



EFFECTIVE POLICE STATION LEGAL ADVICE
COUNTRY REPORT 4: THE NETHERLANDS

BY

ENIDE MAEGHERMAN

AND

MIET VANDERHALLEN

SCHOOL OF LAW
UNIVERSITY OF MAASTRICHT

April 2018

1. INTRODUCTION

This Country Report for the Netherlands 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.

Following the verdict of the European Court of Human Rights (ECtHR) in the case of *Salduz v. Turkey* (2008), the Supreme Court of the Netherlands took this ruling to mean that an arrested suspect has the right to consult a lawyer prior to being interviewed by the police. However, according to the Supreme Court, the right to have a lawyer present during the interview could not be inferred from the ECtHR jurisprudence (Supreme Court verdict, 30th June 2009). On 22 December 2015, the High Court recognised that, since their earlier ruling in 2009, the ECtHR had decided in a number of cases that the lack of legal assistance during a police interview can, under some circumstances, constitute a violation of the rights provided by Article 6 of the ECHR, which provides the right to a fair trial. Although the ECtHR had never explicitly stated that not having a lawyer present would be a violation of Article 6, the Supreme Court decided that an arrested suspect has the right to have a lawyer present during the interview, except in cases where there are pressing reasons to limit that right. The suspect has to be informed about this right prior to the start of the interview and they can then waive this right. In the same ruling, the Supreme Court also stated that this right was to be applicable not only to the first interview but to all subsequent interviews. The Supreme Court stated that they expected this rule to be applied starting 1st of March 2016 (Supreme Court Verdict, 22nd December 2015).

Thus, as of the 1st of March 2016, suspects interviewed by the police had a right to have a lawyer present during interviews, regardless of whether they had been invited or arrested. On the 1st of March 2017, the introduction of two laws formalised this right, as well as the rules concerning the lawyers' role and powers and the right to consultation with a lawyer prior to the interview (Ministerie van Veiligheid en Justitie, 2017). It must be noted that only one of the lawyers in the current study was interviewed after the 1st of March. Nevertheless, as there was no detailed regulation on what lawyers were allowed to do prior to the introduction of the law, it is not that they were allowed to do more after the 1st of March 2017, but simply that it is now regulated. The answers provided by the lawyers during the current study were in line with the new laws, thereby suggesting that this is also how they behaved after its introduction.

Previous research has looked at the consequences of having a lawyer present during the interview in the Netherlands. One study, which was conducted prior to lawyers being

given the right to be present during the interview, involved a two-year experiment whereby lawyers attended the first interview (Stevens & Verhoeven, 2010). The study found that suspects who receive legal assistance are more likely to invoke their right to silence, with prior consultation having a greater effect than their presence during the interview (Stevens & Verhoeven, 2010). Another study made use of focus groups to find out about police and lawyers' experiences and opinions. The police were found to have a negative view of what the lawyers' advised their clients during consultation, and they did not understand why lawyers would advise a suspect to invoke his right to remain silent. However, they did acknowledge that when a suspect makes a statement, it appears to contain fewer contradictions and to be more truthful (Vanderhallen *et al.* 2014). That study also found that Dutch lawyers are more likely to advise suspects to use their right to remain silent when they do not have insight into the case file. Furthermore, their findings suggest that the lawyer's position is changing to become more equal to that of the police. On the other hand, another study published in 2014 identified a lack of trust between the police and lawyers (Blackstock *et al.* 2014). Importantly, these studies were conducted prior to the lawyer officially being able to attend the interview.

Several factors are likely to play a role when examining how high quality legal assistance can best be provided in practice. An important aspect of understanding factors which may influence the legal advice given 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 rates. After having established which factors might influence the provision of legal assistance, potential ways of bringing about improvements are examined. In the first instance, it is important to establish whether such improvements would be positively received by the lawyers who would ultimately have to use them. Therefore, in addition to investigating 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 lawyers who have the experience of providing legal advice and policy officials responsible for legal aid. Through their perspectives, the aim is to gain an insight into the factors influencing legal assistance, and the potential for bringing about improvements. By listening to lawyers and policy officials, a deeper understanding of police station legal advice develops, as contrasting priorities come to light.

2. METHOD

Four semi-structured interviews were conducted for the current study. Three of the interviews were conducted with criminal law lawyers who are part of the duty system in the Netherlands. For one of these interviews, two lawyers were interviewed simultaneously, resulting in a total of four lawyers having been interviewed. Three lawyers were located in Rotterdam, and one was located in Maastricht. Two of the lawyers interviewed were female. The fourth interview was conducted with two officials from the Legal Aid Board (Raad voor Rechtsbijstand) responsible for the policy regarding legal aid and legal assistance in the Netherlands. In addition, the statements provided by the interviewees were supplemented with findings from other documents they provided.

The semi-structured interviews were conducted using a topic list which had been divided into a number of 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 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 and analysis led to the emergence of key themes, as well as the identification of differences in understanding or opinion. Unless stated otherwise, all the information outlined in the following section was obtained from either the lawyers or the policy officials interviewed.

3. LEGAL ADVICE AT THE DUTCH POLICE STATION

3.1 Organisation of legal assistance at the police station

When asked how often they provide legal assistance at the police station, all the lawyers interviewed found it difficult to provide an estimate due to the way in which the duty system works. They described how, for each jurisdiction, a rota is made every six months. Each of the lawyers qualified to be part of the duty system will be assigned a certain time slot when they are on duty. Whereas some of the lawyers interviewed stated that the duty slot was either in the morning or the afternoon, the regulations state that the lawyer needs to be available between 7 am and 8 pm, as was noted by the other lawyers. The lawyers can swap slots with colleagues or can ask not to be scheduled in for a particular day but it is

not possible for them to ask for additional days. According to the lawyers interviewed in Rotterdam, they are on duty about once every two months. Therefore, they perform many more consultations in the week they have a duty slot than in any other week. The number of clients assisted in that duty slot will depend on how many suspects need legal assistance and how many lawyers are on duty.

The rota is organised by the Duty Department of the Legal Aid Board (Piket afdeling). As explained by the policy officials interviewed, this department is also responsible if something goes wrong, such as a lawyer failing to appear at the police station after accepting an assignment. The department is therefore staffed between 7 am and 8 pm. The police can enter requests until 8 pm, but any requests submitted after this time will go to the lawyer who is scheduled to be on duty the following day. The policy officials also explained that there has been some discussion about extending the opening hours of the duty department, but pointed out that if this were to happen, then the police would also have to be able to receive the lawyer outside of these times and the prosecution would also have to be available to make decisions on further proceedings. If these other parties are not available, the suspect would still have to remain at the police station, which means there is little added value to be gained in extending the opening hours of the duty department. Furthermore, as the police are not allowed to interview suspects between the hours of 12 am and 9 am, there is a natural end time to the duty hours, as noted by the policy officials.

Notification system. Lawyers are notified of a referral for legal advice through an electronic system, which was described by the interviewees. The policy officials explained that the system is automatic, and that there is no delay in notifications being sent through. Once a suspect is registered as being arrested, a notification is sent to the Legal Aid Board, and transferred to the first lawyer on the duty list. As the duty lawyer, they then have 45 minutes to accept the notification. If the lawyer reject the notification, or fails to accept it in time, it is sent to the next lawyer on the duty list. One of the benefits of the automatic system, as explained by the policy officials, is that the information is logged and can be checked afterwards. For instance, they described how claims have previously been investigated over lawyers claiming that they were not notified of a referral despite the suspect asking for them. These claims were not substantiated by what had been registered on the system, which includes when a preferred lawyer has been requested. Another advantage of the automatic electronic system, as mentioned by the policy officials, relates to the even distribution of cases amongst lawyers. When the police simply had to call a lawyer, certain lawyers received more assignments than others due to their connection to the police. In addition, it was noted that some lawyers would stay at the police station so they were available to receive referrals direct from the police. With the electronic system,

therefore, the policy officials felt that cases are now distributed evenly between the lawyers on duty.

The lawyers explained that they are notified of a request for legal advice by way of an email. They then have 45 minutes to accept the request, which they accept are rarely declined. The policy officials explained the reasoning behind this time frame when stating that if the first lawyer notified fails to accept the request then 45 minutes will have elapsed before it is passed on to the second lawyer. If the second lawyer also fails to accept the request then 1.5 hours would have gone by without the suspect receiving legal advice. At this stage, the duty department becomes responsible for handling the request. The policy officials explained that if this was to happen, they would call the lawyer who was on duty the day before or, failing that, the one who is scheduled to be on duty the day after. The importance of a having a quick response was said by the policy officials to be in suspects' best interests, as they are held in custody without being able to speak to a lawyer. The policy officials pointed out that suspects are likely to experience this delay as annoying, or even as part of their punishment. At this point, the suspect may not fully understand what is happening, and they need to be assured that a lawyer will be with them within two hours.

In the opinion of one of the policy officials, 45 minutes is too long and this time could be reduced. He noted that the lawyers have agreed to be on duty and they should be available all day for duty work and it should not take them 45 minutes to decide whether they want to accept the assignment or not. The reason for giving lawyers 45 minutes to contact their client was that lawyers were not allowed to take their mobile phones into the police station, and once they had finished a consultation they then had time to check their phone and accept the next request. However, lawyers are now allowed to take their mobile phones into the police station and, with lawyers knowing that if they delay they might lose their client, most notifications are accepted within a few minutes. Accordingly, there have been discussions with the Dutch Bar Association to reduce this time limit although, according to the policy officials, the Bar Association was not in favour of this. The policy officials described how the moment the lawyer accepts the request, a message will be sent to the police about the lawyer who will be providing legal assistance, including their contact details. This then allows for communication between the police and the lawyer, at which point, the system is no longer involved. The responsibility of getting a lawyer to the police station is then with the lawyer who accepts the notification. If a client is to be transferred between lawyers, then the lawyers are responsible for making this arrangement, rather than the Legal Aid Board or the electronic system that sent out the official notification. When the lawyer attends the interview, they fill in the declaration form (see Appendix A) in order to receive payment. These changes are not logged in the system because it would become too complicated, and it would also require lawyers needing access to the system.

