



# Inside Police Custody

An Empirical Account of Suspects' Rights in Four  
Jurisdictions



Jodie Blackstock  
Ed Cape  
Jacqueline Hodgson  
Anna Ogorodova  
Taru Spronken

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## PREFACE AND ACKNOWLEDGEMENTS

This book sets out the research findings of the European Commission funded project ‘Procedural rights of suspects in police detention in the EU: empirical investigation and promoting best practice.’<sup>1</sup> The research was an empirical study of the daily routines and practices of those involved in the administration and provision of suspects’ rights in four EU jurisdictions: England and Wales, France, the Netherlands and Scotland. The study examined the processes in place in each jurisdiction, making particular reference to the rights (some of which are now incorporated into EU Directives) set out in the EU Roadmap on procedural rights. Underpinned by our empirical findings and the identification of best practices, the book also includes a separate ‘Training Framework’ for police officers and lawyers. This sets out key training requirements and recommendations, designed to enhance the knowledge, understanding and skills of practitioners in respect of the procedural rights of suspects.

The success of this ambitious project was made possible through the efforts of the many people who assisted us and worked with us over the last two and a half years. Firstly, we must thank the European Commission for funding the project and granting us a short extension to enable us to complete our fieldwork and writing. We would also like to thank John Long (National Police Service lead on integrated offender management), Roger Smith (JUSTICE) and Zaza Namoradze (Open Society Justice Initiative) for their support, advice and encouragement as project partners. We have guaranteed the anonymity of those who kindly allowed us to observe them as they went about their daily work, preventing us from naming the police officers, assistant prosecutors and lawyers and law firms, who welcomed us and assisted us in conducting the research. Nonetheless, they know who they are and we would like to acknowledge our thanks here. Quite literally, we could not have done this without them.

<sup>1</sup> JUST/2010/JPEN/AG/1578.

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Our researchers did an excellent job conducting fieldwork, providing detailed field notes, carrying out interviews and responding to queries and requests for clarification along the way, enabling us to really understand the daily practices of police and lawyers. They worked long hours, often away from home, and we are grateful to them for all that they have contributed to the project. In addition to Anna Ogodorova, the three other principal researchers were Marc van Oosterhout, Brigitte Perroud and Dan Shepherd. Ciarán Burke also carried out some observations and interviews. We are especially grateful to Laurène Soubise who carried out field observations and interviews in France at very short notice and assisted us with some additional legal research. Marc van Oosterhout also provided a great deal of project support – from note-taking to setting up and managing the secure website where all data was stored.

Maastricht University was responsible for the administration of the project and special thanks must go to Diana Schabregs who managed the complex budget with great efficiency. Thanks also to Yleen Simonis who organized the final project conference in Maastricht. Violet Mols did a fantastic job of formatting the entire manuscript and Marjo Mullers worked in record time to ensure that it was camera ready. Marion Isobel, John Long, Zaza Namoradze, Hans Nelen and Miet Vanderhallen were on our advisory board of experts and assisted us in planning, researcher training and participated in the final project conference in May 2013. Miet Vanderhallen deserves special mention for the work she did in analysing the quantitative data for us. We are grateful to all the lawyers and police officers who participated in the training pilots and also to the experts who assisted us: in Bristol: Robert Brown, Angela Devereux, John Long and Zaza Namoradze; in Maastricht:

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Jodie Blackstock  
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## BIOGRAPHIES

### **Jodie Blackstock**

Jodie Blackstock is an employed barrister at JUSTICE, in the role of Director of Criminal and EU Justice Policy. JUSTICE is a policy and law reform organisation focusing on human rights, access to justice and the rule of law. It is also the UK section of the International Commission of Jurists. Her position involves briefing on the impact of EU legislation in the criminal justice sphere, conducting research into the effectiveness of criminal justice procedures across the EU, as well as domestic law reform, training practitioners in legal developments and intervening in cases in the public interest. Recent projects include the European Commission funded, *European Arrest Warrants: Ensuring an Effective Defence*. Recent case interventions have included appeals to the UK Supreme Court in relation to the right of access to a lawyer (2010), positive obligations upon deaths in the control of the State (2011) and the rights of children of extraditees in preventing extradition (2012). She regularly gives or contributes to lectures and seminars on criminal and human rights law, most recently for the European Academy of Law, the European Criminal Bar Association and the European Parliament.

