

A Methodology to Rewrite the Belgian Letter of Rights

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Abstract. This paper explains how we rewrote the Belgian Letter of Rights. This is the document that arrested persons receive, which explains to them what their rights are: the right to remain silent, the right to obtain legal assistance, the right to receive medical help, etc. The problem is that this document is not appropriate for persons to correctly understand their rights, especially as they receive it in a stressful context. They are unaware of their rights, or they don't know how to exercise their rights.

We rewrote the Belgian Letter of Rights, in order to make it clear, understandable and efficient for persons under arrest.

This paper presents the steps and methodology we followed.

It also presents the results and impact we hope for this project. This impact is mainly to provide better access to justice because the first step towards justice is to understand rights and obligations.

Keywords: Legal design, Plain legal language, Access to justice, Criminal justice, Arrested persons.

1. Introduction

1.1. To inform the persons under arrest is a legal obligation

In Belgium, and in all EU Member States, persons under arrest receive a Letter of Rights, which explains to them what their rights are: the right to keep silent, the right to obtain legal assistance, the right to receive medical help, etc.

The Belgian Letter of Rights is provided by a legal text: arrêté royal du 23 novembre 2016 portant exécution de l'article 47bis § 5 du Code d'instruction criminelle.

Arrested persons must be informed of their rights, based on the following Belgian legal texts:

- Article 47bis du Code d'instruction criminelle.
- Article 33ter de la loi du 5 août 1992 sur la fonction de police.
- Articles 2bis et 16 de la loi du 20 juillet 1990 relative à la détention préventive
- Article 12 de la Constitution belge.

Belgian legislation implements European law, specifically Directive UE 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

Article 6 of the European Convention for Human Rights (ECHR) also creates the obligation to inform persons under arrest about their rights. In principle, there is a clear right to information, under the ECHR and the related case law, the European Directive, and national requirements. The right to information is necessary to ensure a fair trial. But where arrested persons do not receive this information in an accessible form, they are unable to exercise their rights. These rights, which exist in law, are illusory in practice.

1.2 The problem: persons under arrest don't understand their rights

A study conducted in 2010 (Spronken, 2010), highlighted that the language used in many European Letters of Rights is technical and inaccessible.

To address this problem, the Right to Information Directive (2012) requires information to be provided in “simple and accessible language”.

In 2015, several European associations¹ started a research project², to assess how this requirement is applied in practice. They conducted research, including a survey of stakeholders, and sociolinguistic surveys, in almost all EU Member States.

Mainly, a survey was conducted among the members of the Legal Experts Advisory Panel (an EU-wide network of experts in criminal justice and human rights). They tested the existing official Letters of Rights. This led to a comparative report of good practices (2017) and to recommendations.

All the research showed that the European Letters of Rights are not adapted for persons under arrest to correctly understand their rights, especially as they receive these documents in a stressful context. The documents are far too long, written in legalese style, with complicated vocabulary, unlogical structure, unnecessary information, etc.

And as a result: persons under arrest don't read the document, or don't read it all, or don't understand what they read.

They are unaware of their rights, or they don't know how to exercise their rights. They don't know what the police officers can do and cannot do.

They don't know that they can act in a way (for example remain silent and refuse to answer questions), without the police or judge reproaching them this later.

They don't know that they can ask for an interpreter, or for the translation of key documents.

Another example: in some countries (for example in Belgium), if they don't have their own lawyer, they get one «for free». But as they don't know this lawyer, and don't understand the Letter of Rights, they think that this is the lawyer of the police, and they don't trust them. But this lawyer is present for them, to help them. Persons under arrest need to know this, in order to receive an effective legal assistance from their lawyer.

1.3. The «Access Just» project

In this context, a group of European associations launched the project “Access Just: Demystifying Justice – Training for Justice Actors on the Use of Plain Language and Developing Clear and Accessible Letters of Rights (2018-2020)”.

This project aims to improve access to justice, mainly by clarifying all European Letters of Rights. This project is financed by the European Union and coordinated by the Hungarian Helsinki Committee³ in partnership with other associations, including Fair Trials Europe⁴.

