



**EFFECTIVE POLICE STATION LEGAL ADVICE**

**COUNTRY REPORT 1: BELGIUM**

**BY**

**ENIDE MAEGHERMAN**

**AND**

**MIET VANDERHALLEN**

**SCHOOL OF LAW  
UNIVERSITY OF MAASTRICHT**

**April 2018**

## **1. INTRODUCTION**

This Country Report for Belgium has arisen out of a comparative study into police station legal advice, led by Dr Vicky Kemp, University of Nottingham. She received a small grant from the British Academy/Leverhulme to undertake semi-structured interviews with defence lawyers and policy officers responsible for criminal legal aid in six jurisdictions. Dr Miet Vanderhallen was the consultant responsible for the research being undertaken in Belgium and the Netherlands, assisted by Enide Maegherman, both from the University of Maastricht.

It was following the decision of the European Court of Human Rights concerning the right to legal assistance (*Salduz v. Turkey*, 2008), the Salduz-law was implemented in Belgium on the 1<sup>st</sup> of January 2012. It then became possible for arrested suspects to have a thirty minute confidential consultation with their lawyer before the start of the interview, and for them to have their lawyer present during the interview (Law Salduz, 2011). Since then, the role of the lawyer in the pre-trial phase of proceedings has continuously been increasing. As of November 2016, Belgium has also translated the EU Directive on the right of access to a lawyer (2013) into its national regulations. This implementation brought a number of changes with it. For instance, it is now also possible for suspects who have not been arrested to have their lawyer present during the interview. This, as well as other changes, causes the role of the lawyer to become much more significant. Consequently, it is also increasingly important to understand how effective legal advice can be provided, and what factors might influence this.

Shortly after the implementation of the Salduz law, this legislation was evaluated. This evaluation study found that suspects generally consider it useful to have a lawyer present during the interview, for instance because the lawyer might make them feel more at ease. The evaluation also examined the experiences of lawyers. This was done through the use of questionnaires sent out to both the Flemish and Walloon Bar Associations, as well as the police and investigative judges. The conclusions were generally positive (Penne et al., 2013).

Although there is some research in Belgium looking at legal assistance and the presence of a lawyer during the interview, this has to a large extent been focused on how this might impact the suspect and subsequent proceedings. For example, Vanderhallen *et al.* (2014) conducted a qualitative study exploring the consequences of the lawyer's presence on the interview approach, the suspect's statement, and the investigation as a whole. It became apparent that lawyers view their role differently. Whereas some may instruct their client what to do, others will leave this decision entirely to the suspect. Similarly, some adopted a more active role than others during the interview. Hence, there appeared to be no consensus yet as to how the lawyer's role should be fulfilled.

It should be remembered that the recent changes implemented within the Belgian legislation have also affected the role of lawyers. This also means that prior research may have been focused on concerns which have been resolved through the introduction of new regulations. For example, Cape *et al.* (2010) concluded that improvements on various levels were necessary for Belgium to meet the standards set by the ECtHR. This situation has improved considerably with the introduction of both the original Salduz law (2011) and the Salduz + Law (2016). Hence, it is important to maintain an up-to-date understanding of legal assistance, as well as to explore viewpoints which have not yet been adequately addressed. One of these viewpoints is the experiences of the lawyer and what they consider to be important in order to be able to provide effective legal advice. These viewpoints, as well as experience and opinions relating to the use of technology, form the focus of the current study.

A number of factors are likely to play a role when examining how legal assistance of a high quality can be provided in practice. An important aspect of understanding factors which may influence the legal advice is knowing how lawyers themselves view their role, and what their expectations are. In addition, the way in which legal assistance is organised is likely to influence the role of the lawyer. Moreover, the funding available for legal aid might also affect the quality of legal advice, or the willingness of lawyers to work for legal aid. After having established which factors might influence the provision of legal assistance, potential methods of improvement can also be examined. In first instance, it is important to establish whether these would be positively received by the lawyers who would ultimately have to use them. Therefore, in addition to looking at legal assistance in practice, the current study also explores the attitudes towards potential advancements in technology and lawyers' thoughts on training. In addition to the lawyers' opinions and experiences, it is also important to determine how their opinions and expectations relate to the existing regulations. In order to gain insight into what potential improvements are feasible, the practical and policy implications also need to be taken into account.

The current study will attempt to explore the above themes by interviewing a number of lawyers who have extensive experience with providing legal advice. Through their answers, the aim is to gain various insights which can be combined to achieve an insight into the factors influencing legal assistance, and the possibilities for improvements. Similarly, two senior officials responsible for legal aid will be interviewed to find out what they consider to be possible in terms of potential improvements. By obtaining information from both these parties, a more complete picture emerges, as possible contrasting priorities will likely come to light.

## **2. METHOD**

In Belgium, four semi-structured interviews were conducted. Three of these interviews were done with lawyers who had experience of providing legal assistance at the police station. It is important to mention that, even though all three lawyers were criminal defence lawyers, they each had a specific focus within their work. The first lawyer often defends police officers suspected of an offence and the second lawyer mostly provides legal assistance to minors. The third lawyer, who mostly assists adults, was available to all suspects, and so also for legal aid cases. All three lawyers were male.

All the lawyers interviewed worked in different firms and in different jurisdictions (Limburg, Leuven and Ghent). In each of their firms, multiple lawyers were involved in criminal law and legal assistance. How often they provided legal advice at the police station varied between the lawyers. The lawyer who was available to everyone estimated he provided legal assistance at the police station on average once or twice per week. In comparison, those only working for their own clients provided assistance on average about two or three times a month, but without a regular pattern.

The fourth interview was conducted with two governmental officials (Ministry of Justice) responsible for the policy regarding legal aid and legal assistance in Belgium. They also handed in relevant documents to clarify the statements they provided. The information obtained during the interviews was also supplemented with information obtained from a representative from the Flemish Bar Association, who is the coordinator of the Belgian web application that appoints lawyers who are enrolled in the duty scheme for legal assistance at the police station.

The semi-structured interviews were conducted using a topic list which had been divided into several sections. Firstly, the aim was to obtain an understanding of how providing legal assistance is organised in practice, and what experiences the lawyers had with this procedure. Secondly, the lawyers were asked how they viewed their role during the consultation prior to the interview, as well as during the interview itself. The next section of the topic list looks at the financial aspects of legal aid and then the quality of legal assistance and implications for training are considered. Finally, several questions were included to explore whether the lawyers had any experience of using technology in the context of providing legal assistance, and their attitudes towards the potential use of technology. All topics were discussed during each of the interviews with lawyers, although not necessarily in the order in which they have here been listed. For the policy interview, the topics also included organisation and funding of legal assistance, as well as the potential role of technology and training. All interviewees received a shortened version of the topic list one week prior to the interview to allow them to prepare.

The interviews were transcribed individually prior to being assembled into the current report. This allowed for a clear analysis of emerging themes, as well as the identification

of any key differences in understanding or opinion. Unless stated otherwise, all the information outlined in the following section was obtained from either the interviewees, documents provided by the interviewees, or the representative from the Flemish Bar Association.

### **3. LEGAL ADVICE AT THE BELGIAN POLICE STATION**

When examining the system currently in place to provide legal assistance to suspects, it is important to be aware of how the system came into existence, as was emphasised by the policy officials. They pointed out that the European Directive (2013) was a compromise between several nations, each with their own legal systems. Thus, implementing its demands into the national legislation resulted in a complicated system. For certain aspects, the policy officials were not able to change things in the way they wanted due to being confronted with various limitations. According to them, despite being complicated, the system of providing legal assistance to suspects works in practice. They consider it to be a well-balanced system, which could have been even more balanced if it had been allowed to develop without the time pressure. For instance, after the introduction of legal assistance during the first interview was introduced, there would likely have been a shift towards having the lawyer present during all interviews. Nevertheless, the policy officials were generally satisfied with the existing system.

Although all suspects have the right to legal assistance, the police only have to organise legal assistance for the arrested suspects. In Belgium, it is also possible to be interviewed at the police station after having been invited instead of arrested (voluntary suspects). For suspects of crimes which are punishable by imprisonment, the invitation letter includes the information about their right to legal assistance. They are then expected to consult a lawyer prior to coming to the police station, which replaces the right to a 30 minute consultation at the police station. However, if they will be arrested while they are at the police station, a new procedure will start, and the police then have the obligation to arrange a lawyer on the suspect's request. The policy officials explained that, in accordance with the European Directive (2013), the Belgian law includes no requirement to actively inform those suspected of a crime not punishable by imprisonment of their right to legal assistance. The policy officials considered this to be regrettable, especially when taking into consideration the extensive possibility to impose punishments of another nature, such as large fines, in Belgium. For minors and vulnerable suspects there is a different procedure only when suspected of having committed a crime punishable by imprisonment. These suspects are not allowed to waive their right to legal assistance. If, after having been invited to the police station, the minor comes to the police station without a lawyer, the duty system will still be used to arrange a lawyer for consultation and assistance during

the interview. For adults, there is no obligation on the police to do so. Throughout this report, the information relates to arrested suspects, unless specifically stated otherwise.

### **3.1. Organisation of legal assistance at the police station**

When explaining how legal assistance in Belgium is organised, the system used to assign lawyers to cases will first be explained, which makes use of a web application.

Subsequently, the process which occurs after a lawyer accepts a case will be described.

