

Submission Template

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

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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).

Estonian legislation differentiates between a criminal offence and a misdemeanour. All the procedures relating to the first are regulated in the Code of Criminal Procedure¹ (hereinafter CCP); the latter is regulated in the Code of Misdemeanour Procedure (hereinafter CMP)². Regarding the issues that are not regulated in the Code of Misdemeanour Procedure, the Code of Criminal Procedure applies. There are substantive differences in the regulation of the translation and interpretation in these procedures.

The main changes relating to the Directive 2010/64/EU were adopted in 2013 and entered into force on 27 October 2013.³ Some provisions relating to written translation entered into force on 1 September 2011.⁴ Prior to the 2013 amendment to the CCP, there were a number of issues relating both to the interpretation and translation as well as to the protection of the rights of suspected and accused persons that were not in compliance with the respective Directives. The Legal Chancellor was asked to give his opinion on the planned implementation measures of the Directive 2010/64/EU and several of his suggestions were taken into account.⁵

Estonian word “*tõlge*” applies to both interpretation and translation. Term “*kirjalik tõlge*” means translation, term “*suuline tõlge*” refers to interpretation. Therefore, if the law does not include such specifying clauses, it applies both to translation and interpretation.

¹ Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

² Estonia, Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*), 22 May 2002, available at: www.riigiteataja.ee/en/compare_original?id=530032015002.

³ Estonia, Act to amend the Code of Criminal Procedure (Unofficial translation) (*Kriminaalmenetluse seadustiku muutmise seadus*), 4 October 2013, available at: www.riigiteataja.ee/akt/104102013003.

⁴ Estonia, Act to amend the Code of Criminal Procedure and other relevant legislation (Unofficial translation) (*Kriminaalmenetluse seadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seadus*), 23 February 2011, available at: www.riigiteataja.ee/akt/123022011001.

⁵ Estonia, Legal Chancellor (*Õiguskantsler*), Opinion on the Act to amend the CCP and other legislation (Unofficial translation) (*Arvamus eelnõule: kriminaalmenetluse seadustiku jt seaduste muutmise eelnõu*), 16 April 2013, available at:

http://oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_arvamus_kriminaalmenetluse_seadustiku_jt_seaduste_muutmise_eelnou.pdf.

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

1.	RIGHT TO INTERPRETATION ⁶	Brief Description
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?</p> <p>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?</p> <p>c) Who bears the cost of interpretation at each stage?</p> <p>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) The responsibility to determine the need for interpretation depends on whether the act committed is a crime or misdemeanour.⁷ Establishing proficiency in Estonian language forms part of the general procedure i.e. there is no separate procedure for determining the need of interpretation. During criminal procedures, everybody conducting questioning has an obligation to determine the Estonian proficiency of participants; and decide if oral interpretation or translation of documents is needed.⁸ During misdemeanour procedures, interpreters are involved in the pre-judicial stage when requested by participants.⁹</p>

⁶ See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

⁷ Estonia, Penal Code (*Karistusseadustik*), 6 June 2001, available at: www.riigiteataja.ee/en/eli/519032015003/consolide.

Art. 3 paras 3-4 of the Penal Code give the following definitions:

“(3) A criminal offence is an offence which is provided for in this Code and the principal punishment prescribed for which in the case of natural persons is a pecuniary punishment or imprisonment and in the case of legal persons a pecuniary punishment.

(4) A misdemeanour is an offence which is provided for in this Code or another Act and the principal punishment prescribed for which is a fine, detention or deprivation of driving privileges.”

⁸ Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002. According to Art. 10 (2) of the CCP “the body conducting the proceedings shall determine the proficiency in the Estonian language of both the participants in the proceedings as well as parties to the court proceeding. If it is impossible to determine the proficiency in the Estonian language or it proves to be insufficient, the assistance of an interpreter or translator shall be ensured.”

⁹ Estonia, Art. 24 of the Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*), 22 May 2002, available at: www.riigiteataja.ee/en/compare_original?id=530032015002.

		<p>A refusal to provide interpretation or translation can be made by the body conducting the investigation; however this ruling can be challenged in accordance with the procedure indicated in Article 228 of the CCP.</p> <p>Article 228 of the CCP establishes complaint mechanism against the activities of the investigative body or Prosecutor's office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor's office that violate basic rights can also be challenged in the court.¹⁰</p> <p>Article 161 of the CCP regulates considerations for deciding whether the translation or interpretation is needed. Further, it defines the requirements of the qualifications of translators and the requirements and format of translation.</p> <p>b) Both the Police and Boarder Guard Board (hereinafter PBGB) as well as the Prosecutor's office confirmed that the need for both translation and interpretation becomes evident during the first procedural acts, and that there are no separate procedures used for determining the proficiency of Estonian language of the participants.¹¹ Research did not show any recent cases where a refusal of translation during police questioning was challenged.</p> <p>c) According to Article 177 (3) of the CCP, the costs of interpretation are defined as additional costs and they are borne by the state. Precise requirements are regulated in Article 178 of the CCP. According to the PBGB translation registry, there were 26,549 requests for translation (including both translation and interpretation) in 2014.¹²</p> <p>d) Generally interpretation and translation have to be provided within a 'reasonable amount of time.' There is more precise time-frame for suspects and accused persons. Article 10 (8) of the CCP sets forth that oral interpretation should be ensured immediately so that it does not impair the exercise of their rights to defence. The PBGB employs a number of interpreters and translators (fulfilling both functions) and the orders for translations are fulfilled through the translation registry.¹³</p>
<ul style="list-style-type: none"> • court hearings; 		<p>a) The general regulation is the same for both court hears and pre-trial procedures. During court hearings, the body responsible for guaranteeing the interpretation is the judge. According to Article 10 (2) of the CCP <i>"the body conducting the proceedings shall determine the proficiency in the Estonian language of both the participants in the proceedings as well as parties to the court proceeding. If it is</i></p>

¹⁰ Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

¹¹ Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

¹² Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

¹³ Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

1.1.2	<p><i>impossible to determine the proficiency in the Estonian language or it proves to be insufficient, the assistance of an interpreter or translator shall be ensured.”</i></p> <p>Firstly, the text of the report on the detention of the suspected, arrest warrant, European arrest warrant, statement of charges and judgment is translated into their native language or a language in which the person is proficient; and is communicated to him or her.¹⁴ This translation is obligatory and there is no discretion given to the body conducting the procedure.¹⁵ The text of a statement of charges and judgment is translated in writing. All the other documents may be translated orally or an oral summary may be made thereof, unless this affects the fairness of the proceedings.¹⁶</p> <p>Secondly, pursuant to Article 10 (6) of the CCP, translation of all the other documents which are significant from the point of view of understanding the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings requires a reasoned application by the counsel. The law does not specify which documents are translated, thus, they might include both documents from the case-file as well as legal acts. When approved, the translation is made into the individual's native tongue or into another language in which the person is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified, it will issue a formal refusal.</p> <p>When the interpretation or translation is refused, it is possible to challenge it according to the procedure in Article 228 of the CCP. Article 228 of the CCP establishes complaint mechanism against the activities of the investigative body or Prosecutor's office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor's office that violate basic rights can also be challenged in the court.¹⁷</p> <p>As there is no additional regulation related to misdemeanours, the CCP and the regulation related to the criminal procedure applies. The need for a written translation depends on the stage of the proceedings.</p>
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¹⁴ Estonia, Art. 10 (5) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