The policy officials also described how some firms have arrangements where notifications are simply accepted and they then decide amongst themselves who would take that client. The Legal Aid Board is not responsible for arranging a lawyer for any subsequent interviews. The policy officials explained that, although there was discussion about this, it was decided that once contact was made between the police and the lawyer, they could arrange between them when to hold subsequent interviews. They also explained how this arrangement prevents lawyers from not taking cases because they may not be able to attend subsequent interviews. Once accepted, the case is theirs to manage. This idea was supported by the lawyers, as they agreed it is important to have colleagues available who can attend interviews in their place. Several of the lawyers explained that they may, for example, go to the police station instead of a colleague, or ask a colleague to go instead of them. However, it is possible for lawyers to swap cases when they are on duty. The lawyers said that they might have to do this, for instance, if a court case had been listed for the time they are supposed to be on duty.

One of the benefits of the automatic system in the Netherlands is its independence from the police as well as the lawyers, thereby helping to ensure that the distribution of cases among lawyers is fair. The policy officials noted that, in other countries, there is the potential for bias as the police are required to contact lawyers when a request for legal advice has been made. In this scenario, as occurred previously in the Netherlands, it is possible for the police to call on lawyers who will be compliant and let them have their own way. When assuring the right to legal assistance in such a biased manner, the suspect's interests seem to be of secondary importance. The lawyers in this study said that when the Salduz consultation was first introduced, some lawyers got more cases than others, but that the current system now ensures that cases are equally distributed among the lawyers on duty. One of the policy officials mentioned that when the system is temporarily out of order, the news spreads very quickly and some lawyers will go to police stations to try and get cases.

Availability of lawyers. Suspects are able to request that a specific lawyer be contacted. The police will then contact this lawyer first, and he has 20 minutes to accept the referral. The request is also sent via email, although one of the lawyers stated that, in very exceptional cases, the police might call him. The preferred lawyer can be requested when not on duty. If the preferred lawyer fails to accept the request within 20 minutes, the request will go to the duty lawyers. Whichever lawyer ends up going to the police station will then be able to see who the preferred lawyer is, and the proper and courteous thing to do is to then contact the preferred lawyer. However, as some of the lawyers explained, some lawyers might not contact the preferred lawyer, and keep the case for themselves. With a high number of lawyers on the duty list in some jurisdictions, it is perhaps not surprising that there may be competition amongst them. Nevertheless, one lawyer said

that such practices are damaging trust among the criminal law lawyers, and that this can ruin the system for everyone.

In Rotterdam the lawyers said that, at 365, there are a lot of lawyers on the duty list. The duty days are divided between these lawyers and it is not possible for lawyers to request extra days. After the right to legal assistance during the police interview was introduced, the Legal Aid Board discussed with the Bar Association whether the number of lawyers on duty at one time should be increased. This was on the basis that a lawyer would be occupied for some time when accepting a referral and this would create an additional contact point for the client, but the decision was to leave the duty scheme as it was. However, according to the policy officials, the lawyers were told that they should have a support system so that when there are lots of requests, they can transfer duties to other colleagues. It was their understanding that most lawyers make use of this, which was supported by the lawyers in the current study.

The policy officials explained that the system is based on averages, and that it is no use to schedule 10 lawyers to be on duty when there is only work available for one. They explained that this would lead to lawyers getting very few, if any, notifications. They anticipated that lawyers would then no longer keep their day free when on duty. However, if the police notify them in advance of any events which is likely to lead to an increase in the number of arrest, such as a football match, then an effort would be made to have more lawyers on duty than usual.

3.2. Pre-interview disclosure

The lawyers explained how they are notified by way of an email when there was a request for legal assistance. They then have 45 minutes within which to accept the request. When receiving the email, one lawyer said that he was notified of the client's name, whereas the other lawyers said they received a code. The code from the first email has to be entered into the second email and more details are subsequently provided: the client's name, where they are being held, what for, and whether the assistance requested is for the consultation, the interview, or the appearance before the investigative judge. The information regarding what the client was arrested for is usually limited to the article of law of the suspected offence. This means that there is no information about when, or where, the alleged crime occurred. The lawyers then contact the police station to arrange a meeting with their client. One lawyer said that logistics are important when deciding whether to go to the police station, such as having several clients to attend to.

The lawyers described having very little information prior to the consultation. Two of the lawyers explained that, because of the difficulty in obtaining disclosure, for instance, they no longer try to get more information at this stage. They said that they would request disclosure if it was more likely that information would be forthcoming. They stressed that

it was important to have information when advising clients, as knowing what evidence the police have will influence the advice given. This view was previously expressed by lawyers in a focus group in another study (Vanderhallen *et al.*, 2014). The lawyers interviewed for the current study said their advice is based solely on what the client tells them and the very limited information contained in the notification form. They noted that in some cases they can later be confronted with evidence which gives a very different version of events, mainly because some of their clients are not always keen to say what happened. One lawyer did say that he would tell clients that the advice given is based on what they have told him, but also point out that it is not yet known what evidence the police might have.

One lawyer explained that obtaining additional information from the police is to a great extent dependent on the police officer involved. In general, he felt that the police were starting to notice that providing additional information works better for all parties. This lawyer also stated that it is not practically possible at present to obtain disclosure through the official channels at such an early stage. After having accepted the request for legal assistance, the lawyer has two hours to consult with their client, thereby making it practically impossible to submit a request for disclosure through the official procedures, let alone have time to receive the information.

Another lawyer acknowledged that, for some lawyers, the need for information at this point is greater in some cases than for others. She felt that having disclosure prior to the consultation does not make a difference in some cases. When there is a lot at stake, for instance, she would advise clients to invoke their right to remain silent. In her opinion, this advice would not change if he had sight of the case file. Based on this answer, it seems that lawyers may hold differing views on this point. One of the other lawyers explained that his advice might change depending on what evidence the police have in less severe cases. For instance, if there is CCTV of the client shoplifting, he said there is no point in making things more difficult by making no comment. In this scenario, having seen the CCTV he would advise his client to respond to police questions, which would ultimately lead to more efficient proceedings.

The policy makers acknowledged that they were aware of lawyers' complaints concerning the lack of disclosure provided to them. In their opinion, this is due to the fact that the police do not yet have much information at this stage of the investigation. Indeed, they said that there may not be much more information than what was provided to the lawyer in the notification of the request for legal assistance. The policy officials seemed to be understanding of the police's hesitation, as the information they have may be vague and releasing this could interfere with the investigation. They also commented on an experiment which had been conducted with a message box system that had previously taken place. This system had allowed lawyers to obtain more information more quickly.

The policy officials felt this system had worked quite well, which was also supported by one of the lawyers. The evaluation of this experiment was still ongoing.

The problem with obtaining disclosure seems to extend beyond the information provided prior to the first interview. It has been argued that informing the suspect and his lawyer about the evidence in a case not only serves the interests of the defence, but that it can also contribute to an efficient investigation (Boksem, 2016). One of the lawyers commented as to the difficulties he experiences with the procedure when officially requesting information using article 30 of the Code of Criminal Procedure. According to this article, the suspect has a right to be informed about the contents of the file as of the first interview following their arrest. This has to be requested, and it is provided by the prosecutor. The prosecutor is allowed to deny the request if it is not in the best interests of the investigation. However, one of the lawyers said that the prosecutor often does not know about cases at the time requests are made, which means they are more likely to not disclose the information. He added that, in practice, insight into the case file is often only obtained after an interval of several weeks. By this time, the information deficit has caused a significant loss in efficiency.

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

"There is a difference between legal assistance and effective legal assistance"

3.3.1. Consultation

After the lawyer has accepted a case, a confidential discussion with his client will take place. There are various ways in which consultations can occur, namely via the telephone, video-conferencing, or at the police station. How lawyers viewed their role during the consultation will later be outlined.

Via video-conferencing. In this study, three out of the four lawyers interviewed worked in Rotterdam, where video-conferencing can, in some cases, be used to facilitate confidential consultations with clients at the police station. These arrangements were implemented following a pilot study run in several areas in the country. The lawyers explained that there is a specific location where facilities have been set up to allow for confidential video-conferencing. Lawyers who are on duty can work from this location, which is referred to as 'desk-duty'. From this location, lawyers can talk to their clients via a video-link, which is established within the police station where the client is located.

As explained by the Rotterdam lawyers, only some cases will be dealt with via video-conferencing. The more serious cases would be sent to duty lawyers but not those on desk-duty, so that these consultations take place face-to-face. Both the lawyers and the policy officials agreed that not all cases are fit to be dealt with via video-conferencing. The lawyers also said that they can decide to conduct the consultation face-to-face if they feel the

video-link is not suited to the client or the case. A face-to-face consultation would be required, for instance, if they felt the client was not in a sound mental or physical state. In this situation, the lawyer would have to find a colleague outside of desk-duty to go to the police station and conduct the consultation in person. It is for the lawyer to decide whether a face-to-face consultation is required, and so it can vary as to when this is deemed to necessary.

The lawyers explained that when on desk duty, they are not allowed to leave the location. When the use of video-conferencing was first introduced as part of the pilot, compensation was provided to the lawyers for the time spent at the location but this is no longer the case. One of the lawyers said that not being allowed to leave was being criticised and some lawyers would leave the location to attend in person at the station. The lawyers said that being unable to leave the location meant that the lawyer who provides the consultation is not allowed to attend the interview. While he would inform the lawyer who attends the interview about what was discussed in the consultation, this arrangement is far from satisfactory. Indeed, while the lawyer established a rapport with his client during the consultation this is of little or no benefit to the lawyer-client relationship during the interview.

