num. 101, of 28 April, 2015 (Ley Orgánica 5/2014, de 27 de abril, por la que se modifican la Ley de Enjuiciamiento Criminal y la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, para transponer la Directiva 2010/64/UE, de 20 de octubre de 2010, relativa al derecho a interpretación y traducción en los procesos penales y la Directiva 2012/13/UE, de 22 de mayo de 2012, relativa al derecho a la información en los procesos penales).

QUESTIONS

As envisaged in the section on Research Methodology, please note that some questions require consultation with organisations and/or practitioners working in relevant fields covered by the research to cross-check findings from the desk research with respect to the way in which the examined rights are applied in practice (such as judges, lawyers, interpreters and translators or civil society organisations active in the field of legal assistance in criminal proceedings).

Article I. SECTION A: The right to interpretation and translation in criminal proceedings

1.	RIGHT TO INTERPRETATION²	<p>Brief Description</p> <p>Although not specifically regulated as such among the set of fundamental procedural rights regulated under Article 24 of the Spanish Constitution, the Constitutional Court (hereinafter TC) has ruled that the right to an interpreter is covered under the fundamental right to defense and assistance by a lawyer as established in Article 24.2 CE (Constitutional Court Judgement, Civil Chamber, num. 171/2009, of July 9).</p> <p>In turn, Article 50.1 section a) of Act 1/1996 of January 10, on Free Legal Aid,³ regarding the material content of this right, and related recitals of Directive 2010/64/EU establishes that the right to free legal aid –Art. 119 CE– includes, among other services, interpretation. Furthermore, Article 231.5 of Organic Act 6/1985 of July 1, on the Spanish Judiciary (hereinafter LOPJ), stipulates that any person with knowledge of the language being used can be appointed as an interpreter during oral proceedings, after making an oath or statement to confirm this position.</p> <p>Very recently, Organic Act 5/2015, of April 27⁴, has been approved and published in the Official State Gazette. This new law modifies the Code of Criminal Procedure and Organic Law 6/1985, of July 1, on the Judiciary, in order to transpose Directive 2010/64/EU, of October 20, 2010, regarding the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of May 22, 2012, regarding the right to information in criminal proceedings. This new Law's first</p>
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² See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

³ Spain, Act 1/1996, of 10 January, on Free Legal Aid Official State Gazette, No. 11, of 12/01/1996 (*Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita*), 10 January 1996, <https://www.boe.es/buscar/act.php?id=BOE-A-1996-750>.

⁴ Spain, Organic Act 5/2015, of 27 April, that modifies the Code of Criminal Procedure and Organic Act 6/1985, of July 1, on the Judiciary, in order to transpose Directive 2010/64/EU, of October 20, 2010, regarding the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of May 22, 2012, regarding the right to information in criminal proceedings. Official State Gazette, num. 101, of 28 April, 2015 (*Ley Orgánica 5/2015, de 27 de abril, por la que se modifican la Ley de Enjuiciamiento Criminal y la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, para transponer la Directiva 2010/64/UE, de 20 de octubre de 2010, relativa al derecho a interpretación y a traducción en los procesos penales y la Directiva 2012/13/UE, de 22 de mayo de 2012, relativa al derecho a la información en los procesos penales*), 27 April 2015, http://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4605.

article will come into force one month after publication in the Gazette and the second article will come into force six months after publication in the Gazette.

With regard to the right to interpretation, Article 1 of this new Organic Act establishes the following amendments to the Code of Criminal Procedure:

One. The heading of Title V of Book I of the Code of Criminal Procedure has been amended and now reads as follows: "On the right to defense, to free legal aid and to translation and interpretation in criminal proceedings".

Two. A new Chapter I is added to Title V of Book I of the Code of Criminal Procedure with the following heading: "On the right to defense and free legal aid", which includes Articles 118 to 122 as currently in force in the Code of Criminal Procedure.

Three. A new Chapter II is added to Title V of Book I of the Code of Criminal Procedure with the following heading: "On the right to translation and interpretation"

Four. A new Article 123 is introduced that reads as follows:

Article 123.

1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights:

- a) The right to be assisted by an interpreter who speaks a language they understand in all situations in which their presence is required, including questioning by the police or the Public Prosecutor's Office and at all court hearings.
- b) The right to interpretation in conversations with their lawyer in direct connection with any subsequent questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.
- c) The right to interpretation in all oral proceedings.
- d) The right to a written translation of documents that are essential to ensure that they are able to exercise their right of defense. Essential documents shall include any decision depriving a person of their liberty, any charge or indictment, and any judgment.
- e) The right to submit a reasoned request for a document to be considered essential.

The Administration shall meet the costs of interpretation and translation, irrespective of the outcome of the proceedings.

2. In the event of not being able to offer simultaneous interpretation, consecutive interpretation shall be performed at the oral proceedings referred to in point c) of the previous section in such a way that sufficiently guarantees that the accused person is able to exercise their right of defense.

3. In the case of point d) in section 1, there shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them. In exceptional circumstances, the written translation of a document can be substituted by an oral summary of the content thereof in a language understood by the suspected or accused person, providing this also enables them to exercise their right of defense.

4. Translations should be completed within a reasonable period of time and the applicable procedural deadlines shall be suspended from the time agreed by the Court, Judge or Public Prosecutor's Office.

5. Interpretation services may be provided by videoconference or any other means of telecommunications, except when the Court, Judge or the Public Prosecutor, on their own motion or at the request of the interested party or in the defense thereof,

requests the physical presence of the interpreter in order to safeguard the rights of the suspected or accused person.

6. All oral interpretations, except for those referred to in point b) of section 1, may be documented by an audiovisual recording of the original statement and of the interpretation. In the case of oral translation of the content of a document, a copy of the translated document and an audiovisual recording of the translation shall be attached to the official report. If recording equipment is not available, or it is neither deemed convenient nor necessary, the translation or interpretation and, when appropriate, the original statement shall be documented in writing.

Five. A new Article 124 is introduced that reads as follows:

Article 124.

1. The court translator or interpreter shall be appointed from a list drawn up by the competent authority. In exceptional circumstances, when a translator or an interpreter is required urgently and no court translator or interpreter can be appointed from the list drawn up by the competent authority, in accordance with the provisions of section 5 of the previous article, another person with knowledge of the language used and who is deemed capable of performing this task can be named as court interpreter or translator on a one-off basis.

2. When the Court, Judge or Public Prosecutor's Office, on their own motion or at the request of the interested party, considers that the translation or interpretation is not sufficiently accurate, the necessary checks may be conducted and, when appropriate, a new translator or interpreter may be appointed."

Six. A new Article 125 is introduced that reads as follows:

Article 125.

1. When it becomes apparent that a translator or interpreter may be required, the Judge or Court, on their own motion or at the request of the lawyer of the suspected or accused person, shall ascertain if the accused has a sufficient grasp of the official language of the proceedings and, when appropriate, shall order a translator or interpreter to be appointed according to the provisions of the previous article and shall decide which documents need to be translated.

2. All decisions of the Court or Tribunal to refuse the right to the translation or interpretation of any document or passage thereof, which the defense considers as essential, or decisions to reject complaints from the defense regarding the quality of a translation or interpretation, shall be documented in writing.

If such decisions are adopted during the oral trial, the defense can register their challenge on the official record.