¹⁵ Estonia, Art. 10 (5) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

¹⁶ Estonia, Art. 10 (7) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

¹⁷ Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

		<p>b) Decisions to include the translation is in the discretion of the judge. The Supreme Court has stressed suspects' and accused persons' right to understand procedural acts carried out concerning them. Interpretation should be effectively guaranteed when the suspects or accused persons take part in the procedural acts that concern or include the accused or suspect; interpretation should make these procedures comprehensible. Secondly, all the central documents of the proceedings should be translated.¹⁸ There are no exceptions to this rule in the CCP.</p> <p>c) Costs of the interpretation are defined as additional costs and they are borne by the state.¹⁹ The expenses covered are enlisted in Article 178 of the CCP.</p> <p>d) There is no general corresponding regulation. A relevant time-frame has been set for suspects and accused persons, whereby oral interpretation should be ensured immediately, written translation of documents is ensured within a reasonable time so that it does not impair the ability to exercise their rights to defence.²⁰</p>
1.1.3	<ul style="list-style-type: none"> any necessary interim hearings; 	<p>a) If necessary, the general regulation described in A.1.1.2 applies.</p> <p>b) Ibid.</p> <p>c) Ibid.</p> <p>d) Ibid.</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 	<p>a) According to Article 10 (2¹) of the CCP, if a suspect or accused person is not proficient in the Estonian language, the assistance of an interpreter or translator is ensured at their request. The suspect or accused person or their counsel can also request interpretation for the meeting with the counsel which is directly related to the procedural act performed with respect to the suspect or accused, or the application or complaint submitted. If the body conducting the proceedings finds that the assistance of an interpreter or translator is not necessary, the body shall formalise the refusal in a ruling that can be challenged pursuant to Article 228 of the CCP.</p>

¹⁸ Estonia, Supreme Court of Estonia (*Riigikohus*), No. 3-1-1-58-10, 6 August 2010, available at: [¹⁹ Estonia, Art. 177 \(3\) of the Code of Criminal Procedure \(*Kriminaalmenetluse seadustik*\), 12 February 2003, available at: \[www.riigiteataja.ee/en/compare_original/501042015002\]\(http://www.riigiteataja.ee/en/compare_original/501042015002\).](http://www.riigikohus.ee/?id=11&indeks=0,1,15013,15356,15501&tekst=RK/3-1-1-58-10, para. 9.</p>
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²⁰ Estonia, Art. 10 (8) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

	questioning or hearing during the proceedings?	<p>Article 228 of the CCP establishes complaint mechanism against the activities of the investigative body or Prosecutor's office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor's office that violate basic rights can also be challenged in the court.²¹</p> <p>b) Ibid.</p> <p>c) Costs of the interpretation are defined as additional costs and they are paid by the state according to Article 177 (3) of the CCP. Precise requirements are regulated in Article 178 of the CCP.</p> <p>d) There is no general corresponding regulation. For suspects and accused persons, oral interpretation should be provided immediately and written translation of documents must be ensured within a reasonable time so that it does not impair the exercise of their right to defence.²²</p>
1.2	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>There is no such specific regulation. All the bodies e.g. PBGB, the Prosecutor's office and the court confirm that each of these institutions have a number of contractual translators from translation bureaus and they turn to them when there is a document that is not understood by participants.²³ In addition, they have contacts with the embassies and universities, who are connected when need be. There have been no cases when family members have been used. The PBGB stated that in some rare cases, when it was necessary to translate into a rare language, they have used private persons (an example brought was a cook).²⁴</p>

²¹ Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

²² Estonia, Art. 10 (8) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

²³ Estonia, representatives of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*), the Prosecutor's office (*Prokuratuur*) and a translator of the Tartu District court (*kohtutõlk Tartu Ringkonnakohtus*).

²⁴ Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

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.	<p>If the body conducting the proceedings finds that the assistance of an interpreter or translator is not necessary, the body shall formalise a refusal by a ruling that can be challenged pursuant Article 228 of the CCP.</p> <p>Article 228 of the CCP establishes complaint mechanism against the activities of the investigative body or Prosecutor's office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor's office that violate basic rights can also be challenged in the court.²⁵</p>
1.4	<p>With regard to remote interpretation via communication technologies :</p> <p>a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?</p> <p>b) Which technologies are used, if any (videoconference, telephone, internet, etc.)</p>	<p>There is no respective regulation.</p> <p>In principle, there is no prohibition or limitation whereby communication technologies could not be used. It is, however, not a common practice.²⁶</p> <p>It is possible to provide simultaneous translation in the Tartu courthouse. It is mainly used for the translation of oral arguments. It is also possible to use videoconferences and telephone.²⁷</p>

²⁵ Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

²⁶ Estonia, representative of the Ministry of Justice (*Justiitsministeerium*).

²⁷ Estonia, translator in the Tartu District court (*kohtutõlk Tartu Ringkonnakohtus*).

<p>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 relevant organisations and/or practitioners.</p>	<p>None of the stakeholders have used such instruments.</p>		
<p>TRAINING²⁸</p>	<p>Yes</p>	<p>No</p>	<p>Brief Description</p>
<p>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.</p>		<p>x</p>	<p>None of the contacts has been involved or has knowledge of the judicial training of their translators in criminal law matters. According to the training division of the Supreme Court, the judges have not received any training on how to ensure effective participation of translators.²⁹</p> <p>The translators of the PBGB and the Prosecutor's office stated that they have not received any such training.³⁰</p>

²⁸ See in particular Art. 6 and relevant recitals of Directive 2010/64/EU.

²⁹ Estonia, representative of the Supreme Court of Estonia (*Riigikohus*).

³⁰ Estonia, representatives of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*) and the Prosecutor's office (*Prokuratuur*).

