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Ed Cape
Jacqueline Hodgson
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Suspects in Europe

Procedural Rights at the Investigative Stage of the Criminal Process in the European Union



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Suspects in Europe. Procedural Rights at the Investigative Stage of the Criminal
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PREFACE

This book is the result of an international research project examining the nature of the legal protections provided to suspects in the investigative stage of criminal proceedings in a range of EU countries – Belgium, England and Wales, Germany, Greece, Italy, the Netherlands and Poland – from both a theoretical and practice-based perspective. Knowledge of procedural rights such as criminal defence provision across Europe is patchy and the accounts that exist often differ widely from practice. The study aims to provide a more contextual understanding of the criminal defence role across different European jurisdictions, considering the legal and procedural rules in place and the implications which the pre-trial stage process has for the trial stage.

The context for this project is the increasingly proactive nature of EU activity in matters of criminal justice, concerning both transborder crime and domestic provisions. In spring 2004 the European Commission proposed that minimum safeguards for criminal investigation be agreed by member states and published a draft framework decision comprising *inter alia* the right to legal assistance. Since then, negotiations have continued with increasing opposition to the proposal emerging from member states. One of the main arguments against a framework decision is that the ECHR already guarantees procedural rights to suspects, and member states are obliged to comply with this. At the time of the completion of this book it is still uncertain whether an agreement on minimum standards in compliance with the ECHR for suspects in criminal proceedings within the EU can be reached.

The contributions in this book demonstrate that procedures vary enormously across EU jurisdictions as does the level of legal protection of suspects in criminal proceedings in practice. It also makes clear how important it is to gain an understanding of the ways in which these systems function, when policies are to be adopted that aim to develop standards and consistency in the protection of rights of individuals in the EU. They also demonstrate that there is still a great deal of research that remains to be done.

This book would not have been possible without the participation of academics and practicing lawyers in the research group, willing to share their experience and expertise in discussions that have encouraged critical reflection. We

want to express our thanks to Michele Caianiello, Stef De Decker, Zinovia Dellidou, Jan Fermon, Giulio Illuminati, Piotr Kruszyński, Christos Naintos, Franz Salditt, Frank Verbruggen and Thomas Weigend for their support, inspiration and contributions.

Our warm thanks also go to Dorris de Vocht and Mark Jackson for their editorial support and Yleen Simonis at METRO, the Institute for Transnational Legal Research at the University of Maastricht for editing the text of the book.

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March 2007

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BIOGRAPHIES

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Michele Caianiello is Assistant Professor in Criminal Procedure at the University of Bologna, Faculty of Law. He also lectures in Criminal Evidence at the L.U.I.S.S. 'Guido Carli,' University of Rome. He graduated in 1994, with a thesis on pre-trial detention. He was awarded his PhD in 2000, with a thesis on International Criminal Tribunals. In 2005, he won a competition as Associate Professor promoted by the University of Lecce. He has studied the decision to charge a suspect with a crime, especially the legally recognised rights of victims and private citizens in this matter. He has also conducted research in the field of evidence law in international criminal justice systems. He is the author of two books (*Poteri dei privati nell'esercizio dell'azione penale*, Giappichelli, 2003; *L'ammissione della prova davanti ai Tribunali penali internazionali per la ex Jugoslavia e il Ruanda e alla Corte penale internazionale*, ConquistE, 2004). He practiced as a lawyer in the field of Criminal Law from 1998 until 2006.

2. Ed Cape

Ed Cape is Professor of Criminal Law and Practice at the University of the West of England, Bristol, UK, where he is Director of the Centre for Legal Research. As a former criminal defence lawyer in practice in Bristol, he has a special interest in criminal justice, criminal procedure, police powers, the legal profession, legal aid and access to justice. He is the author of a leading practitioner text, *Defending Suspects at Police Stations* (5th edition, 2006), and has contributed to and edited a number of books on aspects of criminal justice. He is the author of many articles in academic and professional journals, including the 50th anniversary article on the criminal defence profession in *Criminal Law Review* (2004). His research includes the contracting of publicly funded criminal defence services, cost drivers in criminal legal aid, victim impact statements, and an evaluation of the pilot Public Defender Service in England and Wales. He has acted as consultant to the Law Society and the Legal Services Commission, and he regularly presents courses on police station practice to the legal profession.

