

# Quality: time for the re-emergence of the client

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A progress report on a project on effective defence rights in the EU

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## Effective Criminal Defence Rights in Europe

The goal of the project is to determine and define the right to effective defence in criminal proceedings in accordance with human rights' standards, and to empirically examine compliance with those standards across nine European jurisdictions.

This is done particularly in relation to procedural rights such as the rights to information, effective advice and representation, free legal aid for poor defendants, and to interpretation.

In addition the project aims to develop monitoring indicators which may be used to assess the extent to which effective criminal defence is available in any jurisdiction.

### Project partners

Maastricht University  
University of the West of England  
Open Society Justice Initiative  
JUSTICE

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# Project team

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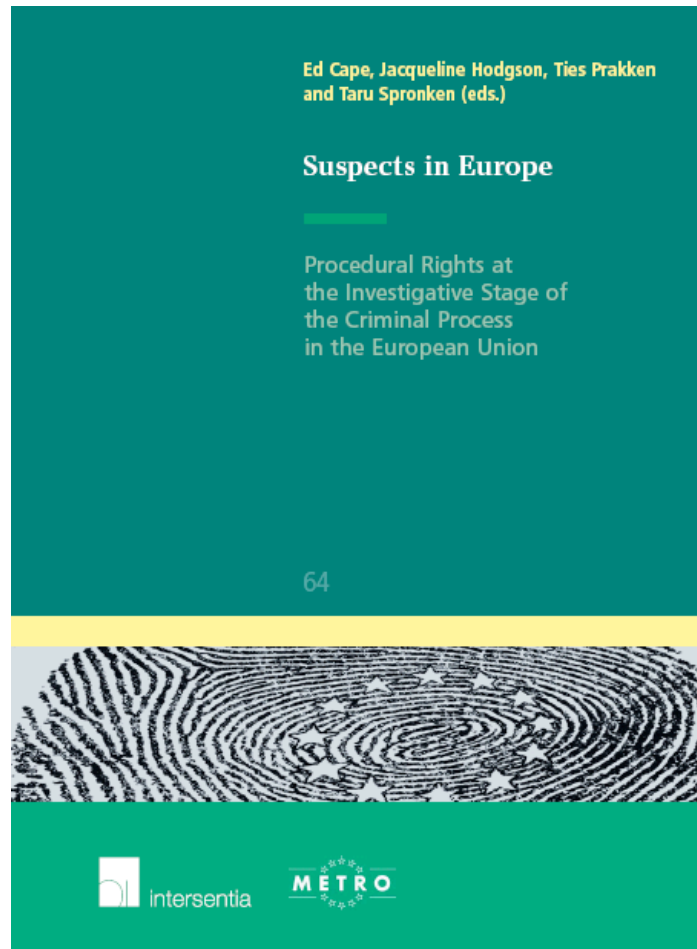
Ed Cape



Taru Spronken



# Previous study



- In practice, police often carry out interrogation without supervision
- The product of interrogation is normally included in the dossier
- Practice frequently departs from the formal legal position, to the detriment of suspects
- Lack of data or rigorous, scientific, evidence on how the investigative stage works in practice

# Countries in study and timetable

Preparation research	September 2007---	---January 2008
I	II	III
Feb 2008-Oct 2008	Nov 2008-May 2009	March 2009-Aug 2009
<b>England &amp; Wales</b>	<b>Finland</b>	<b>Turkey</b>
<b>Belgium</b>	<b>Germany</b>	<b>France</b>
<b>Hungary</b>	<b>Poland</b>	<b>Italy</b>
Overall report by project team	September 2009-----	----- June 2010

# Four major research questions

1. What are the core procedural safeguards for effective defence in general and for indigent suspects in particular?
2. By which indicators can these procedural safeguards be monitored?
3. To what extent are the requirements for an effective defence met in practice in a range of selected European countries?
4. To what extent (if at all) is the regulatory regime deficient in ensuring access to effective criminal defence, and what role might be played by the EU?

# Our approach to effective criminal defence

A human rights approach that focuses on the suspect/  
accused

- equality of arms
- effective representation, and
- effective participation

# Article 6(1) – the substantive right

In the determination of... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Salduz v Turkey (App 36391/02: 27.11.08)

access to a lawyer should be provided, as a rule, from the first police interview of a suspect, unless it could be demonstrated in the light of the particular circumstances of a given case that there had been compelling reasons to restrict this right. Even where compelling reasons might exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not have unduly prejudiced the rights of the accused under Article 6.

# Article 6(2) – the specific requirements

- Adequate time and facilities to prepare defence
- Right to defend in person or through legal assistance
- Free legal aid where accused has insufficient means and it is in the interests of justice
- Examination of witnesses
- Free use of interpreter if required

# ECHR – some unanswered questions

- When does the right to legal assistance arise (the meaning of ‘charge’)?
- At what point does the right to state funding arise?
- What information should be given to the accused about their rights, and about legal aid – when and in what form?
- Who should appoint the defence lawyer?
- What is the role of the defence lawyer?
- What quality of legal assistance is required?
- What is the relationship between fair trial, procedural rights and criminal defence?

# Effective defence rights in the EU

Some preliminary findings

# Hungary

- ❖ No obligation to provide a 'letter of rights'
- ❖ Ploys to avoid legal advice prior to interviews
- ❖ Rights of suspects avoided by informal questioning and questioning as a witness
- ❖ Lack of defence access to information at the investigative stage (affecting pre-trial detention decisions)
- ❖ Appointment of substitute lawyers at short notice in cases of mandatory defence
- ❖ No mandatory translation of key documents, and poor quality of translation
- ❖ Indigent defendants particularly disadvantaged, eg. police choose lawyer at investigative stage, lawyers not attending investigative acts, no contact with detained defendants, some activities not remunerated, weak quality assurance of lawyers

# Belgium

- ❖ No general obligation to inform persons interrogated of nature and cause of accusation
- ❖ No obligation to provide a 'letter of rights'
- ❖ No right to the presence of a lawyer during interrogation by police or investigating judge
- ❖ No right to access to the file at the investigative stage
- ❖ Poor level of quality of interpreters and no quality assurance
- ❖ Over-use of pre-trial detention resulting from lack of facilities and poor knowledge of lawyers
- ❖ Inadequate remuneration for defence lawyers in state funded cases
- ❖ No research evidence of quality of defence lawyers, but some evidence of poor quality especially of appointed lawyers

# England and Wales

- ❖ A guilty plea system heavily dependant on availability and competence of defence lawyers
- ❖ 'Letter or rights' required at investigative stage, but not thereafter
- ❖ No right to information at investigative stage, and limited right at trial stage – yet no 'right to silence'
- ❖ No special provisions for legal representation for vulnerable groups
- ❖ Increasing obligations on accused and their lawyers to provide information to the prosecution
- ❖ Police have extensive rights to conditionally release suspects where proceedings have not commenced
- ❖ Systemic disincentives to appeal
- ❖ No clear statutory right to interpretation and translation

# Emerging themes

- ECHR does not cover all aspects of effective criminal defence
- Compliance with ECHR fair trial rights is variable
- There are major deficiencies in those jurisdictions examined so far, especially for poor(er) people
- Legal regulation and quality assurance developed by legal aid funders are a necessary, but not a sufficient, condition for ensuring effective criminal defence rights