More specifically, the focus of the project is to make “criminal procedure more accessible to suspects or accused persons by:

- Stimulating a movement for an open and accessible European legal culture grounded in the use of plain language.
- Encouraging better implementation of the provisions on notification of rights of the Right to Information Directive (Directive 2012/13/EC).

¹ Rights International Spain, the Lithuanian Human Rights Monitoring Institute, Fair Trials Europe and the Bulgarian Helsinki Committee.

² Accessible Letters of Rights in Europe (2015-2017).

³ <https://www.helsinki.hu/en/>

⁴ www.fairtrials.org

- Drafting alternative, plain language Letters of Rights (LoRs) that Member States can use to better comply with their obligations under Article 3 and 4 of the Right to Information Directive.”⁵

Belgium is one of the pilot countries, and Droits Quotidiens, a Belgian non-profit organization,⁶ was asked to help with this work, as a legal design expert

Droits Quotidiens rewrote the Belgian Letter of Rights, in order to make it clear, understandable and effective for persons under arrest.

2. Methodology

Changing a document is a whole process. It requires many interactions between several stakeholders.

For this project, the legal design experts worked on the rewriting of the Letter of Rights, but they regularly consulted field actors, in order to take into account their practical skills.

Here is the methodology we followed to rewrite the Belgian Letter of Rights. But first a precision: this project wasn’t intended to be a research project. It is a concrete and practical project, that aims to reach two goals:

- Raise awareness among criminal justice actors, on the importance to use language that is clear and understandable, in order to provide a real access to justice.
- Rewrite the Letter of Rights.

We didn’t investigate the literature before starting the project. We didn’t choose a particular methodology. We just did what we thought was important, what was best to reach the goals, and what was possible with the available tools and actors.

Here are the steps we followed:

1. First, Fair Trials and the Hungarian Helsinki Committee organized a European workshop, in January 2019.
The goal was to gather European experts in plain language, criminal justice, and plain legal language, in order to precise the framework of the project, the goals and the content of the training module.
Each participating country had two practitioners attending the workshop:
 - One plain language expert (linguist/ translator/ communication expert/ designer).
 - One criminal justice expert (lawyer, judge, etc.).
2. Back in Belgium, Droits Quotidiens and Fair Trials created the practical training module “How to write clearly”, for lawyers and judges in criminal procedures in Belgium.
The training took place in June 2019. We organized 2 sessions for 2 groups: one group of lawyers, and one group of judges and magistrates. Each group had two half-day sessions, so they could work and think between the 2 sessions.
The training goals were to:
 - Raise awareness on the importance to be clear.
 - Teach the participants a plain legal language method.

⁵ According to the description of the project by Fair Trials Europe and the Hungarian Helsinki Committee.

⁶ www.droitsquotidiens.be

- Work on the Letter of Rights.

The training included exercises on the Belgian Letter of Rights. These exercises aimed to:

- Identify the target audience of the Letter of Rights, the objective of this document, the context of communication.
- Select important and relevant information to keep.
- Structure the information in a logical order for the persons under arrest.
- Rewrite the document in plain legal language.

The training led to informative and constructive exchanges, ideas and instructions. It helped the experts work on rewriting the Belgian Letter of Rights.

3. After the training, the experts started rewriting the Belgian Letter of Rights. This work was accomplished by:
 - Plain legal language and legal design experts (Droits Quotidiens).
 - Criminal law experts (Fair Trials).
 - A graphic designer (Droits Quotidiens).

We worked not only on rewriting the text, but also on presenting the information visually. We added visual elements and designed a whole new document. It led to a first draft of the rewritten Letter of Rights.

4. We then presented the first draft to field actors: lawyers, judges, and legal aid actors. This step intended to take their input as field actors, and to assess if the new version was:
 - Relevant, pertinent and usable for the persons under arrest.
 - Complete enough to be legally correct.