At the police station. One of the lawyers interviewed did not work in Rotterdam, and therefore did not provide consultations via a video-link. In his area, he described there being a shortage of rooms available where confidential consultations can take place. At his usual police station, he said that there is only one room which is used for both consultations and for conversations lawyers have with their clients following the interview. He was critical over the facilities in the room, with a glass divider separating the lawyer from his client. While the lawyer recognised that the divide was installed due to safety concerns, he said that this made it difficult for him to connect with his client; he could not shake their hand, for instance. Moreover, he describes having to use an intercom when speaking to his client, which was not practical and caused concerns about the privacy. The lawyer again emphasised this point when describing how an interpreter is included in the consult. The interpreter, who could be located anywhere, is also included through the intercom. This means three people are talking over one line, which presents difficulties. There are also confidentiality issues raised with the intercom being connected to an outside phone line. In addition, the lawyer pointed out that the intercom is used to contact the police at the end of the consultation. Essentially, the only form of communication between the client and his lawyer is a line which is used to communicate with different parties, including the police, which the lawyer found disconcerting.

One aspect lawyers seemed content with overall was the length of the consultation, as they felt they are given sufficient time to talk to their client. Some of the lawyers mentioned that because they tend to have very little information at this stage, the discussion

concerning what happened would be limited. Several lawyers also mentioned there being a shortage of rooms available for consultations, and so keeping the discussion reasonably short would reduce the time others have to wait. Although some lawyers mentioned there was an agreement on a 30-minute limitation to the consultation, no one had experienced running out of time or the police ending the consultation before it had finished. One lawyer said that the consultation may be shorter when speaking to the client over a video-link as there are likely to be many more clients to speak to. He also acknowledged a tendency not to discuss details of the case, because of issues of confidentiality. The policy officials were surprised that some lawyers had complained that 30 minutes was not enough time when presented with research findings that indicate consultations in practice do not last this long (Blackstock *et al*, 2014).

One of the lawyers provided legal assistance to young suspects, where the time limit for the consultation is also 30 minutes, even though more time is likely to be required in explaining everything to them. It is not possible to provide consultations to youths via video-conferencing, although some attempts had been made to introduce this but these were resisted by the lawyers. A lawyer interviewed in this study explained that, while young people are more familiar than adults with virtual communication, they require additional support because they are vulnerable due to their age and are more likely to be intimidated by the criminal justice system.

Telephone consultation. Telephone consultations are not common. One lawyer said that telephone consultations had been more common but there were limitations, particularly in relation to there being no guaranteed confidentiality. The lawyer said that there is no legal reason why telephone consultations should be forbidden, but it is not a satisfactory way for a lawyer to provide quality legal advice. There was one case where he said he had consulted with a client over the phone, but this was someone she had known for a very long time. Meeting face-to-face, she said, is important, particularly from the client's perspective, when needing to build a relationship of trust with their lawyer. In practice, lawyers in the Rotterdam region acknowledged that due to the high number of clients they deal with, it is not possible to meet with all their clients. Although face-to-face consultation remains the preferred form of contact, the video-link is seen to offer a better alternative than telephone consultations.

Telephone consultations are not remunerated, although some lawyers said that there were lawyers who would provide telephone consultations and claim the points for financial reimbursement as if they had spoken to their client face-to-face. It is because the Bar Association is not in favour of telephone consultations that the Legal Aid Board does not remunerate these. The policy officials said that they had taken legal proceedings against a lawyer who had given a consultation over the phone and wanted to be reimbursed. They won the case, reinforcing the fact that consultations should not take place over the phone.

In the future, however, the policy officials felt that telephone consultations could be allowed, but while the Bar Association is against this, and with no system to ensure that this could function properly, telephone consultations are not funded.

Lawyer's role during Salduz consultations. When using the video-link to provide the consultation to the client, the lawyers stressed that they need to reassure the client that the conversation is confidential. As it is difficult to build trust without face-to-face contact, it is important for the client to know that the video link is secure. In addition to building trust, lawyers described their role during the consultation as mainly being informative. He would explain the criminal process and his role as a lawyer. Furthermore, he would take into account the client's best interests when advising whether he should make a statement or invoke his right to remain silent. Such decisions, he acknowledged, are dependent on the nature of the case and the extent to which he has been given information. When dealing with minor shoplifting offences, for instance, these will be less complicated than when dealing with more serious offences where the lawyer said he would be more likely to advise clients to invoke the right of silence from the outset.

Another lawyer said his approach largely depended on whether he knew the client. When consulting with a client already known to him, he said that this would be a short conversation, involving discussing the alleged offence and what tactics they should adopt. In contrast, when consulting with a client for the first time, he feels that he also has to take on the role of a social worker. This would involve reassuring the client and building a relationship of trust. He would still try to keep the conversation short, as in his experience clients can only retain so much information.

The lawyers said that the information provided by clients during the consultation could influence the advice given. If there is no additional information provided by the police, his advice would generally be to invoke their right to remain silent. The more complete the picture they have, particularly when receiving information from the police, then the less likely they are to advise clients to remain silent. This is in line with previous research where lawyers expressed this opinion, although at that time they were not allowed to be present during the interview (Blackstock *et al.*, 2014). Being allowed to attend the interview, however, does not seem to have changed the lawyers' decision when advising clients to remain silent. The lawyers explained that this has a lot to do with tactics – as the lawyer has an information deficit when compared to the police. In addition to being dependent on the police for information, it remains unclear what evidence the police have against their client. Ultimately, the lawyers aim to treat a case as strategically as possible. If he does not know what the police know, he cannot assess the harm that could be done by his client making a statement. Therefore, the lawyer will try and find out what is known by the police after hearing his client's version of events. If he were to find out that the defence's case is hopeless, he could ask to speak to the client again so they can adjust their strategy. This

is usually allowed, particularly as the police increasingly seem to realise that they do not, per definition, have opposing interests.

3.3.2 Legal assistance during the interview.

The lawyers interviewed raised several factors they consider to be important when providing legal assistance to a suspect during an interview. Firstly, there is the question of whether the lawyer should attend. Secondly, how the lawyers viewed their role was discussed, including their relationship with the police and what they consider to be important in order to help their client. Finally, the lawyers described what happens at the end of the interview.

Attending the interview. As noted above, when providing a consultation via video-conferencing, the lawyer cannot attend the interview. If they feel someone should attend, they must arrange for someone else to go to the police station. To some extent, this arrangement is historic because when video-conferencing for the consultation was introduced, the lawyer was not allowed to be present in the interview. Now this is allowed, the system no longer works effectively. When another lawyer goes to the police station, the lawyer who did the consultation would have to inform the lawyer attending the interview of what was discussed during the consultation but, the lawyers explained, this does not always happen. If the advice was to invoke their right to remain silent, for example, the lawyer attending the interview does not necessarily have to know all the details. Nevertheless, the lawyers said that when a case is transferred to another lawyer, they would be informed about what has happened in the case.

The police may not start the interview immediately after the consultation, because they may have to conduct other interviews first. Some lawyers said that when the police are busy it can take a few hours before the interview commences. They said that it helps if they can agree with the police beforehand when the interview is due to start. If it is to be a few hours later, the lawyers said they could leave and come back to the station at the appointed time. The lawyers said that it was also possible after reading the notification of the referral to contact the police and agree a time when the interview is to take place. The lawyer could then go to the station right before the interview.

Some lawyers said that they have a say when liaising with the police over when an interview is to take place. As lawyers are usually very busy dealing with cases, as well as when they are on duty, both the police and the lawyer need to be realistic when arranging interviews. It is important, therefore, that these practical matters are discussed. The lawyers have a slight advantage here, as the client is less likely to talk to the police if the lawyer is not present. The lawyer also has the advantage that a statement made after the suspect's right to legal assistance has not been respected will be problematic when used as evidence. Nevertheless, conflicting agendas still present an issue when trying to agree

when to interview. Lawyers acknowledged that, in light of the client's best interests, it can be better to choose not to attend an interview so that it can happen sooner, as the suspect may then be released sooner. In such a case, delaying the interview to make sure the lawyer can be present would have little added benefit.

One lawyer made it clear that he does not always consider it necessary for him to attend the interview. In a lot of his cases, he knows the client well, and knows what they will do with his advice. In cases where it makes no difference, he would advise him to invoke their right to silence, because he finds this a better tactic than talking to the police. In this case, it is not necessary for him to be present during the interview. He also said that he knows how clients he has known for a long time will act under certain circumstances and that he would agree on a strategy with the client during the consultation, which would then be followed during the interview. In his experience, a lawyer being present changes the dynamic of the interview, which leads to the police being more careful. He feels that legal assistance during the interview should not be chosen simply because it can be; it should always have an added value. However, if a client asks for him to be present, he would attend the interview. This reasoning was also supported by the Legal Aid Board, who felt that lawyers may attend interviews because they are dependent on the remuneration rather than deciding when it is necessary to do so.

Role during the interview *"If I am there to assist the client, I should be able to do so, regardless of how often this requires an intervention"*

As previously explained, lawyers in the Netherlands have been allowed into the interview since the 1st of March 2016, but this was only enforced by law as of the 1st of March 2017. Therefore, such regulations over lawyers' behaviour are novel. The lawyers interviewed before the 1st of March 2017 made it clear that at that time there were no national regulations and some lawyers said that the European Directive (2013) had been interpreted differently by the different parties. The police had their rules and the lawyers had their views on wanting to adopt a more active role. One lawyer explained that everyone was a bit taken aback when they were first allowed to be present during the interview as they had been asking for this right but were then not sure what to do with it once it was received. The lawyers interviewed felt that lawyers should ensure that their clients can exercise their rights in practice, which is proving to be difficult, particularly if clients have been advised to waive their right to have a lawyer present.

One of the lawyers explained that the first phase is now more important compared to how it used to be. Whereas lawyers used to only play a role after the suspect had been seen by the investigative judge, they can now be present from the beginning with the Salduz consultation, and if necessary, the interview. A lot of progress has been made, but the question now is how it should be executed and maintained. According to one lawyer, interviews are not as important as they used to be, due to the fact that the police now

gather more evidence for the interview, which means they are not so reliant on the suspect's statement. As the police are relying less on interviews for proving cases, the lawyer thinks they have adopted a different attitude; they have fewer problems with the lawyer's presence. However, he also said that when an interview is required by the police to help prove a case, the tension rises in the interview and he tends to intervene more quickly.