The way in which the right to legal assistance can be waived will also be addressed, as well as potential obstacles to receiving legal assistance.

**Web application and notification.** The provision of legal assistance to arrested suspects in Belgium is organised through the use of a web application. In this application, the lawyer has to tick whether he wants to be part of the duty system, and thus available to all clients, or whether he wants to be available only to his own clients. The lawyers can change these settings at any time. According to the Flemish Bar Association representative, at the time of writing this report, 487 lawyers were registered as only providing legal advice to their own clients. As lawyers can change who they wish to be available for at any time, this number varies. Out of the lawyers interviewed, only one chose to be available to all clients.

If the lawyer is part of the duty system, he can indicate at which times he is available. This can be done for specific time periods, for instance day or night. The lawyer who was part of the duty system explained that it is possible to register at any time prior to the duty time, but it is not possible to withdraw less than 2 days before being on duty. Once he has registered to be on duty for a specific day, the lawyer then has to keep that day free from any binding appointments. As this requires thorough organisation on the lawyer's part, there may be some weeks where it is not possible for the lawyer to sign up to be on duty. The lawyers also have to indicate the areas of law and police regions they work in, which languages they speak, and whether they want to provide legal assistance to minors. When using the application to organise legal assistance, the police have to fill in the police region and area of law concerned, the language of the interview (in the bilingual zones in Brussels), the suspect's first and possible second languages, and whether the suspect is a minor. In case a specific lawyer is requested, this lawyer will be called first. If he is not available, or does not accept the assignment, a lawyer from the duty system will be contacted.

After the police have filled in the web application, the system will return a list of available lawyers in that region which can be contacted by the police in the order given by the system. It is rare that no lawyers are available. In this case, the president of the local bar association is responsible for finding a solution. When a lawyer is contacted, he first receives a text message. If they are the preferred lawyer, this message will contain the

suspect's name. If they are contacted as a duty lawyer, the message will contain the post code of the station the suspect is at. The lawyer then receives a call asking whether he accepts the assignment. At this point in the procedure, the lawyer knows very little to nothing about the client or case. After they have accepted the assignment, they will then be sent the Salduz case number and the contact details for the police officer which allows them to call the officer to arrange going to the police station.

The lawyer who was available to all clients expressed some frustration regarding the way in which lawyers are notified, as it is problematic to have so little information about the client before accepting a case. For instance, the lawyer does not know whether he will be paid for legal aid or whether the client has the means to pay. This might only become clear at a much later stage, especially if the lawyer chooses not to spend the limited time available for the consultation on discussing the financial issues. For the other two lawyers, this was not a real concern. In addition to them working only with their own clients, one of them also stated that it was usually possible to make a reasonable guess concerning the situation of the suspect. Nevertheless, this appears to be an area for improvement, as not knowing how he will be compensated may also influence the lawyer's approach during the consultation, as was explained by the lawyer available to all clients.

**Case accepted.** After having contacted the police officer, the lawyer technically has two hours to go to the police station. All lawyers stated there was some flexibility in this, but also acknowledged that the prosecution only has 24 hours before the suspect has to be brought before the investigative judge. Therefore, although it is usual to wait for a lawyer for a short period of time, this should be an exception. All lawyers also understood and respected this reasoning. The lawyer explained that after accepting the assignment, there is usually no contact with his client at this point. According to the new law (29<sup>th</sup> of November 2016) it is also possible to have a telephone consultation if the lawyer cannot arrive at the station within the two-hour time frame. Furthermore, if the lawyer is unable to get to the police station within those 2 hours, they may arrange for a replacement. Whereas one of the lawyers described this as being problematic for the police, another had not experienced any problems doing so. This may be due to the difference between being assigned to a new client through the duty system and being assigned to own clients. The problem lies in the fact that when the lawyer is replaced by a colleague, this does not mean that the case has also been handed over to this colleague in the web application. Therefore, transferring the entire procedure rather than simply the first interview to another lawyer is more complex than only having another lawyer attend the first interview. In cases concerning own clients, the latter scenario whereby the preferred lawyer asks a colleague to attend the interview seems more likely, which might explain why the lawyers differed in their experiences.

**Waiving right to legal assistance.** In Belgium, the regulations used to state that if a suspect chooses to waive his right to a lawyer, he was obliged to discuss this with a lawyer from the duty service by means of a short telephone consultation. Although this is no longer obliged, most lawyers still answered in line with this previous regulation. Currently, when a suspect wants to waive his right to legal assistance, the lawyer receives a notification that a suspect is considering waiving his right to legal assistance and has asked for a confidential telephone call to discuss the waiver with a lawyer. When the lawyer accepts this assignment, he will receive the contact details after which he can talk to the suspect. If the suspect subsequently decides not to waive his right to a lawyer, the lawyer can then go to the police station for consultation and assistance during the interview. If the suspect still chooses to waive his right to legal assistance, the lawyer will then be notified that the file has been closed. In 2016, 56.3 per cent of suspects who indicated that they wanted to waive their right to legal assistance did so following a telephone consultation with a lawyer, according to the data obtained from the Flemish Bar Association.

The lawyers expressed a number of concerns related to this telephone renunciation consultation. Most suspects in this position have already decided that they do not want or need a lawyer and the aim of this telephone consultation is to make sure the suspect has come to this decision through the right reasoning and understanding of his right. For instance, they may have chosen to waive their right to legal assistance because waiting for a lawyer would delay the start of the interview. The lawyer who worked for legal aid described that he would usually check whether the suspect has understood what legal assistance means, that it may be possible to receive legal aid, and that the lawyer could be there shortly. These points mainly concern practical issues and in the lawyer's experience, the suspect would decide to get legal assistance after having discussed them. However, this lawyer also acknowledged that not all lawyers might discuss these points with their clients, and simply accept that the suspect does not want legal assistance without asking why. In his opinion, there are actually few cases where there is no benefit to having legal assistance. For example, if a suspect is being accused of having punched someone, he is not denying the offence and unwilling to pay for a lawyer, it may be acceptable for him to not have legal assistance. Nevertheless, it is challenging to decide whether the suspect needs legal assistance, or what strategy would be best, the more so since a lawyer does not have all details of the case when receiving the assignment. Therefore, during this telephone consultation, when a suspect insists on waiving his right, a lawyer can often only advise the client to invoke their right to silence.

The same lawyer who was part of the duty system expressed some concerns regarding the confidentiality of the renunciation consultation with the suspect. For him, these would be clients he had not met before, which likely also influenced his opinion of such an

interaction. As there is no information about where exactly the client is calling from within the police station, there is also no guarantee that the conversation is confidential. This concern is applicable to both the telephone consultation because of time constraints as well as when waiving the right to legal assistance. He therefore preferred face to face contact with his client in all cases. The other two lawyers indicated that they trusted the police in this but they strongly preferred face-to-face contact. One lawyers stated he avoided talking about the case itself over the phone.

**Invited suspects.** With regard to voluntary suspects who are invited to come to the police station, lawyers agreed that the majority of the clients they provide legal assistance to are being invited to the police station. After being invited, they contact a lawyer. According to the lawyers, there may be an increase in the number of suspects who are invited to the police station following the implementation of the new regulation, which states the lawyer can also attend the interview of voluntary suspects. The invited suspect is expected to have consulted and arranged a lawyer prior to coming to the police station. Hence, the lawyers felt that, as the police are under no obligation to arrange legal assistance for invited suspects, there may be an increasing preference for inviting suspects. This observation had also emerged in previous research, although it was then also acknowledged that the police may have chosen to arrest a suspect in order to give them the right to have a lawyer present (Vanderhallen et al., 2014). As invited suspects now also have this right, this is likely to no longer affect the police's choice to the same extent. If the lawyer attends the interview with his invited client, it may be necessary to reschedule the interview given the agenda of the lawyer. The police, the suspect and his lawyer then have to agree a new date. In general, the lawyers interviewed had positive experiences, saying that police officers were quite flexible. However, one lawyer described that the police have sometimes insisted on keeping the initial date, in which case he responded that the client would not be attending the interview without him. The lawyer stated that incidents of this nature are rare, and are likely to be related to the novelty of being able to have a lawyer present during a voluntary interview.

**Obstacles to obtaining legal assistance.** In general, obstacles or problems with suspects receiving legal assistance rarely occur, according to the lawyers. Suspects are usually well-informed about their rights to legal assistance, regardless of whether the suspect was arrested or invited to the interview.<sup>1</sup> Although they could not be certain that suspects would not be constrained in exercising their right to legal assistance, for instance by believing that waiting for the lawyer would cause them to remain in custody longer, there was a general consensus that this does not usually happen. In any case, as described by the lawyer available to all clients, these issues could normally be resolved when

---

<sup>1</sup> A copy of the 'Explanation of Your Rights' for suspects both detained and not detained is included at Appendix A.

speaking to the client over the phone. However, now that the telephone consultation is no longer obligatory when waiving the right to legal assistance, this may lead to some suspects not realising what is possible. Hence, this lack of awareness or understanding could potentially become an obstacle under the new regulations.

