

## REGULATION

### On the legal status of arrested persons, interviews by the police etc.

#### CHAPTER I

##### Notifications to the family of arrested persons.

###### Article 1

A person arrested by the police in connection with the investigation of an offence has the right to contact an attorney immediately upon his/her arrest, and also his/her close family members.

If an arrested person is under the age of 18, his parents shall be contacted immediately and a representative of the child welfare committee shall also be contacted, and they shall be urged to come to the police station as soon as possible.

If an arrested person is incapacitated for other reasons, then his legal guardian shall be contacted and urged to come to the police station as soon as possible.

The duty officer or the officer responsible for the investigation of a case may postpone the arrested person's contacting his/her relatives if there is reason to believe that this may hinder the investigation of the case. However, the close relatives of a suspect shall be notified as soon as possible of his arrest and where he is being held in custody.

###### Article 2

The decision to postpone contacting close relatives shall be put down in writing and supported with arguments, and the arrested person shall be notified of the decision and the reason for it.

When evaluating whether there is a particular reason to believe that a suspect contacting a close relative will hinder an investigation, the following shall be kept in mind:

- a. that signs of a crime might be removed or evidence spoiled in some other way;
- b. that items might be concealed and their return to the rightful owner prevented;
- c. that the spoils of a criminal offence might be concealed;
- d. that accomplices who have not been arrested might be given warning.

#### CHAPTER II

##### Giving a statement in a police investigation.

###### Article 3

When the police carry on interviews of eye witnesses or other witnesses, the police may prepare a report on their statements without their express confirmation. In that case, great care should be taken to record these statements as precisely as possible, since it is assumed that this type of report has the same validity as a formal statement of the person in question, and may be presented in court.

An informal statement may be taken from the suspect, even though he/she will later be summoned to make a formal statement. In that case, the provisions of Chapter VIII on Criminal Procedure no.88/2008 shall always be kept in mind.

When taking an informal statement, the police shall use similar procedures as used when taking a formal statement, they shall ensure that the questions are clear and unequivocal, and the person in question shall be informed as to whether he is being questioned as a witness or a suspect, if the case has become sufficiently clear to make this possible.

###### Article 4

The police officer conducting the interview shall be polite towards the suspect and witnesses and take care to be calm and considerate at all times. At the beginning of the interview the provisions of Chapter VIII on Criminal Procedure shall be closely observed.

The police may not give the suspect any promise of concessions or privileges if the suspect gives evidence in a certain way. However, the police may notify the suspect about the provisions of item 9 of paragraph 1 of Article 70 of the General Criminal Code no. 19/1940, which provides for permission to pass a more lenient sentence if the suspect informs on the participation of others in the criminal act. Furthermore, if the case comes to court, the prosecution will make a note of the fact

that this assistance has been given and that the claim for a sentence will be adjusted accordingly. The prosecution is permitted to suggest that the sentence be reduced by up to 1/3 in that case. A record shall be made of how this notification was made.

Normally, a suspect shall not be interviewed if he/she is considered to be under the influence of alcohol or other drugs and especially not in the case of a serious crime or when the evidence is limited. If this is done, however, it shall be noted in the report and the condition of the suspect described as exactly as possible.

#### Article 5

The police shall notify the victim of his/her right to bring a claim for damages which may be brought to court in eventual criminal proceedings. If the victim claims damages for personal injury, harm or damages to property, the amount shall be included and the claim documented as far as possible, as the case may be, within certain time limits. The victim shall be given guidance on the preparation of the claim and evidence produced concerning it as necessary.

If the victim has suffered damage which may be compensated by the state according to law regarding payment of compensation to victims of crimes out of state funds, he or she shall be notified of this right to compensation according to the law.

The legal guardian of a minor who is a victim shall be asked if he/she wants to make a claim on behalf of the minor person.

#### Article 6

If a child is being interviewed as a witness, the police shall take care to show special consideration. In special circumstances, e.g. with regard to the maturity of the child, its young age or the seriousness of the crime, the police shall contact the legal guardians of the child and give them an opportunity to be present at the interview, as the case may be. This does not apply if that person is a suspect in the case or if the police consider that this is inappropriate for other reasons. If the child's legal guardians cannot be reached, the child welfare committee shall be given an opportunity to have its representative present at the interview.