One lawyer commented on the importance of lawyers having a more active role by comparing the police interview to a trial setting. The trial usually also involves a form of questioning by the judge and the lawyer is allowed to play an active role. In both situations, the lawyer is there to protect the best interests of their client. If something is happening which the lawyer does not agree with, it should be possible to intervene. One lawyer explained that the client may need time to process what has happened, particularly where victims are involved. His role can then entail trying to get the police to take a step back. In the lawyers' experience, simply being present helps to support clients, and it can be helpful to explain to them that the role of the lawyer is sometimes to sit and observe, which helps to control clients' expectations.

All lawyers described their role as being more passive than they would like. They said that the European Directive (2013) meant that the lawyer is allowed to sit next to the client, make comments or ask questions before and after the interview, and interrupt the interview to have a discussion with their client, and to see evidence which the police put before the suspect. Although this is more than lawyers were allowed to do in practice, their role remains more passive than they would like. For instance, the police believe that the lawyer should only intervene once, whereas lawyers feel they should intervene as often as necessary to properly assist their clients.

Relationship with the police. Some lawyers said that the police do accept the lawyer intervening more than once, but it depends on the people involved and the interaction between them. He described the interviews as requiring cooperation, as the police have a different role to fulfill. According to some of the lawyers, clear agreements between the parties can help to improve the interaction, leading to less resistance from the police when intervening. However, at the time of these research interviews, the police had the upper hand when trying to reach an agreement with the lawyer, as there were no legal regulations as to what the lawyer was allowed to do. As previously noted, since March 2017, the role of the lawyer has been more regulated. Nevertheless, several lawyers said that they tended to make agreements with the police beforehand, but this depended on their cooperation.

In one lawyer's opinion, there is little benefit for the police in attempting to remove the lawyer, as the client is then more likely to invoke their right to silence. Another lawyer pointed out that removing the lawyer is likely to have adverse consequences for the evidential value of the statement made. Although all the lawyers said they personally had

never experienced such problems with the police, several had heard stories about other lawyers having these problems. One lawyer commented that there is still a lot of distrust from police officers, as many feel the lawyers are undermining their work. However, in the lawyer's opinion, the lawyer who informs the client about what is happening is more likely to encourage them to cooperate, thereby assisting the investigation.

All lawyers interviewed made it clear that their relationship with the police has a significant influence on what the lawyer will be able to do, and it is important therefore to establish good communication and rapport. In their experience, respecting each other's interests will result in better understanding and cooperation. According to the lawyers, there are various things which can influence their relationship with the police, including the personalities involved. As noted above, younger police officers tend to stick to the rules more closely. The type of case can also have an influence, particularly when dealing with serious cases, where the police follow the rules more closely and the lawyers are more likely to advise clients to remain silent. One lawyer said it was important for them to be aware of any tension in the interview and to try and keep things under control. Overall, the lawyers felt the police acted appropriately, which could be an indication of improving relations between the police and lawyers. This is in line with previous research which found that having a lawyer present tended to discourage police officers from intimidating suspects (Stevens and Verhoeven, 2010). Based on the generally positive descriptions of encounters with the police provided by the lawyers, it appears that the need for cooperation expressed by the lawyers is also recognised as beneficial by the police.

Interrupting the interview. The lawyers' said that they are allowed to ask for an interruption to have a short discussion with the client, to ask to note certain issues in the written record of the interview, and to ask to see evidence which is placed before their client. If the police do not allow these requests, the client can choose not to answer any more questions, which emphasises the need for a positive interaction between the different parties. The lawyers said that the aim is not to interrupt every time a critical question is asked, because this is inherent in a police interview. One lawyer said he had no desire to take control of the interview but he would like to be able to have a conversation with his client if he was having difficulties in knowing how to respond to a question. Another lawyer agreed lawyers should not interrupt too often, and that there needed to be a clear and reasonable justification when doing so. For instance, if the officers kept repeating the same question, or if he noticed his client having difficulties in coping with the interview. One of the other lawyers said he would stay quiet if the interview was going well, but that he would intervene as soon as he considered it necessary. His experience of intervening was similar to that of the other lawyers, that this only occurs when it is reasonable to do so, which also encourages the police response to be reasonable too. He said that if a client was deviating from the strategy agreed, or he was giving answers intended to placate the

police, he would give a non-verbal signal which would indicate to the client the need for a confidential discussion. In the discussion, he would discuss the strategy agreed with the client, what issues had arisen in the interview, and advise them as to how to proceed. The lawyer stressed, however, that he would not try to stop his client from talking to the police if the client chooses to do so and this was against his advice. In general, it seems the lawyers have varying approaches when intervening, but nevertheless agree on needing a good reason to do so. Such an approach could have arisen out of the initial testing of boundaries after lawyers were allowed to be present in police interviews.

When asking for an interruption, it is possible to talk to the client in private. According to some of the lawyers interviewed, the police have a rule that allows for only two interruptions, regardless of the length of the interview. Lawyers feel they should be able to ask for an interruption whenever they feel this is required. One lawyer said only one interruption was allowed, and that the police might be difficult about allowing this if it is requested at a critical moment. Another lawyer said that the police prefer not to have more than two or three interruptions, but that they will allow more if required. There is no time limit on the length of this "time-out", or consultation. In some cases, the police will leave the room and leave the lawyer to speak to their client in private. Going back to the room where the confidential consultation took place is an option, but a lawyer said this could be a hassle if it was a long way away, and so interrupting the interview was not ideal. Suspects who do not have a lawyer present can interrupt the interview to speak to them. This is usually facilitated via a police officer's mobile phone and, once again, there are issues over confidentiality with the lawyer not knowing who is present. Due to this lack of privacy, the lawyers said they would not discuss the case in detail with the client but give general advice. There is no guarantee that if a client asks to speak to a lawyer that this is arranged immediately. In the lawyers' experience, it is rare for clients to contact them during the interview but one lawyer said that the police are becoming more flexible in allowing clients contact with their lawyer, although this is usually in a later stage of interviewing.

Written record. Checking the written record was considered to be one of the most important tasks for a lawyer. If a good relationship with the police has been established, the lawyers say that they are usually able to be critical of the written record. However, this can be a lengthy process. One of the lawyers described that when reading through the record, there may be something which she thinks was said differently, or which may allow for different interpretations and it could be problematic when he points this out. In practice, the original written version of the interview is printed out and the lawyer can read it through with his client and make comments if necessary, and the record would then usually be changed. If the change is not agreed, it will be written down on the record as a comment made by the lawyer. The lawyers generally had positive experiences with the willingness of the police to make changes. The lawyers might also want certain details added to the

written record which might have been left out because the police did not consider them to be important. The role of the lawyer is extremely important in this regard, as the written record will form the evidence for the proceedings. One lawyer explained that later complaining about something that happened during the interview would be the start of a lengthy procedure which would be of little value. The lawyers also acknowledged that their presence during the interview helps to legitimise the statements made and it is therefore important that the written record reflects what was said during the interview.

After the interview. All the lawyers said they would speak to the client after the interview. They described it as a sort of debriefing about how the client feels and how the interview went. If evidence was disclosed during the interview, the lawyer might be able to make a better assessment as to what will happen next (e.g., if the client will continue to be detained or not). One of the lawyers said they would ask the client to think about what other evidence the police might have against them based on what had been disclosed during the interview. One lawyer pointed out that if he knows he will not be able to attend any further interviews, he would use this opportunity to discuss the strategy to be adopted. This conversation should be confidential, and in general, the lawyers said this was the case in practice. It might take place in the same room as the interview or the room used for the Salduz consultation. There is very little contact between lawyers and the police immediately after the interview. One lawyer described this contact as being functional, e.g., to find out what happens next and for the lawyers to ask the police to keep them informed of progress. Some lawyers said they might call the police later to find out if the suspect is appearing before the prosecutor. As explained by one of the lawyers, it may be necessary to ask for the case file if the suspect was not brought before the investigative judge, because the client might have to justify himself at a later stage. The issue of obtaining evidence, referred to previously, is relevant at this stage, as one lawyer expressed frustration when trying to obtain information via the article 30 procedure. He described how he would write a request, after which it could take a month before he receives sight of the case file. In the meantime, a lot could have happened. Therefore, keeping the lawyer informed, both about further proceedings as well as the contents of the case file, appears to be an area where improvement is required.

3.4 ZSM procedures

When asked about their contact with the police, the lawyers raised concerns over the ZSM procedures¹, which were introduced nationally following a pilot in 2011. The aim of these

¹ ZSM can be defined as “Zo snel, slim, selectief, simple, samen, samenlevingsgericht mogelijk”, which can be translated as, as fast, selective, smart, together, and society-focused as possible” (<https://www.om.nl/vaste-onderdelen/zoeken/@24445/factsheet-zsm/>). Another definition sometimes used is “zorgvuldig snel maatwerk”, which can be translated as careful, quick, and tailored (<https://www.om.nl/actueel/werkbeeld/video/2013/strafrecht-volgens-0/>)

procedures is to handle common, low-ranking crimes, in a fast, simple, smart, and careful manner out-of-court. One definition specifically mentions that treatment of cases should be tailored to the case itself. The maximum punishment for these crimes can be no more than six years imprisonment. The procedure aims to deal with simple cases in six hours. This is achieved by finalisation methods adopted by the police and the prosecution, including the offer of a non-custodial penalty without the involvement of a judge (e.g., payment of a fine, community service, compensation for damages to the victim, revoking license) (Aanwijzing OM-straftbeschikking, 2015). In accepting this penalty, the suspect has to admit the offence and the penalty is added to their criminal record.