Seven. A new Article 126 is introduced that reads as follows:

Article 126.

Waiver of the rights referred to in Article 123 must be expressly and voluntarily stated and shall only be deemed valid if the suspected or accused person has received sufficient legal advice to understand the consequences of such a waiver. The rights referred to in sections a) and c) of Article 123 cannot be waived under any circumstances.

Eight. A new Article 127 is introduced that reads as follows:

Article 127.

The provisions of the foregoing articles are equally applicable to persons with sensory disabilities.

Nine. A new section 3 is added to Article 416 that reads as follows:

3. Translators and interpreters of conversations and any communication between suspected, investigated or accused persons and the persons referred to in the foregoing section, in relation to the matters referred to in their translation or interpretation.

1.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Who has the responsibility for determining the need of interpretation at each stage of the proceedings? b) How it works in practice for the various stages of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings? c) Who bears the cost of interpretation at each stage? d) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</p> <p>.Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	
1.1.1	<ul style="list-style-type: none"> • police questioning; 	<p>a) <i>Who has the responsibility for determining the need of interpretation at this stage of the proceedings?</i> When the accused person is detained by the police and taken to the corresponding police station, the police officer responsible for drafting the police report shall decide whether the detained person requires an interpreter, if it becomes clear that they are unable to, or struggle to, understand and speak Spanish. In this stage there is nothing regulated in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>)</p> <p>b) <i>How does it work in practice for this stage of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</i> When the arrested person is taken to the police station, the police officer who takes their statement and draws up the report shall ask them for an identification document and shall try to ascertain their nationality, personally checking whether they speak and understand Spanish⁵. In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) there is nothing regulated on this issue.</p> <p>c) <i>Who bears the cost of interpretation at this stage?</i> The Spanish State always meets the costs arising from interpretation, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet this cost⁶. In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>)respect there is nothing regulated on this issue In the new regime introduced by Lay 5/2015 (<i>ley organic</i>) the last paragraph of Article 123.1 of the Code of Criminal Procedure states that “the Administration shall meet the costs of interpretation and translation, irrespective of the outcome of the proceedings”.</p>

⁵ Spain, representative from the Immigration and Borders Police Station of Madrid.

⁶ Spain, representative from the Immigration and Borders Police Station of Madrid.

		<p>d) <i>What is the timeframe (deadline) for providing interpretation at this stage of the proceedings?</i> There is no specific deadline⁷. In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>).there is nothing regulated on this issue</p>
1.1.2	<ul style="list-style-type: none"> • court hearings; 	<p>a) <i>Who has the responsibility for determining the need of interpretation at this stage of the proceedings?</i> When the case has already been referred to the courts, opening the preliminary proceedings in order to investigate the crime -examination stage-, there is no such person responsible for deciding whether the accused person needs an interpreter; as such, the court only arranges for an interpreter, if this service is requested by the accused⁸.</p> <p>This answer describes the judicial practice according to the previous system . Law 5/2015 introduces the new Article 125.1 of the Code of Criminal Procedure, states that the Judge or Court, on their own motion or at the request of the lawyer of the suspected or accused person, shall ascertain if the accused has a sufficient grasp of the official language of the proceedings and, when appropriate, shall order a translator or interpreter to be appointed according to the provisions of the previous article and shall decide which documents need to be translated.” This provision will start to be applied by 28 October 2015</p> <p>b) <i>How does it work in practice for this stage of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</i> There is no specific process in the Court for ascertaining whether the accused person speaks and understands the language of the proceedings, which in practice leads –not infrequently– to the accused having a perfect grasp of the language of the proceedings but deciding to use an interpreter for spurious reasons⁹.</p> <p>c) <i>Who bears the cost of interpretation at this stage?</i> The Spanish State always meets the costs arising from interpretation, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet this cost¹⁰. Nothing on this issue at Law 5/2015</p> <p>d) <i>What is the timeframe (deadline) for providing interpretation at this stage of the proceedings?</i> There is no specific deadline Nothing on this issue at Law 5/2015</p>

⁷ Spain, representative from the Immigration and Borders Police Station of Madrid.

⁸ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

⁹ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹⁰Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

1.1.3	<ul style="list-style-type: none"> • any necessary interim hearings; 	<p>a) <i>Who has the responsibility for determining the need of interpretation at this stage of the proceedings?</i> In this case there is no such person responsible for deciding whether the accused person needs an interpreter; as such, the court only arranges for an interpreter, if this service is requested by the accused¹¹. Nothing on this issue at Law 5/2015</p> <p>This answer describes the judicial practice according to the previous system . Since Law 5/2015 has entered into force the new Article 125.1 of the Code of Criminal Procedure, states that the Judge or Court, on their own motion or at the request of the lawyer of the suspected or accused person, shall ascertain if the accused has a sufficient grasp of the official language of the proceedings and, when appropriate, shall order a translator or interpreter to be appointed according to the provisions of the previous article and shall decide which documents need to be translated.” This provision will start to be applied by 28 October 2015</p> <p>b) <i>How does it work in practice for this stage of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</i> There is no specific process in interim hearings for ascertaining whether the accused person speaks and understands the language of the proceedings, which in practice leads –not infrequently– to the accused having a perfect grasp of the language of the proceedings but deciding to use an interpreter for spurious reasons¹².</p> <p>c) <i>Who bears the cost of interpretation at this stage?</i> The Spanish State always meets the costs arising from interpretation, even though this responsibility is devolved to the corresponding Regional Government (Comunidad Autónoma) and therefore it would be the Regional Ministry of Justice that would meet this cost¹³. Nothing on this issue at Law 5/2015</p> <p>d) <i>What is the timeframe (deadline) for providing interpretation at this stage of the proceedings?</i> There is no specific deadline¹⁴. Nothing on this issue at Law 5/2015</p>
1.1.4	<ul style="list-style-type: none"> • any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or 	<p>a) <i>Who has the responsibility for determining the need of interpretation at this stage of the proceedings?</i> In this case there is no such person responsible for deciding whether the accused person needs an interpreter; as such, the court only arranges for an interpreter, if this service is requested by the accused¹⁵.</p> <p>In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) the new Article 123.1 b) of the Code of Criminal Procedure says: “1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights:</p>

¹¹ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹² Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹³ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹⁴ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹⁵ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

	<p>hearing during the proceedings?</p>	<p>b) The right to interpretation in conversations with their lawyer in direct connection with any subsequent questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications”.</p> <p><i>b) How does it work in practice for this stage of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</i> There is no specific process in this case for ascertaining whether the accused person speaks and understands the language of the proceedings, which in practice leads –not infrequently– to the accused having a perfect grasp of the language of the proceedings but deciding to use an interpreter for spurious reasons¹⁶. Nothing on this issue at Law 5/2015</p> <p><i>c) Who bears the cost of interpretation at this stage?</i> The Spanish State always meets the costs arising from interpretation, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet this cost¹⁷. Nothing on this issue at Law 5/2015</p> <p><i>d) What is the timeframe (deadline) for providing interpretation at this stage of the proceedings?</i> There is no specific deadline¹⁸. Nothing on this issue at Law 5/2015</p>
<p>1.2</p>	<p>How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters exist? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>The competent authorities play no part in ensuring the effectiveness of interpretation in lesser known languages in the event of there being no qualified interpreters because all translations and related vicissitudes are handled, at all times, by an external company specializing in this type of service hired by the corresponding Justice Department. This means that there are no overseeing or monitoring mechanisms at all exercised by the competent authorities over these external companies regarding the effectiveness of interpretation, nor over the specific conditions in the contracts that the competent authorities signed with these external companies. In Madrid, for example, this service is outsourced to “Adecco-Atlas Servicios Empresariales, S.A.U.”. Likewise, in the case of deaf-mute people, sign language interpreters are hired from the C.I.L.S.E.M. Association (Spanish Coordinator of sign language interpreters and guide-interpreters of the Autonomous Community of Madrid)¹⁹. The case is the same in all the regions of Spain, even if the company is different in each region. As for the police, an external interpretation service is also used that works exclusively for the Directorate General of Police (awarding this service through occasional calls for tenders). This company is also responsible for finding the most suitable interpreter for the detained person, depending on the language or dialect they speak²⁰.</p>

¹⁶ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹⁷ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹⁸ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

¹⁹ Spain, court clerk, Instruction Court No. 2 of Madrid.