#### Article 7

In recording of a personal data, cf. Paragraph 2 of Article 54 of the Act on Criminal Procedure, care must be taken to show consideration when asking about sensitive personal information according to provisions in the Act on the Protection of Privacy as regards the processing of personal data

Along with the items listed in paragraph 2 of Article 54 in the Act on Criminal Procedure, as considered necessary, the suspect's personal data file shall include the name of his/her parents, citizenship, position and place of work, marriage status and name of spouse or life partner, maintenance of family, schooling, professional education and official diplomas.

if the suspect is under the age of 18, the personal data record shall record the the address of the suspect's parents, and if his parents are not living together, the arrangement of child support and child custody. The personal data file shall include information in the personal situation of the suspect, as appropriate, in particular at home and in school, as well as the decisions that have been taken regarding the suspect according to provisions in the Act on Child Welfare.

### CHAPTER III

#### **Conducting and recording police interviews.**

#### Article 8

The police may record interviews of suspects and witnesses. This means recording in audio and video.

#### Article 9

Whenever practicable, the interview of a suspect, claimant (victim) and important witnesses shall be recorded in audio.

Normally, the interview shall be recorded in audio and video in the following instances:

- a. In an investigation of an offence according to the provisions of Chapter XXII of the General Criminal Code, other than Articles 199, 209 and 210.
- b. In an investigation of an offence according to the provisions of Chapter XXIII of the General Criminal Code, other than Article 217.
- c. In an investigation of an offence according to the provision of Article 173(a) of the Criminal Code.
- d. If the interviewed person is a child under 15 of age, or if his/her situation is exceptional, e.g. due to mental disability.

Every interview shall be recorded in its entirety, including read-out passages and any kind of narrative.

The interviewed person and others present shall be notified that the interview will be recorded.

If a statement is not recorded in audio or in some other form, an effort shall be made to write down the words of the interviewed person verbatim. The interviewed person shall also be informed of the reason why the interview is not recorded.

#### Article 10

Use of other recording equipment in police interviews than that which has been approved by the National Commissioner of Police is not permitted.

#### Article 11

When an interview is being recorded, a special report shall be made on the procedure of the recording.

This shall include the case number, location, date, beginning and end of the interview, name and ID number of the interviewed person and what other persons were present. If a report is being written along with a recording it is not necessary to prepare a special report on the recording, since it is sufficient to state at the beginning that the interview is also being recorded.

#### Article 12

The procedure of writing up a statement which has been recorded shall be in one of the following ways:

- a. A summary, based on the recording, written later as a report.
- b. A verbatim transcription of the recording, written up later.
- c. A report, written almost verbatim, along with the recording.

#### Article 13

At the beginning of an interview, the person conducting the interview shall give his/her name and rank, date and time of the beginning of the interview and its location. Thereupon, the interviewed person shall give his/her name and ID number. Other persons present shall also introduce themselves. Then the interviewed person shall be notified of the appropriate legal provisions.

#### Article 14

If the interviewed person objects to a recording of the interview in the beginning, during the interview or in a break, the person conducting the interview shall notify about the legal provisions regarding the recording of police interviews. It must appear clearly whether the person in question refuses to say anything, or objects to the interview being recorded. The person conducting the interview shall evaluate if it is appropriate to stop the recording and continue the interview in a normal way, but it shall be noted in the beginning of the report that the interviewed person had refused to say anything if the interview was recorded.

Article 15

When a break is made in the interview, this shall be noted, along with the reason for it and the time of the break. When the recording is started up again, the person conducting the interview shall state the time and notify the interviewed person again of the legal provisions regarding the interview.

The interviewed person must not be left alone with the recording equipment or in the interview room.

Article 16

At the end of the interview, the interviewed person, the defence attorney and/or legal counsel shall be given an opportunity to add further information and/or comments.

Then the time is read out, an announcement made that the interview is over and the recording is stopped.

Article 17

Interviews with witnesses or suspects may be recorded by telephone unless it is considered that a person's statement might materially affect the outcome of a case.

Along with the usual introduction and reading at the beginning of an interview, the interviewed person shall be asked to state his/her location and the telephone number spoken from. At the beginning of an interview, the same things must be observed as in Article 4, and also, the person conducting the interview may confirm the correct identity of the person, if this is considered necessary.