Suspects in the ZSM procedure have the same right to legal assistance as other suspects. They are also allowed to consult a lawyer once they have been offered a penalty. However, during the pilot, this option was rarely used by suspects (Jacobs et al., 2015). Although this could have been due to the lack of time available in these proceedings. The lawyers in this study pointed out that they were not informed about the continuation of proceedings following the first interview. One lawyer stated that he might be told if he asks explicitly, but even then, the changing of duties between officers could result in him not being informed. Another lawyer explained that, if the case is brought before the investigative judge, the lawyer will usually remain involved in the case. However, if the case is not brought before the investigative judge, but is dealt with through a ZSM procedure, the lawyer is rarely informed. Ideally, the lawyers would be informed before the client accepts the penalty. As outlined by one of the lawyers, the ZSM procedure is completed once the suspect accepts the penalty. However, if they want to challenge the penalty, they have 14 days to appeal, and the case will go before a judge.

The lawyers all stated that their not being informed of the ZSM procedure was problematic. One lawyer said that suspects might accept the penalty without consulting a lawyer, only to find out afterwards that there was insufficient evidence. This is supported by the findings of Knigge and de Jonge van Ellemeet (2014), in which several cases were identified as having insufficient evidence to determine guilt beyond a reasonable doubt. In such cases, one lawyer pointed out that they would have to have sight of the case file to achieve the required equality of arms. Without knowing what evidence the police have, the lawyer is unable to properly advise their client on whether they should accept the penalty offered. One lawyer said that, although there is now a requirement that the lawyer should be consulted on whether to take the penalty offered. However, in practice, the lawyer said that the police do not always tell them about the ZSM procedure, and that lawyers are becoming less involved, which is receiving a lot of criticism. Also, due to the novelty of ZSM procedures, he said that clients often do not fully understand what is happening. For instance, they may not be aware that accepting the penalty equates to admitting guilt, which leads to them having a criminal record.

Another problem, which is not limited to ZSM procedures, is when suspects waive their right to legal assistance to the police or to the prosecutor. Some of the lawyers expressed concern that suspects do not usually speak to a lawyer when wanting to waive their right to legal assistance. Currently, the lawyer would find out that the client waived their right at the client's hearing for prolonging detention. In ZSM cases, there would be no contact with a lawyer at all. In some cases, the lawyer may agree that it was not necessary for him to be present, but this largely depends on the client. The lawyers said that the police could raise a number of issues which could discourage suspects to waive their right to legal assistance. To try and make sure that the procedure is not biased, they feel that a lawyer should be present when the suspect decides whether to have legal advice. However, one of the lawyers acknowledged that there would be some logistical issues in involving a lawyer in the waiving process. This would increase the amount of contact with the lawyer, and it is unlikely that there is enough capacity to execute this properly. Nevertheless, one of the policy makers mentioned that changes are imminent in this regard as the Minister of Justice (who has since stepped down) was attempting to implement the requirement for suspect to have to waive their right to legal assistance to a lawyer, rather than the police or the prosecutor (Van der Steur, 2016). According to the policy officials, research is currently being conducted into the practical and financial aspects of implementing this change.

4. STRUCTURE OF LEGAL AID REMUNERATION AND IMPLICATIONS FOR QUALITY

During the research interviews, it became clear that most criminal lawyers in the Netherlands work for legal aid. The lawyers interviewed had identified some concerns, which included the lack of having a means and merits test as well as the level of remuneration provided for attending suspect interviews, which they considered to be insufficient. Both the lawyers and the policy officials' viewpoints on these issues will be addressed following an explanation of how legal aid is organised.

4.1 Organisation of legal aid.

In the Netherlands, every arrested suspect has the right to financial legal aid. Suspects who have been invited do not have this right. The letter sent to suspects which invites them to the station can state that they will be arrested at the police station. If so, they would then have the right to a consultation funded by legal aid, regardless of whether they knew they were to be arrested beforehand. However, it is not possible for suspects who have been told they are going to be arrested to get legal aid for the consultation if they have met with a lawyer prior to going to the police station. The lawyers interviewed stated that the majority of suspects are arrested and thus, financed by legal aid. Furthermore,

they did not feel their role was any different for those who had been arrested or those who had been invited.

Clients are also able to choose their own lawyer and have this financed by legal aid, provided the lawyer is a registered member of the duty system. On the legal aid form, the lawyer has to indicate whether they were acting as the preferred lawyer (see Appendix A). One lawyer mentioned that, although it is very rare, a lawyer is allowed to ask a regular client to pay. However, if the lawyer is not specifically requested by the suspect, this is not possible. Similarly, if the lawyer is not a registered member of the duty system, the client will have to pay their normal rate. There is no means test to determine whether someone is eligible for legal aid. However, as of the 1st of March 2017, a measure has been introduced which allows for the costs of legal aid to be taken from a client who has been convicted by the highest instance. Unlike the initial legal aid provided, this would be subject to a means test (Ministerie van Veiligheid en Justitie, 2017). However, one lawyer complained that this test makes no difference to what the lawyer is paid, as the convicted client would simply pay the amount paid by legal aid, rather than the lawyer's hourly rate.

In the current system, suspects receive legal aid so long as they are being detained, and they do not have to take any action to get a lawyer appointed. They can request their own lawyer, at no cost to them, provided the lawyer is registered for the duty system. Those who are not detained following their appearance before the investigative judge can also receive legal aid, but this is subject to a means and merits test. Legal aid provided to the suspect in this stage of proceedings is referred to as "additions". Both the means and merits test for non-detained suspects and the appointing of a lawyer to those who have been detained is done by the Legal Aid Board. According to the interviewed policy officials, the means and merits test is based on an individual's taxable income and capital. In order to conduct the means and merits test, the Legal Aid Board has a direct connection electronically with the tax services, thereby avoiding the need to make a request for this information.

Several of the lawyers felt the system was not entirely fair, and that a means and merits test at an earlier stage could be useful. However, they also acknowledged that being deprived of one's liberty is very invasive, and they understand the benefit of not having to worry about who will pay for the lawyer. Nevertheless, the fact that the vast majority of clients are paid for by legal aid creates problems for lawyers, particularly as some lawyers acknowledged, it can be a struggle to keep a firm going. The legal aid remuneration is significantly lower than the hourly rate lawyers would normally be paid, as noted by the lawyers interviewed. The legal aid system uses a point system, where each part of the procedure is compensated with a set amount of points, and a point is worth around 100 euros per point. For the Salduz consultation, the lawyer receives 0.75 point. Another 0.75 point can be earned for the prolonged detention hearing, and 1.5 points can be earned

when the suspect is brought before the investigative judge. The lawyers generally felt this was sufficient for the time spent on providing police station legal advice.

4.2 Remuneration

However, there was agreement among the lawyers that the remuneration for attending police interviews is not sufficient. For the interview phase, lawyers receive either 1.5 points, for less serious cases, or 3 points, for more serious cases. The remuneration is not dependent on the length or number of interviews, which was considered to be problematic by some of the lawyers interviewed. It is also possible for lawyers to attend one interview and receive the full remuneration, in which case there is no financial benefit in them attending the remaining interviews. Not allowing these financial factors to influence their decisions requires some idealism on the lawyer's part. One lawyer, for instance, admitted struggling with these decisions. He explained that there had been occasions where he could not justify attending an interview. For some cases, the decision not to attend was easier than in others. However, if the client requests the lawyer to be present, the lawyer has no choice but to attend the interview.

The importance of providing adequate financial compensation has been said to be key to fulfilling suspects' legal rights (Boksem, 2016). Although the lawyers felt that remuneration should not influence the quality of legal assistance, some acknowledged that a lawyer may be more inclined to advise a client to invoke their right to remain silent, as this was likely to involve a shorter interview. Similarly, they mentioned that in cases where they feel the client does not necessarily need their assistance, they would be less inclined to attend the interview. One lawyer acknowledged that while lawyers being influenced by the level of funding was definitely a problem, few lawyers would admit to this. When speaking to the policy officials, they acknowledged that there was criticism over the amount of points given for each of the different activities. However, after having conducted an evaluation of the level of remuneration, they were found to be adequate. Another evaluation is currently looking at the remuneration available in relation to police interviews and this could lead to changes being made. The policy officials felt that the remuneration was sufficient when compared to other European countries.

The duty system is performance based. It is dependent on what is available, which also means some duty days will be a lot more profitable than other days. For the consultation provided via video-conferencing, there used to be payment made for the time spent at the location, but this is no longer the case. However, remuneration for the video consultation is equivalent to that for a face-to-face consultation. In addition, the lawyer does not get compensated for travelling to the police station. Another problem highlighted by the lawyers, was to try and find parking near the police station. As explained by the

policy officials, these logistical issues were instrumental in the decision to use video-conferencing.

The policy officials did not seem to share the lawyers' opinion that the remuneration is insufficient. They pointed out that each point is seen as being equivalent to one hour of work. In other words, for the consultation, 45 minutes are remunerated. However, according to the policy officials, most consultations finish in 20 minutes in practice. Similarly, 1.5 hours are compensated for the interview, whereas the policy officials thought that most interviews, particularly for less serious crimes, do not last more than one hour. If lawyers were to attend the interview immediately after the consultation, they would then receive 2.25 points in compensation, which would be equivalent to more time than they actually spend on the case. However, in cases where there are multiple interviews, there would be no additional payment. The policy officials stated that most cases are not very time consuming. Overall, the remuneration is therefore quite good. They stated that the system is based on averages, and that cases with one short interview are far more common than those with lots of longer interviews. The policy officials pointed out that lawyers who do not receive many cases through the duty system may not be aware of this. As a potential solution, they mentioned making the regions larger, thereby giving lawyers less time on duty, but with more cases being dealt with in this time.

According to the policy officials, the current system has the benefit of providing new clients to the lawyers without them having to advertise. Furthermore, they felt that there is sufficient interest in the legal aid system, which means that remuneration is not unreasonable. However, the lawyers interviewed had a much more negative view on this. One expressed concern that the system is not encouraging lawyers to provide legal aid assistance, and that there is a risk of lawyers simply choosing not to do it. Another lawyer stated that, as most people fall under the legal aid system, it is difficult to supplement the income from legal aid with payment from paying clients. This lawyer also pointed out that to earn sufficient money to keep a firm viable on legal aid, a high volume of cases would need to be taken on, which could negatively impact quality. There was agreement among the lawyers that the current system needs to change in order for them to be able to continue providing clients with a high-quality service. The policy officials, on the other hand, felt that not doing the job properly because lawyers do not feel they are paid enough is unreasonable, but they acknowledged that the problem arises from the high workload needed to be taken on by lawyers, rather than this being their intention.