2.	RIGHT TO TRANSLATION OF DOCUMENTS ³¹	Brief Description
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) Ordering translation of necessary documents relies on the body conducting the procedure i.e. the police or prosecutor. Whether the translation is obligatory or not is dependent on the specific type of the document.</p> <p>The key documents related to police questioning include: the text of the report on the detention of the suspected, the arrest warrant, the European arrest warrant. These documents are translated into the person's native language or a language in which he or she is proficient; and is communicated to them.³² This translation is obligatory and there is no discretion given to the body conducting the procedure.³³ The text of the statement of charges and judgment is translated in writing. All the other documents may be translated orally or an oral summary may be made, unless such oral interpretation or summary affects the fairness of the proceedings.³⁴</p> <p>According to Article 10 (6) of the CCP, translation of all other documents which are significant from the point of view of understanding the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings requires a reasoned application submitted by the counsel of the accused or by themselves. When approved, the translation is made into the person's native tongue or into another language in which he or she is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified, it is formalised the refusal by a formal ruling.</p>

³¹ See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

³² Estonia, Art. 10 (5) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

³³ Estonia, Art. 10 (5) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

³⁴ Estonia, Art. 10 (7) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

		b) Costs of the translation are defined as additional costs and they are borne by the state. ³⁵ Precise requirements are regulated in Article 178 of the CCP.
		c) Written translation of documents is ensured within a reasonable time so that it does not impair the exercise of their right to defence. ³⁶
2.1.2	<ul style="list-style-type: none"> • court hearings; 	a) The regulation is the same as during the police hearing.
		b) Costs of the translation are defined as additional costs and they are borne by the state. ³⁷ Precise requirements are regulated in Article 178 of the CCP.
		c) Written translation of documents is ensured within a reasonable time so that it does not impair the exercise of their right to defence. ³⁸
2.1.3	<ul style="list-style-type: none"> • any necessary interim hearings; 	a) Regulation is the same as for court proceedings.
		b) Ibid.
		c) Ibid.
	<ul style="list-style-type: none"> • any communication between suspects and accused persons 	a) Ibid.

³⁵ Estonia, Art. 177 (3) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

³⁶ Estonia, Art. 10 (8) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

³⁷ Estonia, Art. 177 (3) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

³⁸ Estonia, Art. 10 (8) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

2.1.4	and their legal counsel in direct connection with any questioning or hearing during the proceedings?	b) Ibid.
		c) Ibid.
2.2	How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	<p>There is no formal procedure. There are, however, certain documents which the suspect or accused person has to sign and these documents have to be translated. The Supreme Court has stated that the suspect should receive interpretation or translations of the documents that determine the subsequent course of the proceedings.³⁹ The Supreme Court stressed that it is of utmost importance that the accused person understands the content of the suspicion of charges; therefore, when the law foresees that translations are submitted on the request of the accused (such as the expedited procedure, Article 256¹ of the CCP), this requirement has to be interpreted restrictively. Whenever additional procedures are used, the suspicion of charges has to be translated. In addition, the Supreme Court found that generally the violation of translation requirements in pre-trial stages are considered as violations of criminal procedure only when such violation results or may result in an unlawful or unfounded court judgment.⁴⁰ As the interpreter was involved in the court procedures, this violation was not seen as material – the accused person understood the charges and accepted them. Thus, although the Supreme Court did not state it explicitly in the judgment, it accepted the interpretation of the charges as sufficient instead of a full translation of them.</p> <p>Furthermore, Article 10 (7) of the CCP states that the text of a statement of charges and judgment have to be translated in writing. Instead of the written translation of the remaining documents listed in subsections (5) and (6) of Article 10 of the CCP, such documents may be translated orally or an oral summary may be made, unless these affects the fairness of the proceedings. Article 10 of the CCP reads:</p> <p><i>“(5) If a suspect or accused is not proficient in the Estonian language, the text of the report on the detention of the suspected, arrest warrant, European arrest warrant, statement of charges and judgment translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.</i></p> <p><i>(6) If a suspect or accused is not proficient in the Estonian language, he or she or his or her counsel may submit a reasoned application for translating a document which is significant from the point of view of understanding the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings into his or</i></p>

³⁹ Estonia, Supreme Court of Estonia (*Riigikohus*), No. 3-1-1-58-10, 6 August 2010, available at: [⁴⁰ Estonia, Art. 339 \(2\) of the Code of Criminal Procedure \(*Kriminaalmenetluse seadustik*\), 12 February 2003, available at: \[www.riigiteataja.ee/en/compare_original/501042015002\]\(http://www.riigiteataja.ee/en/compare_original/501042015002\).](http://www.riigikohus.ee/?id=11&indeks=0,1,15013,15356,15501&tekst=RK/3-1-1-58-10, para. 9.</p>
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		<i>her native tongue or into another language in which he or she is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified, such body shall formalise the refusal by a ruling.”</i>		
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.	<p>There is no such official procedure in place. All the appeals against activities of the investigative body or Prosecutor’s Office follow the general regulation set forth in Article 228 of the CCP. Neither the PBGB nor the Prosecutor’s office keep statistics on the amount of such refusals.⁴¹</p> <p>Article 228 of the CCP establishes a complaint mechanism against the activities of the investigative body or Prosecutor’s office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor’s office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor’s office that violate basic rights can also be challenged in the court.⁴²</p>		
		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?		x	<p>These documents have to be understandable for the suspected or accused person. This, however, does not necessarily mean that only written translations of these documents are permissible; it is possible to translate these documents orally instead. Observations of the Chancellor of Justice show that in the police house of detention there are documents in the Estonian language that are not translated, but are still signed by the suspected or accused persons whose language is not Estonian.⁴³</p> <p>According to the Article 10 (7) of the CCP, the text of a statement of charges and judgment have to be translated in writing. The remaining documents listed may be translated orally or an oral summary may be made, unless this affects the fairness of the proceedings.⁴⁴</p>

⁴¹ Estonia, representative of the Ministry of Justice (*Justiitsministeerium*).

⁴² Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁴³ Estonia, Legal Chancellor (*Õiguskantsler*), OPCAT visit to the PBGB South prefecture Valga and Võru house of detention (Unofficial translation) (*OPCAT kontrollkäik: Politsei- ja Piirivalveamet Lõuna prefektuuri korrakaitsebüroo arestimaja Valga ja Võru kamber*), 3 April 2014, available at: <http://oiguskantsler.ee/et/seisukohad/seisukoht/opcat-kontrollkaik-politsei-ja-piirivalveameti-louna-prefektuuri>.

