

Human Rights in Criminal Proceedings

5 Years after the Salduz Case

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ECBA Spring Conference 26-27 April

Istanbul



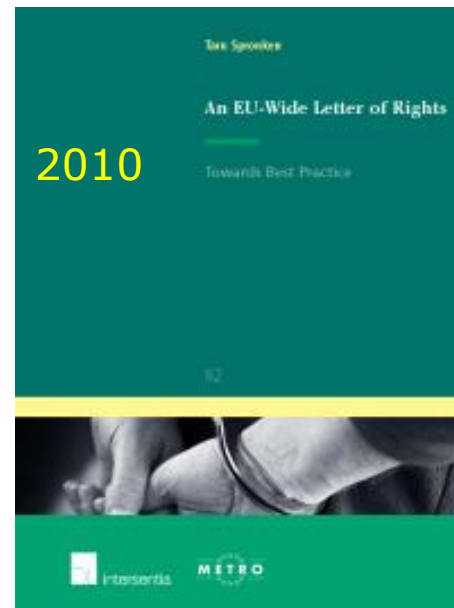
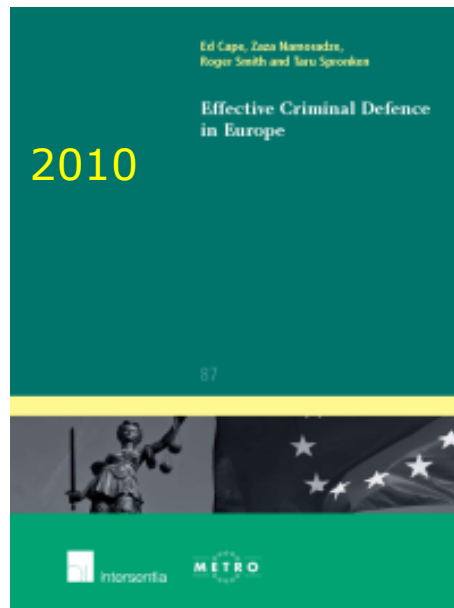
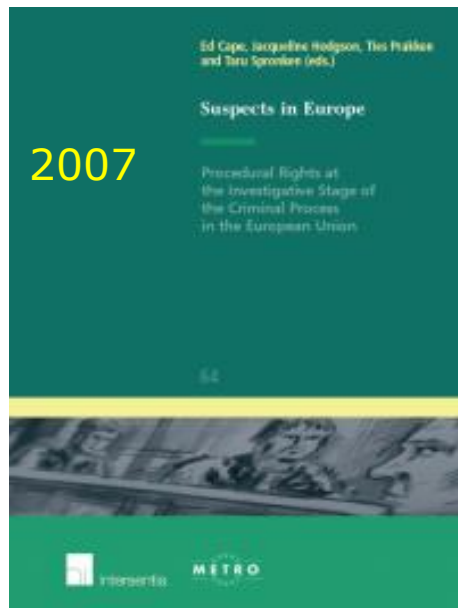


It's not all roses in Strasbourg....

- Backlog of cases
- Case driven
- Lack of sanctions and remedies



Three studies and one on the way



2013 **Inside police custody** *empirical study*

Common problems suspects rights in the EU

- Practices that circumvent the right to silence
- Overuse of pre-trial detention, and lengthy periods in pre-trial detention
- Failure to guarantee **in practice** the right to legal assistance at the investigative stage
- Failure to guarantee the right to information as to charge

Legal assistance

Identified problems:

- mechanisms that deter exercise of the right at the investigative stage
- lack of procedures and structures to ensure timely assistance
- limits on choice of lawyer
- lack of, or ineffective, enforcement mechanisms
- variable, and sometimes poor, quality and no quality assurance mechanisms
- structural and cultural factors that disadvantage the defence

Legal aid

Without legal aid, most suspects and defendants will not have legal assistance.

- complicated, unclear and/or slow application methods
- inadequate remuneration
- appointment mechanisms that threaten independence

With consequences for –

- availability
- access
- quality



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STOCKHOLM PROGRAMME



- Measure A: Translation and Interpretation.
- Measure B: Information on Rights and Information about the Charges.
- Measure C: Legal Advice.
- Measure C 2: Legal Aid.
- Measure D: Communication with Relatives, Employers and Consular Authorities.
- Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable.
- Measure F: A Green Paper on Pre-Trial Detention.

The interrelation of rights

Pitfalls “step by step” approach ?

Example: ‘minor offences’

Directive on the right of access to a lawyer

Good!

- Scope irrespective of deprivation of liberty
- Before and during all interrogations

Problematic

- Effective participation of lawyer (national law)
- Derogations
- Confidentiality communication
- Remedies

minor offences?

2013 **Inside police custody** *empirical study*

- **Translation and interpretation**
- **Right to information**
- **Right to legal assistance and legal aid**
- **Right to silence**

Scotland SARF (Sollicitor Access Recording Form)

1. Do you wish to have a solicitor notified of your detention?
2. Do you wish a private consultation before the interrogation?
3. Do you wish to have a private consultation at any time during police questioning?

The interrelation of rights

Examples:

Right to information and the waiver of the right to a lawyer

Right to access to the file and consultation

Conclusion

EU intervention bears fruits!

The devil is in the detail!

..... and never give up

And new questions arise

- 1. How do directives on procedural safeguards effect on directives based on mutual recognition?**
- 2. What is the impact of cross-border gathering of evidence on the right to legal assistance and fair trial in general?**
- 3. Is the current EU approach on cross-border cooperation and safeguarding rights still adequate?**



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