4.3 Quality of police station work

Lawyers were asked how they viewed the quality of legal assistance currently being provided at the police station, as well as factors which may influence the quality of such advice. Several of the lawyers felt that quality was not sufficiently checked. The regulations

which set out what lawyers should do, implemented on 1st March 2017, are limited. The police interviewer is in charge of the interview and the lawyer should direct his comments and any requests to the interviewer. The lawyer does not answer questions on behalf of the suspect, unless he has been asked to do so by both the interviewer and the suspect. The lawyer is allowed to notify the interviewer that the suspect has not understood a question, or that their physical or mental condition prevents the continuation of the interview. Furthermore, the lawyer may point out that the interviewer is not respecting the need for the suspect's statements to be made freely. The lawyer is not allowed to use such powers unreasonably. If the lawyer's actions violate rights provided to him, and he has received a warning, the assistant prosecutor can remove the lawyer from the interview. The interview can then only continue if the lawyer is allowed to come back into the interview, the suspect waives his right to have a lawyer present, or a replacement lawyer is found (Blok, 2017).

There is a protocol which has been developed as a best practice guide for lawyers providing legal assistance at the police station (NVSA, 2013). This sets out the lawyer's duties which are determined to be in their client's best interests. It requires the lawyer to inform clients about the criminal process, his rights, and how best to exercise these rights.² The lawyer should also perform his duties to the best of his abilities, professionally, and with care. He should also ensure that his client is not held in detention for an unnecessarily lengthy period of time, and that the written record of the interview is correct (NVSA, 2013). Although this document is available, there is no requirement that this must be followed by lawyers.

Although the policy officials acknowledged quality controls could lead to improvements, they did not feel that the Legal Aid Board was the organisation to provide this, as it is not its area of expertise. They felt that the Bar Association is more qualified to implement a system to ensure quality. However, they did suggest introducing a system of peer review. While this would require funding, they felt that it would be possible to compensate lawyers for their participation in a peer-review system, for instance by reducing the number of course points required in exchange for taking part in peer-review. One of the lawyers did not feel that peer-review was realistic, and expected there to be little interest in it, despite acknowledging that it could be a useful tool in controlling quality. Another lawyer said he was in favour of using peer-review, but that there had been a lot of resistance against implementing this. Nevertheless, there was general agreement that there was a need for increased quality control and stricter requirements for lawyers to be registered as a duty lawyer.

² A copy of the notice of rights for suspects is included at Appendix B.

Training and quality requirements. *"Lawyers learn from their experiences in practice"*

Education and training are raised as important factors required by lawyers when providing quality legal advice. Several conditions must be met in the Netherlands before a lawyer is registered as a duty lawyer. Firstly, they must be trained in criminal law, and have undertaken vocational training. They also have to deal with at least 10 criminal law cases a year. These cases need to have reached the stage of proceedings where the legal aid is provided through requests of financial additions, namely after the suspect has appeared before the investigative judge. They must also collect at least 12 points for attending criminal law courses each year, and a course on developments in criminal law every two years. In addition, new applicants must have shadowed a registered lawyer on several cases and there is also a mandatory course which they have to follow when first providing legal assistance. Furthermore, they must have worked on six cases, three of which need to have been before the investigative judge, under the supervision of a registered lawyer (Gerritsen, 2017). Some of the lawyers interviewed, however, did not know about these requirements.

The mandatory course was described by all interviewees as a one day course which covers legal assistance at the police station. According to the policy officials, there are various organisations approved by the Legal Aid Board which offer this course. The lawyers said the mandatory course was not in-depth and that they learned more from their experiences of shadowing and working with registered lawyers. One lawyer commented on some things covered in this course, including what topics the lawyer should discuss with their client, how to gain the client's trust, how to inform the family, and what time limits the police are bound by. There is no requirement for follow-up training.

The policy officials explained that the requirements and training needed to be agreed with the Bar Association but while they are experts in their field, they felt they may not always appreciate the bigger picture, or recognise the significance of all the issues involved. The Bar Association seems to place their trust in lawyers being professional and to provide a quality service. On the other hand, the policy officials felt that it should not be assumed that lawyers know everything, or that they do not make mistakes. They based this opinion partly on previous research findings, which highlights the need for having continuous improvement.

The policy officials said that there has been discussion about increasing the requirements for lawyers to register as part of the duty system. For instance, one option raised was to require specialisation from the lawyers. As many lawyers are also registered to practice in other areas of law, this was felt to be an unrealistic requirement. The Bar Association has now taken the lead in changing the requirements. Some of the lawyers interviewed shared the view that the requirements should be increased; such as requiring lawyers to do more cases or requiring them to obtain more course points. One lawyer

complained that the requirements were so low that many of the lawyers currently providing legal assistance should not be allowed to do so. Another lawyer said that he felt some lawyers were involved in too many other areas of law, and that they were not sufficiently experienced in criminal law.

There was some disagreement among lawyers about whether the person providing legal assistance needs to be a qualified lawyer. Several of the lawyers mentioned that the first phase of criminal proceedings is incredibly important, as the advice given and strategy determined at this stage can impact what happens later in proceedings. Some lawyers felt very strongly that legal assistance in this early phase should be provided by a lawyer. They felt that the combination of experience, education, and training were important in understanding the implications of what is said by clients at this early stage, as well as putting them at ease, which are paramount factors of providing high quality legal advice. One lawyer did feel that this work could be done by a paralegal, provided they could meet the educational and case requirements of the Legal Aid Board. Although using paralegals may have practical and financial benefits, some lawyers felt that the difference in experience and qualification between the police and prosecution, when compared to a paralegal would be problematic. One lawyer also pointed out that the suspect may not feel comfortable having a non-lawyer there to assist them. As the lawyer is also the only person the suspect is allowed to speak to in this early phase, having someone who they consider not to be sufficiently qualified to assist them instead could cause concern.

5. TECHNOLOGY

"The client and his lawyer should be seen as one"

The Netherlands has previously experimented with several ways in which technology could be used to improve the efficiency and quality of providing legal assistance. The interviewees were therefore able to identify several positive and negative aspects, as well as to comment on the potential for technology to have an impact in the future.

Video-conferencing. In addition to the video consultations previously discussed, video-conferencing is used in other hearings, such as when the suspect's detainment is being considered by the investigative judge. During these proceedings, the lawyer can choose to sit with the client or with the investigative judge. Most lawyers said they would sit with the client, as they feel they need to be together and they could communicate directly with them. Some did mention that they might decide to sit with the investigative judge for practical reasons - such as having to attend other hearings. The investigative judge has the case file with him and this was another reason given by the lawyers for sitting with the investigative judge rather than their client.

In general, lawyers held the view that the lawyer should be as close as possible to the client, as they are effectively one party during the proceedings. This is also considered to

be one of the negative aspects of using video-conferencing in the consultation. One alternative to video-conferencing at the consultation stage, mentioned by some of the lawyers as well as the policy officials, was to have the lawyer on duty based at the police station. In this way, lawyers can provide face-to-face consultations to multiple suspects without having to travel to do so. The policy officials mentioned that they had previously tried this, as part of their continued efforts to make legal assistance more practical and efficient. However, in their experience, not all lawyers are in favour of such changes. The policy officials explained that when video-conferencing in the consultation phase was first introduced, evaluations showed that everyone had to get used to this change, but that the clients did not dislike video-conferencing. The police were noted to like it as it could help to speed up the process. However, face-to-face contact is still the lawyers' preference. They would also not be in favour of attending an interview via video-conferencing as they felt this would limit the support they are able to give to their client. For example, one lawyer mentioned that there were subtle ways of communicating with clients, such as nudging their chair. Such subtle communications would be impossible if the lawyer were not physically present. As one lawyer put it, after fighting so hard to be allowed into the interview, it makes no sense to take a step back by not being present in the room.

Electronic case files. Case files are no longer on paper but are provided to the lawyer electronically. The lawyers described that they will receive an email when new evidence or other information has been added to the electronic case file. They then have to log into a portal where they can see what has been added. Logging in requires a lawyer ID card and a card reader. They also fill in their duty code number, after which they receive a password which they use to access case files. All the files that have been sent can be downloaded, and the lawyer can choose to print them out. As stated by several of the lawyers interviewed, providing cases electronically is not yet done in larger cases.

Electronic case files were generally considered positive, as they are quicker to transfer and there is less paper wasted. One concern highlighted by the lawyers was over the quality of digital documents, with the electronic case files consisting of a scanned version of the paper case file. Photographs, for instance, can become blurred when they are scanned. In this case, however, if the images are not clear, a better copy can be requested or the lawyer can ask to see the original document in the case file. This would occur just prior to the hearing. According to the lawyers, the PDF document is normally of a quality sufficient to work with. Nevertheless, some lawyers said they preferred paper files, as they are easier to work with and to make notes. They pointed out that it can also be difficult to read through large case files on a screen.

There is a problem for lawyers in providing a copy of the case file to their clients, as this usually requires a paper copy. One of the lawyers, however, said that he had heard of clients soon having access to a secure laptop in the detention center, which then enables

them to view electronic versions of the case file. Some of the lawyers interviewed felt it should be possible for a lawyer to take a laptop into the detention center to go through the case file with their client. Until recently, it had not been possible to take electronics into the detention center but one lawyer said that with advances in technology this was now becoming possible.

The electronic case file is only provided to the lawyer just before the hearing. One lawyer said that attempts are being made to access electronic case files at an earlier stage but that this is not yet possible. The lawyer mentioned a pilot in relation to the ZSM procedures where the police provided a digital copy of the case file, which seems to be ideal. Furthermore, one of the lawyers said that there was a benefit to all parties receiving the case file at the same time, whereas previously, the prosecution first had sight of the case file. While all interviewees were positive about their experiences with this system, the lack of access to case files at this early phase continues to be problematic.