⁴⁴ Other documents that might be translated are enlisted in Art. 10 paras 5-6 of the CCP:

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?		x	Translation is a functional guarantee assuring that the suspect or accused person understands the procedure affecting them. Thus, when the respective authorities have decided that there is a need for translation, it is not possible to waive this right.
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3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION⁴⁵			
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?	x		<p>Estonia has the Chamber of Sworn translators⁴⁶, who make official and notarised translations. Whether or not they also provide interpretation services is not regulated by the law. Persons working only with legal interpretation, cannot enter the Chamber. There is a database of these translators. Such translators may also be used for interpretation as this is neither prohibited nor covered by the Sworn Translators Act (STA).⁴⁷ Article 2 (1) of the STA defines a sworn translator as follows: <i>“Sworn translator is a person who provides the official translation service of documents as professional activity and performs other functions related to translation in the cases provided for in the law.”</i> Article 5 of the STA enlists the duties of the sworn translators as follows:</p> <p style="text-align: center;"><i>“(1) Upon the provision of the translation service of documents, sworn translators shall:</i></p> <p style="text-align: center;"><i>1) translate documents (hereinafter sworn translation);</i></p> <p style="text-align: center;"><i>2) certify the authenticity of copy of a document to be translated, if necessary;</i></p>

“(5) If a suspect or accused is not proficient in the Estonian language, the text of the report on the detention of the suspected, arrest warrant, European arrest warrant, statement of charges and judgment translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

(6) If a suspect or accused is not proficient in the Estonian language, he or she or his or her counsel may submit a reasoned application for translating a document which is significant from the point of view of understanding the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings into his or her native tongue or into another language in which he or she is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified, such body shall formalise the refusal by a ruling.”

⁴⁵ See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

⁴⁶ More on Chamber of Sworn Translations available at: www.vandetolgid.ee/en/. See also Sworn Translators Act (*Vandetõlgi seadus*), 23 December 2013, available at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/527122013001/consolide.

⁴⁷ Estonia, Sworn Translators Act (*Vandetõlgi seadus*), 23 December 2013, available at: www.riigiteataja.ee/en/eli/527122013001/consolide.

				<p>3) <i>certify the authenticity of printout of a document to be translated obtained from a computer network database, if necessary.</i></p> <p>(2) <i>Pursuant to the performance of a public function, sworn translators shall be required to translate:</i></p> <p>1) <i>acts published in the State Gazette (Riigi Teataja) into foreign language on the basis of clause 6 (3) 1) of the Riigi Teataja Act;</i></p> <p>2) <i>international agreements published in the State Gazette (Riigi Teataja) into Estonian on the basis of clause 6 (3) 2) of the Riigi Teataja Act.</i></p> <p>(3) <i>Within the framework of their professional activities, sworn translators shall advise persons in issues related to the translation of documents.</i></p> <p>(4) <i>On the request of a person, a sworn translator shall organise the certification of a document to be translated or a translation with an apostille by a notary within the framework of his or her professional activities."</i></p> <p>Most of the translators are provided by privately owned translation bureaus or are self-employed translators. Bodies conducting the procedures have their own lists of translators; there are regular tenders for finding necessary translators. A majority of the translations are still made by the permanent translators employed full time by the relevant bodies.</p>
	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?		x	There are no official lists of translators besides the list of sworn translators. The first choice for all the bodies conducting investigation is their own regular translators. Secondly, all the institutions have their own lists of translators collected through tenders. Thirdly, when translation has to be made into a more uncommon language, the body might also contact universities, embassies etc. ⁴⁸

⁴⁸ Estonia, representatives of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*) and the Prosecutor's office (*Prokuratuur*).

	c) Who has access to these databases?	Brief Description: Database of Sworn translators is available for the general public. ⁴⁹ Other lists of translators are for in-house use. ⁵⁰		
	d) Which professional qualifications are needed by: <ul style="list-style-type: none"> • translators and • interpreters in order to be registered in the database?	Brief Description: Sworn translators have to fulfil the requirements of the Sworn Translators Act and is certified by the Ministry of Justice. ⁵¹ Other in-house lists do not have any formal requirements of professional qualifications. ⁵²⁻		
	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).	x		<p>When an interpreter or translator is not a sworn translator pursuant to the Sworn Translators Act⁵³, s/he is warned that they may be punished via criminal procedure for providing a knowingly false interpretation or translation.⁵⁴ The translator has to sign all the documents that he or she translates.</p> <p>Furthermore, in order to ensure the correctness of interpretation or translation, an interpreter or translator has the right to pose questions to participants during the proceedings, examine the minutes of procedural acts and make statements</p>

⁴⁹ www.vandetolgid.ee/en/.

⁵⁰ Estonia, representatives of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*) and the Prosecutor's office (*Prokuratuur*).

⁵¹ Art. 16 of the Sworn Translators Act provides requirements for sworn translators:

"The following person may become a sworn translator:

- 1) *a person with active legal capacity;*
- 2) *a person who has acquired at least a nationally recognised Bachelor's degree or a qualification corresponding thereto for the purposes of subsection 28 (2^o) of the Republic of Estonia Education Act or a foreign qualification corresponding thereto;*
- 3) *a person who has not been deprived of the profession of a sworn translator on the basis of clause 24 (1) 5) or clause (2) 1) or clause 28 (3) 3) of this Act;*
- 4) *a person who has not been punished for an intentionally committed criminal offence which would damage the reliability of the profession of a sworn translator;*
- 5) *a person who is honest and of high moral character."*

⁵² Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*), and the Prosecutor's office (*Prokuratuur*).

⁵³ Estonia, Sworn Translators Act (*Vandetõlgi seadus*), 23 December 2013, available at: www.riigiteataja.ee/en/eli/527122013001/consolide.

⁵⁴ Estonia, Art. 161 (3) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

				concerning the report, and such statements are recorded in the minutes. ⁵⁵ According to Article 161 (6) of the CCP, an interpretation or translation of any aspect of a procedural act should be precise and complete. The interpreter or translator has an obligation to maintain the confidentiality of the information which became known to him or her in the course of the translation. There are no other guarantees in place for ensuring the independence of translators. Furthermore, approximately 80% of the translations are made by in-house translators employed by the bodies conducting the proceedings. ⁵⁶
	f) Is access to existing databases provided through the European e-Justice portal ? ⁵⁷ How is this register available to legal counsel and relevant authorities?		x	None of the stakeholders have used the European e-Justice portal.
	g) Are criminal justice institutions required to use interpreters and translators listed in these registers?		x	As indicated before, there is no such official list in place. According to the PBGB, they use their own translation and interpretation register and they have not seen the need to use other databases. ⁵⁸
3.2	With regard to other mechanisms/procedures:	Yes	No	Brief Description
	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		x	There are no common quality assessment mechanisms in place. According to the Prosecutor's office, the work of a new translator is sometimes monitored by a translator who has previously collaborated with the office. ⁵⁹

⁵⁵ Estonia, Art. 161 (5) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁵⁶ Estonia, representatives of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*) and the Prosecutor's office (*Prokuratuur*).