### **3.2. Pre-interview disclosure**

Prior to the consultation, the suspect and lawyer have to be given a succinct description of the facts about which the suspect will be interviewed. In the case of an invitation, this will be mentioned on the invitation sent to the suspect. All lawyers interviewed said they have had cases where this description was too succinct; to the extent that it was not possible for them to know exactly what crime it concerned. The lawyers viewed this as a problem for a number of reasons. Firstly, the police are only allowed to interview the suspect about the offence for which they have been invited. Therefore, the lawyer needs to know what the interview concerns so as to be able to intervene if the interview strays towards another offence. Secondly, in order to adequately prepare the client and provide the best advice, the lawyer should also know exactly what the offence is, who is involved and when it took place. Furthermore, although the suspect may have told the client exactly what the invitation concerns, it is important to try and determine what the police know and what evidence their suspicions are based on. The lawyers interviewed were unanimous concerning the need for a description of the facts which makes clear the time and place in which they happened. This information is vital to the lawyer in order to decide what the best approach of defence would be. They explained that if the information in the invitation was too succinct, they might call the police to ask for more information. They might also try and obtain some more information over the phone, which could also happen in the case of an arrested suspect.

When it comes to obtaining further information from the police, two different approaches emerged. A distinction was found between the lawyer who is also involved in the duty system and both other lawyers. The first lawyer explained that he would try to get more detailed information about what the police have against the client prior to the consultation. He explained that some officers might give a lot of information whereas others might refuse to do so. The additional information given could relate to the context and circumstances of the case, as well as what evidence the police have which led to them suspecting the client. The extent to which the police are willing to provide information is heavily influenced by the interaction between the lawyer and the police, according to this lawyer. Other factors that might influence the extent to which the police are willing to provide information include the nature of the offence and the available evidence. For instance, if the police have camera footage showing the suspect shoplifting, they might be willing to show these images to the lawyer prior to the consultation. In doing so, they can

avoid an unpleasant and lengthy interview where the suspect denies the offence before being confronted with strong evidence.

The lawyers who represent their own clients were less concerned with obtaining more information from the police. One of them explained that it usually becomes clear during the course of the interview what information or evidence the police have. They also indicated that they would usually obtain the details of the facts from the suspect himself. When considering the different approaches, it is important to consider that the latter strategy is likely to be more applicable to own clients, where a relationship has already been established. Similarly, it may also be easier to follow this strategy in cases where the suspect has been invited, and the consultation is not limited to thirty minutes.

### **3.3. The role of the lawyer providing legal assistance at the police station**

#### **3.3.1. Consultation**

*“There is no checklist of what you should discuss during the consultation”*

The suspect has the right to a confidential consultation with their lawyer prior to the start of the interview (Wetsontwerp, 2016). According to Penne et al. (2013), 79 per cent of suspects chose to have a consultation with a lawyer, with only 6.6 per cent then waiving their right to have a lawyer present during the interview, based on data obtained from the web application between July and December 2012. Despite the logistic aspects of this consultation, the content of the consultation, namely what is discussed between the lawyer and his client, was also addressed. Another issue relates to whether the consultation can be done via telephone. Lastly, contact with the police between the consultation and the interview also falls under the lawyer’s role.

**Confidential room.** With arrested suspects, the consultation takes place at the police station. Although some police stations have special rooms designed for this purpose, others do not. In some cases, there may again be a concern for confidentiality, although it was acknowledged by the three lawyers that the police usually try their best to provide a space where the private consultation can take place. One lawyer described having to do the consultation through a glass divider between him and his client. He stated that this creates a different atmosphere and makes it more difficult to establish a relationship with the client. On the contrary, another lawyer emphasised the benefits of the glass divider, as it ensures the safety of the lawyer when talking to potentially extremely aggressive clients. As the safety of the lawyer falls under the responsibility of the police, the necessity for such protective measures can be understood by this lawyer, despite the negative impact they may have on other aspects of the interaction. This opinion was expressed by the lawyer who often represents police officers; he may have a more positive view of the police’s intentions. In addition, this lawyer was also the head of the bar for his region, and

so was likely more aware of incidents which occurred, which could also explain his concern for safety.

**Time limit.** The consultation with arrested suspect is limited to thirty minutes. It was again emphasised by the lawyers that this time limit was not absolute, although extensions were restricted. The lawyers' experiences differed, with some suggesting the police were more flexible. There was consensus on the fact that the way in which the lawyer interacts with the police has a big influence on how strict they are. The importance of this interaction was evident from all lawyers' descriptions of the various stages of the process at the police office. Consequently, there was also agreement on the fact that it is in everyone's best interest for all parties to be respectful towards each other, and to allow them to do the job required of them. For instance, if a lawyer is being difficult about the length of the consultation, this is likely to lead to a tense atmosphere during the interview. Although in some instances the lawyers had still experienced what could be described as a power struggle, this became increasingly less relevant as both parties become more accustomed to the other, as well as changed interaction, where some form of cooperation is required. All lawyers agreed that the relationship between the police and the lawyers had improved, although this finding was contrary to research conducted by Penne et al. (2013), who found more negative experiences. All interviewees in the current study also seemed optimistic about how this relationship will evolve in the future.

**Content.** The lawyers agreed that at the police station, due to the limited time available, a decision has to be made about what to discuss during this time. All lawyers agreed that it was important to obtain the client's version of events during the consultation, and said that they usually decide on an approach together with the client. According to the lawyer available to all suspects, who often meets his clients for the first time during the consultation, there is no checklist on what to do during the consultation. He explained this will to a large extent depend on the nature of the case, as well as what information is available, and what the client wants to do. In his opinion, the client is the starting point. For instance, if the client wants to confess, he would not encourage the client not to say anything just because the police might not have any evidence. If the client claims to be innocent, he would try and determine the truth and work from there, for instance, by looking at what may be difficult to explain. His aim is to start from the client's own story and, through questioning, he tries to anticipate what will be said during the interview, and what the consequences of this might be. In his experience, this might cause the client to change their story a little, or to delay providing information.

One of the lawyers had a similar approach within the context of voluntary interviews where the consultation is not limited in time and can take place at the lawyer's firm. He described how some clients write down what they intend to say during the interview before seeing a lawyer. This allows the lawyer to look at this prepared statement and discuss with

the client the impact of some elements in the statement. The lawyer might, for instance, suggest changing some of the phrasing in order to change the tone of the message which does not mean the lawyer dictates the statement to the client.

In general, the lawyers also discussed the strategy the client would be taking during the interview, and on what information to share. One of the lawyers stated that if a client denies the offence, there is no need for an agreement on what to say, as he assumes they will be able to answer every question the police would put to them. He also believes it is best not to lie, as lies are likely to be discovered quickly. The two other lawyers stressed the importance of the question and answer format of the interview, and were not in favour of starting the interview with a free recall. By not having the free recall they could first try to find out what the police know. The importance of releasing information in a controlled manner was also stressed by one of the lawyers.

What should be addressed during the interview also seemed to depend on the nature of the case. All lawyers also agreed that, in case of arrested suspects, if there is a high likelihood that the client will be detained, it may be of more use not to discuss too many details during the course of the first interview. A better approach may then be to delay the discussing the details of the case until a few days later, at which point the lawyer will have full insight into the case file. As the lawyer is now also allowed to be present during subsequent interviews, adopting this strategy may become more common.

**Telephone consultation.** Since 2016, it is possible for the consultation to be replaced by a telephone consultation (Wetsontwerp, 2016), but only one of the lawyers had experience of this. As he worked only for clients he already knew, he explained that he usually had an idea what the case concerned based on the client's previous history. Thus, in his experience, there is no significant difference between the telephone consultation and the consultation which takes place at the police station. This opinion forms a stark contrast to that of the lawyer available to all suspects, who clearly expressed his concerns regarding confidentiality of the telephone consultation. This difference in opinion and experience between the lawyers could be due to working with different clients. With new clients, the consultation is also of great importance to build a working relationship with the client, whereas with existing clients this will already have been established. Therefore, a telephone consultation is more likely to suffice in the latter.

**Contact after consultation.** The lawyers described there was no contact between the police and the lawyer or his client between the consultation and the interview. The police bring the client and his lawyer from the room where the consultation took place to the interview room. It was also suggested that caution should be applied to the lawyer having contact with the police at this point. One lawyer expressed the view that contact between the lawyer and the police at this point could damage the lawyer-client relationship. This can again be related to the importance of the lawyer showing the client that their role is

to support the client and their interests. Similarly, this could cause the client to lower their guard, which may put them in a more difficult position during the interview.

### **3.3.2 Legal assistance during the interview**

*"The attitude makes the person"*

There are several aspects to providing legal assistance during the interview which should be taken into consideration. Firstly, there is the question of whether it is necessary for the lawyer to attend the interview. Secondly, there are various approaches concerning the extent to which the lawyer chooses to intervene or interrupt the interview. Thirdly, the lawyer's role also entails providing support to their client, as well as checking the written record. More generally, the relationship between the lawyer and the police is also important to consider. Lastly, there is a question of what to discuss at the end of the interview.

**Attending the interview.** All lawyers would attend the interview if they were already at the police station for the consultation, but there were differing opinions about attending the interview in case of invited suspects. One lawyer said that he would only attend the interview if he considered this to be necessary based on the client and the circumstances of the case. For instance, if the client is being suspected of a minor infraction, having a lawyer present during the interview might give the impression that the client has something to hide. The other two lawyers said they would almost always attend the interview. For the lawyer who specialised in representing juveniles, attending the interview is in those cases obligatory, as juveniles cannot waive the right to legal assistance during the interview. He did express the concern that having a lawyer present during the interview might have the effect of condoning the interview as a whole. It is then more difficult for the lawyer to argue against something that was said or done at a later stage, as it was to be expected of him that he should intervene when it happened.

