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PRACTICAL ISSUES OF NATIONAL IMPLEMENTATION

Police questioning in the presence of a lawyer: What can the lawyer do?

DIRECTIVE 2013/48/EU on the right of access to a lawyer in criminal proceedings...

Preparing yourself

- Study national legislation . . . Again!
- EU law
 - Directives on defence rights
 - ECHR jurisprudence
- "Portfolio" in phone/laptop/printed
 - Relevant law, directives, cases, publications at hand. – keep it simple!

Preparing the client

Explain

- what to expect during the interview
- what rights apply and how they can be exercised
- how the interview will/can be used as evidence

Preparing the client

- Remain silent?
 - Everybody have the right to remain silent, but few are wise enough to do it...
- Listen to the client
- Ensure the statement will be understandable
- Adress weaknesses/logical fallacies etc.
- "The implausible is not the impossible"

Getting access to the client

- Article 3:3 (a)

"...suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning..."

- Interpretation

- Article 4 - Confidentiality:

- Meetings

- Correspondence

- Telephone

- Other means of communication

Access to the client

- (22)
- Suspects or accused persons should have the right to meet in private with the lawyer representing them. Member States may make practical arrangements concerning the duration and frequency of such meetings, taking into account the circumstances of the proceedings, in particular the complexity of the case and the procedural steps applicable. Member States may also make practical arrangements to ensure safety and security, in particular of the lawyer and of the suspect or accused person, in the place where such a meeting is conducted. Such practical arrangements should not prejudice the effective exercise or essence of the right of suspects or accused persons to meet their lawyer.
- Examples? Are the “practical” arrangements really practical?

During the interview

Article 3:3 (b)

"...lawyer to be present and participate effectively when questioned."

(25) ... During questioning by the police or by another law enforcement or judicial authority of the suspect or accused person or in a court hearing, the lawyer may, inter alia, in accordance with such procedures, ask questions, request clarification and make statements, which should be recorded in accordance with national law.

After the interview

How is the interview documented?

- Written summary/protocol– remedies?
- Recorded (sound/video)

Something out of context

- Derogations
- Article 3. 5 and 6 . "exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.
- (31) and (32) Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.
- Why the need for clarification?

Swedish legislation before the directive

- Anyone that seems to be in need a public defender should get one... eventually.
 - Vulnerable suspects
 - Youths
 - Serious crimes (risk of prison-sentence)