⁵⁷ <https://e-justice.europa.eu/home.do?plang=en&action=home>

⁵⁸ Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

⁵⁹ Estonia, representative of the Prosecutor's office.

	quality checks? Who is responsible for carrying them out?			
	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?	x		<p>If a non-staff interpreter or translator is not sufficiently proficient in the required language, they must refuse to participate in the criminal proceeding. A suspect or accused person or his or her counsel has the possibility to file an appeal against the provision of a false translation or interpretation by a translator or interpreter pursuant to the procedure provided for in Article 228 of the CCP.⁶⁰ There is no such separate option available for the in-house interpreters or translators. There is no reason why such complaints would not be permissible.</p> <p>Article 228 of the CCP establishes a complaint mechanism against the activities of the investigative body or Prosecutor's office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor's office that violate basic rights can also be challenged in the court.⁶¹</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.	x		<p>Article 162 of the CCP regulates removal of the translator/interpreter. According to the Article 162 (2¹) the body conducting the proceedings may request the removal of an interpreter or translator if the interpreter or translator does not perform his or her duties as required or if the quality of the interpretation or translation may impair the exercise of the right to defence by the suspect or accused.</p>
3.3	Are there special procedures designed to take into account the		x	<p>None of the stakeholders indicated the availability of any special procedures besides the obligatory participation of a council that is required according to Article 45 (2) of the CCP.</p>

⁶⁰ Estonia, Art. 161 (7) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁶¹ Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

	special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? ⁶² If yes, briefly provide information on those mechanisms considering the following vulnerable groups:			
	a) suspect or accused persons with physical impairment or disability;		x	When necessary, sign language interpretation will be included in the proceedings; interrogation may be postponed if immediate interrogation is impossible in order to ensure the participation of counsel and interpreter or translator. ⁶³
	b) suspect or accused persons with intellectual impairment or disability;		x	None of the stakeholders indicated the availability of any special procedures besides the obligatory participation of a council that is required according to Article 45 (2) of the CCP.
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).		x	Both the PBGB and the Prosecutor's office have adopted internal guidelines for treatment of children during criminal procedure. ⁶⁴ None of these guidelines relate to interpretation or translation.
3.4	Is there any recording procedure to note that interpretation and translation have occurred and in which form? ⁶⁵ If yes, briefly provide information on how this procedure is organised in practice.	x		All the procedural documents that have been translated include the name of the translator and are signed by the translator. All the minutes and record where the interpreter has been used include the name of the interpreter and are signed by them.

⁶² See in particular recital 27 of Directive 2010/64/EU.

⁶³ Estonia, Art. 33 (2) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁶⁴ Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), Decree no. 17, 20 January 2015; and Prosecutor General (*Riigi peaprokurör*), Guidelines on special treatment of children during criminal procedure (Unofficial translation) (*Juhis: Alaealiste kohtlemine kriminaalmenetluses*), Decree no. RP-1-4/07/8, 29 June 2007, available at: www.prokuratuur.ee/sites/www.prokuratuur.ee/files/elfinder/article_files/Riigi%20peaprokur%C3%B6ri%20juhis-%20alaealiste%20%C3%BChetaoliseks%20erikohtlemiseks%20krim.menetluses%2028.06.2007.pdf.

⁶⁵ See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

Directive 2012/13/EU was transposed into the CCP with the amendments from the 12.06.2014⁶⁶.

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS ⁶⁷	Brief Description
1.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) What information is provided?</p> <p>b) How is it provided (e.g. orally or in writing)?</p> <p>c) What is the timeframe (deadline) for providing information at each stage of the proceedings?</p> <p>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	

⁶⁶ Estonia, Act to amend the Code of Criminal Procedure and other relevant legislation (Unofficial translation) (*Kriminaalmenetluse seadustiku ja sellega seonduvalt teiste seaduste muutmise seadus*), 21 June 2014, available at: www.riigiteataja.ee/akt/121062014011.

⁶⁷ See in particular Article 3 and relevant recitals of Directive 2012/13/EU.

<ul style="list-style-type: none"> • police questioning; 	<p>a) Rights and obligations of suspects are enlisted in Article 34 of the CCP.⁶⁸ Generally, the rights and obligations of a suspect and accused person are immediately explained to them⁶⁹; it is done either orally or in writing, in plain and intelligible language (see also Article 35¹ (1)). This explanation of rights has to be confirmed by a signature of the suspect.⁷⁰ Written declaration of rights is immediately given to suspects or accused persons who are detained.⁷¹</p> <p>The Legal Chancellor noted in April 2014 that during the visit to the PBGB detention houses it was unclear whether all detained persons had received the declarations of rights and whether they understood the substance of the declaration. In some of the cases it was unclear whether the detained person was given the declaration of their rights or whether their rights were explained to them only orally.⁷²</p>
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⁶⁸ Article 34 of the CCP enlists rights and obligations of suspects:

“(1) A suspect has the right to:

- 1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;*
- 2) know that his or her testimony may be used in order to bring charges against him or her;*
- 2¹) the assistance of an interpreter or translator;*
- 3) the assistance of a counsel;*
- 4) confer with the counsel without the presence of other persons;*
- 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;*
- 6) participate in the hearing of an application for an arrest warrant in court;*
- 7) submit evidence;*
- 8) submit requests and complaints;*
- 9) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;*
- 10) give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings.”*

⁶⁹ Estonia, Art. 33 (2) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁷⁰ Legal Chancellor noted in 2014 that some of the detained suspects whose mother tongue is not Estonian have signed declaration of rights in Estonian. Nevertheless, the interpreter has been included in these proceedings. Legal Chancellor (*Õiguskantsler*), OPCAT (Optional Protocol to the Convention against Torture) visit to the PBGB South prefecture Valga and Võru house of detention (Unofficial translation) (*OPCAT kontrollkäik: Politsei- ja Piirivalveametite Lõuna prefektuuri korrakaitsebüroo arestimaja Valga ja Võru kamber*), 3 April 2014, p. 4.2., available at: <http://oiguskantsler.ee/et/seisukohad/seisukoht/opcat-kontrollkaik-politsei-ja-piirivalveameti-louna-prefektuuri>.

⁷¹ Estonia, Art. 35¹ of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁷² Estonia, Legal Chancellor (*Õiguskantsler*), OPCAT visit to the PBGB South prefecture Valga and Võru house of detention (Unofficial translation) (*OPCAT kontrollkäik: Politsei- ja Piirivalveameti Lõuna prefektuuri korrakaitsebüroo arestimaja Valga ja Võru kamber*), 3 April 2014, p. 4.2., available at: <http://oiguskantsler.ee/et/seisukohad/seisukoht/opcat-kontrollkaik-politsei-ja-piirivalveameti-louna-prefektuuri>.