²⁰ Spain, representative of the Immigration and Borders Police Station of Madrid.

1.3	Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no interpretation is needed? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	This is not stated anywhere in the law until now but this is not the case in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) because of a new Article. Article 125.2 of the Code of Criminal Procedure says: “All decisions of the Court or Tribunal to refuse the right to the translation or interpretation of any document or passage thereof, which the defence considers as essential, or decisions to reject complaints from the defence regarding the quality of a translation or interpretation, shall be documented in writing. If such decisions are adopted during the oral trial, the defence can register their challenge on the official record”. These types of measures do not arise in Spanish criminal proceedings, as no right exists to challenge a decision finding that there is no need for interpretation. However, it is important to note that, providing the accused person requests assistance from an interpreter, the Court provides one, without exception; thereby no decision to refuse interpretation would arise. ²¹
1.4	With regard to remote interpretation via communication technologies : a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings? b) Which technologies are used, if any (videoconference, telephone, internet, etc.) c) Do competent authorities rely on the tools developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment provided on the European E-justice Portal)? Please cross-check findings from the desk research by consulting	
		Police stations are still not equipped with the necessary communication technologies. In the Courts, this type of technology may be used as they are equipped for this purpose ²² .
		The only technology used to date by the Courts is videoconferencing ²³ .
		In the specific field of translation, European e-Justice is still not set up in either Spanish police stations or courts ²⁴ .

²¹ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

²² Spain, representative of the Immigration and Borders Police Station of Madrid.

²³ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

²⁴ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

	relevant organisations and/or practitioners.			
	TRAINING²⁵	Yes	No	Brief Description
1.5	Are providers of judicial training requested to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication? If yes, briefly provide details.		NO	No, because there are no such training providers. This means that criminal justice professionals do not receive any judicial training that takes into account the specific peculiarities of communicating via an interpreter ²⁶ .

²⁵ See in particular Article 6 and relevant recitals of Directive 2010/64/EU.

²⁶ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

2.	RIGHT TO TRANSLATION OF DOCUMENTS²⁷	<p>Brief Description</p> <p>The right to the translation of documents is considered, in an indirect manner, in Article 50.1 section b) of Act 1/1996, of January 10, on Free Legal Aid, regarding the material content of the right, which establishes that the right to free legal aid – Article 119 CE– includes, among other services, the translation of documents submitted for the beneficiary at the request of the Court, Tribunal or the competent authority and which are necessary in order to resolve the case.</p> <p>As indicated in the previous section, The new Organic Act 5/2015, de 27 de abril, on the Status of crime’s victim modifies the Code of Criminal Procedure in order to transpose Directive 2010/64/EU, of October 20, 2010, regarding the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of May 22, 2012, regarding the right to information in criminal proceedings.</p>
2.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</p>	
2.1.1	<ul style="list-style-type: none"> • police questioning; 	<p>a) In police stations, where printouts are produced in various languages to inform detained persons of their rights, in accordance with the provisions of Article 520 of the Code of Criminal Procedure²⁸. On the other hand, if we look at the provisions of the (current) Code of Criminal Procedure, although not explicitly stated as such, the following would classify as essential documents: the official complaint and the police report.</p> <p>However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 123.1 d) of the Code of Criminal Procedure says: “1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights:</p> <p>d) The right to a written translation of documents that are essential to ensure that they are able to exercise their right of defence. Essential documents shall include any decision depriving a person of their liberty, any charge or indictment, and any judgment”.</p>

²⁷ See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

²⁸ Spain, representative of the Immigration and Borders Police Station of Madrid.

		<p>b) These costs are always met by the Spanish State, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet the cost²⁹. Nothing on this issue at Law 5/2015</p>
		<p>c) There is no specific deadline³⁰. Nothing on this issue at Law 5/2015</p>
<p>2.1.2</p>	<p>• court hearings;</p>	<p>a) In Spanish criminal procedure, it is not general practice to translate documents. In reality, it does not often occur but, if the accused person requests the translation of any document, whether essential or not, the translation is entrusted to the external company hired by the Justice Department³¹. On the other hand, if we look at the provisions of the (current) Code of Criminal Procedure, although not explicitly stated as such, the following would classify as essential documents: the court decision requesting the accused person to testify regarding the charges brought against them, the judicial decree ordering, extending or ruling out provisional detention, the judicial decree that concludes the preliminary proceedings, the written classification of the facts and the judgment that closes the case.</p> <p>However, in the new regime introduced Law 5/2015 (ley orgánica), the new Article 123.1 d) of the Code of Criminal Procedure says: “1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights:</p> <p>d) The right to a written translation of documents that are essential to ensure that they are able to exercise their right of defence. Essential documents shall include in any case any decision depriving a person of their liberty, any charge or indictment, and any judgment.</p> <p>e) The right to make a request for a particular document to be considered essential”.</p> <p>b) These costs are always met by the Spanish State, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet the cost³². Nothing on this issue at Law 5/2015</p>

²⁹ Spain, representative of the Immigration and Borders Police Station of Madrid; court clerk, Instruction Court No. 2 of Madrid.

³⁰ Spain, representative of the Immigration and Borders Police Station of Madrid.

³¹ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

³² Spain, representative of the Immigration and Borders Police Station of Madrid; court clerk, Instruction Court No. 2 of Madrid.

