

## 1 - My rights during the investigation

### A. If I am a foreign national, does it affect the investigation?

No, in principle, this does not affect the investigation.

If you cannot communicate adequately in German, you have the right to request an interpreter, who will be appointed free of charge during your interrogation. You do not have to and should not answer any questions if the interpreter is not present. The interpreter will interpret the questions put to you into a language you can understand. The interpreter will also interpret your answers back into German.

The interpreter must in any case interpret the information and the instructions on points of law which you are required to be given by law. If you so wish, the interpreter will also assist you in your dealings with the assigned defence counsel (but not with a lawyer of your choice).

If you are notified of an order by the prosecuting authorities or of a court decision, you may also request assistance in having these documents translated. If you wish to consult your file, a translator will only assist you if you do not have defence counsel and it is unreasonable to expect you to arrange for the translation of the relevant parts of the file yourself.

### B. What are the stages of an investigation?

- The purpose of criminal investigation is to determine whether a criminal offence has been committed and, if so, by whom.
- Once investigations are conducted against a person suspected of a specific offence, that person is deemed to be the accused.
- The court must take certain steps in the investigation. It must reconstruct the offence and conduct what are known as adversarial proceedings. The public prosecutor and the accused, together with his/her defence counsel, are present during these proceedings and have the right to put questions to the person under interrogation. The prosecuting authorities may also request the court to take further evidence if they consider this necessary in the public interest.
- The prosecuting authorities and/or the criminal investigation department may take most investigative steps on their own initiative without the consent of the court. These steps include, in particular, inquiries and interrogations, as well as establishing the identity of persons, seizing property, conducting searches of a person's clothing and any items in his/her possession, etc.
- A court order is required to impose and to extend pre-trial detention. The same applies to the use of coercive measures in connection with fundamental rights (e.g. searching places protected by householder's rights, accessing bank accounts, telephone tapping or analysing phone data).
- The prosecuting authorities must discontinue the investigation if no criminal offence has been committed, or if the established facts are insufficient to prosecute the accused. In all other cases where the facts have been sufficiently determined, the prosecuting authorities must file an action with the competent court.
- The prosecuting authorities may withdraw from further prosecution (diversion) in cases that cannot be discontinued, but where sentencing does not appear to be necessary because the accused (in most cases) pays a fine. Diversion is not possible if the offence resulted in the death of a person or if it falls within the jurisdiction of a lay judges' court or a jury court, in other words in cases carrying a prison sentence of more than five years (as a rule).

## i. Evidence gathering phase / Power of investigators

The court must take certain steps in the investigation. It must reconstruct the offence and conduct what are known as adversarial proceedings. The public prosecutor and the accused, together with his/her defence counsel, are present during these proceedings and have the right to put questions to the person under interrogation. The prosecuting authorities may also request the court to take further evidence if they consider this necessary in the public interest.

The prosecuting authorities directing the criminal investigation department are responsible for conducting investigations. The criminal investigation department will start the investigation on its own initiative if a third person files a report with the police, or by order of the public prosecutor.

The prosecuting authorities or the criminal investigation department must inform you in every case that you are under investigation and why. Moreover, you must be informed that, as the accused, you are not obliged to make a statement and that if you do make a statement, it may be used in evidence against you.

If you have committed the offence of which you are accused and if you confess to it (if you plead guilty), this will be an important mitigating factor when the court decides on your sentence. However, a plea of guilty will not affect the course of the trial.

## ii. Police custody

The prosecuting authorities and/or the criminal investigation department may take most investigative steps on their own initiative without the consent of the court. These steps include, in particular, inquiries and interrogations, as well as establishing the identity of persons, seizing property, conducting searches of a person's clothing and any items in his/her possession, etc.

## iii. Questioning

## iv. Pre-trial detention

A court order is required to impose and to extend pre-trial detention. The same applies to the use of coercive measures in connection with fundamental rights (e.g. searching places protected by householder's rights, accessing bank accounts, telephone tapping or analysing phone data).

You may only be taken into pre-trial detention if you are strongly suspected of having committed an offence and if there is also a reason for detention (risk of absconding, risk of evidence being destroyed or risk of committing an offence). The consent of the court is required for your arrest (by criminal investigation department officers) (unless you are caught in the act or there is imminent danger).

Pre-trial detention must be imposed by the court and it must be enforced in a prison. The criminal investigation department may detain you for a maximum of 48 hours before transferring you to the court without undue delay.

The law does not specify whether and how you may inform your family or friends about your detention. Social services are available in every prison to assist you in such matters.

The decision concerning your pre-trial detention must be read out to you, if necessary with the help of an interpreter. You must be given a written copy of this decision. The decision must state the nature of the offence of which you are strongly suspected. It must also mention all facts which in the opinion of the court justify your detention.

You must be represented by defence counsel throughout the full period of your pre-trial detention. If you do not appoint one yourself, counsel will be assigned to you.

The decision of the court to impose pre-trial detention is taken during an oral hearing.