		<p>b) Rights can be explained both orally as well as in writing and explanation of rights is confirmed by signature.⁷³ The Ministry of Justice has prepared leaflets where the rights and obligations of all participants in the proceedings are stated in clear and simple language. These leaflets are freely available in all the rooms of the PBGB that suspects or accused persons might visit.</p>
		<p>c) The rights of a person have to be explained immediately. In practice, the PBGB does it as soon as possible. According to the PBGB, there might be instances when there is a short time period between detention and explanation of rights. Examples of this might include detention of several persons at the same time or when there is an urgent need to perform a security check. In such cases their rights are explained immediately after these procedures, and after this the suspect or accused person signs the declaration of rights and they are given a copy of the declaration. Examples given by the PBGB included up to 30 minutes delay.⁷⁴</p>
	<ul style="list-style-type: none"> • court hearings; 	<p>a) There are a number of different procedures related to the court and in some of them the court does not re-introduce the declaration of rights. In the beginning of an ordinary court session, it is established whether or not the relevant parties to the court procedure are present.⁷⁵ After identification of the accused person(s) and ascertaining whether they have received a copy of the statement of charges, the rights and obligations provided in Article 35 (2) of the CCP are explained to the accused person.</p> <p>b) The law does not specify the form of this explanation; therefore, it can be done either orally or in writing.</p> <p>c) The CCP includes explanation of rights in a particular part of the proceedings. It is not possible to continue with the proceedings without this explanation. Thus, it has to be done immediately either with or without an interpreter or translator.</p>

⁷³ Estonia, Art. 35 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁷⁴ Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

⁷⁵ Estonia, Art. 277 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

	<ul style="list-style-type: none"> • any necessary interim hearings; 	<p>a) There are a number of procedures where the court does not repeat the rights of the accused person. They include simplified procedures such as alternative proceedings⁷⁶, settlement proceedings⁷⁷, summary proceedings⁷⁸, and expedited procedures⁷⁹. In these proceedings, the court does not have an obligation to introduce their rights to the accused person.</p>
		<p>b) -</p>
		<p>c) -</p>
	<ul style="list-style-type: none"> • any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	<p>a) There is no specific regulation available – the law does not regulate communication between the suspect/accused and their legal counsel.</p>
		<p>b) Ibid.</p>

⁷⁶ Estonia, Chapter 9 division 1 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁷⁷ Estonia, Chapter 9 division 2 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁷⁸ Estonia, Chapter 9 division 3 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁷⁹ Estonia, Chapter 9 division 4 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

		c) Ibid.
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.	During the simplified proceedings the court explains to the accused the consequences of accepting these proceedings.
2.	LETTER OF RIGHTS⁸⁰	Brief Description
2.1	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>The current form of the declaration of rights was adopted by the Minister of Justice and it entered into force on 19 August 2014⁸¹. The letter of rights includes the following information:</p> <ol style="list-style-type: none"> 1. The right to use the assistance of counsel and to receive other legal assistance (this includes comments on the specific procedure and instances when assistance of a counsel is obligatory). 2. The right to obtain information regarding suspicion and charges. 3. The right to use interpretation and translation. 4. The right to remain silent. 5. The right to have access to relevant legal documents. 6. The right to submit evidence. 7. The duration of detention and contestation of detention. 8. The right to demand verification of reasons for holding in custody and to apply for commutation of holding in custody. 9. The right to notify someone of your arrest or detention and to notify the consulate or embassy. 10. The right to receive emergency medical care.

⁸⁰ See in particular Article 4 and relevant recitals of Directive 2012/13/EU.

⁸¹ Estonia, Regulation of the Minister of Justice (*Justiitsministri määrus*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidivormi kehtestamine*), 14 July 2014, available at: www.riigiteataja.ee/en/eli/519082014001/consolide.

		There is a separate declaration of rights available for a person arrested on the basis of an European arrest warrant. ⁸² However there are no separate declarations of rights available for vulnerable persons.
2.2	At what stage of the proceedings is the letter of rights provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	The letter of rights is provided immediately after the arrest or detention. In practice, the PBGB does it as soon as possible. According to the PBGB, there might be instances when there is a short time period between the detention and explanation of rights. Examples of this might include detention of several persons at the same time or when there is an urgent need to perform a security check. In such cases the rights are explained immediately after these procedures, suspect or accused person signs the declaration of rights and they are given a copy of the declaration. Examples given by the PBGB included up to 30 minutes of delay. ⁸³
2.3	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>The language of the declaration of rights is understandable and accessible; however, it is not plain. During police questioning, the suspect or accused person has to sign the declaration of rights indicating that it was clear and understandable to them. During court proceedings, the court has to be satisfied that the accused person has understood his or her rights.</p> <p>When a case concerns a minor or a person in a vulnerable situation, obligatory participation of a council should guarantee that the declaration of rights is understandable.⁸⁴</p>

⁸² Estonia, Regulation of the Minister of Justice (*Justiitsministri määrus*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidivormi kehtestamine*), 14 July 2014, available at: www.riigiteataja.ee/en/eli/519082014001/consolide.

⁸³ Estonia, representative of the Police and Border Guard Board (*Politsei- ja Piirivalveamet*).

⁸⁴ Estonia, Art. 45 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

3.	RIGHT TO INFORMATION ABOUT THE ACCUSATION ⁸⁵	Brief Description
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)	<p>According to Article 34 (1) of the CCP, a suspect or accused has the right to know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion. According to Article 34¹ this includes the right to request access to the evidence which is essential for specifying the content of the suspicion filed against the person, if this is required for ensuring fair proceedings and the preparation of defence. Access to the evidence collected should be ensured at the latest after the prosecutor's office has declared the pre-trial proceedings completed and submitted the criminal file for examination pursuant to Article 224 of the CCP.</p> <p>Suspects have the right to request access to any evidence which is essential in order to discuss whether an arrest warrant is justified and for contesting detention and taking into custody in court. The decision to enable access to the evidence is decided by the prosecutor's office. A prosecutor's office may make a ruling on refusal to enable access to evidence if this may significantly damage the rights of another person or if this may damage the criminal proceedings.⁸⁶ This ruling can be appealed in accordance with the provisions of Article 228 of the CCP.</p> <p>Article 228 of the CCP establishes a complaint mechanism against the activities of the investigative body or Prosecutor's office, whereby before a statement of charges is prepared, a participant in a proceeding has the right to file an appeal with the Prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Such appeal does not suspend the execution of the contested order or performance of the procedural act. Furthermore, when such appeal is received after the statement of charges has been sent to a court, the appeal is communicated to the court which hears the criminal matter. All the rulings of the Prosecutor's office that violate basic rights can also be challenged in the court.⁸⁷</p>
3.2	At which stage of the proceedings is the information provided? Please cross-check findings from the desk research by consulting	This information is provided immediately after the suspect or accused person is informed of their rights and when they are interrogated in regard to the content of the suspicion. ⁸⁸ Interrogations are documented in the transcript.