3. Stef De Decker

Stef De Decker graduated from the Catholic University of Leuven with a Master of Laws (2004) and a Master in Tax Law (2006), where he has been a junior member of academic staff at the Institute of Criminal Law since 2004. He teaches in the areas of Criminal Law, Criminal Procedure and Corporate Criminal Law. His research interests include white collar crime, the procedural treatment of illegally obtained evidence, special investigation methods, and pre-trial detention.

4. Zinovia Dellidou

Zinovia Dellidou completed her undergraduate legal studies at the University of Warwick in England and the University of Lille II in France, and obtained a Master's degree in European Community Law at the College of Europe in Bruges. She has a PhD in Law from Warwick University where she taught on the undergraduate law programme for two years. Her thesis concerned the role of defence counsel and the right to legal aid and assistance in Europe. She has worked in a law practice in Greece and for the Representation of the European Commission in Athens. She was a research assistant at the College of Europe on the consolidation of European Community Law project. Her research interests include European law, social law, human rights, Justice and Home Affairs and comparative criminal justice.

5. Jan Fermon

Jan Fermon graduated in law at the Free University of Brussels (VUB) in 1983. He has practiced as a lawyer at the Brussels Bar since 1989 and specialises in international humanitarian law; international, EU and Belgian criminal law; and in immigration law. He is a member of the Progress Lawyers Network - PLN (<www.progresslaw.net>) and is a senior lawyer in their Brussels office. He is also a member of the Bureau of the International Association of Democratic Lawyers (with official consultative status to the United Nations Economic and Social Council ECOSOC). In September 2006 he joined the Faculty of Law of the University of Maastricht and began work on his doctoral thesis on the protection of professional privilege within the EU.

6. Jacqueline Hodgson

Jacqueline Hodgson is Professor of Law in the School of Law, University of Warwick, UK, teaching Criminal Law and Criminal Justice and Human Rights in Europe. She graduated with an LLB and PhD from the University of Birmingham. She has conducted a range of empirical research projects in the UK and in France. She is the author of *French Criminal Justice* (2005) and co-author (with Belloni) of *Criminal Injustice* (2000) and (with McConville, Bridges and Pavlovic) of *Standing Accused: The Organisation and Practices of Criminal Defence Lawyers in Britain* (1994).

She has published widely in the area of UK, French and comparative criminal justice, notably on the right to silence, the role of the criminal defence lawyer in Britain and in France, comparative criminal justice and procedural models of justice, the investigation and supervision of crime in France and human rights and criminal justice. She has advised the House of Lords Select Committee on the European Union and taught postgraduate comparative criminal procedure as visiting professor at the University of Bordeaux IV from 2004-2006.

7. Giulio Illuminati

Giulio Illuminati is Professor of Criminal Procedure at the Faculty of Law of the University of Bologna, and Head of the Department of Law. He also lectures in Criminal Procedure at L.U.I.S.S. 'Guido Carli' in Rome. He graduated in Law in 1969 at the University of Bologna where, in 1971, he was granted a research fellowship and went on to work there as an assistant from 1974 to 1980. From 1980 to 1989 he was Professor at the University of Camerino, lecturing in Criminal Procedure and General Theory of the Legal Process. Between 1987 and 1989 he was appointed as a member of the Committee for the Reform of the Italian Criminal Process, established by the Minister of Justice, which drew up the current Code of Criminal Procedure. His main research fields have so far concerned the constitutional rights of the accused, the rights of the arrested person, and more recently, human rights in international criminal law. His main publications include *La presunzione d'innocenza dell'imputato* (1979) and *La disciplina processuale delle intercettazioni* (1982); he also contributed to the textbooks *Casi e questioni di diritto processuale penale* (1995), *Compendio di procedura penale* (3rd edition, 2006), and co-edited the volume *Crimini internazionali tra diritto e giustizia* (2000). He is a member of the Editorial Board of the review *Cassazione penale*.

8. Piotr Kruszyński

Piotr Kruszyński, is an Attorney as well as Professor and Director of the Institute of Criminal Law in the Law and Administration Department, Warsaw University. He is the author of approximately sixty publications, including two monographs dedicated to the legal status of the defence lawyer in criminal proceedings and is co-author of an academic student text on the scope of criminal law. He has participated in numerous scientific conferences, either in Poland or abroad (Germany, Austria, France, the Netherlands, Italy and the United Kingdom). He has contributed, as an expert, to the work of several parliamentary committees dealing with substantive criminal law and criminal procedure. As a defence lawyer, he has participated in several famous cases; recently (in 2006) he has defended Poland's present Deputy Prime Minister, Prof. Zyta Gilowska, in her vetting trial before the Court of Appeal in Warsaw.