### **Ed Cape**

Ed Cape is Professor of Criminal Law and Practice at the University of the West of England, Bristol, UK. A former criminal defence lawyer, he has a special interest in criminal justice, criminal procedure, police powers, defence lawyers and access to justice. He is the author of a leading practitioner text, *Defending Suspects at Police Stations* (6<sup>th</sup> edition, 2011), and is a contributing author of the leading practitioner text, *Blackstone's Criminal Practice* (2013, published annually). His research-based publications include *Demand Induced Supply? Identifying Cost Drivers in Criminal Defence Work* (2005), *Evaluation of the Public Defender Service in England and Wales* (2007), *Suspects in Europe: Procedural rights at the Investigative Stage of the Criminal Process in the European Union* (2007), *Effective Criminal Defence in Europe* (2010), and *Effective Criminal Defence in Eastern Europe* (2012). Ed is also the co-editor of

*Regulating Policing: The Police and Criminal Evidence Act 1984 Past, Present and Future* (2008), and author of *Improving Pretrial Justice: The Roles of Lawyers and Paralegals* (2012). He has recently completed, for the United Nations Office on Drugs and Crime, a handbook, *Early Access to Legal Aid in Criminal Investigations and Proceedings: A Handbook and Training Curriculum for Policymakers and Practitioners*, and is currently engaged in a research project on access to effective criminal defence in Latin America.

### **Jacqueline Hodgson**

Jacqueline Hodgson is Professor of Law at the University of Warwick, UK. She has researched and written on issues within French, English/Welsh and comparative criminal justice, on the role of the criminal defence lawyer, the right to silence, the process of investigation and prosecution, terrorism, miscarriages of justice and suspects' rights. Much of her work draws upon her own externally funded empirical research and she held a British Academy/Leverhulme Senior Research Fellowship from 2009-2010. Key publications include *Custodial Legal Advice and The Right to Silence* (1993) *Standing Accused* (1994), *Criminal Injustice* (2000) *French Criminal Justice* (2005) *The Investigation and Prosecution of Terrorist Offences in France* (2006) *Suspects in Europe* (2007) *The Extent and Impact of Legal Representation on Applications to the Criminal Cases Review Commission* (2009). She has advised the Parliamentary Select Committees, EU impact assessment studies and her research has been relied on by the Special Immigration Appeals Commission and in European Arrest Warrant proceedings. She is currently involved in a comparative empirical study of the safeguards in place for juvenile suspects during police interrogation funded by a European Commission.

### **Anna Ogorodova**

Anna Ogorodova is PhD researcher at the University of Maastricht, Faculty of Law. She also teaches courses related to criminal procedure and human rights. Her research interests include police custody, suspect interrogations, and the role of defence lawyers therein, studied from a comparative, legal and empirical perspective. She has presented and published internationally on these topics. Previously she worked as Associate Legal Officer at the Open Society Justice Initiative (of the Open Society Institute). In this capacity, she provided technical assistance governments and NGOs on the issues related to reforming their national criminal justice systems. She also served as international consultant on criminal justice and legal aid reforms.

### **Taru Spronken**

Taru Spronken is Professor of Criminal Law and Criminal Procedure at Maastricht University, she has been a criminal defence lawyer for more than 30 years and substitute Judge in the Court of Appeal of Den Bosch. She is specialised in criminal procedure and human rights and has brought numerous cases to the European Court of Human rights. As from September 2013 she has been appointed Advocate

General at the Supreme Court in the Netherlands and has remained part time professor at Maastricht University.

In her research she focuses on the implications of EU cooperation in criminal matters for procedural rights and has acted on numerous occasions as expert for the European Commission. She has published extensively on criminal defence rights and human rights (i.a. with E. Cape, Z. Namoradze, R. Smith (Eds.) *Effective Criminal Defence in Europe* (2010); *EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice* (2010); with Chen Weidong (Eds.), *Three Approaches to Combating Torture in China* (2012)).





## LIST OF ABBREVIATIONS

### A

ACPOS	Association of Chief Police Officers in Scotland
AP	assistant prosecutor (Netherlands: <i>hulpofficier van justitie</i> , HOVJ)
APJ	<i>agents de police judiciaire</i> – France (lower-ranking police officer)

### C

CCP	Code of Criminal Procedure (Netherlands: <i>Wetboek van Strafoordering</i> )
CCTV	closed-circuit television
CDS	Criminal Defence Service (England and Wales)
CID	Criminal Investigation Department (England and Wales, and Scotland)
COPFS	Crown Office and Procurator Fiscal Service (Scotland)
CP	Crown Prosecutor (England and Wales)
CPP	<i>Code de Procédure Pénale</i> – France (Code of Criminal Procedure)
CPS	Crown Prosecution Service (England and Wales)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

### D

Directive on the right to interpretation and translation	Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, O.J. 26.10.2010 (L 280).
Directive on the right to information	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, O.J. 1.6.2012 (L 142).