⁸⁵ See in particular Article 6 and relevant recitals of Directive 2012/13/EU.

⁸⁶ Estonia, Art. 34 (3) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁸⁷ Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁸⁸ Estonia, Art. 33 and 34 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

	relevant organisations and/or practitioners.	
3.3	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation change?	According to the Prosecutor's office, when the accusation changes, the suspect or accused person might be interrogated again. However, when there is no more reason to suspect the person of the offence, there is no need for such formality. When the prosecutor changes or amends the accusation during the court procedure, the prosecutor's office has to prepare a statement of charges in accordance with Article 226 of the CCP. ⁸⁹
4.	RIGHT OF ACCESS TO CASE MATERIALS⁹⁰	Brief Description
4.1	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	According to Article 34 ¹ of the CCP, suspects and accused persons have a right to examine the contents of their criminal file. Suspects also have the right to request access to the evidence which is essential for specifying the content of the suspicion filed against them. This request has to ensure fair proceedings and the preparation of a defence. Suspects have the right to request access to any evidence which is essential in order to discuss whether an arrest warrant was justified and for contesting detention and taking into custody in court.
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.	According to Article 34 ¹ of the CCP, access to evidence should be ensured at the latest after the prosecutor's office has declared the pre-trial proceedings completed and submitted the criminal file for examination pursuant to Article 224 of the CCP. This practice was confirmed by the Prosecutor's office. When necessary, all the materials can be accessed also in the later phases of the trial.

⁸⁹ Estonia, representative of the Prosecutor's office (*Prokuratuur*).

⁹⁰ See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

4.3	Under what circumstances is access to material refused? Who takes the decision of refusal?	The prosecutor's office may make a ruling on refusal to enable access to evidence if this may significantly damage the rights of another person or if this may damage the criminal proceeding. ⁹¹ As all the rulings of the Prosecutor's office, it can be appealed according to Article 228 or to the county court. ⁹²		
5.	CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING & SPECIAL MEASURES⁹³	Brief Description		
5.1	In which languages can information be provided for the following?	General principle is to provide this information in either the mother tongue or a language spoken by the suspect or accused person.		
	a) information on procedural rights	Estonian, Russian and English are the most common languages used by the stakeholders		
	b) letter of rights	The declaration of rights is officially available in Estonian, English, Finnish, and Russian. ⁹⁴ If the suspect or accused person is not proficient in the Estonian language, he or she shall be provided with the declaration of rights in his or her mother tongue or in a language in which he or she is proficient.		
	c) information about the accusation	Information about the accusation has to be provided in a language that is understandable to the accused.		
	d) case materials	Case materials are available in Estonian. When necessary, central documents can be translated, as indicated above.		
		Yes	No	Brief Description
5.2	Is there any procedure to ensure that suspects or	x		

⁹¹ Estonia, Art. 34 (3) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁹² Estonia, Art. 230 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁹³ See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU.

⁹⁴ Estonia, Regulation of the Minister of Justice (*Justiitsministri määrus*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidisevormi kehtestamine*), 14 July 2014, available at: www.riigiteataja.ee/akt/118072014005.

	accused persons have the right to challenge the failure or refusal to provide information on the following? If yes, briefly describe the procedure where relevant.			
	a) information on procedural rights	x		Failure to provide information on procedural rights is generally not a material violation of criminal procedural law. It is, however, possible to appeal against the activities of an investigative body or the prosecutor's office. ⁹⁵ The procedural failures of the courts can also be brought up in appellate proceedings.
	b) letter of rights	x		Failure to execute some rights entailed in the letter of rights constitutes a material violation of criminal procedural law and is grounds for an appeal according to Article 339 of the CCP. Article 339 of the CCP reads as follows: <i>“(1) Violation of criminal procedural law is material if: 1) the decision is made in a criminal matter by an unlawful court panel; 2) the criminal matter is heard in the absence of the accused although the participation of the accused in the hearing of the matter is mandatory; 3) a court proceeding is conducted without the participation of a counsel although the participation of the counsel is mandatory; 4) a court proceeding is conducted without the participation of a prosecutor although the participation of the prosecutor is mandatory; 5) the confidentiality of deliberations is violated in the making of a court judgment; 6) a court judgment is not signed by all members of the court panel; 7) a court judgment does not contain the reasons for the judgment; 8) the conclusions presented in the conclusion of a court judgment do not correspond to the facts established with regard to the subject of proof; 9) a criminal matter is heard without the participation of an interpreter or translator in a language in which the accused is not proficient; 10) minutes are not taken of a court session, with the exception of the matters heard by way of summary proceedings; 11) [repealed] 12) the principle of fair and equitable court procedure is violated in the court hearing.</i>

⁹⁵ Estonia, Art. 228 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

				<i>(2) A court may declare any other violation of criminal procedural law to be material if such violation results or may result in an unlawful or unfounded court judgment.”</i>
	c) information about the accusation	x		Failure to provide information on procedural rights is generally not a material violation of criminal procedural law. It is, however, possible to appeal against the activities of an investigative body or the prosecutor’s office. ⁹⁶ The procedural failures of the courts can be brought up in appellate proceedings.
	d) access to case materials	x		Failure to provide information on procedural rights is generally not a material violation of criminal procedural law. It is, however, possible to appeal against the activities of an investigative body or the prosecutor’s office. ⁹⁷ The procedural failures of the courts can be brought up in appellate proceedings.
5.3	Is any official record kept to note the provision of information about the following? If yes, briefly describe where relevant.			
	a) information on procedural rights	x		There is no specific record on the provision of information on procedural rights. Nevertheless, all procedural acts are generally recorded.
	b) letter of rights	x		The letter of rights is signed by the suspect or accused person. ⁹⁸
	c) information about the accusation	x		There is no specific record on the provision of information on procedural rights. Nevertheless, all procedural acts are generally recorded.
	d) access to case materials	x		The counsel confirms receipt of the copy of the case materials or waiver thereof with a signature. ⁹⁹

⁹⁶ Estonia, Art. 228 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁹⁷ Estonia, Art. 228 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁹⁸ Estonia, Art. 35 (1) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

