

## Summary

### **The right to interrogation aid, a long-term monitor**

#### **First edition**

In The Netherlands, the right to consult a lawyer before being subject to a police interrogation has been effective since 2010. Since that time, minors have the right to lawyer assistance also during an interrogation. By March 1, 2016, this right of interrogation aid was extended to majors by way of temporary policy rules of the Public Prosecutor's office and the Legal Aid Board (which were effective until March 1, 2017, when new legislation took effect).

The main topic of this first edition of a 'Long-term Monitor' is this right to interrogation aid of majors, more specifically, the organisation and application during the first transition year. Particularly because the right to interrogation aid was introduced within a relatively short period, this study serves the objective of 'monitoring the implementation and observe whether bottlenecks occur and, where necessary, make adaptations', as explained by the (then) Minister of Security and Justice to Parliament in a letter of March 22, 2016.

#### **Main questions and method**

In this report, two main questions are addressed:

- 1 How has the implementation of the right to interrogation aid been organised, on paper and in practice?
- 2 How has the right to interrogation aid been applied in practice, during the first year from March 1, 2016 to March 1, 2017?

To answer these two questions, data were gathered from the following organisations: Police, Legal Aid Board, Public Prosecutor's Office, Royal Military Police, special prosecuting agencies, the legal profession and/or legal aid lawyers. We applied a mix of qualitative and quantitative methods, aimed to complement and/or mutually reinforce each other. Most of these address the police organisation: registrations of interrogations; a random selection of case files from these registrations containing summons of suspects; a digital questionnaire for police officials and finally, focus groups for police officials and public prosecutors. For the military police – though less intensive – we applied a similar kind of data triangulation. The data for the special prosecuting agencies resulted from interviews, combined with a limited number of registrations. The Legal Aid Board delivered two registration files – of initial alerts and ex post claims of legal aid including interrogation aid – and some additional expert interviews. Finally, as regards the legal profession, particularly legal aid lawyers, we conducted thirteen in-depth interviews complemented with desk study material.

When processing the registrations and summons of interrogations ('summons' in what follows), we used the formal distinction between types of alleged crimes or offences about which a suspect is interrogated, namely suspected of: (A) a crime with 12+ years penalty; (B6+) a crime with 6+years penalty; (other B) a crime with 6- years penalty; and (C) an offence (light case) for which a solicitor can deliver aid but the suspect will carry the costs. Next to this distinction between case types, we

made a distinction between the baseline (January and February, 2016) before the policy rules became effective, and the data covering the 'policy period' (March 2016 - end of February, 2017). Together, baseline and policy period make up the research period for this first edition of the long-term Monitor.

*(A) Organisation of the implementation (research questions 1 and 2)*

- 1 How did the involved organisations prepare and organise the implementation of the right to interrogation assistance?
- 2 How did the actual implementation proceed after March 1, 2016 when the right became effective (for example, in terms of planning interrogations with solicitors)?

Between 30,000-40,000 police officials were faced with the new right to interrogation aid. Nationally, the right was prepared and implemented by means of an implementation manager for each of the ten regional police units next to one central unit, an e-learning course of several hours per police official, fixed contact points for communication and problem solving, and over 130 instructors. In addition, working instructions and tools were spread. As regards content, a point of departure is that, as long as a suspect does not surrender his/her right to interrogation aid (and in the absence of any other pressing reason), it needs to be realised. Next to these national initiatives, various regional initiatives were planned and carried out in terms of supervising and instructing police personnel. Police officials who were surveyed responded 'moderate' to 'positive' to the question of whether they were well-prepared by the police organisation. They were least positive about the facilities for interrogation aid, particularly the (too) small interrogation rooms and lack of proper technical facilities.

In addition to the police, also the military police and special prosecution agencies were faced with the new right to interrogation aid. In both organisations, the right was introduced and implemented with less means than in the police organisation; in the special prosecution agencies, this was particularly because interrogation aid was delivered on a regular basis even before March 1, 2016. Inside lawyers' offices or individually, lawyers did not prepare themselves very elaborately, apart from informal exchange of information and experiences.

*(B) Application of the right to interrogation aid (research questions 3 and 4)*

- 3 In what percentage of interrogations did legal aid take place? How was the right applied in terms of working processes and average interrogation time?

*Percentage (consultation and) interrogation aid*

According to police registrations (BVH-system) a lawyer was consulted before the start of 62% of all interrogations – whether or not publicly financed. This share was smaller during the baseline measurement: 52%. Based on a randomised selection of summons, the percentage of suspects obtaining both consultation and interrogation aid was 31 in the policy period. In the small group of type A-cases, both were delivered by far the most often: to 78% of suspects. This difference between case types can be explained mostly by the built-in policy warrants making it more difficult to surrender the right to pre-interrogation consultation in A-cases than in other case types. Moreover, in heavier cases, suspects have more to win or lose. According to our data, male suspects received interrogation aid more often than female suspects. Other background characteristics did not make much of a difference.