Other uses of technology. There is a regulation concerning the audio or audio-visual recording of interviews in more serious cases (*Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten*, 2013). There are still some difficulties recording interviews in practice, as the lawyers said that facilities to do so are lacking at police stations. The written records provide a summary, so it is not possible to know what was actually said. Audio-visual recordings, on the other hand, capture what happens during the interview. All the lawyers were in favour of recording interviews, particularly as the recording offers them the opportunity to check the interview afterwards, but they stressed that this should not replace the need for the lawyer to be present during the interview. Although a recording can help to settle any disputes about what was said, it is still important for lawyers to intervene during the actual interview, particularly as it can be difficult to persuade judges to watch the recordings.

The policy makers said that they were in favour of the increased use of technology so long as it is in their client's best interest. One use of technology suggested by them would be to use it to inform arrested suspects about proceedings. Although this information is currently set out on a leaflet, the policy makers expressed concern that people who have just been arrested tend to be stressed and reading through a leaflet may be difficult for some people, particularly as these leaflets are not easy to follow. The policy officials thought it would be more effective to use a tablet and to have a video explaining to suspects what happens in the criminal process and sets out their legal rights.

Including an interpreter in proceedings is another way in which technology is used when providing legal assistance. In the rooms designed for the confidential Salduz consultations, there is a phone which can be used to call interpreters and they can provide interpretation over the phone. According to the lawyers, the interpreters use their mobile phones and so they are not tied to an office when providing this service.

6. CONCLUSION

The research interviews have helped to highlight how legal assistance is provided in the Netherlands, as well as raising a number of issues. It is evident that the organisation of legal assistance puts the suspect's best interest first. This is evident from the objective system used to assign cases to lawyers as well as the fact that every arrested suspect has the right to financial legal aid. When speaking to both the lawyers and the policy officials, a positive impression of the system emerged. Although there were concerns regarding the logistics of swiftly and effectively providing legal assistance to suspects, it is clear that attempts are continuously being made to improve legal assistance, which is key in light of the lawyer's changing role.

When discussing how lawyers view and fulfil their role, one grievance mentioned by all lawyers was the lack of disclosure and the difficulty with obtaining information from the police. Research has shown how this can then lead to lawyers advising clients to invoke their right to remain silent – leading to the quality of legal assistance being limited. Another complaint mentioned by some of the lawyers was that they are not informed about further proceedings if the client does not remain in detention, or if they are referred to ZSM procedures. Both these issues can be attributed to a lack of communication between the police or prosecution and the lawyers. Consequently, this was identified as one of the areas needing improvement.

Another issue which causes lawyers frustration is the level of payment available for police interviews, which is a paid as a fixed fee. Although the reasoning for remunerating lawyers in this way is based on averages, it is also understandable that lawyers struggle with not receiving compensation relative to the time spent on cases. This could cause problems for the lawyer, for instance, because they are dependent on this income, or because their firm may not want them to spend their time on activities that are not compensated properly. Ultimately, this issue is likely to affect the quality of legal assistance, as lawyers may not be able to justify attending multiple interviews, causing them to adopt different strategies. As there is currently no quality control, it is difficult to assess whether the quality of legal assistance is influenced by these issues, although all lawyers interviewed considered this is likely to be the case. Furthermore, they said that some lawyers providing legal advice were not providing a quality service and the impression gained was that increased control of the quality of legal assistance would be welcomed.

Finally, the role of technology was also discussed. Due to several pilots which have taken place in the past, as well as the video-link available in Rotterdam, the benefits and problems of using technology were apparent to interviewees. For instance, the situation has changed with the video-link as lawyers are now allowed to attend the interview, which

means that video-conferencing can be a hindrance rather than a benefit, as it does not allow the lawyer who handled the consultation to attend the interview. It is likely that new methods or arrangements will have to be tested out to maintain the efficiency brought about by video-conferencing, while enabling the lawyer to be involved in both the consultation and the interview. Furthermore, lawyers felt that technology may be used as a way of reducing costs, when it is not what is best for their client. The policy officials emphasised that changes should always be made having the client's best interest in mind. One use of technology which was received with enthusiasm is the use of electronic case files, partly due to the difficulty lawyers have in accessing case files.

Overall, the existing system in the Netherlands is functioning well, but a few issues are causing frustration among the lawyers. The system is focused on protecting the client's best interests, but in doing so, the lawyer's interests appear to have become less important. This is likely to cause problems for lawyers serving their client's best interest. In particular, it is becoming increasingly difficult for lawyers to maintain a high-quality service due to the level of remuneration and difficulty in accessing information. As the Netherlands has demonstrated a constructive approach in attempting to change the system to suit the needs of all parties, it may now be paramount to address the issues which are causing difficulties for the lawyers, without infringing the suspect's interests.

References

Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen, en verdachten. (1st January 2013): <http://wetten.overheid.nl/BWBR0032552/2013-01-01>

Aanwijzing OM-Strafbeschikking (1st April 2015):

<http://wetten.overheid.nl/BWBR0036485/2015-04-01#Circulaire.divisie3>

Blackstock, J., Cape, E., Hodgson, J., Ogorodova, A., & Spronken, T. (2014). *Inside police custody: An empirical account of suspects' rights in four jurisdictions*. Cambridge: Intersentia.

Blok, S.A. (2017) Besluit van 26 januari 2017, houdende regels voor de inrichting van en de orde tijdens het politieverhoor waaraan de raadsman deelneemt (Besluit inrichting en orde politieverhoor). *Staatsblad van het Koninkrijk der Nederlanden*.

Boksem, J. (2016) *Goede raad is duur*. Deventer: Wolters Kluwer.

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)

Gerritsen, J.H. (2017) Inschrijvingsvoorwaarden advocatuur 2017 (Besluit van het bestuur van de Raad voor Rechtsbijstand van 24 februari 2017 krachtens artikel 15 van de Wet op Rechtsbijstand) *Staatscourant nr.14440*.

Jacobs, G., van der Giessen, M., Brein, E., Bayerl, S., Verbaam, J., & Thuis, T. (2015) *Eindrapportage Werkwijze ZSM en Rechtsbijstand*. Rotterdam: WODC.

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

Knigge, G. & de Jonge van Ellemeet, C.H. (2014) *Beschikt en gewogen: Over de naleving van de wet door het openbaar ministerie bij het uitvaardigen van strafbeschikkingen*.

Procureur-generaal bij de Hoge Raad: Den Haag.

Ministerie van Veiligheid en Justitie (2017). *Recht op bijstand van een advocaat voorafgaand aan en tijdens het (politie)verhoor en maatregel kostenverhaal draagkrachtige veroordeelden:*

http://www.rvr.org/binaries/content/assets/rvrorg/nieuws/2017/101106_infoblad_recht-op-verhoorbijstand_web-2.pdf

NVSA (2013) *Raadsman bij politieverhoor: Protocol:*

https://www.nvsa.nl/images/actueel/20130307_presbericht_politieverhoor/Protocol_best_practice_raadsman_bij_politieverhoor.pdf

Stevens, L. & Verhoeven, W.J. (2010) *Raadsman bij het politieverhoor: Invloed van vooraafgaande consultatie en aanwezigheid van raadsliden op de organisatie en wijze van verhoren en de proceshouding van verdachten*. Den Haag: WODC:

<http://repository.tudelft.nl/view/wodc/uuid%3A0d2dc4cf-d240-44f0-ad08-4e89ae4e9184/>

Supreme Court Verdict (30th June, 2009). ECLI:NL:HR:2009:BH3079:

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2009:BH3079>

Supreme Court Verdict (22nd December 2015). ECLI:NL:HR:2015:3608:

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2015:3608>

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.

Van der Steur, G.A. (2016) *Kamerbrief over rechtsbijstand in de eerste fase van het opsporingsonderzoek*:

<https://www.rijksoverheid.nl/documenten/kamerstukken/2016/08/22/tk-rechtsbijstand-in-de-eerste-fase-van-het-opsporingsonderzoek>

Appendix A - Declaration form legal aid



37105209

Raad voor Rechtsbijstand

Verklaring optreden strafpiket

Declareer al uw verrichtingen op één formulier.
Kruis aan welke werkzaamheden in de zaak zijn verricht.
Stuur de declaratie voorzien van originele handtekeningen
naar kantoor 's-Hertogenbosch,
Postbus 70503, 5201 CD 's-Hertogenbosch.

Gegevens raadsman/raadvrouw

Voorkeursadvocaat : ja / nee Naam en voorletters :

Kantoor :

Adres : Postcode en plaats :

BAR-nummer : Telefoonnummer : E-mailadres :

Gegevens cliënt

Naam cliënt : Geboortedatum cliënt :

Piketverrichtingen in het kader van het politieverhoor

0,75 punt voor **consultatiebijstand** aangehouden verdachte **vóór** verhoor.
Postcode en plaatsnaam politiepост : Datum :-.....-..... (dd-mm-jj)
Aldus vastgesteld door : Naam : Handtekening
Kilometers : en dienststempel :

Piketrechtsbijstand aangehouden verdachte **na inverzekeringstelling (IVS)**.
 0,75 punt voor piketrechtsbijstand na IVS. Verdachte kreeg **vóór** verhoor **wel** consult.
 1,5 punt voor piketrechtsbijstand na IVS. Verdachte kreeg **vóór** het verhoor **geen** consult.
Postcode en plaatsnaam politiepост : Datum :-.....-..... (dd-mm-jj)
Aldus vastgesteld door : Naam : Handtekening
Kilometers : en dienststempel :

Vergoeding voor bijstand **tijdens** verhoor **aangehouden verdachte**.
 3 punten bij: misdrijf met gevangenisstraf \geq 12 jaar, misdrijf met slachtoffer dat is overleden of zwaar lichamelijk letsel heeft en zedenmisdrijf met gevangenisstraf \geq 8 jaar danwel in een afhankelijkheidsrelatie.
 1,5 punt bij overige delicten waarvoor in verzekeringstelling mogelijk is.
Postcode en plaatsnaam politiepост : Datum :-.....-..... (dd-mm-jj)
Aldus vastgesteld door : Naam : Handtekening
Kilometers : en dienststempel :