Here again, we received very interesting information, relevant and important elements. It helped us to improve the rewritten Letter of Rights, and to make it more adapted to the field, to the practice, and to the reality of persons under arrest.

5. The experts went back to work, in order to improve the rewritten Letter of Rights, thanks to the exchanges with the field actors. We created a second draft, based on comments received from the field actors.
6. At this time (November 2019), Fair Trials and the Hungarian Helsinki Committee, organized a second European workshop, gathering the same experts as in January 2019. The draft was presented to these European plain language experts and criminal law experts. This presentation was meant to:
 - Present the rewritten version to European experts.
 - Identify the cultural and national aspects that must be taken into account to adapt Letters of Rights to each domestic context.
 - Show one example of a rewritten Letter of Rights, to help the European experts for their own work in their country on their Letter of Rights.

7. Shortly after (timing depending on the availability of the actors we wanted

to meet), we obtained a meeting with police officers. This was a great opportunity to present the rewritten version of the Letter of Rights to the officials who are responsible for handing out the document to persons upon arrest.

Police officers are the first persons to come in contact with persons under arrest, before the other stakeholders we had met before (lawyers, judges, etc.).

It was also an opportunity to highlight the importance of plain language in their exchanges with arrested persons.

The police officers helped us to assess whether the rewritten version was:

- Suitable for use by the police officers.
- Relevant for the persons under arrest.
- Matching their needs.

Once more, the input of actors working in the field, in contact on a daily basis with persons under arrest, was very important. These actors know the reality of persons under arrest, their needs, their reactions, the risks if we give them a paper document in a smaller format, and some other practical implications important to know for this project. Their comments were very valuable.

8. After these meetings, the experts worked on incorporating information and comments received from the field actors.

We further improved our rewritten version of the Letter of Rights thanks to the input received and created the third draft of the rewritten Letter of Rights.

9. The next step will be to present the rewritten Letter of Rights to persons under arrest, and to test this rewritten document.

Who better than persons under arrest to tell us whether they understand their rights:

- With the existing official version of the Letter of Rights?
- With the new version, the rewritten Letter of Rights?

At the time of writing, this step has yet to be implemented.

The user is the target audience: the best person a designer can learn from, able to verify whether the new version of the document matches users' needs.

Ideally, user involvement should be carried in the beginning and all along the process, due to the fact that this is one of the key elements for any design thinking process in the legal design approach.

10. From the outset of the project, and still for some time in the future, there is a great task of advocacy, towards convincing the Belgian ministry of justice to adopt the new version of the Letter of Rights and make its use mandatory for all criminal justice actors.

At the time of writing, these discussions are still ongoing, and no confirmation was given that the proposed new version of the Belgian Letter of Rights will be used in future.

3. Results

Here is an overview of the former version and the new version of the Letter of Rights.

3.1. Former Letter of Rights – Original version

The former Letter of Rights, which is still the official Letter of Rights in Belgium, is a four pages document, in black and white, very dense and indigestible (See figure 1).

It is very difficult to understand for persons under arrest, for many reasons. Here are the main characteristics that make this document unclear.

- 4 pages is long to read, and discouraging: when the persons see all the text that they have to read, they might give up reading it.
- There is only text: no pictograms, no visual presentation of the information (while we know that persons under arrest have often difficulties to read).
- There is too much information, including information that is irrelevant for persons under arrest.
- Some secondary information may be useful for a lawyer, but not for the target audience.
- Similar information is included at different places, creating unnecessary repetitions, and a risk of confusion.
- The information is organized according to the judicial logic, which does not correspond to the logic of the persons. It makes it difficult for the persons to follow the reasoning and to understand the document.
- The vocabulary is complicated, the text is full of legalese style, and complicated formulations.
- The sentences are very long, with a complicated structure: it makes them difficult to read, to understand and to memorize.