**Interventions.** The lawyers interviewed felt differently about the use of interventions during the course of the interview. Whereas some said they would do so as little as possible, others made it clear that they would interfere quite often, while stressing that they only do so when they consider it to be necessary. These lawyers also made it clear that they may intervene when the police start the interview with a free recall, as the suspect may then reveal more than they should to the police. One lawyer saw a need for intervening if certain methods were adopted which are not acceptable, or which could influence the representation of the statement, or where interpretation afterwards could be problematic. He made it clear that he would not intervene if, for instance, the client says something which was not agreed upon. He believes that, if the client decides to give a statement, there is little the lawyer can do to influence this. He sees the role of the lawyer as being more important during the consultation, where it is possible to explain to the

client what the possible consequences of his statement might be. Although this may cause them to change their statement, he would not explicitly instruct them what to say, nor would he intervene if the client made a statement not agreed upon. One of the other lawyers explained that he often had discussions with officers who complained that he intervened too often. He insists that he only intervenes when necessary. It also became clear that when intervening, he would explain his reason for doing so. For instance, if he feels a question is inappropriate, he will explain why, which is likely to reduce resistance from the police. He considered that making sure the client does not say something which incriminates them was one of the most important aspects of his role. Similarly, the last lawyer expressed a need to intervene if it seems the client is making the situation worse for themselves, or if he feels the client has not understood the question correctly. It is important to be aware of how a question is received. He would also intervene if he noticed that the client's concentration was decreasing. Similar to the first lawyer, he made it clear that he would not intervene if the client was to do something other than what they had prepared. Examples of when the lawyers would intervene also included asking for clarifications of questions or details they are asking about, as well as if the questions concerned an offence other than the one the suspect was initially going to be interviewed about.

***Interrupting the interview.*** In addition to intervening, according to the law, one interruption for a confidential discussion between the lawyer and his client can be requested, which is limited to 15 minutes. The interruption may be used when new evidence is presented to the suspect (Wetsontwerp, 2016). There was also a difference in how lawyers made use of this interruption. Whereas one lawyer said he would use the interruption as little as possible, another lawyer said he tends to use it whenever he feels the client needs it. However, lawyers again indicated there was some flexibility in this, with several of them indicating that more than one interruption can happen. In their experience, the interruption could sometimes also be longer than 15 minutes. Again, the lawyers emphasised the importance of a good relationship with the police in the extent to which they are flexible.

***Support.*** The lawyers also expressed the importance of supporting the client psychologically. This could happen in various forms. For instance, one lawyer gave the example of arguing a point for the client, despite knowing he is wrong, for the sake of showing the suspect that he is on their side. Others explained that suspects may glance at their lawyer throughout the interview in order to find reassurance. The fact that the suspect is not alone during the interview also makes them feel better, and some lawyers described clients as being visibly relieved when the lawyer arrives. In light of the psychological support, the fact that the lawyer is now allowed to sit next to the suspect, whereas they previously had to sit behind them, also makes an important contribution,

which was also acknowledged by the lawyers. Another example given was that some officers may still explain the old Salduz regulation, whereby the role of the lawyer was much more limited with regards to what they were allowed to do. The lawyer would then argue with the officers to make it clear that, according to the new Salduz, he is allowed to play a more active role. This also tends to put the client at ease, according to the lawyer.

**Relationship with the police.** There was agreement amongst the lawyers that they generally have a good relationship with the police during the interview. According to the policy officials, this was also due to the introduction of the Salduz regulations, which forced the police and the lawyers to work together, allowing the development of an increasingly positive relationship. There was a general consensus between all interviewees that, as the interview is a human interaction, it is important to realise that the lawyer's own attitude has a huge influence on the situation. Consequently, all lawyers felt that, as they acted respectfully towards the police, the police acted the same way towards them. One lawyer said that they might try and tell him not to intervene at the start of the interview, but that he would simply tell them he would intervene when he deemed it necessary. They all agreed that they generally have a good relationship with the police. The lawyers did not notice a difference between police officers on a personal level, although there seemed to be a difference between the older and the younger police officers. Perhaps surprisingly, the older officers seemed more open to working with the lawyer than the younger officers, despite the fact that the latter have never known otherwise. However, this can also be explained in light of the power struggle mentioned, as younger officers may feel less confident and more intimidated by the lawyers, and respond to this by attempting to strengthen their own position in relation to the lawyer. Furthermore, they may also be less aware of what is and what is not allowed, and may be more cautious in allowing the lawyer to intervene. Another indicator of the respectful relationship between the police and the lawyer is the limited use of the ability to report incidents with the lawyer in the web application. According to the policy officials, this option was rarely used. When this question was put to the Flemish Bar Association, it turned out that the incident field was used quite regularly, but for incidents such as the language of a suspect not being available, or a wrong phone number being given.

**Written record.** In addition to intervening and providing psychological support, one other aspect of legal assistance which all lawyers considered to be important is ensuring the written report is an accurate representation of what was said during the interview. They would therefore check the written record at the end of the interview. The importance of an accurate representation should not be underestimated, as it is this document, and the statement within it, which will ultimately become the evidence in the case file. All lawyers had some negative experiences with how things had been written down. For instance, where there has been extensive free recall, this may have been summarised in five

sentences. One lawyer gave the example that if the lawyer disagrees with how something is written down, a comment will be added at the end of the document simply indicating what the lawyer said. However, the original record, as noted down by the police, will remain in the statement. In addition, one lawyer pointed out that a written version of the interview is inherently not able to convey certain nuances. For example, if a suspect takes time to think about an answer, it is difficult to accurately represent this in the written record. Furthermore, it was recognised that it was natural for the statement written by the police to contain a certain amount of interpretation, just as it would if it were to be written by anyone else. Thus, although all lawyers considered it to be of vital importance to check the written record at the end of the interview, there was no criticism of the police for what was seen to be this flawed method of recording interviews.

**End of interview.** Lawyers mentioned that at the end of the interview, when questioning of the suspect has ended, the lawyer is asked whether he has any further remarks. He is then also allowed to ask for additional investigative measures. One lawyer explained that this option is currently rarely used. This is another aspect where disclosure could be beneficial. Having more insight into what the police already know would enable the lawyer to better judge what could still be investigated. Some practical issues may be discussed at this point, such as who should be contacted. The lawyer who represented minors also noted that this time may be used by the police to show their concern, e.g. in cases of drug abuse, where they might suggest the minor should seek help. However, after the interview has ended, there is no discussion of the case. One lawyer also suggested, now that lawyers are also allowed to attend the following interviews, this time could be used to schedule a next interview. This would make it easier to co-ordinate with all parties.

In case of an arrested suspect, where the lawyer has only had the 30 minutes of consultation before the interview to speak to his client, he may use the time after the interview to discuss some other practical issues. This might, for example, be the time to discuss the clients' financial situation. This time can also be used to explain to the client what will happen next, and try to put them at ease about future proceedings. Some lawyers also stated that during this time, the client might ask him how he feels about the interview, or might ask why he intervened at certain points. This lawyer considered the time spent with the client after the interview to be a sort of debriefing.

#### **4. STRUCTURE OF LEGAL AID REMUNERATION AND IMPLICATIONS FOR QUALITY**

*"If you choose to give people a right, you also need to be able to pay for it for those who cannot afford it".*

According to the EU Directive (2016), the right to legal assistance should be fulfilled by lawyers financed by the member states for suspects with insufficient resources. Belgium has met this requirement, and the way in which it organises legal aid will first be outlined,

including the decision on who should receive legal aid. Subsequently, the question of whether the amount of compensation lawyers receive for legal aid is sufficient will be addressed. Lastly, the influence of the legal aid remuneration on quality of legal assistance will also be considered.

#### **4.1 Organisation of legal aid**

The duty system used to arrange legal advice is not directly related to being remunerated by legal aid. Lawyers can choose to be on the list of lawyers willing to work for legal aid, and lawyers can choose to be part of the duty system. However, one choice is not necessarily related to the other. For instance, it is possible for a lawyer to be willing to work for legal aid remuneration but not be on the duty rota. However, it is not possible for a lawyer to be available to all clients if they are not on the legal aid list.

Whether a client can receive legal aid is decided by the bureau of legal aid, which has to make a decision within two weeks. There is a means test, which has recently changed. Whereas it used to be based only on income, it now takes into account other means, such as what real estate a client has. Consequently, it has become more difficult to determine whether or not someone will be eligible for legal aid at the moment they are arrested. This is why the lawyers who want to be available for all clients have to be willing to work for legal aid, as it is unclear whether suspects are eligible for legal aid at the time the lawyer is appointed. According to the lawyer who works for legal aid, some lawyers may consider it important to discuss financial arrangements during the 30 minute consultation, although he personally did not approve of doing so. There is a form which has to be filled in, which is usually done after the interview (see Appendix B). There is also the possibility of obtaining partial legal aid. If a client does not pay the lawyer for the work done, a lawyer who was appointed to the client can obtain some payment from the state (Compendium Juridische Tweedelijnsbijstand, 2016). In any case, everyone has the right to a free conversation with a lawyer (eerstelijnsbijstand) for legal advice. Lastly, there is also a possibility to have other legal costs covered (e.g., an interpreter). Although this is arranged through a separate system, the eligibility requirements are the same as those for legal aid which covers the cost of a lawyer.