### *Consequences for work processes of police and legal aid lawyers*

Police respondents argued that realising the right to interrogation aid had progressed quite smoothly in the first ten months after the introduction of the regulations. Planning consultations and interrogations with lawyer aid succeeded in roughly half of interrogations. The largest bottleneck of the new regulations for the police and other prosecutors was not work load as such, but waiting for lawyers before being able to start an interrogation or having to postpone an interrogation. More than half of police respondents mentioned to have been waiting 'often' to 'very often', particularly because lawyers arrived late, or were available only at a later time. A perceived negative side effect of waiting is that suspects were taken into custody more often, while without interrogation aid, they would have been released. This was argued not to be in their best interest.

Next to waiting, informing suspects and communicating with lawyers also meant additional workload for the police, on top of the work load of 2010 to implement and apply the right to consultation aid.

Working processes differed substantially between heavier and lighter cases. Lighter cases are coming towards the police and lawyers in larger amounts at a time, making it a challenge to plan interrogation aid directly after consultation aid (or vice versa: to plan consultation aid directly before an interrogation). This is partly because during their picket shift, legal aid lawyers receive many digital alerts of required interrogation aid, to be accepted (or not) to be delivered within a short time span. This implies that they cannot deliver assistance instantly for each interrogation. By contrast, in heavier cases, interrogations are part of a planning process and the police is reserving time and capacity for interrogations in advance, in coordination with legal aid lawyers. This renders the working process more flexible in these cases. Flexibility was also promoted by short communication lines between lawyers and police officers, for example in rural areas or small police stations.

### *Duration of interrogating*

Interrogation aid implied additional work load for lawyers as from March 1, 2016. An indicator for this is the total duration of suspect interrogation – from the first up to the last of (any) subsequent interrogations in the first stage of the criminal process. Suspects have been interrogated on average 1,3 times in the policy period. Judging from only the police registrations, the total average duration of interrogations per suspect per case is 137 minutes for A-cases (4% of all interrogations), 75 minutes for the 12% of B6+-cases and 59 minutes for the largest share (67%) of the other B-cases. Regardless of case type, the average duration was 65 minutes per suspect per case.

From the registrations we could not deduct in what percentage a lawyer was present. According to our random selection of summons, the total average duration of interrogations of suspects having a lawyer present once or more often, is 98 minutes. Not in all of these minutes the lawyer was actually present: generally, the lawyer attended one or two interrogations, even if three or four interrogations took place (a small share of the cases). In about one tenth of the cases the lawyer left the interrogation room before the interrogation ended, or he/she entered the room after the interrogation started.

For the workload of the police, the *difference* in the average duration of an interrogation before and after March 1, 2016 is of importance. Based on the police registrations, we found that the duration differed only 30 seconds between baseline and policy period – between case types, no significant differences were found either. When comparing the average interrogation time with and without the presence of a lawyer, differences turned out to be larger: 11 minutes for the first interrogation and 10 minutes for the second.

The total interrogation time per suspect per case in the first stage of the criminal process also hardly differs between baseline and policy period, at least for the vast majority of suspects who were interrogated once or twice. The total duration between suspects who opted for interrogation aid (once or more often) was 27 minutes longer than for suspects who surrendered their right. Differences in case types partly explain for this: in heavier cases, interrogations last longer and lawyers are more often present. Only in the largest group of other B-cases, the relationship between lawyer presence and the duration of interrogations was confirmed. In a future edition of this monitor we will investigate to what extent these findings are substantiated.

In the late summer of 2016, partly in response to a previous study of the average duration of interrogations, the (then) Minister of Security and Justice decided not to increase the fixed compensation for interrogation aid, introduced earlier that year. According to the majority of legal aid lawyers interviewed, this compensation (system) was insufficient in comparison with the actual time lawyers spent in – and on their way to – the interrogation room. A question that has not been answered thus far, is whether and to what degree the fixed compensation has discouraged lawyers to spend time and effort on offering interrogation aid.

#### 4 How did the right to interrogation aid take shape in practice?

##### *Communicating suspects' rights and reasons for surrendering the right*

In the policy period, the right to interrogation aid (on top of consultation aid) and the right to remain silent was communicated to most suspects. In most cases, this was done in different ways and at different points in time during the first stage of the criminal process. In about 75% of surrendering the right, suspects did not want interrogation aid, or deemed it unnecessary – as we deduced from the summons. A refusal to wait for the lawyer to come, or surrendering one's right at the advice of the lawyer did not take place often. Lawyers argued that it depends on the type of client and the type of case, whether and to what extent they advise their clients to surrender their right to legal aid during the interrogation.