		<p>c) There is no specific deadline. However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 123.4 of the Code of Criminal Procedure says: “Translations should be completed within a reasonable period of time and the applicable procedural deadlines shall be suspended from the time agreed by the Court, Judge or Public Prosecutor’s Office”.</p>
2.1.3	<ul style="list-style-type: none"> any necessary interim hearings; 	<p>a) In Spanish criminal procedure, it is not general practice to translate documents. In reality, it does not often occur but, if the accused person requests the translation of any document, whether essential or not, the translation is entrusted to the external company hired by the Justice Department³³.</p> <p>On the other hand, if we look at the provisions of the (current)Code of Criminal Procedure, although not explicitly stated as such, the following would classify as essential documents: the court decision requesting the accused person to testify regarding the charges brought against them, the judicial decree ordering, extending or ruling out provisional detention, the judicial decree that concludes the preliminary proceedings, the written classification of the facts and the judgment that closes the case.</p> <p>However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 123.1 d) of the Code of Criminal Procedure says: “1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights:</p> <p>d) The right to a written translation of documents that are essential to ensure that they are able to exercise their right of defence. Essential documents shall include in any case any decision depriving a person of their liberty, any charge or indictment, and any judgment.</p> <p>e) The right to make a request for a particular document to be considered essential”.</p> <p>b) These costs are always met by the Spanish State, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet the cost³⁴. Nothing on this issue at Law 5/2015</p> <p>c) There is no specific deadline. However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 123.4 of the Code of Criminal Procedure says: “Translations should be completed within a reasonable period of time and the applicable procedural deadlines shall be suspended from the time agreed by the Court, Judge or Public Prosecutor’s Office”.</p>
	<ul style="list-style-type: none"> any communication between 	<p>a) In Spanish criminal procedure, it is not general practice to translate documents. In reality, it does not often occur but, if the accused person requests the translation of any document, whether essential or not, the translation is entrusted to the</p>

³³ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

³⁴ Spain, representative of the Immigration and Borders Police Station of Madrid; court clerk, Instruction Court No. 2 of Madrid.

2.1.4	suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?	<p>external company hired by the Justice Department³⁵.</p> <p>On the other hand, if we look at the provisions of the (current)Code of Criminal Procedure, although not explicitly stated as such, the following would classify as essential documents: the court decision requesting the accused person to testify regarding the charges brought against them, the judicial decree ordering, extending or ruling out provisional detention, the judicial decree that concludes the preliminary proceedings, the written classification of the facts and the judgment that closes the case.</p> <p>However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 123.1 d) of the Code of Criminal Procedure says: “1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights:</p> <p>d) The right to a written translation of documents that are essential to ensure that they are able to exercise their right of defence. Essential documents shall include in any case any decision depriving a person of their liberty, any charge or indictment, and any judgment.</p> <p>e) The right to make a request for a particular document to be considered essential”.</p> <p>b) These costs are always met by the Spanish State, even though this responsibility is devolved to the corresponding Regional Government (<i>Comunidad Autónoma</i>) and therefore it would be the Regional Ministry of Justice that would meet the cost³⁶. Nothing on this issue at Law 5/2015</p> <p>c) There is no specific deadline. However, in the new regime introduced by Law 5/2015, the new Article 123.4 of the Code of Criminal Procedure says: “Translations should be completed within a reasonable period of time and the applicable procedural deadlines shall be suspended from the time agreed by the Court, Judge or Public Prosecutor’s Office”.</p>
2.2	How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written	<p>The competent authorities perform no such verification. Any activity regarding either oral or written translation is performed by the external translation company hired by the Justice Department³⁷.</p> <p>In the new regime introduced by Law 5/2015, the new Article 123.3 second paragraph of the Code of Criminal Procedure only says: “In exceptional circumstances, the written translation of a document can be substituted by an oral summary of the content thereof in a language understood by the suspected or accused person, providing this also enables them to exercise</p>

³⁵ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

³⁶ Spain, representative of the Immigration and Borders Police Station of Madrid; court clerk, Instruction Court No. 2 of Madrid.

³⁷ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

	translation? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	their right of defence”.		
2.3	Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no translation is needed? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	These types of measures do not arise in Spanish criminal procedure, as no right exists to challenge a decision finding that there is no need for translation. However, it is important to note that, providing the accused person requests the translation of any document, the court shall oblige, without exception; thereby no decision to refuse translation would arise ³⁸ . Although this is not stated anywhere in the law, this is not the case in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) because the new Article 125. 3 of the Code of Criminal Procedure says:” All decisions of the Court or Tribunal to refuse the right to the translation or interpretation of any document or passage thereof, which the defence considers as essential, or decisions to reject complaints from the defence regarding the quality of a translation or interpretation, shall be documented in writing.”		
		Yes	No	Brief Description
2.4	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?		NO	Currently there is no legal obligation regarding the translation of documents during criminal proceedings, therefore documents shall only be translated at the request of the accused person, irrespective of the significance of such documents to the proceedings ³⁹ . In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) the new Article 123.1 d) of the Code of Criminal Procedure says: “1. Suspected or accused persons who neither speak nor understand Spanish or the official language in which the proceedings take place shall have the following rights: d) The right to a written translation of documents that are essential to ensure that they are able to exercise their right of defense. Essential documents shall include any decision depriving a person of their liberty, any charge or indictment, and any judgment. The new regime will be applicable on 28 November 2015
2.5	Is it possible to waive the right to translation of documents and if so, what form can it have and under which conditions can it be accepted?		NO	This type of waiver does not arise in Spanish criminal procedure. However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 126 of the Code of Criminal Procedure says: “Waiver of the rights referred to in Article 123 must be expressly and voluntarily stated and shall only be deemed valid if the suspected or accused person has received sufficient legal advice to understand the consequences of such a waiver. The rights referred to in sections a) and c) of Article 123 cannot be waived under any circumstances”.

³⁸ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

³⁹ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION⁴⁰			
3.1	With regard to use of registers of interpreters and translators in EU Member States:	Yes	No	Brief Description
	a) Do national databases or registers exist for legal translators and interpreters?		NO	In reality, there is still no database of legal translators and interpreters in either police stations or courts. The external company hired by the Justice Department in each Autonomous Community is in charge of selecting these professionals and neither the police stations nor the courts exercise any control over this process ⁴¹ . This official list is published by the Spanish Ministry of Foreign Affairs (<i>Ministerio de Asuntos Exteriores</i>). but a procedure to become a sworn interpreter/translator is not followed at all by the courts/police This official list isn't used by courts o police.
	b) Do translators and interpreters have to be listed in databases/registers for their services to be used? In other words, is membership/registration mandatory?			<p>NA</p> <p>This official list is published by the Spanish Ministry of Foreign Affairs but a procedure to become a sworn interpreter/translator is not used at all by the courts/police.</p> <p>Organic Law 5/2015 incorporates a sole additional Provision that refers to the creation of a Court Translators and Interpreters' Register as a mechanism necessary to ensure that the service is provided properly and by the appropriate professionals, which is essential for court cases to take place.</p> <p>First Final provision with the title “Official Register of judicial translators and interpreters” states: “‘The Government will present in a maximum period time of one year from the entrance into force of the present Law, a Draft Law on the creation of an Official Register of judicial translators and interpreters in order to create the lists according to Article 124 of the Organic Law 5/2015. The registration of these professionals will be condition sine qua non to be appointed by the judge notwithstanding the exceptions that could be established. The Minister of Justice could ask for the fulfillment of certain requirements apart from the educational degree-, however this other requirements need to be proportionate and non-discriminatory,</p>
	c) Who has access to these databases?			Brief Description:NA This official list is published by the Spanish Ministry of Foreign Affairs but a procedure to become a sworn interpreter/translator is not followed at all by the courts/police ⁴² .

⁴⁰ See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

⁴¹ Spain, representative of the Immigration and Borders Police Station of Madrid; court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

⁴² Spain, court clerk, Instruction Court No. 2 of Madrid.