9. Christos Naintos

Christos Naintos studied law and political science at the Aristotle's University of Thessaloniki between 1997-2001 and 2002-2004, and was awarded scholarships during this time. Between 2002 and 2004 he studied a Masters degree in Penal Law and Criminal Procedure at the University of Thrace, in Komotini, where he has studied as a PhD student in Penal Procedure since 2004. He has taught Criminal Procedure at the Komotini Police College, as well as teaching at the university of Thrace. He has published two articles in student magazines concerning the use of weapons by the police and the use of community service as a criminal penalty. He has been working as a lawyer in Thessaloniki since 2003.

10. Ties Prakken

Ties Prakken graduated in law at Amsterdam University. She started her career as a practising lawyer in Amsterdam, before going on to teach criminal law at Utrecht University (1971-1985) and completing her PhD there in 1985 on the subject of legal aid and legal activism. From 1985 to 1998 she left academia in order to return to practice as defence counsel, working on many politically important and controversial cases. In 1998 she became a professor in criminal law at Maastricht University, from where she retired in 2004. Throughout her career she has published across a range of areas in criminal law, in particular the law of criminal procedure. Most recently, she has co-authored (with Taru Spronken) a Manual for Criminal Defence Lawyers (2003) and she continues to research and practice in the area of criminal law.

11. Franz Salditt

Franz Salditt has been a defence lawyer in private practice since 1971, specialising in the defense of tax and other white-collar cases. He was a member of the criminal law committee of the German Lawyers' Association (*Deutscher Anwaltverein*) from 1991 to 2002 and co-founded the European Criminal Bar Association (ECBA) in 1997, serving as its vice chairman from 1997 to 2002. He has published extensively on issues of criminal law and criminal procedure. He holds an honorary professorship at the FernUniversität (University for Distant Learning) at Hagen, Germany.

12. Taru Spronken

Taru Spronken is Professor of Criminal Law and Criminal Procedure at the University of Maastricht and defence lawyer at the *Advocatenpraktijk, Universiteit Maastricht*. She is Chair of the Legal Development Committee of the European Criminal Bar Association, Chair of the Advisory Committee on Criminal Law of the Dutch Bar Association and an honorary judge in the Court of Appeal of Arnhem. As both an academic and a practitioner she specialises in proceedings before the

European Court of Human Rights in Strasbourg. She has written a thesis on the role and professional responsibility of the defence counsel in the Netherlands and has published extensively on the position of the defence in criminal proceedings.

13. Frank Verbruggen

Frank Verbruggen is professor at the Institute of Criminal Law of the Catholic University of Leuven, Belgium. He teaches Criminal Law, the Law of Criminal Sanctions, European Criminal Law and International Criminal Law. He has studied the impact of the fight against organized crime and terrorism on criminal law and procedure. His current research focuses on pan-European principles legitimizing and limiting mutual recognition in criminal matters and on the reform of Belgian sentencing and penitentiary law within a European context. He served as an expert to the Belgian parliament in the debate on the Bill for a new Belgian Code of Criminal Procedure (2006). He also is a lawyer at the Brussels Bar, as of counsel with Liedekerke-Wolters-Waelbroeck-Kirkpatrick.

14. Thomas Weigend

Thomas Weigend is professor of criminal law and criminal procedure at the University of Cologne, Germany. He has studied law at the Universities of Hamburg, Freiburg and Chicago and received the degree of *Dr. jur.* from the University of Freiburg in 1977. In 1985, he obtained the *Habilitation* (license to teach law) from the University of Freiburg. Since 1986, he has been a member of the law faculty of the University of Cologne. He has published several books and more than one hundred articles in German and foreign law reviews, mostly on problems of (comparative) criminal procedure and recently on international criminal law. He has been co-editor of *Zeitschrift für die gesamte Strafrechtswissenschaft* since 1988 and managing editor of that journal from 1982 to 2004. He taught as a visiting professor at the University of Chicago (1976/77), the University of Tokyo (1991 and 1996) and New York University (2001).