#### **4.2 Remuneration**

The legal aid system makes use of points. How much a point is worth is dependent on the available budget and the amount of points claimed in that time period, although the actual calculation is more complicated. The budget is decided by the government. Currently, a point is worth approximately 26 euros before tax deduction. In some regions, the bar operates a slightly higher rate of 75 euros per point. This amount was considered to be more reasonable, which was supported by one of the lawyers working only for his own

clients. Nevertheless, when compared to the lawyers' own hourly rate, of around 150 euros, it becomes clear that financial incentive is unlikely to motivate lawyers to want to work for legal aid. Regardless of the fact that the legal aid remuneration, in comparison to the lawyer's own rate, is minimal, there is the issue that it could take two years before it is paid. This means that, although the lawyer may know how many points he will receive, he does not know how much these points will be worth at the moment they are paid out.

Although there seemed to be a general consensus among the lawyers that the legal aid remuneration is not sufficient, it is the lawyers and the bar association which decide on the amount of points. They decide this based on the amount of work required for each of these performances. Thus, the policy officials expect that the remuneration should be enough to ensure quality legal assistance. There is an extensive nomenclature which indicates how many points can be received for each of the stages where the lawyer provides legal assistance. For instance, for the consultation, half a point can be earned, regardless of whether the consultation happens face to face at the police station, or over the phone. The same amount of points can also be earned for the telephone consultation whereby the suspect waives the right to legal assistance (Ministerial Decision, 2016). Telephone consultations whereby the lawyer does not meet the suspect, either because he waives the right to legal assistance or because another lawyer takes over, are remunerated via the web application.

The idea that the remuneration is sufficient could also be considered to be supported by the fact that there are enough lawyers who are willing to work for all suspects, and also for pro deo cases. In 2015, a lawyer was found through the web application in 99 per cent of cases in Flanders. However, it should be remembered that the lawyers who do represent clients in pro deo cases are also likely to represent paying clients. Therefore, the fact that lawyers could be found in such a high percentage of cases should perhaps be seen more as an indicator of a well-functioning, balanced system rather than an indicator of sufficient legal aid remuneration being provided to the lawyers. This is also supported by Penne et al. (2013), who found that the lack of remuneration and insecurity about being paid in general were factors influencing lawyers' decision not to work for legal aid.

### **4.3 Quality of police station work**

Whether legal aid is sufficient can also be related to the quality of the legal assistance. The payment is often far less than the regular fee charged by a lawyer, despite the fact that providing legal assistance on a case could take up a large amount of time. Thus, the remuneration is unlikely to be an incentive for those working for legal aid. Out of the lawyers interviewed for this study, one did not provide legal assistance covered by legal aid, while another only did so because he represented minors, who receive legal aid (Compendium Juridische Tweedelijnsbijstand, 2016). If parents choose to pay the lawyer

themselves, their income will not be taken into account. The lawyer interviewed mentioned that, in the latter scenario, there is a concern as to whose interests are being represented.

The legal aid remuneration was mainly raised as a concern by the lawyer who provided legal advice to all suspects, and thus works for legal aid. He felt that, for some, there was a large difference between what a lawyer can do, and what a lawyer is willing to do. Although legal aid does not pay much, this can be compensated by doing lots of cases, although this is likely to reduce the quality of the assistance provided, as mentioned by the lawyers interviewed. They described experiences whereby lawyers would take on as many cases covered by legal aid as possible while providing the minimum amount of actual assistance to their client. The system also allows for lawyers to collect a large number of points for a minimal amount of work. There was also some competition between lawyers to get new cases. Defending the client's best interest then seems to become a distant goal.

Although the lawyers shared experiences where lawyers taking on legal aid cases for financial benefits endangered the quality of the legal assistance, they also all made it clear that this is not necessarily so. There was a general agreement that, just as in any other profession, there are some lawyers who are better at their job than others, regardless of how much they are paid. Hence, although the low remuneration may threaten the quality of the legal assistance, this is not true for all lawyers. Considering the financial implications, this is likely to require a certain ideological motivation on the lawyer's part. The idea that financial remuneration should not influence the quality of the legal advice was reiterated by the policy makers. They made it clear that it is the lawyers who decide on how many points can be received for each action, they expect that this should be sufficient to provide a quality service.

**Training and quality requirements.** *"There is a difference between what a lawyer can do and what a lawyer is willing to do."* Besides the influence of financial compensation on quality, the influence of training and experience should also be considered. Whereas in other countries it is possible for legal advisers who are not qualified lawyers to provide legal assistance, this is not possible in Belgium. However, being a lawyer is the only qualification needed, which means a lawyer who has focused his career on tax law could suddenly decide to provide legal assistance to a suspect. Similarly, in certain jurisdictions, there is a requirement for interns to subscribe to the list for providing legal assistance. This results in the possibility that the lawyer providing assistance has no prior experience in police interviews, or with dealing with the police in general. All of the lawyers interviewed expressed concern that this could have a negative impact on the quality of legal assistance. For instance, there was agreement that a certain amount of experience is required to respond appropriately to the nuances involved when cooperating with the police. One example given was that they need to know when it is in the best interest of

their client to intervene as well as having the authority to do so. In addition, the consultation and interview can have a significant impact on the remainder of the proceedings. The importance of this, and how it should be approached, is said to require the experience of a lawyer.

A comparison between the lawyers providing legal assistance and the police officers interviewing suspects was also raised by some of the lawyers. Both parties have their own interests when working with the suspect. In addition, there can be a discrepancy in the experience both parties bring to the interaction. On the one hand, police officers receive ample training on how to interview a suspect, which may include recommendations on how to handle having a lawyer present. They are also likely to have conducted many suspect interviews. On the other hand, lawyers have only recently been granted access to the police interviews. They are also present at far fewer interviews than most police officers, which may place them at an unfair disadvantage. It was suggested by some of the lawyers that the difference in training between the police and the lawyer should be addressed in order to maintain the necessary balance between both sides.

Thus, although training is currently not mandatory, lawyers were in favour of training, especially for those who do not have the relevant background. However, providing training is not enough, and the need for testing what has been learned was also raised. Furthermore, the impact on the quality of the legal assistance should also be reviewed, and the training should be maintained. Although the policy officials can suggest training to the bar association, they cannot make it obligatory, due to the division of powers. However, they again think that, as it is the lawyers who want to be present during the interview and the consultation, they shall do their best to ensure the quality.

Another reason a lawyer may not do everything he is able to when acting for a suspect who was assigned through the duty system, is the possibility that the lawyer who comes to the consultation is not the client's preferred lawyer. If the lawyer is aware of this from the start of the consultation, this is likely to influence the lawyer's advice, as the case will probably be transferred to the preferred lawyer. The preferred lawyer, knowing the client, may choose to use a different strategy. In this scenario, it is difficult to build a relationship with the client, and it may be best to advise the suspect to exercise their right to silence. Ultimately, the most important influence on the quality of the legal assistance remains the lawyer himself. Although a lawyer may not choose to fulfil his role to the best of his abilities due to the lack of financial compensation, this is due to his own decision rather than any aspect of the existing system preventing him from providing legal advice of a high quality.

## 5. TECHNOLOGY

*“There is a lot of possibilities, but also a lot of issues”*

Currently, the use of technology in criminal proceedings in Belgium seems very limited, based on the experiences shared by the interviewees. Although the web application was considered to be extremely successful by both policy officials and the lawyers, there is currently no other use of technology at the police station. Introducing additional advancements may also be difficult, due to the fact that police stations are not yet up-to-date enough to enable the use of certain applications, for instance those in need of a wireless internet connection. If such advances were to be introduced, this would require every police station to have a wireless internet connection which, financially speaking, is not realistic. Although both lawyers and policy officials acknowledged that it may save money over an extended period of time, the changing and updating of the current systems would be too great a cost to bear. Furthermore, the policy officials also looked beyond the initial cost, and saw several problems with the maintenance of such systems. A maintenance service would have to be available at all times in order to ensure the effective use of any technology. In addition, the prosecutor’s office and the police station currently use different systems, which means that files cannot simply be transferred from one to the other. Another concern which emerged in relation to the audio-visual recording of the interviews, which is not currently required, was the cost and practical concerns of storing the footage. According to the policy officials interviewed, regulations in Belgium stipulate that these recordings would need to be stored for up to 65 years. Regardless of the financial and practical concern, there is also a major concern regarding the confidentiality and privacy of the information that would have to be stored, as this would be difficult to ensure. The lawyers were also sceptical about the introduction of technology; some technological improvements were very welcome to the lawyers, whereas others were not deemed desirable. Specifically, they seemed interested in using technology to improve the efficiency of legal assistance through some of the following implementations.