| DÉCLARATION DE VOS DROITS | | Lorsque vous êtes privé de votre liberté et que vous allez être entendu en tant que suspect | 1/4 |
|---|--|---|-----|
| Quels sont les droits qui doivent vous être communiqués avant le début de l'audition ? | | | |
| <p>1. Droit à une concertation confidentielle avec un avocat et à une assistance pendant l'audition</p> <p>A. Avocat</p> <ul style="list-style-type: none"> — Vous pouvez contacter un avocat de votre choix. — Si vous n'avez pas d'avocat ou si celui-ci est empêché, vous pouvez demander que l'on contacte un avocat de la permanence. — Si vous remplissez certaines conditions légales, cette assistance juridique est totalement ou partiellement gratuite. Vous pouvez demander le formulaire reprenant ces conditions. <p>B. Concertation confidentielle préalable</p> <ul style="list-style-type: none"> — Vous avez droit, avant la première audition qui suit et dans les 2 heures suivant le contact avec l'avocat ou la permanence, à une concertation confidentielle avec votre avocat pendant 30 minutes, exceptionnellement prolongeable sur décision des personnes qui vont vous interroger. — Cette concertation peut se faire par téléphone ou sur le lieu de l'audition. — Si la concertation planifiée avec votre avocat n'a pas eu lieu dans les 2 heures, une concertation confidentielle par téléphone a néanmoins encore lieu avec la permanence. L'audition pourra commencer après. — Si votre avocat arrive pendant l'audition, il peut assister à la suite de son déroulement. | <p>C. Assistance pendant les auditions</p> <ul style="list-style-type: none"> — Vous avez droit à l'assistance de votre avocat pendant les auditions. — Votre avocat veille : <ul style="list-style-type: none"> ○ au respect de votre droit au silence et de votre droit de ne pas vous accuser vous-même; ○ à la manière dont vous êtes traité pendant l'audition ou à l'absence de contraintes ou de pressions illicites exercées à votre égard; ○ à la notification de vos droits et à la régularité de l'audition. — Si votre avocat a des remarques à ce sujet, il peut les faire mentionner immédiatement dans le procès-verbal. Votre avocat peut demander qu'il soit procédé à tel acte d'information ou à telle audition. Il peut demander des clarifications sur des questions qui sont posées. Il peut formuler des observations sur l'enquête et sur l'audition. Il ne lui est toutefois pas permis de répondre à votre place ou d'entraver le déroulement de l'audition. — Vous ou votre avocat avez le droit d'interrompre une seule fois l'audition pour une concertation confidentielle supplémentaire. De même, si de nouveaux faits apparaissent pendant l'audition, vous pouvez mener une concertation confidentielle supplémentaire avec votre avocat. Celle-ci peut durer 15 minutes maximum. | | |

Figure 1. First page of the current official Letter of Rights in Belgium.

3.2. New Letter of Rights – Rewritten version

We propose a rewritten version of the Letter of Rights, in which we intended to apply all plain legal language rules, and legal design principles. We made it shorter, keeping only relevant information, and explaining it in a way that gives more chances to the persons to understand their rights and to memorize important information.

Here are the characteristics of the rewritten version we propose:

- We changed the 4 pages document into a **practical leaflet** that is short and easy to keep (pocket size).
- The new version contains far **less information**: we kept only pertinent and important information for persons under arrest. For example, we removed the information about the rights of the persons if they are taken to the examining magistrate (prosecutor) and focused on their immediate rights during police custody.

We removed this information for mainly 2 reasons.

- If you want the persons to read, understand and remember the information, you must give them the information at the right moment. In other words, the document must provide information that is relevant to their current situation (police custody). Any other information, for example relating to the next steps in the criminal procedure (being interviewed by a magistrate), is not relevant at the time of arrest. Therefore, it is useless and confusing to provide this information at the moment they are “only” arrested and taken to the police station.
 - It is very stressful for the persons to be under arrest and to talk to police officers. It is not necessary to add further stress by providing information about being presented to a judicial authority.
- We **structured** the document according to the **logic of the persons** under arrest. Therefore, we answered the following questions:
 - What information do they really need?
 - What information do they need first?
 - What information is most important for them and should be emphasised?