	<p>d) Which professional qualifications are needed by:</p> <ul style="list-style-type: none"> • translators and • interpreters <p>in order to be registered in the database?</p>	<p>Brief Description:NA This official list is published by the Spanish Ministry of Foreign Affairs but a procedure to become a sworn interpreter/translator is not followed at all by the courts/police⁴³.idem</p>		
	<p>e) Are there any requirements in place to ensure the independence of interpreters and translators? If yes, provide a brief overview (for both translators and interpreters).</p>			<p>This official list is published by the Spanish Ministry of Foreign Affairs but a procedure to become a sworn interpreter/translator is not followed at all by the courts/police⁴⁴.</p>
	<p>f) Is access to existing databases provided through the European e-Justice portal?⁴⁵ How is this register available to legal counsel and relevant authorities?</p>			<p>This official list is published by the Spanish Ministry of Foreign Affairs but a procedure to become a sworn interpreter/translator is not used at all by the courts/police⁴⁶.</p>
	<p>g) Are criminal justice institutions required to use interpreters and translators listed in these registers?</p>			<p>This official list is published by the Spanish Ministry of Foreign Affairs but a procedure to become a sworn interpreter/translator is not used at all by the courts/police.</p>
<p>3.2</p>	<p>With regard to other mechanisms/procedures:</p>	<p>Yes</p>	<p>No</p>	<p>Brief Description ⁴⁷</p>

⁴³ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁴⁴ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁴⁵ Available at: <https://e-justice.europa.eu/home.do?plang=en&action=home>

⁴⁶ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁴⁷ Spain, court clerk, Instruction Court No. 2 of Madrid.

	a) Are there other mechanisms or procedures in place to ensure the quality and independence of interpretation and translation during the course of the proceedings? Are there any quality checks? Who is responsible for carrying them out?		NO	<p>Unfortunately, there are currently no mechanisms in police stations or courts designed to ensure the quality of interpretation and translation. It all depends on the professionalism and internal practices of the company awarded to provide this type of service⁴⁸.</p> <p>However, in the new regime introduced by Law 5/2015 (<i>ley orgánica</i>), the new Article 124.2 of the Code of Criminal Procedure says: “When the Court, Judge or Public Prosecutor's Office, on their own motion or at the request of the interested party, considers that the translation or interpretation is not sufficiently accurate, the necessary checks may be conducted and, when appropriate, a new translator or interpreter may be appointed”.</p>
	b) Is there any procedure in place to ensure that suspects or accused persons have the possibility, when interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation?		NO	<p>There is no possibility to complain about the quality and independence of the interpretation or translation⁴⁹.</p> <p>In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) the new Article 125.2 of the Code of Criminal Procedure says: “All decisions of the Court or Tribunal to refuse the right to the translation or interpretation of any document or passage thereof, which the defence considers as essential, or decisions to reject complaints from the defence regarding the quality of a translation or interpretation, shall be documented in writing. If such decisions are adopted during the oral trial, the defence can register their challenge on the official record”.</p>
	c) Are there any mechanisms in place that allow for the replacement of the appointed interpreter or a new translation when the quality of the interpretation or the independence of the interpreter is considered insufficient? If yes, briefly provide information.		NO	<p>No, there is still no such procedure.⁵⁰</p> <p>In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) the new Article 124. 2 of the Code of Criminal Procedure says: “When the Court, Judge or Public Prosecutor's Office, on their own motion or at the request of the interested party, considers that the translation or interpretation is not sufficiently accurate, the necessary checks may be conducted and, when appropriate, a new translator or interpreter may be appointed”.</p>

⁴⁸ Spain, representative of the Immigration and Borders Police Station of Madrid; court clerk, Instruction Court No. 2 of Madrid.

⁴⁹ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

⁵⁰ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

3.3	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? ⁵¹ If yes, briefly provide information on those mechanisms considering the following vulnerable groups:		NO	There are no special procedures of this nature ⁵² . In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) the new Article 127 of the code of Criminal Procedure only says: “The provisions of the foregoing articles are equally applicable to persons with sensory disabilities”.
	a) suspect or accused persons with physical impairment or disability;		NO	NA
	b) suspect or accused persons with intellectual impairment or disability;		NO	NA
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).		NO	NA
3.4	Is there any recording procedure to note that interpretation and translation have occurred and in which form? ⁵³ If yes, briefly provide information on how this procedure is organised in practice.		NO	There is no such recording mechanism in Spanish criminal procedure ⁵⁴ . In the new regime introduced by Law 5/2015 (<i>ley orgánica</i>) the new Article 123.6 of the Code of Criminal Procedure only says: “All oral interpretations, except for those referred to in point b) of section 1, may be documented by an audiovisual recording of the original statement and of the interpretation. In the case of oral translation of the content of a document, a copy of the translated document and an audiovisual recording of the translation shall be attached to the official report. If recording equipment is not available, or it is neither deemed convenient nor necessary, the translation or interpretation and, when appropriate, the original statement shall be documented in writing”.

⁵¹ See in particular recital 27 of Directive 2010/64/EU.

⁵² Spain, court clerk, Instruction Court No. 2 of Madrid.

⁵³ See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

⁵⁴ Spain, court clerk, Instruction Court No. 2 of Madrid.

SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS ⁵⁵	<p style="text-align: center;">Brief Description</p> <p>The provision of information to accused or detained persons regarding their procedural rights is regulated in Articles 520.2 and 775 of the Code of Criminal Procedure (<i>Ley de Enjuiciamiento Criminal</i> 14 de septiembre de 1882). Firstly, all persons who are arrested or detained shall be promptly informed of their rights during criminal proceedings as well as of the accusations made against them. Subsequently, once the preliminary proceedings are open, upon their initial appearance, the accused person shall again be informed by the Court Clerk of their rights and of the accusations made against them. Following Law 5/2015(<i>ley orgánica por la que se modifican la Ley de Enjuiciamiento Criminal y la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, para transponer la Directiva 2010/64/UE, de 20 de octubre de 2010, relativa al derecho a interpretación y a traducción en los procesos penales y la Directiva 2012/13/UE, de 22 de mayo de 2012, relativa al derecho a la información en los procesos penales.</i>), Articles 118, 520.2 and 775 of the Code of Criminal Procedure have been redrafted, and will enter into force on 28 October 2015.</p>
1.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <ul style="list-style-type: none"> a) What information is provided? b) How is it provided (e.g. orally or in writing)? c) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings? <p>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	
	<ul style="list-style-type: none"> • police questioning; 	<p>a) Firstly, when the arrested person is brought to the police station, they shall be given information about the rights set forth in Article 520 of the Code of Criminal Procedure, which are listed here below. Yes, it's the same set of rights that I refer in the section below regarding court hearings.</p> <p>b) The information about the rights to which the person detained is entitled are provided in writing via a form⁵⁶.</p>

⁵⁵ See in particular Article 3 and relevant recitals of Directive 2012/13/EU.