**Digital case files.** The use of digital case files was greeted with much enthusiasm. These are increasingly being used, but one lawyer said that case files which do exist digitally are still an exception. The case file will usually be put onto a CD-ROM, although USB sticks are now also starting to be used. Although some of these files are well organised, others are not. The digital version of the file is likely to be easier to organise. A search function would also have great added value. The lawyer might still print out certain parts of the case to create an overview for himself, but this is an improvement from having several versions of the file lying around. One concern with the digital case files is the quality of the documents, as these are scans of the original file. However, this could mean that the pictures are provided in colour, rather than in black and white as would be the case in a paper copy. One lawyer gave a striking example whereby the case concerned a collision

between three cars, and the written report referred to the green car, but the pictures were provided in black and white. The policy officials also explained the difficulties in creating digital versions of the files, as everything needs to be scanned, and so this requires people who would essentially spend all their time on the scanning of these case files. Although the officials are also enthusiastic about this advance, the financial aspect is again a problem, as they do not have the budget to make progress at this stage. Digital files are currently to a greater extent being used in other areas of law, as criminal law is more hesitant in light of the confidentiality concerns.

**DIPLAT.** One of the lawyers described how technological advances are currently being taken forward by some organisations. The Flemish bar association (Orde van Vlaamse Balies), in cooperation with the various districts, for example, set up an organisation known as DIPLAT (Digitaal Platform Advocatuur). This organisation is striving to introduce digital ways through which the efficiency of the process of providing legal assistance could be improved. One of these is the identification card for lawyers which will be introduced in the near future (see Appendix C). Currently, lawyers can use the chip in their national identity cards to identify themselves and log in to the national register where they can find information about their clients. In the future, this will be done using the lawyer ID card, which will also be used to identify themselves in other situations, such as when visiting prisons. Furthermore, there is also an aim to make it possible to transfer conclusions electronically, which, at present, have to be brought to the Registry. It is currently possible to do so in proceedings before the Court of Appeal. When making use of this function, the lawyers receive an email which sets out the verdict. Additionally, a case file has to be requested via the post using a cheque system. The aim here is that it would become possible to do this digitally, again by logging in using the lawyer's ID card. This should then also allow for the digital transfer of the case file.

**Recording of interviews.** Lawyers said they would welcome the audio-visual recording of suspect interrogations. If the lawyer is not present during the interview, it would be helpful to audio/visually record the interrogation, provided the required technology is present in the police station. The interview could also be recorded on demand of the investigative judge. The lawyer who had previously expressed his concern regarding how the lawyer's presence is interpreted, seemed more enthusiastic about this than the other lawyers. It would then be possible for the lawyer to watch the recording of the interview afterwards, which would also be beneficial to the written records, as these could then be compared to the recordings at a later stage. As this was an important aspect of the legal assistance for all lawyers, the recording of suspect interviews would likely have great added value. However, in addition to the practical and financial concerns previously outlined, it might also be problematic to make effective use of the recordings. If the lawyer were to watch the recording at a later stage and disagree with the written record, the

judges would still need to watch the footage in order to make a decision over which record is correct and they are unlikely to do so. One lawyer did provide an example where he argued in court that something had not been said in the way it had been written down, and urged the judges to watch the footage. After they did so, the client was acquitted, and from their reasoning, this seemed to be based on what they had seen in the recording. Thus, if the judges are willing to view the video footage, the benefit of recording interviews could go beyond the practical aspect of the lawyer being able to view the interview at a later stage. Although the recording of interviews was to be encouraged, it was argued that it does not eliminate the need for the lawyer to be present during the interview. In light of the psychological support offered by the lawyer, his presence has a greater function than intervening when inappropriate questions are asked.

**Videoconferencing.** The importance of physically being presented was also often mentioned in response to the suggestion of using video-conferencing. Lawyers were generally not in favour of this option as they feel face-to-face contact to be important. The lawyer who was available to all clients was more positive than the lawyers available to their own clients, and saw the benefit of video communication over telephone communication. However, he did not seem to think that technology at present was not sufficiently advanced to provide the added benefit, as a lot of the non-verbal communication, such as facial expressions, is not always captured. One of the scenarios in which he did think videoconferencing could be used would be, in voluntary interviews, to have the client next to him in his office, while the police interview via video-conferencing. However, he also acknowledged that the police would most likely not allow this. He also mentioned that making it easier to provide legal assistance could make it more attractive to those who would then do it for the wrong reasons. Another possible use for technology, he mentioned, was to be able to communicate with clients while in prison. But again, he acknowledged that a lot would have to change for this to be feasible. The ability to use smartphones to quickly look things up while in court, or perhaps during the consultation, was also mentioned as a way in which technology could benefit the defence. The other lawyers were not in favour of the use of video-conferencing, at all stages of the proceedings. Although there have been some trials of using video-conferencing in the courtroom, the lawyers felt this was not a positive experience. They believed it to be important for a hearing to be done in court, with all parties present. This also relates to the equality of arms, which is likely to be disturbed if one of the parties is not physically present. This reasoning could also be applied to the interview, where the lack of the lawyer's physical presence could be a disadvantage to the client. Furthermore, considering the importance of the human interaction in the various settings of the proceedings, it is to be expected that maintaining this contact would be of greater importance than the eventual financial benefits the introduction of technology might offer.

Previous steps have made been made towards regulating the use of video-conferencing during pre-trial detention, with the aim of reducing costs and safety concerns. Although the law was passed (2016), it has not been implemented due to a lack of funding. It was also met with a lot of resistance from both lawyers and judges, due to the loss of personal contact. Thus, the introduction of video-conferencing faced issues from both parties, which seem unlikely to be resolved.

## **6. CONCLUSION**

The current explorative study aimed to achieve an understanding of what factors influence effective legal advice provided to suspects, as well as the potential for making improvements. In order to do so, an overview of how legal assistance is organised in practice was undertaken. Although the system in Belgium is fairly complicated, it manages to efficiently provide legal assistance to suspects, regardless of whether they have been arrested or invited for an interview. The web application plays an enormous role in arranging a lawyer for a suspect who has been arrested. Although the lack of information initially provided to the lawyer when accepting a case was mentioned as a point which could be improved upon, no real problems with the existing system came to light during the current study. There were no barriers identified within the way legal assistance is provided which currently prevents suspects from obtaining legal assistance.

The study also aimed to gain insight into what factors influence the quality of legal advice. One aspect which proved difficult concerns the various ways in which lawyers see their own role, both during the consultation and the interview. Subsequently, there may also be a difference in what they consider to be high-quality legal advice. These varying opinions can possibly be explained by the distinction between lawyers working for own clients only compared to lawyers working for all clients, as this may influence the interaction during the interview. As underlying reasons for these various approaches were not addressed in the current study, these could be the focus of further research.

One key concern which emerged was the low rate at which lawyers were financially remunerated. All lawyers felt that this could influence the quality of the legal advice provided by the lawyer, although there was a general agreement that it should not have such an influence. This latter opinion was also shared by the policy officials. It is important to note that whether the quality of the legal advice is impaired by the lack of financial remuneration ultimately seems to be personal to the lawyer involved, as some lawyer also provide high quality legal advice to the best of their abilities while being paid by legal aid. In light of the lack of financial incentives provided to lawyers, the question arises what motives lead lawyers to work for legal aid. Although one lawyer in the current study mentioned that a certain extent of idealism is needed, future research could further elucidate why lawyers choose to work for such low remuneration.

One potential area for improvement which was identified was the current lack of training for lawyers providing legal assistance. All lawyers were in favour of introducing such training, especially for lawyers who may not have sufficient or relevant experience. However, it was also emphasised that the person providing legal assistance should be a lawyer. Hence, in the lawyers' view, it would not be possible to allow a non-lawyer to provide legal assistance, even after having been trained. In addition, it was pointed out that any training should be ongoing.

When considering potential improvements which could be made to the system, the advancement of technology was received with a divided opinion. Whereas some developments are very welcome, such as digital case files, others are not, such as video-conferencing. The introduction of video-conferencing and other technological changes is faced with resistance from both what is financially possible and what is wanted by the lawyers, who want to maintain the face-to-face contact whenever possible. These concerns, that caused a law which allowed for video-conferencing not to be enforced despite being passed, will likely delay further technological advancements in this area.

The current practice of providing legal advice in Belgium was viewed positively by both the policy officials and lawyers interviewed in the current study. Although each of these parties had a few concerns or suggestions for improvements, there was none so significant that it impaired the ability to effectively provide legal advice. An interesting finding of the current study was the different approaches used by the various lawyers. Future research could look at the underlying reasons for why some lawyers find a certain approach more effective. When taking into consideration that most issues seemed to relate to lawyers on an individual level, one suggestion may be to introduce the possibility to perform a quality check for lawyers who seem to take on an unusually large amount of Salduz cases. Due to the division of powers, any scheme through which quality can be checked would need to be introduced by the bar association. The question then remains how quality legal advice can best be defined, as this is also likely to vary from case to case.

Overall, the Belgian system seems to be functioning well, and any possible improvements will be difficult to introduce, as well as being met with resistance.

## References

Belgische Kamer van Volksvertegenwoordigers (9 november 2016) Wetsontwerp betreffende bepaalde rechten van personen die worden verhoord.

Cape, E., Namoradze, Z., Smith, R., Spronken, T. (2010) *Effective Criminal Defence in Europe*. Antwerp: Intersentia.

Declercq, P. (2016) *Compendium Juridische Tweedelijnsbijstand*: [http://www.balie-gent.be/UserFiles/files/2016%2009%2001\\_compendium%20juridische%20tweedelijnsbijstand.pdf](http://www.balie-gent.be/UserFiles/files/2016%2009%2001_compendium%20juridische%20tweedelijnsbijstand.pdf)

Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (22 October 2013).

Directive of the European Parliament and of the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (26 October 2016).