Within a period of three days, you may appeal to the Higher Regional Court against the decision to impose, or later extend, pre-trial detention.

Any decision concerning pre-trial detention is for a limited period of time. The decision to impose pre-trial

detention is effective for fourteen days. The decision extending your pre-trial detention for the first time is effective for one month. Any subsequent decision extending your detention is effective for two months.

Pre-trial detention should not be longer than six months in total, but it may be extended owing to the seriousness of the offence.

## C. What are my rights during the investigation?

You have different rights depending on the various steps and stages of the investigation:

- Investigation and taking of evidence
- Arrest and pre-trial detention
- Criminal charges
- Preparation for trial by the defence

In any event, you have the following rights irrespective of the specific stage of the proceedings:

- You must be informed as early as possible of the fact that an investigation is being conducted against you, of the offence of which you are suspected and of your main procedural rights.
- During every stage of the proceedings, you have the right to defence counsel of your choice or to apply for legal-aid defence counsel. If the facts or the legal issues are complex, you may ask for legal-aid defence counsel to be assigned to you for the entire proceedings. In criminal proceedings against foreigners, unfamiliar with the Austrian legal system, this will most likely be the case. In all cases requiring what is known as mandatory defence, defence counsel will be assigned to you in any event if you do not appoint one yourself. If you are not represented by legal-aid defence counsel, you must bear the cost of the assigned defence counsel.

The most important stages where you must have defence counsel are: the entire period of pre-trial detention, throughout proceedings for the institutionalisation of offenders with mental health issues, proceedings before a lay judges' court or a jury court, or trial before a single judge, if the offence may carry a prison sentence of more than three years.

- To consult your file;
- To comment on the allegations raised against you, or to remain silent;
- To request the taking of evidence;
- To appeal against measures taken by the prosecuting authorities or the criminal investigation department, as well as against court decisions;
- To be assigned a translator/interpreter.

### i. What is my right to an interpreter and translations?

If you cannot communicate adequately in German, you have the right to request an interpreter, who will be appointed free of charge during your interrogation. You do not have to and should not answer any questions if the interpreter is not present. The interpreter will interpret the questions put to you into a language you can understand. The interpreter will also interpret your answers back into German.

The interpreter must in any case interpret the information and the instructions on points of law which you are required to be given by law. If you so wish, the interpreter will also assist you in your dealings with assigned defence counsel (but not with a lawyer of your choice).

If you are notified of an order by the prosecuting authorities or of a court decision, you may also request assistance in having these documents translated. If you wish to consult your file, a translator will only assist you if you do not have defence counsel and it is unreasonable to expect you to arrange for the translation of the relevant parts of the file yourself.

### ii. What are my rights to information and access to the case-file?

As an accused person you have the right to consult your file. In this way you will learn more about the evidence against you. In exceptional cases, individual parts of the file may not be accessible for consultation. You have the right to present your own evidence at any time.

### iii. What is my right of access to a lawyer and to have a third party informed of my situation?

You do not have to have a lawyer, except in cases requiring representation by defence counsel. However, irrespective of whether you are being detained or not, you have the right to consult a lawyer at any time, if you wish. An interpreter must also be made available in your dealings with the assigned defence counsel.

If you are arrested and know the name of a lawyer whom you wish to defend you, you may also contact him/her directly or through the police. If you do not know any defence lawyers, you can use the standby service of the bar association.

### iv. What is my right to legal aid?

During every stage of the proceedings you have the right to defence counsel of your choice or to apply for legal-aid defence counsel. If the facts or the legal issues are complex, you may ask for legal-aid defence counsel to be assigned to you for the entire proceedings. In criminal proceedings against foreigners, unfamiliar with the Austrian legal system, this will most likely be the case. In all cases in which it is a requirement, defence counsel will be assigned to you in any event if you do not appoint one yourself. If you are not represented by legal-aid defence counsel, you must bear the cost of the assigned defence counsel.

### v. What is important to know regarding:

#### a. Presumption of innocence

The prosecuting authorities must discontinue the investigation if no criminal offence has been committed, or if the established facts are insufficient to convict the accused. In all other cases where the facts have been sufficiently determined, the prosecuting authorities must file an action with the competent court.

#### b. Right to remain silent and not to incriminate oneself

Persons have the right to remain silent if, for example, they would otherwise expose themselves or a relative (Section 156(1)(1) of the Code of Criminal Procedure (*Strafprozeßordnung*)) to a risk of criminal prosecution or, in connection with criminal proceedings brought against them, to a risk of incriminating themselves more than in their previous testimony.

### vi. What are the specific safeguards for children?

If children or minors have themselves been victims of or witnessed violence, they have the right to psychosocial and judicial assistance.

## D. What are the legal time limits during the investigation?

The prosecuting authorities must discontinue the investigation if no criminal offence has been committed, or if the established facts are insufficient to convict the accused. In all other cases where the facts have been sufficiently determined, the prosecuting authorities must file an action with the competent court.

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