⁵⁶ Spain, representative of the Immigration and Borders Police Station of Madrid.

		c) There is no specific deadline ⁵⁷ .
<ul style="list-style-type: none"> • court hearings; 		<p>a) Once in court, in judicial practice, if the accused person has been detained, they shall be informed of the following rights:</p> <ul style="list-style-type: none"> • The right to remain⁵⁸ silent, and to give no statement if they choose not to, and to not answer any questions⁵⁹. • The right to not testify against themselves and to not confess guilt. • The right to a lawyer, to request the presence of their lawyer at all judicial hearings and that they act in all corresponding recognition of identity. If the accused person does not appoint their own lawyer, a public defender shall be provided. • The right to inform a family member or any other person of the place where they are being held at any given time. Foreign persons have the right to their country's consular office being informed of the foregoing circumstances. • The right to be assisted by an interpreter, free of charge, when the accused person is foreign and neither understands nor speaks Spanish. • The right to be examined by a forensic doctor. • The right to meet in confidence with a lawyer both before and after providing a statement. <p>If the accused person has not been detained, the information provided to them is limited to points 1, 2, 3 and 5.</p> <p>In the new regime introduced by Organic Act 5/2015 (which will enter into force on 28 October 2015) the new article 118.1 of the Code of Criminal Procedure says: “1. Any person accused of an act punishable by law may exercise their right to a defense, acting in whatever proceedings they may be, from the moment the commencement thereof is communicated to the person, whether said person has been placed in detention or subjected to any other measure resulting from an injunction or court order, or whether said person is under indictment, for the purposes of which the following rights shall, without unjustified delay, be informed:</p>

⁵⁷ Spain, representative of the Immigration and Borders Police Station of Madrid.

⁵⁸ Spain, representative of the Immigration and Borders Police Station of Madrid.

⁵⁹ Spain, court clerk, Instruction Court No. 2 of Madrid.

a) The right to be informed of the acts of which the person stands accused, as well as of any relevant change in the subject-matter of the investigation and in the acts of which the person is being accused. This information shall be provided with a sufficient degree of detail so as to enable the effective exercise of their right to a defense.

b) The right to review the proceedings in a timely manner so as to safeguard the right to a defense.

c) The right to appoint a lawyer freely, without prejudice to the provisions contained in letter a) of article 527.

d) The right to request legal advice free of charge, the procedure to do so and the conditions to receive it.

e) The right to translation and interpreting services free of charge in accordance with the provisions set forth in articles 123-127.

f) The right to remain silent, providing no statement if they choose not to.

g) The right to not testify against themselves and not plead guilty.

The information to which the above paragraph refers shall be provided in a language understood by and accessible to the accused. To such end, the information must be adapted to their age, degree of maturity, any disabilities they may have as well as any other personal circumstance which may entail a change in their capacity to understand the full scope of the information that is being provided”.

The new article 520.2 of the Code of Criminal Procedure states: : “Any person that is detained or held in custody must be informed in writing, in a style of language that is simple and accessible, and in a language that the person immediately understands, of the acts of which the person stands accused and of the reasons causing such person to have been imprisoned, and of any rights to which the person is entitled, especially the following:

a) The right to remain silent, providing no statement if they choose not to, to not answer any question(s) being asked, or to state that the person shall only testify before a Judge.

b) The right to not testify against themselves and not plead guilty.

c) The right to appoint a Lawyer and request their presence during police and court proceedings to provide statements or pleadings, and appear during any identity parade in which the person is involved. If the person that is being detained or held in custody has not appointed a Lawyer, a public defender shall be appointed.

d) The right to access the elements of the proceedings that may be essential to challenge the lawfulness of the detention or imprisonment.

e) The right to inform a relative or any other party that the person so chooses of the detention and the place where the person is being detained at any given time. Foreign nationals shall be entitled to the above circumstances being notified to their country's Consular Authority.

f) The right to be assisted by an interpreter free of charge, when the person is a foreign national who neither speaks nor understands Spanish or the official language in which the proceedings take place, or in the case of persons with deafness or hearing impairment, as well as persons with language or speech difficulties.

g) The right to be examined by a forensic doctor or alternate designated by law and, in the absence thereof, by that of the institution in which the person is at the time, or by any other officer of the State or of other Public Administration agencies.

		<p>h) The right to request legal advice free of charge, the procedure to do so and the conditions to receive it.</p> <p>Moreover, the person shall be informed of the maximum detention period stipulated by law until said party is taken before the court and of the procedure whereby the person may challenge the lawfulness of their detention.</p> <p>When the rights are not informed in a language that the person detained understands, they must be informed of their rights via an interpreter at the earliest convenience. In this case, a written statement containing the rights must be provided to the person subsequently and without unjustified delay, and in a language that the person understands.</p> <p>In all cases, the detainee shall be allowed to keep a written copy of the statement containing the rights throughout the entire time of detention.</p> <p>And, finally, the new article 775 of the Code of Criminal Procedure says:” 1. When the person appears in court for the first time, the Judge shall inform them in a more comprehensible manner of the acts of which the person stands accused. Before that, the Court Clerk shall inform the person of their rights, particularly those listed in subsection 1 of article 118 and shall require the person to indicate a registered address in Spain for notification purposes, or a person who shall receive any notifications on their behalf, noting that any summons being served at such address or to such person, as designated, shall enable the trial to be held in absentia as per the circumstances provided for in article 786.</p> <p>The person shall be allowed, both before and after testifying, to speak with their Lawyer in private, without prejudice to the provisions set forth in letter c) of article 527.</p> <p>2. When the proceedings result in any relevant change in the subject-matter of the investigation and in the acts of which the person is being accused, the Judge shall inform the accused of such at the earliest convenience.</p> <p>This information may be provided by means of a succinct explanation that may be sufficient to enable the exercise of the right to a defense, communicated in writing to the defense Lawyer of the accused”.</p> <p>(NB. It is not expressly mentioned who is the person –the police or the judge- that communicate the rights to be respect, therefore it is necessary to wait for how in practice this article will be applied. On the other hand, concerning differences between articles 118 and 520 2 LECrim, both are to be applied to same phase of the proceedings. However, Article 118,1 is more general on the rights of every detained person while article 520,2 explains those rights in detail</p> <p>b) The information is first provided orally by the Court Clerk and then in writing, in a document drawn up for this purpose and which must be signed by the accused person⁶⁰.</p>
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⁶⁰ Spain, court clerk, Instruction Court No. 2 of Madrid.

		c) There is no specific deadline for providing information in each stage of the proceedings since this depends on the Court schedule, although, in practice, priority is always given to cases in which the accused person is held in custody; that is, when the accused person has been deprived of liberty and detained ⁶¹ .
	• any necessary interim hearings;	a) At this stage of the process, the rights are not informed given that this necessarily takes place at the beginning, as described in the two subsections above 62.
		b)
		c)
	• any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?	a) The lawyer must inform the client of the rights to which the latter is entitled by law and which have been listed in the two subsections above 63.
		b) This information is always provided orally ⁶⁴ .
		c) There is no specific deadline ⁶⁵ .
1.2	Do authorities provide information about any other procedural rights (apart from those established in Article 3 of the Directive)? If yes, briefly provide information.	In practice, no further information is provide. Law 5/2015 ((<i>ley orgánica</i>) does not introduce any provisions regarding recording mechanisms.

⁶¹ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁶² Spain, court clerk, Instruction Court No. 2 of Madrid.

⁶³ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁶⁴ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁶⁵ Spain, court clerk, Instruction Court No. 2 of Madrid.