Article 18

The defence attorney, suspect and legal counsel have the right to listen to or watch the recording of a police interview. Access to the documents in a case shall be in accordance with provisions in Articles 37 and 47 of the Act on Civil Procedure no. 88/2008.

Article 19

The use of recording equipment, preservation of recorded interviews, identification and copying of recordings shall be in accordance with procedures laid out by the National Commissioner of Police.

CHAPTER IV

**The recording of certain items regarding the arrest of persons  
and the keeping of arrested persons in police custody.**

Article 20

Detailed information regarding the arrest and detention by the police of an arrested person shall be recorded in the police case file.

A brief entry into the initial report of the police shall include information on the arrest, its reason and how it was carried out, when the arrest took place, who performed a body search, if applicable, and information on where the arrested person was detained, as the case may be.

All reports written by the police on the arrest and detention of an arrested person shall bear the number of the case which was the premise for the arrest. The reports shall be in a standardized form, determined by the National Commissioner of Police.

Article 21

The police shall prepare a separate arrest report for the arrest of each individual person being arrested. The report shall include the following information:

- a. name, ID number and address of the arrested person,
- b. reason for the arrest,
- c. where and when the arrest took place,
- d. what person or persons carried out the arrest,

- e. if the arrested person appeared to be under the influence of alcohol or drugs or seemed to be mentally unbalanced,
- f. if the arrested person had visible signs of injury prior to the arrest or received injuries during the arrest,
- g. when the arrested person was notified of his/her legal rights and who carried out this notification,
- h. what requests were made by the arrested person regarding a defence attorney and notification to his family,
- i. when and how the wishes of the arrested person were carried out regarding a defence attorney and notification to his family,
- j. where the arrested person was taken after the arrest.

#### Article 22

The police shall write a special detention report regarding the detention of each person in a prison cell. The report shall include information on:

- a. who made the decision on the detention of an arrested person in a prison cell,
- b. items taken from the possession of an arrested person before he/she was detained in a prison cell,
- c. if an arrested person showed any visible injury when he was taken to the prison cell,
- d. the number of the prison cell in which an arrested person was detained and his/her detention number, as appropriate,
- e. visits of the defence attorney and others,
- f. when food was brought to an arrested person,
- g. in what period the arrested person was interviewed,
- h. when the arrested person was brought before a judge,
- i. when the arrested person was returned to the police prison, if this was the case, or released on the court order of a judge,
- j. when an arrested person was brought to a custody centre, or to a prison, as appropriate,
- k. other information which may be of importance regarding the detention, e.g. if the arrested person was brought to a doctor, a hospital, another police station or another police district, etc.
- l. when an arrested person was released.

#### Article 23

The police shall prepare a separate items report regarding the appropriation and release of the items which were taken from the possession of an arrested person at his arrest, or detention in a prison cell. The signature of an arrested person shall be obtained on the items report upon the release of the items and the report shall show if the arrested person refuses to sign and the reasons for this if they are given.

#### Article 24

The police shall record in a police case file, information on the arrest and detention of an arrested person as these events take place, as appropriate. If it is not possible to record the events as they take place, this shall be noted and the reasons for this given.

Entries in a police case file shall be dated and identified with the name of initials of the recording officer. That person is responsible for the correctness of entries.

#### Article 25

If an arrested person is transferred to other police districts or police stations, all documents regarding his/her arrest and detention shall accompany his case. The case file of the police shall record the reason for the transfer. The recording into the police case files shall continue at the police district to which the arrested person has been transferred.

CHAPTER V  
**Entry into force.**

Article 26

This regulation is made in accordance with provisions in subparagraph 3 Paragraph 2 of Article 28, Article 67 and paragraph 4 of Article 93 of the Act on Criminal Procedure no. 88/2008 and becomes effective forthwith.

At the same time, Regulation no. 395/1997 on the rights of arrested persons and interviews by the police and Rules no. 826/2005 on the procedure of audio recordings and recordings of police interviews shall become ineffective.

*Ministry of Justice and Ecclesiastical Affairs, 8 July 2009,*

**Ragna Árnadóttir.**

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