Directive on the right of access to a lawyer	Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 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 deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, O.J. 6.11.2013 (L 294)
DSCC	Defence Solicitor Call Centre (England and Wales)
<b>E</b>	
EAW	European Arrest Warrant
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EULITA	European Legal Interpreters and Translators Association
<b>G</b>	
GAV	<i>garde à vue</i> - France (police custody)
<b>I</b>	
ICTY	International Criminal Tribunal for the former Yugoslavia
<b>N</b>	
NGO	non-governmental organisation
NRPSI	National Register of Public Service Interpreters (England and Wales, and Scotland)
<b>O</b>	
OPJ	<i>officier de police judiciaire</i> - France (higher-ranking police officer)
<b>P</b>	
PACE	Police and Criminal Evidence Act 1984 (England & Wales)
PCSO	Police Community Support Officer (England & Wales)
PCT	price competitive tendering
PDSO	Public Defence Solicitor's Office (Scotland)
PF	Procurator Fiscal (Scotland)
PV	<i>procès-verbal</i> - France (official police report of evidence)
<b>S</b>	
SARF	Solicitor Access Recording Form (Scotland)
SIM	standard interrogation method (Netherlands: <i>Standaard Verhoorstrategie</i> , SVS)
SLAB	Scottish Legal Aid Board

SOP	standard operating procedure
SPPF	Scottish Policing Performance Framework
<b>W</b>	
Wet RO	<i>Wet op de rechterlijke organisatie</i> – Netherlands (Law on Judicial Organization)





## POLICE DETENTION TIMELINE

Police Detention Timeline

Police Detention Timeline<sup>1</sup>

Hours	England & Wales	France	Hours	Netherlands	Hours	Scotland
	Arrest - a person must be taken to a police station as soon as practicable. <sup>2</sup>			Arrest – a person must be taken to a police station as soon as possible. <sup>3</sup>		
00:00	Pre-charge detention - authorised by police on the grounds of investigative need.	Garde à Vue (GAV) - effectuated by police for investigative purposes; information sent to prosecutor.	00:00	Investigative detention ( <i>ophouden voor onderzoek</i> ) - authorised by police on the grounds of investigative need.	00:00	Pre-charge detention - ( <i>section 14 detention</i> ) effectuated by police for investigative purposes when there is insufficient evidence to charge a suspect.
06:00	First review of detention		06:00-15:00 <sup>4</sup>	End of detention/minor crimes; more serious crimes – police decide to release or to prolong detention for a maximum of 3 days (place a suspect in prolonged detention, or <i>inverzekeringstelling</i> ).		
09:00	Second detention review – if detention continues beyond this time, it must be reviewed every nine hours.				Before 12:00	End of detention - ( <i>section 14 detention</i> ) a person can be detained in police custody without charge, unless further detention is authorised.
Before 24:00	End of detention – maximum period for which a person can be detained in police custody without a charge, unless further detention is authorised.	Prosecutor orders release or GAV is extended for a further 24 hours.	Before 24:00		24:00	Absolute maximum period of detention before charge.

<sup>1</sup> The purpose of this Timeline is to illustrate the periods in the criminal proceedings by the observations. For a more detailed description of the various stages of police detention and of the suspects' rights during police detention in the four jurisdictions, see Chapter 3.

<sup>2</sup> The period between arrest and arrival to the police station was not covered by the observations.

<sup>3</sup> *Ibidem*.

<sup>4</sup> Excluding the hours between midnight and 9 am. If a suspect is arrested in the evening before midnight, the initial detention period may be up to 15 hours.

36:00	Maximum period of pre-charge detention, unless further detention is authorised by magistrates' court.	Before 48:00	End of GAV, unless further GAV authorised by a judge. Prosecutor orders release, an immediate trial or further investigation.	Before 87:00	End of police detention, unless it is prolonged by a decision of a prosecutor for another 3 days. Judicial review of legality of detention.	Until first available court sitting	Detention under common law <sup>5</sup> - a person must be brought to court as soon as practicable.
96:00	Absolute maximum period of pre-charge detention following a decision of magistrates' court.	96:00	Absolute maximum period of GAV following a decision of a judge.	159:00	Absolute maximum period of police detention.	Until first available court sitting	Post-charge detention may be ordered by police, if certain conditions apply. <sup>6</sup>

<sup>5</sup> A suspect may be detained directly under common law arrest powers (i.e. without a prior s14 detention), where there is sufficient evidence to charge and there is no need to interrogate (e.g. where a suspect was caught in the act or where an arrest warrant was issued by a court).

<sup>6</sup> The period of post-charge detention in England and Wales was not covered by the observations.