2.	LETTER OF RIGHTS ⁶⁶	Brief Description
2.1	<p>What rights does the letter of rights provide information about? What information is included in the letter of rights when children are arrested or detained?</p>	<p>The rights that are communicated to detained persons are in essence the fundamental procedural rights referred to in Article 24.2 CE, especially those regarding the right to not plead guilty, to be informed of the accusation made against them and to legal aid in order to ensure the proceedings are conducted with full guarantees and that the accused person may exercise their right of defence. The full list of rights contained in the letter of rights is as follows:</p> <ul style="list-style-type: none"> • The right to remain silent, to give no statement if they choose not to, and to not answer any questions. • The right to not testify against themselves and to not confess guilt. • The right to a lawyer, to request the presence of their lawyer at all judicial hearings and that these act in all corresponding recognitions of identity. If the accused person does not appoint their own lawyer, a public defender shall be provided. • The right to inform a family member or any other person of the place where they are being held at any given time. Foreign persons have the right to their country's consular office being informed of the foregoing circumstances. • The right to be assisted by an interpreter, free of charge, when the accused person is foreign and neither understands nor speaks Spanish. • The right to be examined by a forensic doctor. • The right to meet in confidence with a lawyer both before and after providing a statement. <p>And the full list of rights included in Article 24.2 CE is the next: the right to an ordinary Judge established by law, to defense and to legal counsel, to be informed of the charges against the person, to a public trial without undue delays and with all the guarantees and safeguards, to use proof mechanisms that are relevant to the defense, to not testify against themselves, to not plead guilty and to be presumed innocent. Minors are provided with the same information as detained persons of full legal age⁶⁷.</p>
2.2	<p>At what stage of the proceedings is the letter of</p>	<p>In criminal proceedings, the abbreviated procedure is the most typical –regulated in Articles 757-794 of the Code of Criminal Procedure– which consists of an investigation stage and an oral trial. In the first stage, the letter of rights is provided by the</p>

⁶⁶ See in particular Article 4 and relevant recitals of Directive 2012/13/EU.

⁶⁷ Spain, court clerk, Instruction Court No. 2 of Madrid.

	<p>rights provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>Court Clerk at the first appearance of the accused person called to testify before the judge. In the second stage, the rights are read to the accused person by the Court Clerk before the trial begins⁶⁸.</p>
<p>2.3</p>	<p>Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language is simple and accessible enough for the suspects or accused persons and/or that the suspects or accused persons understand the language? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>The wording⁶⁹ of the letter of rights is rather technical as it transcribes some of the rights held by detained persons as they appear in the Code of Criminal Procedure, although it can be understood by the accused person and, in any case, by their lawyer. However, the simplicity or accessibility of the wording of the letter of rights is neither controlled nor verified in anyway by the competent authorities and there is no verification of whether the accused person understands the language⁷⁰.</p>

⁶⁸ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁶⁹ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁷⁰ Spain, court clerk, Instruction Court No. 2 of Madrid.

3.	<p>RIGHT TO INFORMATION ABOUT THE ACCUSATION⁷¹</p>	<p>Brief Description The right to be informed about the accusation appears as a fundamental right in Article 24.2 CE, implying "reinforced" legal protection in relation to other non-fundamental rights contained in the CE. This right forms one of the formal guarantees in place to ensure legal compliance in proceedings with full guarantees, which is also regulated in Article 24.2 CE. In addition, Article 118 of the Code of Criminal Procedure states that "when a formal complaint is received or any other procedural act occurs that results in the accusation of a crime against specific persons, these persons shall be promptly informed". Finally, it is important to note that Constitutional Court Judgement (Criminal Chamber) num. 149/1997, of 29 September, confirms the fundamental right of accused persons to be informed of the accusation, establishing a threefold requirement based on the right to information:</p> <ul style="list-style-type: none"> a) Nobody can be officially accused without having been subject to preliminary proceedings. b) Nobody can be officially accused without a hearing with the Judge before the preliminary proceedings are concluded. c) Suspects cannot be subject to merely witness statements if the proceedings find sufficient cause to suspect them of being involved in a criminal act. <p>In the new regime introduced by Organic Act 5/2015 the new article 118.1 of the Code of Criminal Procedure says: "1. Any person accused of an act punishable by law may exercise their right to a defense, acting in whatever proceedings they may be, from the moment the commencement thereof is communicated to the person, whether said person has been placed in detention or subjected to any other measure resulting from an injunction or court order, or whether said person is under indictment, for the purposes of which the following rights shall, without unjustified delay, be informed:</p> <ul style="list-style-type: none"> a) The right to be informed of the acts of which the person stands accused, as well as of any relevant change in the subject-matter of the investigation and in the acts of which the person is being accused. This information shall be provided with a sufficient degree of detail so as to enable the effective exercise of their right to a defense. b) The right to review the proceedings in a timely manner so as to safeguard the right to a defense. c) The right to appoint a lawyer freely, without prejudice to the provisions contained in letter a) of article 527. d) The right to request legal advice free of charge, the procedure to do so and the conditions to receive it. e) The right to translation and interpreting services free of charge in accordance with the provisions set forth in articles 123-127. f) The right to remain silent, providing no statement if they choose not to. g) The right to not testify against themselves and not plead guilty. <p>The information to which the above paragraph refers shall be provided in a language understood by and accessible to the accused. To such end, the information must be adapted to their age, degree of maturity, any disabilities they may have as well as any other personal circumstance which may entail a change in their capacity to understand the full scope of the information that is being provided".</p>
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⁷¹ See in particular Article 6 and relevant recitals of Directive 2012/13/EU.

3.1	What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally or in writing)	At the beginning of the oral trial, the judge informs the accused person orally of the charges that have been brought against them ⁷² . There is no relevant legal provision; it is a forensic practice. This oral information on the charges that have been brought against the accused person takes place only before the oral trial and therefore NOT at other phases of the proceedings
3.2	At which stage of the proceedings is the information provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	At the oral trial, regulated in Articles 649-749 of the Code of Criminal Procedure, just before the statement the accused person makes to the court. ⁷³ This oral information on the charges that have been brought against the accused person take place only before the oral trial and therefore NOT at other phases of the proceedings
3.3	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation change?	<p>The accused person is not directly informed of any changes to the details of the accusation, made by either the Public Prosecutor's Office or the private prosecution, since any such changes would be announced by the parties in their concluding reports, read in the presence of the accused person, at which time they would be informed⁷⁴.</p> <p>In the new regime introduced by Organic Act 5/2015 the new article 775.2 of the Code of Criminal Procedure says: “When the proceedings result in any relevant change in the subject-matter of the investigation and in the acts of which the person is being accused, the Judge shall inform the accused of such at the earliest convenience. This information may be provided by means of a succinct explanation that may be sufficient to enable the exercise of the right to a defence, communicated in writing to the defence Lawyer of the accused”.</p>

⁷² Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

⁷³ Spain, judge at the Criminal Court.

⁷⁴ Spain, court clerk, Instruction Court No. 2 of Madrid; judge at the Criminal Court No. 13 of Madrid.