⁹⁹ Estonia, Art. 224 (1) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

<p>5.4</p> <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</p>		<p>There are no specific instruments used for further protection of the special needs of vulnerable suspects or vulnerable accused persons except the obligatory inclusion of the counsel. Article 45 (2) of the CCP sets forth that the participation of a counsel throughout a criminal proceeding is mandatory if:</p> <p><i>“1) the person was a minor at the time of commission of the criminal offence or unlawful act;</i> <i>2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;”</i></p> <p>When necessary, interrogations will be postponed to ensure these rights.¹⁰⁰ It is also not possible to apply some of the simplified procedures e.g. summary proceedings in relation to vulnerable accused persons and expedited procedures are not permitted if the suspect or accused person is a minor.¹⁰¹</p> <p>Both the PBGB and the Prosecutor’s office have adopted internal guidelines¹⁰² for the treatment of children during criminal procedures. There are no guidelines regarding other vulnerable groups of suspects or accused persons.</p>
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¹⁰⁰ The application of this right is analysed also in Haruoja, M., Meior, M., Nauts, K. (2013) *Study on children’s involvement in judicial proceedings. Contextual overview for the criminal justice phase – Estonia*, Luxembourg, European Commission, Directorate-General for Justice, available at: www.childrenjudicialproceedings.eu/docs/ContextualOverview/Estonia.pdf, 23.

¹⁰¹ Estonia, Art. 251 (2) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

¹⁰² Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), Decree no. 17, 20 January 2015; and Prosecutor General (*Riigi peaprokurör*), Guidelines on special treatment of children during criminal procedure (Unofficial translation) (*Juhis: Alaealiste kohtlemine kriminaalmenetluses*), Decree no. RP-1-4/07/8, 29 June 2007, available at: www.prokuratuur.ee/sites/www.prokuratuur.ee/files/elfinder/article_files/Riigi%20peaprokur%C3%B6ri%20juhis-%20alaealiste%20%C3%BChetaoliseks%20erikohtlemiseks%20krim.menetluses%2028.06.2007.pdf.

<p>and/or the holder of parental responsibility.</p> <p>If yes, briefly provide information on those mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?</p>			
<ul style="list-style-type: none"> • information on procedural rights 	a)	x	Participation of counsel in criminal proceedings is obligatory, but there are no other special procedural guarantees.
	b)	x	Participation of counsel in criminal proceedings is obligatory, there are no other special procedural guarantees.
	c)	x	<p>According to Article 45 of the CCP, the participation of a counsel throughout a criminal proceeding is obligatory if the person was a minor at the time of commission of the criminal offence or unlawful act or due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability. When necessary, interrogation is postponed to ensure these rights.¹⁰³</p> <p>Police officers are required to explain to the child the nature of all procedures.¹⁰⁴ The Guidelines on treating children require that the investigator or prosecutor ensures that all proceedings conducted with the child are done with due consideration to his/her age and best interests.¹⁰⁵ There is an obligation to provide a automatically with a legal defence.¹⁰⁶</p>

¹⁰³ The application of this right is analysed also in Haruoja, M., Meiorig, M., Nauts, K. (2013) *Study on children's involvement in judicial proceedings. Contextual overview for the criminal justice phase – Estonia*, Luxembourg, European Commission, Directorate-General for Justice, available at: www.childreninjudicialproceedings.eu/docs/ContextualOverview/Estonia.pdf, 23.

¹⁰⁴ Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), Decree no. 17, 20 January 2015.

¹⁰⁵ Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), Decree no. 17, 20 January 2015.

¹⁰⁶ Estonia, Article 34 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, available at: www.riigiteataja.ee/en/compare_original/501042015002.

				<p>The Police and Border Guard's Guidelines on treating children calls for special treatment of children in all their contacts with the police. It includes several rules requiring information to be given to legal guardians or an adult family member.¹⁰⁷ The police must inform them of all proceedings made with the child on the location of the crime. In fact, it is stated in the form filled in during the proceeding. Guardians are also informed if it is necessary to bring the child to the police department to conduct additional proceedings. Moreover, they must be informed of every restriction to the child's freedom of movement, such as detention on suspicion of a criminal offence, compelled attendance, and other preventive measures.¹⁰⁸</p> <p>Guidelines of the Prosecutor General stress the importance of explaining to minors the right to remain silent and not give statements (art 8 of the Guidelines).¹⁰⁹</p>
• letter of rights	a)		x	Participation of counsel in criminal proceedings is obligatory; there are no other special procedural requirements.
	b)		x	Participation of counsel in criminal proceedings is obligatory; there are no other special procedural requirements.
	c)	x		Participation of counsel in criminal proceedings is obligatory; there are no other special procedural requirements. Rights of the suspect or accused person are also explained to a parent or legal guardians of the child. The Police and Border Guard's Guidelines on treating children stresses the importance of explaining to them the right to appeal to the bodies conducting the proceedings (Article 41 of the Guidelines). ¹¹⁰
• information about the accusation	a)		x	Participation of counsel in criminal proceedings is obligatory; there are no other special procedural requirements.

¹⁰⁷ Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), Decree no. 17, 20 January 2015.

¹⁰⁸ Haruoja, M., Meiorg, M., Nauts, K. (2013) *Study on children's involvement in judicial proceedings Contextual overview for the criminal justice phase – Estonia*, Luxembourg, European Commission, Directorate-General for Justice, available at: www.childreninjudicialproceedings.eu/docs/ContextualOverview/Estonia.pdf; Article 36 in the Republic of Estonia Child Protection Act, 8 June 1992, available at: www.riigiteataja.ee/en/eli/ee/Riigikogu/act/531102014002/consolide.

¹⁰⁹ Estonia, Prosecutor General (*Riigi peaprokurör*), Guidelines on special treatment of children during criminal procedure (Unofficial translation) (*Juhis: Alaealiste kohtlemine kriminaalmenetluses*), Decree no. RP-1-4/07/8, 29 June 2007, available at: www.prokuratuur.ee/sites/www.prokuratuur.ee/files/elfinder/article_files/Riigi%20peaprokur%C3%B6ri%20juhis-%20alaealiste%20C3%BChetaoliseks%20erikohtlemiseks%20krim.menetluses%2028.06.2007.pdf.

¹¹⁰ Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), Decree no. 17, 20 January 2015.

		b)	x	Participation of counsel in criminal proceedings is obligatory; there are no other special procedural requirements.
		c)	x	Participation of counsel in criminal proceedings is obligatory; there are no other special procedural requirements.
	<ul style="list-style-type: none"> access to case materials 	a)	x	There are no special procedural regulations.
		b)	x	There are no special procedural regulations.
		c)	x	There are no special procedural regulations.

