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Four Fundamental Procedural Rights in Criminal Proceedings – ECHR 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

Questionnaire-detailed information

122 Questions
What?
When?
How?
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 access but facilities outdated: in writing ...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 ECHR in Salduz v. Turkey, 27 November 2008 no. 36391/02 and Panovits v. Cyprus, 11 December 2008 no. 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 irrevocably 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....