Overige verrichtingen strafpiket

1,5 punt voor bijstand bij **behandeling** van de **rechtmatigheidstoets** (art. 59a Sv) indien niet gelijktijdig met behandeling van de vordering tot inbewaringstelling, inclusief bijstand via video.
Plaatsnaam : Behandeldatum :-.....-.....
Aldus geverifieerd door of namens de griffier van de rechter-commissaris :
Kilometers : Naam : Handtekening :

1,5 punt voor bijstand bij **behandeling** van de **vordering tot bewaring** (art. 63 Sv) / vordering o.g.v. art. 14fa Sr 15h Sr 38x Sr, inclusief bijstand via video.
Plaatsnaam : Behandeldatum :-.....-.....
Aldus geverifieerd door of namens de griffier van de rechter-commissaris :
Kilometers : Naam : Handtekening :

1,5 punt voor de bijstand bij **behandeling** van het **hoger beroep** o.g.v. art. 59c Sv.
Plaatsnaam : Behandeldatum :-.....-.....
Aldus geverifieerd door de griffier van de rechter-commissaris :
Kilometers : Naam : Handtekening :

Aldus naar waarheid ingevuld,

Datum :-.....-..... Handtekening raadsman/raadvrouw :

Combinatiereizen kunt u slechts één keer declareren. Meld afwijkingen via een aparte bijlage. Toeslagen voor weekend, feestdagen en daarmee gelijkgestelde dagen kennen we automatisch toe. Een tolkdienst vraagt u aan bij Tolk- en Vertaalcentrum Nederland (TVcN). Als u zelf een tolk heeft geregeld dan moet u de originele nota van de tolk en een niet-leveren-verklaring van TVcN meesturen.

Appendix B – Suspects’ Notice of Rights

Ministry of Security and Justice

You are suspected of committing a criminal offence.

You have been arrested as a suspect and taken to the station by an investigating agency such as the police. Or you have been invited to the station for questioning. What are your rights and what happens after you have been interrogated.

ENGELS

This folder describes your rights and obligations and the procedures involved. You should read this folder carefully.

Questions?

Do you have any questions after reading this folder? You should put any questions you may have to your lawyer, the police or whatever other investigating agency you are dealing with.

In the context of this folder the term ‘police’ may also refer to some other investigating agency.

For more information go to www.juridischloket.nl or call 0900 – 8020 (€ 0.25 per minute).

If you do not speak or understand Dutch well enough

Is your ability to speak or understand Dutch inadequate? In that case you are entitled to an interpreter. There is no charge for this. You are also entitled to have certain documents translated, such as the arrest warrant and the summons.

You have been arrested by the police and taken to the police station

If you have been arrested by the police on suspicion of a criminal offence, you will be interrogated about it. This means the police have the right to ask you questions.

Your rights:

- You have the right to know what offence you are suspected of committing.
- You are not obliged to answer the questions of the police (you have the right to remain silent).
- You have the right to talk to a lawyer in confidence before the (first) interrogation begins.
- You have the right to have a lawyer present to assist you during the interrogation. This is discussed in greater detail below.
- If you do not understand something you should tell the police. You should also tell them if you are feeling ill, would like to speak to a doctor, or are in urgent need of medical care or medicines.
- If the (acting) public prosecutor decides that you have to stay at the (police) station, you may ask the police to call a member of your family or household to tell them you are being detained. Sometimes the (acting) public prosecutor will refuse to allow this on a temporary basis. In that case he will inform you to that effect.
- Do you do not hold Dutch nationality? In that case you may ask the police to inform the consulate or embassy of the country you come from that you are being detained.
- You have the right to read the documents if there are any. In some cases the public prosecutor may disallow this. In that case he will inform you to that effect.

How long can the police detain you?

- Depending on the offence you are suspected of committing, you can be detained at the police station for a maximum of 90 hours (3 days and 18 hours).
- If it is necessary for the purposes of the investigation to detain you for longer, the judge will then decide on the matter.

Ask your lawyer what you should do if you do not agree with your arrest or the decision to detain you for longer.

Right to a lawyer

Before you are interrogated by the police, you have the right to talk to your lawyer in confidence for half an hour. This may, if needed, be extended by another half hour.

- If you are suspected of committing an extremely serious offence with a penalty of 12 years or more (involving murder, manslaughter for example) or you are considered vulnerable by the police in view of your mental condition, then a lawyer will always be provided before you are interrogated. This will not cost you anything.

When you do not require a consultation with a lawyer, you need to clearly express this to the lawyer.

- If you are suspected of committing a serious offence (offences for which you can also be detained before trial, such as burglary) you may choose to speak to a lawyer before the interrogation. The police will then see to it that a lawyer is engaged. This will not cost you anything.

- If you are suspected of committing a less serious offence, you may decide for yourself whether you want to speak to a lawyer. In that case you must find your own lawyer and you will have to pay the cost thereof yourself.

You also have the right to have a lawyer present to assist you during the interrogation. If you are suspected of committing a serious offence, this will not cost you anything. If you are suspected of committing a less serious offence, you will have to pay these costs yourself.

If it is not clear which situation applies to you, you should ask:

- Whether a lawyer will be engaged automatically in your case, or whether you may decide for yourself if you want a lawyer;
- Whether you will have to pay the costs of speaking to a lawyer yourself.

Do you have a preferred lawyer, please inform the police of this. If your lawyer is not registered with the Legal Aid Board, you then, however, do pay the costs yourself.

If the police pass on your personal details to the Legal Aid Board in connection with engaging a lawyer on your behalf, those details will be processed in the administration of the Board.

- If you decide at first you do not want to speak to a lawyer, you can still change your mind later on.
- If you have indicated that you wish to make use of your right to counsel, the police may then not start the interrogation until you have spoken to your lawyer, unless there is an urgent need for this, such as a life-threatening situation.
- Keep in mind that it may take a while for the lawyer to arrive. In principle, the lawyer must be present within two hours after the notification was done by the police.

You have been invited by the police for questioning at the police station

When you have been invited for questioning by the police because you are suspected of committing an offence, you may also, before your interrogation, contact a lawyer yourself. He can give you information and legal advice. The lawyer is also permitted to be present during the interrogation. If you decide to engage a lawyer the costs thereof will then be for your own account.

You need to identify yourself, therefore please take with you a valid identity document (such as your passport or driving licence).

What can a lawyer do for you before the interrogation?

A lawyer can do the following things for you before your interrogation:

- Explain the offence you are suspected of committing.
- Give legal advice.
- Tell you what is involved in a police interrogation.
- Tell you what rights and obligations you have during the interrogation.
- Contact your family or employer to inform them of your situation (if this is what you want).

The police do not listen in when you are talking to your lawyer. Everything you say to your lawyer is confidential. Without your permission the lawyer must not talk to anyone about what you have told him/her. This includes the police and the public prosecutor.

What can a lawyer do for you during the interrogation?

- The lawyer may ask questions and make comments to the interrogating officer at the beginning and end of the interrogation.
- In the course of the interview you or your lawyer may ask for a pause to consult one another. If this occurs too often, the interrogating officer may refuse this.
- If you do not understand questions or remarks, if you are placed under improper pressure, or if you are unable to be questioned further because of your state of health, the lawyer has the right to draw this to the attention of your interrogator.
- When it is over you and your lawyer have the right examine the official report of the interrogation (the proces-verbaal) and point out any inaccuracies it may contain.

What happened after you have been interrogated?

Your case may be settled in a number of different ways:

Dismissal

Your case may be (provisionally) dismissed. In that case you will not be prosecuted. Conditions may be attached to the decision to dismiss your case however, which you must comply with. Such as a ban on contact with the victim, and/or probation supervision with special conditions. What happens if you fail to comply with these conditions? Or if you commit another criminal offence? In that case you could still be summoned in relation to the matter in question. Which means you would have to appear in court after all.

Penalty order issued by the public prosecutor

If the public prosecutor is of the opinion that you are guilty he may impose a penalty order on you. A penalty order may involve a fine or a community punishment order for example. Or a disqualification from driving (you are not allowed to drive any vehicles) and/or a behavioural intervention (such as a ban on contact with certain persons, or compulsory contact with the probation service).

Do you want to settle your case immediately? In that case you can pay the fine directly at the police station. This is only possible if you were able to consult a lawyer in advance. Can you pay immediately? In that event the case is definitively settled. This will mean that you can no longer object to (resist) the penalty order. Has the public prosecutor decided to impose a driving ban or community punishment order? In that case you will be questioned about the matter first. You may consult a lawyer prior to this hearing. Your lawyer is also permitted to be present during this hearing.

Do you want your lawyer to be present at the hearing? In that case the hearing will be held at another time if necessary. A video connection may also be used to conduct the hearing.

Out-of-court settlement

The public prosecutor may also offer you an out-of-court settlement. This means certain conditions will be imposed on you. If you comply with these conditions you will avoid further prosecution. The most important of these conditions are: payment of a sum of money, a compensation payment for the victim or the relinquishment of seized property. If you do not comply or do not comply in time with these conditions you will have to appear in court. In certain circumstances you can also pay an out-of-court settlement immediately, if you have no fixed place of abode or residence in the Netherlands for example.

Court

Your case may also be brought before the court. In that case you will receive a summons. The summons will state the offence you are accused of committing and the date, time and place at which your criminal case will be tried.

Criminal record?

Have you decided to accept a penalty order issued by a public prosecutor? Or to accept an out-of-court settlement proposal from the public prosecutor? In that case an entry will be made in the judicial records (criminal record). This may mean that you can no longer obtain the certificate of good conduct (VOG) needed for a new job or work experience placement. A lawyer can tell you more about this. Ask the police for the separate folder in which the consequences are explained.

For more information go to: www.justis.nl/producten/vog.

This information folder is a publication of:

The Ministry of Security and Justice
PO Box 20301 / 2500 EH / The Hague
July 2017 / 104356

No rights may be derived from the content of this information folder.