This led us to organize the information according to this logic.

 - First: important rights in the very first page (they were on the last page in the former version).
Then:
 - The rights that the persons can exercise at any time, as soon as they are arrested.
 - The specific rights of the persons before the police interrogation.
 - The specific rights of the persons during the police interrogation.
 - In another document: the rights if the persons are taken to be presented to a judicial authority (in Belgium, an examining magistrate, such as a prosecutor).
 - We grouped similar information together.
 - We added **colors** and used a color code:
 - In orange, the rights of the persons at any time, as soon as they are arrested.

- In green, the specific rights of the persons before their interrogation.
- In blue, the specific rights of the persons during their interrogation.

The intention of the color scheme is to help the arrested persons memorize the information, follow the logic of the document, and find their bearings in the document.

It also makes it easier for them to find the relevant information in the document. For example, the lawyer during the initial telephone consultation can point the arrested person to what is written on the green page.

- We **highlighted important information and keywords**:
 - Key words are highlighted in white (which stands out against a coloured background).
 - Important information is in bold character.
 - Subtitles are visible, and logical.
 - Speech bubbles contain important details, or further information about how to exercise in practice a specific right.

This allows an easy “scan” of the document, a quick overview of the information. In a glance, the arrested persons can grasp the key information about their rights.

- We added **visual elements** and chose a lay-out that helps the comprehension.
 - The structure is visual: 1, 2, 3 for the titles; bullet points, etc.
 - We added pictograms. They help the persons to:
 - Find information in one glance.
 - Link information to a practical element (how they can practically exercise their right).
 - Memorize information more easily and rapidly.
 - Understand or confirm information by a visual element that they often see, recognize and understand (for example a phone, a pen, a doctor, etc.).
- The new version uses **common vocabulary**, everyday words. Those are the words most easily understood by people generally. This is even more important as this document is addressed to persons under arrest, who are often less secure, less stable persons. They often have a low knowledge of language. They are also under a situation of stress, which makes comprehension and assimilation of information more difficult.
- We wrote the information in **short sentences**, and simply structured sentences. They are easy to read, to understand and to memorize. Even for persons with a good language knowledge, long and complicated sentences are difficult to read, especially when the person is in the stressful situation of being under arrest.
- We made it clear where the arrested person is concerned: we used the **first person singular** (“I have the right to...”). Persons immediately see that this document is important for them, it is addressed to them.
- We also added a **note page**, on the back of the leaflet, where persons can write important information for them. For example, the phone number of their lawyer.

A few pictures of the leaflet are shown below (See figure 2).



Figure 2. Rewritten version of the Belgian Letter of Rights, in French, folded.

The following pictures represent the leaflet that still needs to be folded (translated into English) (See figure 3).



Figure 3. Rewritten version of the Belgian Letter of Rights, in English, unfolded.

3.3. Improve the access to criminal justice

Hopefully, this project will have positive implications in improving access to justice in criminal investigations. Literature review at the international and European levels is quite rich and focuses in general on enhancing access to justice. The Access Just project works in this direction dedicating its attention to the specific issue of access to justice in criminal procedures, mainly by turning Letters of Rights into accessible and understandable documents.

This has not been measured yet, but we believe that the new version of the Letter of Rights will:

- Allow the persons under arrest to:
 - Understand that they have rights.
 - Know how they can concretely exercise these rights.
 - Know that they can ask for their rights to be respected.
- Help the criminal justice actors to get those rights respected.
- Show all actors and citizens that even official documents can be written in plain legal language, and that legal design also applies to official documents.
- Inspire a new approach for more clarity and comprehension for legal procedures and justice.

The next step will concern the measurement of the impact of this project so as to test the new version of the Letter of Rights with its target audience, that is persons under arrest. The idea is to create a question-list that would assess what the persons under arrest understand, and how they intend to behave, after having read the Letter of Rights.

Group user testing should receive the former version, others the new version. This will be useful to compare the results and show the differences between the comprehension level before and after this project.

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