




Study on Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union – 2008 Update

Funded by the European Community 

Prof. dr. Taru Spronken Prof. dr. Gert Vermeulen

 Maastricht University  IRCP
Institute for International Research on Criminal Policy
Ghent University

The 2008 - update

Freedom, security and justice

Procedural Rights in Criminal Proceedings:
Existing Level of Safeguards
in the European Union

Taru Spronken and Mieke Aerts
Faculty of Law, Department of Criminal Law and Criminology
University of Maastricht

Completed on 10/12/2008

Justice Freedom and Security



Study on Procedural Rights in Criminal Proceedings:
Existing Level of Safeguards
in the European Union – 2008 Update



Draft Chapter 1
Four Fundamental Procedural Rights in Criminal Proceedings
throughout the European Union

February 2008

Taru Spronken
Faculty of Law, Department of Criminal Law and Criminology
Maastricht University

Gert Vermeulen
IRCP
Institute for International Research on Criminal Policy
Ghent University

 European Criminal Justice  Ghent University

 Maastricht University  IRCP
Institute for International Research on Criminal Policy
Ghent University

Four Fundamental Procedural Rights in Criminal Proceedings – ECtHR case law

1. Right to information
2. Right to legal advice
3. Right to legal assistance free of charge
4. Right to interpretation and translation

*NOT
vulnerable
persons
f
consider
assistance
in this
area.*

Questionnaire-detailed information

CHAPTER 1
THE RIGHT TO LEGAL ADVICE

1.1 Contact

001
Does a person have the right to contact a lawyer (legal representative) after his arrest?
a. Yes, please specify the legal basis of this right [...]
b. no

002
If so, when can this right be effected?
a. immediately upon arrest
b. within [...] hours after arrest
c. at a given stage of the investigation or the proceedings, please specify [...]

003
If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?
a. Yes, please specify the legal obligation [...]
b. no

004
If so, when does the duty to inform the suspect of this right arise?
a. promptly after arrest
b. within [...] hours after arrest
c. at a certain stage of the investigation or the proceedings, please specify [...]

005 (check all that apply)
If so, how should the suspect be informed of this right? (more than one answer possible)
a. orally
b. in writing
c. both orally and in writing
d. by a letter of rights

006
Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?
a. Yes, please specify the legal obligation [...]
b. no

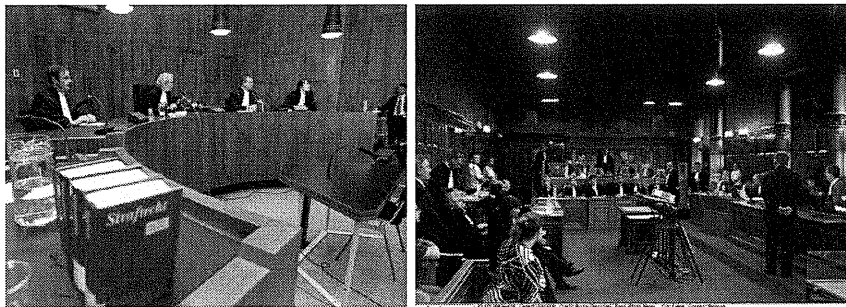
007
Are there (legal) possibilities to limit the right to contact a lawyer after arrest?
a. yes
b. no

122 Questions

What?
When?
How?

v. detailed

A preliminary comparison



Right to information- The Netherlands

- No letter of rights
- Information on arrest: caution and charge
- Access to the file can be limited during pre-trial investigation

Right to information-Belgium (1)

- principle
 - no obligation to inform interrogated persons of nature & cause of accusation
- exception (°1998)
 - those formally accused by investigating judge ('serious indications of guilt')
 - in addition: all persons targeted in judicial investigation (but not officially accused) have same rights as those officially accused (e.g. additional inquiry)
 - however: no obligation for judge to inform these persons
- no letter of rights

Right to information-Belgium (2)

- no explicit information of arrested suspects about their procedural rights (e.g. right to remain silent)
- access to the file
 - for arrested suspects: monthly access to file (1/2 days) in anticipation of appearance before investigating court -> access but facilities outdated: in writing ...
 - for non-arrested suspects (in judicial investigation): possibility to access file following permission investigating judge, but again only 'in writing'...
 - first right to (non-digital) copy only at the end of judicial investigation (before the arrangement of the procedure)

Right to legal advice-The Netherlands

- Entitlement to choose a lawyer at any time during proceedings, but:
 - No access before first police interrogation
 - No assistance during police interrogation
 - After 6-15 hours detention at police station right to have lawyer assigned
- Consequences judgments ECtHR in *Salduz v. Turkey*, 27 November 2008 no. 36391/02 and *Panovits v. Cyprus*, 11 December 2008no. 4268/04

Salduz case

55. Against this background, the Court finds that in order for the right to a fair trial to remain sufficiently "practical and effective" (see paragraph 51 above) Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.

Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 (see, *mutatis mutandis*, *Magee*, cited above, § 44).

The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

Panovits case

66. As regards the applicant's complaints which concern the lack of legal consultation at the pre-trial stage of the proceedings, the Court observes that the concept of fairness enshrined in Article 6 requires that the accused be given the benefit of the assistance of a lawyer already at the initial stages of police interrogation.

The lack of legal assistance during an applicant's interrogation would constitute a restriction of his defence rights in the absence of compelling reasons that do not prejudice the overall fairness of the proceedings.

Right to legal advice-Belgium

- entitlement to choose a lawyer at any time during proceedings, but:
 - no access before first police interrogation
 - no assistance during police interrogation
 - at present: deprivation of liberty by police possible for 24 hours before being brought before a judge (all without access to a lawyer and even without audio recording)
 - in practice: often too short to allow thorough initial investigation and examination of personal situation suspect > unnecessary arrests ...
 - growing support among actors (lawyers and magistrates) for extension to 48 hours (even without access to a lawyer)
 - Salduz/Panovitz arguments in legal practice radically denied

Right to legal aid-The Netherlands

- Indigent suspects
- Suspects in custody regardless financial situation
- Remuneration

Right to legal aid-Belgium

- legal aid system well-functioning but room for improvement:
 - specialisation of legal aid
 - appointment of specialised trainees (at present any trainee can be appointed and will thus be obliged to act as criminal defence lawyer)
 - more attractive/objective/proportionate remuneration necessary to involve more experienced criminal defence lawyers
 - regular (monthly?) instead of annual payment?

Interpretation and translation-The Netherlands

- Interpreter appointed free of charge, also for lawyer-client communication
- Translation of documents: only important documents are translated.
 - Who decides what is important?

Interpretation and translation-Belgium

- adequate legal recognition of interpreters
- however: implementation in practice problematic
 - growing criticism among lawyers & judges on bad performances interpreters
 - no selection and quality criteria (e.g. no effective control on language skills!)
 - no education or deontological code
 - no control nor complaint procedure
 - legislative intervention urgently needed
- translation of documents
 - limited to language used in proceedings (Dutch-French)

These were only two countries....