##### *Role of lawyer and police in the interrogation room*

All our data sources indicate that lawyers exercised restraint during interrogations. Summons revealed little lawyer activity; in one quarter of 'first' interrogations with a suspect, some (mostly one-off) activity was found. This low activity level was confirmed by the questionnaire among police officials. Within the types of actions, asking for a break, for example, to consult with the suspect, occurred most often, followed by advising the suspect to remain silent. According to police and lawyer respondents, lawyers do influence interrogations, either actively or passively. Offering support to the suspect, next to being a check on the interrogation and on police officers were mentioned by lawyers to be of added value.

According to police respondents, police officials have been quite tolerant towards lawyers taking action. Answering questions on behalf of the client or non-verbal interventions were least tolerated. Police respondents replied in a mixed way to the question of whether they feel at ease with a lawyer present in the interrogation room: 41% of them said yes.

##### *Interrogation aid and suspects' use of the right to remain silent*

The summons of interrogations reveal that keeping silent does not occur very often. Nevertheless, lawyer presence and keeping silent were found to be interrelated: in the first interrogation, with a lawyer present, 32% of suspect kept silent in comparison to 22% without a lawyer. For the second interrogation, the difference is larger:

38% with a lawyer present versus 6% without. A similar (less pronounced) effect resulted in relation to confessing. In addition, young adults aged between 18-25 years remained silent most often.

In the perception of survey respondents from the police, there is also a relation between interrogation aid and keeping silent: almost 75% claimed that suspects talk 'less' to 'much less' in the presence of a lawyer. In interviews, both police and lawyers indicated that lawyer presence can lead to more silent suspects, but may also render them more 'talkative'. This depends on case type, type of suspect and also on the kind of lawyer. For example, in a light case involving a first offender, a lawyer may urge his client to make a statement to prevent a criminal trial. By contrast, if the police did not give lawyers insight into the evidence against the suspect, lawyers tend to advise their client to remain silent. The same would happen if a suspect's statement risks becoming inconsistent while the interrogation proceeds.

#### *Interrogation aid at the military police and at special prosecuting agencies*

Results on the military police and special prosecuting agencies strongly resemble the aforementioned findings for the largest part of the research questions. An exception is the average duration of interrogations, which is almost twice as long in the military police force than for the regular police. A possible explanation is that there is less time pressure. Based on the small amount of registrations obtained from the special prosecuting agencies (only covering February 2017) we could not draw final conclusions as to the average duration of interrogations after March 1, 2016, or about the relationship between lawyer presence and duration. Nevertheless, indications from previous research (covering March-April 2016) were confirmed in the sense that the average duration of interrogations was slightly shorter when a lawyer was present.

### **Topics for improvement for practice and for the next edition of this monitor (research questions 5 and 6)**

- 5 Which lessons and topics for improvement regarding the organization and application of the right to interrogation aid result from the above findings, regarding research questions 1 up to 4?

Topics for improvement mentioned by respondents were, among others: initiatives to further improve the trust between police/prosecution services and lawyers, for example through a pre-interrogation talk. It was also suggested to invest more in police interrogation training. In terms of police facilities, respondents suggested to invest in larger interrogation rooms, more audio-video registrations of interrogations (as an additional check on summons or as a back-up) and facilities to realise legal aid by means of videoconferencing.

- 6 Which parts of this first process evaluation and first monitor edition will be taken up again in the next Monitor?

This first edition of the long-term Monitor is not without limitations. Firstly, because data about the criminal investigation cases ('SUMM-IT'-system) could not be obtained from the police, despite many efforts. Data for this report are based on registrations and summons that only cover the first stage of the criminal process ('BVH' system). A second limitation is that data were lacking on the actual police time and personnel capacity spent on the realization of interrogation aid.

Based on the results of this first edition, the focus (indicators) for the second and subsequent editions was to be determined. In any case, we will again address the percentage of interrogations with a lawyer present and the average duration of interrogations, as well as how suspects react to the presence of a lawyer in terms of remaining silent or talk. To represent criminal investigation cases, the summons of SUMM-IT files will be included in the next edition. To properly assess lawyer activity and their interaction with the police and suspects, a larger amount of summons is required. This also makes it possible to further statistically examine relations between independent factors on the one hand, and lawyer activity, the duration of interrogations and the extent to which suspects keep silent on the other hand. What is more, we will further examine the right to interrogation aid from a lawyer's perspective. Finally, other possible results of the right to interrogation aid will be studied, for example, the intensity by which police officials prepare interrogations.