Federale Overheidsdienst Justitie (19 juli 2016) Ministerieel besluit tot vaststelling van de nomenclatuur van de punten voor prestaties verricht door advocaten belast met gedeeltelijk of volledig kosteloze juridische tweedelijnsbijstand. *Belgisch Staatsblad*.

Federale Overheidsdienst Justitie (29 januari 2016) Wet betreffende het gebruik van video-conferentie voor de verschijning van in verzekering gestelden in voorlopige hechtenis. *Belgisch Staatsblad*.

Judgement of the Grand Chamber of the European Court of Human Rights in *Salduz v. Turkey* (2008)

Penne, H., Raes, A., De Keulenaer, S., Deladriere, A. Franssens, M., Deveux, E., Decramer, K., & Sivri, S. (2013) Evaluatie Salduz wet: Eindrapport. *Dienst voor het strafrechtelijk beleid*: [http://www.dsb-spc.be/doc/pdf/Salduz\\_eindrapport\\_NL.pdf](http://www.dsb-spc.be/doc/pdf/Salduz_eindrapport_NL.pdf)

Schema Salduz + Bijstand Advocaat – Meerderjarigen. Retrieved from: [http://www.ommp.be/images/upload\\_dir/Schema%20Salduz%20meerderjarigen.pdf](http://www.ommp.be/images/upload_dir/Schema%20Salduz%20meerderjarigen.pdf)

Schema Salduz+ Bijstand Minderjarigen (+kwetsbare meerderjarigen): [http://www.ommp.be/images/upload\\_dir/Schema%20Salduz%20minderjarigen.pdf](http://www.ommp.be/images/upload_dir/Schema%20Salduz%20minderjarigen.pdf)

Vanderhallen, M., de Jong, A., Nelen, H., & Spronken, T. (2014). *Toga's in de verhoorkamer: De invloed van rechtsbijstand op het politieverhoor*. Den Haag: Boom Lemma uitgevers.

Wet tot wijziging van het Wetboek van strafvordering en van de wet van 20 juli 1990 betreffende de voorlopige hechtenis, om aan elkeen die wordt verhoord en aan elkeen wiens vrijheid wordt benomen rechten te verlenen, waaronder het recht om een advocaat te raadplegen en door hem te worden bijgestaan (aangehaald als : wet Salduz) (13 August 2011):

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2011081313](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2011081313)

Wet betreffende bepaalde rechten van personen die worden verhoord (21 November 2016):

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2016112102](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2016112102)

## Appendix A

### EXPLANATION OF YOUR RIGHTS

If you have been **DETAINED** and are to be questioned as a suspect.

#### Which rights must you be told about before the interview starts?

##### 1. Right to a confidential consultation with a lawyer and legal assistance during the interview

###### A. Lawyer

- You may ask for a lawyer of your choice to be contacted.
- If you do not have a lawyer of your own or this lawyer is unable to attend, you can ask for a lawyer from the Bar Association's pool of duty lawyers to be contacted.
- If you comply with certain legal conditions, this legal aid is either completely or partially free of charge. You may ask for the form that sets out the conditions for legal aid.

###### B. Prior confidential consultation

- Before the next interview - and within 2 hours after you have spoken to the lawyer from the Bar Association's pool of duty lawyers - you are entitled to a confidential consultation with your lawyer for thirty minutes, which may be extended on an exceptional basis by decision of the interviewer.
- This consultation may take place both by telephone and at the location of the interview.
- If the planned consultation with your lawyer has not taken place within 2 hours, as yet a confidential telephone consultation with the Bar Association's pool of duty lawyers will take place. After this, the interview can start.
- If your lawyer arrives during the interview, he may attend the remainder of the interview.

###### C. Legal assistance during the interviews

- You are entitled to be assisted by your lawyer at the interviews
- Your lawyer will ensure:
  - that your right to remain silent and your right not to incriminate yourself are upheld;
  - the way in which you are treated during the interview, whether or not you are put under any undue pressure;
  - the fact that your rights are explained to you and the regularity of the interview.

If your lawyer has comments about any of these matters, he can have them immediately recorded in the police interview statement.

Your lawyer may ask for a specific inquiry to be made or for a specific person to be interviewed. He may ask for clarification regarding the questions being asked. He may put forward comments regarding the investigation and regarding the interview. He is not allowed to answer in your place or obstruct the interview.

- You or your lawyer have the right to have the interview suspended on one occasion only for an additional confidential consultation. If new elements or offences come to light during the interview, you are also allowed to have an additional confidential consultation with your lawyer. This consultation may last for no longer than 15 minutes.

###### D. Waiver

You are not under obligation to request for a consultation with or for the assistance from a lawyer.

You may waive this right on a voluntary basis and after due consideration, if you:

- are of legal age;
- after you have signed and dated a document to this effect;

— if possible, the interview may be filmed. You can discuss this with your lawyer (see also point 7).

On these matters, you may speak on the telephone to someone at the Bar Association's pool of duty lawyers.

#### E. Derogation

In exceptional circumstances and in case of compelling grounds, the Public Prosecutor or the Examining Magistrate may decide not to grant you the right to a prior confidential consultation or the assistance from a lawyer during the interview. He is required to state grounds for this decision.

### **2. Summary communication of the offences**

You have the right to be told about the offences on which you will be interviewed.

### **3. Right to remain silent**

- At no point can you be forced to incriminate yourself.
- After you have stated your identity, you may choose to make a statement, answer the questions asked or remain silent.

### **4. Letting someone know that you have been arrested**

You are entitled to have a third party notified of your arrest.

However, this may be delayed on compelling grounds by the Public Prosecutor or the Examining Magistrate for the length of time required in the interests of the investigation.

### **5. Medical assistance**

- You are entitled to free medical assistance if required.
- You may ask to be examined by a doctor of your choice. If so, this is at your own expense.

### **Which additional rights do you have during the interview?**

#### **6. Other rights during the interview**

The interview itself starts out with a number of communications. In addition to repeating the summary communication of the offences and your right to remain silent, you will be informed that:

- You may request for all questions asked and for all answers given by you to be recorded in the words used by you;
- You may ask for a specific inquiry to be made or for a specific person to be interviewed;
- Your statements made used in evidence before a court of law.
- During the interview, you may use documents in your possession, as long as this does not cause the interview to be delayed as a result. You may ask, either during or after the interview, for these documents to be added to the police interview statement or to be deposited with the Court Registry.

#### **7. Filming the interview**

- If possible, the interview may be filmed to monitor the interview proceedings.
- This is decided by the interviewer, the Public Prosecutor or the Examining Magistrate.

#### **8. At the end of the interview**

At the end of the interview, you will be provided with the text of the interview for you to read. You may also ask to have it read to you.

You will be asked if there is anything you would like to change or add to your statement.

## **9. Interpreter assistance**

- If you do not understand or speak the language, or if you have hearing or speech impediments and if your lawyer does not understand or speak your language, you are entitled to a sworn interpreter during the confidential consultation with your lawyer. This help is free of charge.
- If you wish to speak a language that is different from the language of the proceedings, a sworn interpreter will be called up to assist you during the interview. This help is free of charge.
- You may be asked to write down your statement in your own language.

## **How long can you be held in custody?**

### **1. 48 hours**

You may be held in custody for no longer than 48 hours.

### **2. Examining Magistrate**

– Within 48 hours, you will either be released or taken before the Examining Magistrate. The latter will decide whether or not you are to remain in custody and whether or not to issue an arrest warrant.

– The Examining Magistrate is under obligation to hear you on the matter first. During this interview too you are entitled to be assisted by your lawyer. The Examining Magistrate is to hear your comments, or those put forward by your lawyer, about the fact that a warrant may be issued for your arrest.

You may waive your right to assistance from a lawyer only if you are of legal age.

– If the Examining Magistrate issues a warrant for your arrest, you have the following rights:

- You have the right to speak to your lawyer without limitation.
- Within five days after the arrest warrant was issued, you will appear before the Committals Chamber, where you may challenge your arrest and the fact that you are being held on remand.
- The day prior before the hearing of the Committals Chamber or the Indictments Chamber you will be allowed to consult your case file.
- Unless you have been given a verbal translation of the arrest warrant, you may request a (written) translation of the relevant passages of the arrest warrant if you do not understand the language in which the proceedings are to be conducted. To this end, you will need to submit a request with the Court Registry of the Court of First Instance within three days after the arrest warrant was issued. This translation is free of charge.
- Your lawyer can explain the further course of events of this procedure in greater detail.
- If you are not a Belgian national, you may notify your consular authorities of your arrest.

**You may keep this explanation of your rights.**

## **EXPLANATION OF YOUR RIGHTS**

If you have **NOT BEEN DETAINED** and are to be questioned as a suspect

### **1. Right to a confidential consultation with a lawyer and legal assistance during the interview**

#### A. When?

- You are entitled to a confidential consultation with a lawyer before the interview and to legal assistance during the interview.
- If the offences on which you are being interviewed are punishable by a term of imprisonment, the procedure set out under C. applies

#### B. Which lawyer?

- You are free to consult a lawyer of your choice.
- You may, subject to certain legal conditions, call on a lawyer under the legal aid system, which is completely or partially free of charge. You may ask for the form that sets out the conditions for legal aid. You are then to request the Bar Association's legal aid office to appoint a lawyer.

