

**Measure C:** Legal Advice and Legal Aid

**Jurisdiction:** Republic of Poland

**Interpretation of the relevant provisions of Law** – The Supreme Court decision of 13 October 2011 no. IIIKK 64/11 (negative example of reasoning that justifies changes projected in the scope of Measure C regulations)

**Issues:** the right for the suspect to receive legal advice at the earliest appropriate stage

### **The facts**

YD, a Dutch citizen was stopped by the Police on 29 June 2009, at around 6pm. The Police also found more than 5 kilos of marihuana in his car.

The next day he was permitted to call the Dutch Consulate twice asking them to arrange legal advice. On 1 July 2009 defence counsel, *adwokat* AP, was appointed to defend YD. On the same day Mr YD was charged, among others with smuggling 5 kilos of cocaine from Holland. He admitted possession but not smuggling.

Finally, YD was convicted for smuggling drugs to Poland; the first instance court decision was upheld by the Court of Appeal.

Most relevant evidence – basis for the conviction: testimonies of the policemen who stopping YD on 29 June 2009; they testified that during informal talks with the suspect on the evening of 29 June he admitted that he was smuggling the drugs to Poland (in the further course of the investigation when properly interrogated by the Police, he did not admit that he had been smuggling anything to Poland).

### **Procedural law**

After a person is detained by the Police, he/she has to be immediately informed about the reasons for his/her detention and has the right to immediately contact a lawyer. The person is not instructed about the right to stay silent, not to testify, not to answer any questions. This happens after he/she is charged and the status of the person changes to a 'suspect' /art. 245 Penal Procedure Code/.

### **The Supreme Court decision**

The court says:

- 'Immediately' does not mean 'at once'; it is understandable and acceptable that due to technical reasons and the circumstances of a particular matter a lawyer cannot often participate in the investigation immediately upon a suspect's detention; this is not a violation of a defence right;
- information collected during a person's detention by way of informal interviews may be acceptable as a witness testimony given by the policemen who stopped the person.

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