4.	RIGHT OF ACCESS TO CASE MATERIALS ⁷⁵	<p style="text-align: center;">Brief Description</p> <p>There are no specific regulations in the Spanish legal system governing the right of access to materials of the case. However, this right can be said to be covered in the accused person's right to technical defence, under which their lawyer has direct access to this material. The reform implemented by means of Organic Law 5/2015 introduces, in article 520.2.d) of the Code of Criminal Procedure, the right to access the elements of the proceedings that may be essential to challenge the lawfulness of the detention or imprisonment.</p>
4.1	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	Once the accused person officially appears in the proceedings represented by a lawyer (and not before), they shall have access, through the lawyer, to any material related to the case ⁷⁶ . This is the same during the pre-trial phase ⁷⁷ .
4.2	At what stage of the proceedings is access to case materials granted? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	Access to materials of the case is only granted when the accused person appears in the proceedings represented by a lawyer and never before this point. In principle, there is no access to police materials, but the moment they are incorporated into the court proceedings, the accused person's lawyer gains access to them. ⁷⁸
4.3	Under what circumstances is access to material refused? Who takes the decision of refusal?	No specific circumstances are contemplated in Spanish criminal procedure under which access to case materials would be denied to the parties involved in the proceedings.

⁷⁵ See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

⁷⁶ Spain, court clerk, Instruction Court No. 2 of Madrid; judge, Criminal Court No. 13 of Madrid.

⁷⁷ Spain, court clerk, Instruction Court No. 2 of Madrid; judge, Criminal Court No. 13 of Madrid.

⁷⁸ Spain, court clerk, Instruction Court No. 2 of Madrid; judge, Criminal Court No. 13 of Madrid.

5.	CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING & SPECIAL MEASURES⁷⁹	Brief Description		
5.1	In which languages can information be provided for the following?	In any language that is necessary being that spoken and understood by the accused person. An interpreter for the required language shall be found by the external company hired by the Justice Department to provide these services. ⁸⁰		
	a) information on procedural rights	In any language that is necessary being that spoken and understood by the accused person. An interpreter for the required language shall be found by the external company hired by the Justice Department to provide these services ⁸¹ .		
	b) letter of rights	In any language that is necessary being that spoken and understood by the accused person. An interpreter for the required language shall be found by the external company hired by the Justice Department to provide these services. As many languages as may be required, there is no set number. ⁸²		
	c) information about the accusation	In any language that is necessary being that spoken and understood by the accused person. An interpreter for the required language shall be found by the external company hired by the Justice Department to provide these services ⁸³ .		
	d) case materials	In any language that is necessary being that spoken and understood by the accused person. An interpreter for the required language shall be found by the external company hired by the Justice Department to provide these services ⁸⁴ .		
		Yes	No	Brief Description
5.2	Is there any procedure to ensure that suspects or accused persons have the right to challenge the failure or refusal to provide information on the following? If yes, briefly describe the			The accused person has no right under Spanish criminal procedure to challenge a decision to deny information since information is always provided. Law /2015 (ley orgánica) does not introduce any changes regarding this matter

⁷⁹ See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU.

⁸⁰ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸¹ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸² Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸³ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸⁴ Spain, court clerk, Instruction Court No. 2 of Madrid.

	procedure where relevant.			
	a) information on procedural rights		NO	The accused person has no right under Spanish criminal procedure to challenge a decision to deny information since information is always provided ⁸⁵ .
	b) letter of rights		NO	The accused person has no right under Spanish criminal procedure to challenge a decision to deny information since information is always provided ⁸⁶ .
	c) information about the accusation		NO	The accused person has no right under Spanish criminal procedure to challenge a decision to deny information since information is always provided ⁸⁷ .
	d) access to case materials		NO	The accused person has no right under Spanish criminal procedure to challenge a decision to deny information since information is always provided ⁸⁸ .
5.3	Is any official record kept to note the provision of information about the following? If yes, briefly describe where relevant.		NO	There are no official documents designed specifically for these purposes; nevertheless, in practice, each judge often uses a "model" report or ruling to provide information relating to the items listed above ⁸⁹ .
	a) information on procedural rights		NO	There are no official documents designed specifically for these purposes; nevertheless, in practice, each judge often uses a "model" report or ruling to provide information relating to the items listed above ⁹⁰ .
	b) letter of rights		NO	There are no official documents designed specifically for these purposes; nevertheless, in practice, each judge often uses a "model" report or ruling to provide information relating to the items listed above ⁹¹ .
	c) information about the accusation		NO	There are no official documents designed specifically for these purposes; nevertheless, in practice, each judge often uses a "model" report or ruling to provide information relating to the items listed above ⁹² .

⁸⁵ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸⁶ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸⁷ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸⁸ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁸⁹ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁹⁰ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁹¹ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁹² Spain, court clerk, Instruction Court No. 2 of Madrid.

	d) access to case materials		NO	There are no official documents designed specifically for these purposes; nevertheless, in practice, each judge often uses a "model" report or ruling to provide information relating to the items listed above ⁹³ .
5.4	<p>Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons (e.g. because of any physical impairments which affect their ability to communicate effectively (persons with hearing, sight or speech impediments), intellectual disabilities or in case of children and the holder of parental responsibility) in relation to:</p> <p>a) suspect or accused persons with physical impairment or disability;</p> <p>b) suspect or accused persons intellectual impairment or disability;</p> <p>c) suspect or accused children who are suspects/defendants and/or the holder of parental responsibility.</p> <p>If yes, briefly provide information on those</p>			<p>No, these types of measures are still not part of Spanish criminal procedure. Law 5/2015 (<i>ley orgánica por la que se modifican la Ley de Enjuiciamiento Criminal y la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, para transponer la Directiva 2010/64/UE, de 20 de octubre de 2010, relativa al derecho a interpretación y a traducción en los procesos penales y la Directiva 2012/13/UE, de 22 de mayo de 2012, relativa al derecho a la información en los procesos penales</i>) does not take any steps towards introducing these special procedures either. However, it is important to note that point 30 of the Charter of Citizens' Rights regarding the Justice System (<i>Carta de los derechos de los ciudadanos ante la Justicia</i>)⁹⁴, arising from the State Pact to Reform the Justice System, signed in Madrid on May 28, 2001, without binding nature, establishes the following:</p> <p>Deaf or mute citizens, or those who are blind or have a visual impairment, have the right to use a sign language interpreter or any technological means that enable them to both obtain requested information in a comprehensible format and to adequately communicate and participate in all procedural acts in which they are involved.</p> <ul style="list-style-type: none"> • The use of technical means such as videotext, text telephones, systems to translate documents to braille, sound recordings and similar means shall be encouraged. • Special care shall be taken to verify that the communicated message is effectively received by the recipient and, when appropriate, its content shall be read aloud. <p>In the new regime introduced by Organic Act 5/2015 the new article 520.3 of the Code of Criminal Procedure says: “If it were a minor or a person that is incapacitated, the authority under which the person is detained or held in custody shall notify the circumstances of letter e) of subsection 2 to those who hold parental rights, or who are the de facto carers or guardians thereof and, if such persons were not located, the Public Prosecutor's Office must be notified immediately instead. If the minor or incapacitated person that is detained is a foreign national, their detention must be notified <i>ex officio</i> to their country's Consular officer”.</p>

⁹³ Spain, court clerk, Instruction Court No. 2 of Madrid.

⁹⁴ www.abogacia.es/wp-content/uploads/2012/05/Carta-de-Derechos-de-los-Ciudadanos-ante-la-Justicia.pdf.

	mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?			
	<ul style="list-style-type: none"> • information on procedural rights 	a)		
		b)		
		c)		
	<ul style="list-style-type: none"> • letter of rights 	a)		
		b)		
		c)		
	<ul style="list-style-type: none"> • information about the accusation 	a)		
		b)		
		c)		
	<ul style="list-style-type: none"> • access to case 	a)		

	materials	b)			
		c)			