#### C. How does the confidential consultation take place?

If you have been sent a written invitation, listing the rights specified under numbers 1 through 4 and saying that you are presumed to have consulted a lawyer before attending the interview:

- You will no longer be granted a postponement as you already had the opportunity to consult a lawyer.
- If you do not seek to be assisted by a lawyer, you must be advised of your right to remain silent before the interview starts (see also point 3).

If you have not been sent a written invitation or have been sent an incomplete written invitation:

- You may, on one occasion only, ask for the interview to be postponed to a later date or time so that you can consult your lawyer.
- You are free to choose to speak to your lawyer on the telephone, after which the interview may begin.
- You may await your lawyer's arrival at the Interview location.

#### D. Legal assistance during the interviews

Your lawyer will ensure:

- that your right to remain silent and your right not to incriminate yourself are upheld
- the way in which you are treated during the interview, whether or not you are put under any undue pressure;
- the fact that your rights are explained to you and the regularity of the interview.

If your lawyer has comments about any of these matters, he can have them immediately recorded in the police interview statement. Your lawyer may ask for a specific inquiry to be made or for a specific person to be interviewed. He may ask for clarification regarding the questions being asked. He may put forward comments regarding the investigation and regarding the interview. He is not allowed to answer in your place or obstruct the interview.

#### E. Waiving this right?

You are not under obligation to request for a consultation with or for the assistance from a lawyer.

You may waive this right on a voluntary basis and after due consideration, if you:

- are of legal age;
- after you have signed and dated a document to this effect.

### **2. Summary communication of the offences**

- You have the right to be told in brief about the offences on which you will be interviewed.

### **3. Right to remain silent**

- At no point can you be forced to incriminate yourself.
- After you have stated your identity, you may choose to make a statement, answer the questions asked or remain silent.

### **4. Other rights during the interview**

The interview itself starts out with a number of communications. In addition to repeating the summary communication of the offences and your right to remain silent, you will be informed that:

- You may request for all questions asked and for all answers given by you to be recorded in the words used by you;
- You may ask for a specific inquiry to be made or for a specific person to be interviewed;
- Your statements made used in evidence before a court of law.
- You are not under arrest and are free to go as you please at any time.
- During the interview, you may use documents in your possession, as long as this does not cause the interview to be delayed as a result. You may ask, either during or after the interview, for these documents to be added to the police interview statement or to be deposited with the Court Registry.

### **5. At the end of the interview**

At the end of the interview, you will be provided with the text of the interview for you to read. You may also ask to have it read to you.

You will be asked if there is anything you would like to change or add to your statement.

### **6. Interpreter assistance**

- If you wish to speak a language that is different from the language of the proceedings, a sworn interpreter will be called up to assist you during the interview. This help is free of charge.
- You may be asked to write down your statement in your own language.

**You may keep this explanation of your rights.**



**Te voegen bij deze aanvraag: documenten - niet ouder zijn dan 2 maanden voor de aanvraag - op naam van de aanvrager en van de personen ten laste (partners, kinderen, andere inwonenden):**

1. attest samenstelling gezin;
2. de recente attestering van het (de) exacte bedrag(en);
3. voor zelfstandigen: laatste aanslagbiljet + attestering boekhouder laatste kwartaal;
4. het attest van de schuldbemiddelaar dient het exacte bedrag van het leefloon te vermelden dat op maandbasis wordt uitbetaald en tevens het exacte bedrag van de vaste maandelijkse kosten (huur, nutsvoorzieningen ...) die door de schuldbemiddelaar bovenop dit leefloon rechtstreeks worden betaald.

**O in aanmerking komt op basis de gelijkgestelde categorieën (art. 1 § 4 KB 18/12/2003):**

- de minderjarige, *minstens op voorlegging van de identiteitskaart of een document te voegen bij deze aanvraag waaruit de minderjarigheid blijkt*

**O in aanmerking komt op basis de gelijkgestelde categorieën behoudens tegenbewijs (art. 1 § 2 KB 18/12/2003)**

- u ontvangt een leefloon of een maatschappelijk bijstand van het OCMW te .....:  
*minstens de geldige beslissing van het betrokken OCMW toevoegen;*
- gewaarborgd inkomen voor bejaarden: minstens het jaarlijks attest van de Rijksdienst voor Pensioenen toevoegen;*
- u ontvangt een inkomensvervangende tegemoetkoming voor gehandicapten: *minstens de beslissing van de minister tot wiens bevoegdheid de sociale zekerheid behoort of van de door hem afgevaardigde ambtenaar bijbrengen (www.handiweb.be);*
- u hebt een kind ten laste dat de gewaarborgde kinderbijslag geniet (niet verhoogde kinderbijslag): *minstens het attest van het Federaal agentschap voor de kinderbijslag toevoegen (Famifed);*
- u bent huurder van een sociale woning in het Vlaams Gewest en het Brussels Hoofdstedelijk Gewest en betaalt een huur die overeenkomt met de helft van de basishuurprijs: *minstens de laatste huurberekeningsfiche toevoegen;*
- u bent gedetineerde: *minstens een bewijs met betrekking tot het statuut van gedetineerde toevoegen, bijvoorbeeld een attest gevangenschap;*
- u bent beklagde bedoeld in de artikelen 216quinquies tot 216septies van het wetboek van Strafvordering: *minstens de nodige bewijsstukken toevoegen;*
- u bent geesteszieke voor wat betreft de toepassing van de wet van 26 juni 1990 betreffende de bescherming van de persoon van de geesteszieke: *minstens de nodige bewijsstukken toevoegen;*
- de vreemdeling, voor wat betreft de indiening van het verzoek tot machtiging van verblijf, of van een administratief of rechterlijk beroep tegen een beslissing die genomen werd met toepassing van de wetten betreffende de toegang, het verblijf, de vestiging en de verwijdering van vreemdelingen: *minstens de nodige bewijsstukken toevoegen;*
- de asielaanvrager of de persoon die een aanvraag indient van het statuut van ontheemde: *minstens de nodige bewijsstukken toevoegen;*
- de persoon belast met overmatige schulden met het oog op de inleiding van een procedure collectieve schuldenregeling:

O de aanvraag geen tegenstrijdigheid van belangen uitmaakt met de belangen van de overige gezinsleden.

*Extra vragen door de rechtzoekende in te vullen (behalve voor de minderjarigen).*

1. *Onroerend vermogen (ongeacht in welk land): ik beschik over*
  - geen woning
  - één eigen woning
  - twee of meer woningen
2. *Gelden (ongeacht in welk land):: het totale bedrag aan gelden in mijn bezit is*
  - lager dan 5.000 euro
  - hoger dan 5.000 euro maar lager dan 20.000 euro
  - hoger dan 20.000 euro maar lager dan 50.000 euro
  - hoger dan 50.000 euro
3. *Rollend materiaal (ongeacht in welk land): (brommers, motorfietsen, auto's) mijn gezin heeft gebruik van*
  - geen gemotoriseerde voertuig
  - één gemotoriseerd voertuig
  - twee gemotoriseerde voertuigen
  - drie gemotoriseerde voertuigen
  - meer dan drie gemotoriseerde voertuigen
4. *Krijgt u hulp van vrienden of familieleden (vb. gratis wonen bij vrienden of familie betaalt uw huur of, ...)*
  - nee
  - ja

Indien u in aanmerking komt voor volledig of gedeeltelijk kosteloze juridische bijstand, betaalt u de volgende forfaitaire bijdragen: (art. 508/17 § 1 Ger.W.)

- per aanstelling van een pro-Deoadvocaat: 20 euro;
- per aanleg van een gerechtelijke procedure: 30 euro.

U moet die forfaitaire bijdrage(n) rechtstreeks aan uw advocaat betalen. Uw advocaat is pas verplicht op te treden na ontvangst van die bijdragen. (art. 508/17 § 3 Ger.W.)

U kan bij wet vrijgesteld zijn van het betalen van forfaitaire bijdragen. (art. 508/17 §§4-5 Ger.W.)

Indien u in aanmerking komt voor gedeeltelijk kosteloze juridische bijstand, betaalt u eveneens een bedrag tussen de 25 euro en de 125 euro. De voorzitter van het Bureau voor Juridische Bijstand begroot het bedrag van de provisie. (art. 508/17 § 2 Ger.W.)

Indien de voorwaarden die u toestaan om een beroep te doen op de gedeeltelijke of volledige kosteloze juridische tweedelijnsbijstand wijzigen, meldt u dat onmiddellijk aan uw advocaat en aan het Bureau voor Juridische Bijstand (art. 508/13 vierde lid Ger.W.).

Indien u door het optreden van de advocaat geldsommen ontvangt die, indien zij voorhanden waren op de dag van de aanvraag tot juridische bijstand tot gevolg zouden hebben dat u niet in aanmerking zou zijn gekomen voor een pro-Deoadvocaat, zal de advocaat u met toestemming van het Bureau voor Juridische Bijstand onder bepaalde voorwaarden een vergoeding aanrekenen (art. 508/19 Ger.W.).

Ondergetekende verklaart dat de gegevens volledig en correct werden ingevuld.

**Datum en handtekening rechtzoekende voorafgegaan door de vermelding 'gelezen en goedgekeurd':**

De advocaat of het BJB dient de aanvraag te voegen bij de stukken in de BJB-module en geeft een kopie aan de rechtzoekende.

## Appendix C – Identification Card for Lawyers



