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PART 3
BELGIUM

Police investigations

3.1 If the police catch someone in the act of committing a crime, they may hold the suspect for questioning for no more than twenty four hours. This period of time starts from the moment that the suspect is "arrested". The police officer who made the "arrest" must place the suspect immediately at the disposal of a senior police officer who will "arrest him officially". The senior police officer must inform the public prosecutor immediately of his or her decision. As from this moment, the public prosecutor decides on whether the suspect is to be kept in custody or not.

3.2 In a case where there are serious grounds for suspecting that someone has committed a crime, either a public prosecutor or an investigating judge must order his or her arrest. The duration of this arrest is also twenty four hours. Police officers in this case have only the power to take measures to prevent the suspect from running away.

3.3 In both cases, if the suspect has not been set free by the public prosecutor, the suspect must be taken before the investigating judge within twenty four hours. When deciding whether the suspect should be remanded in custody, the investigating judge should consider whether it is absolutely necessary for public safety and should have regard to the severity of the possible punishment.

3.4 Neither the police nor the investigating judge are under any duty to inform the suspect of his or her right to silence.

3.5 During interrogation by the police and the investigating magistrate the suspect has no right to consult a lawyer.

3.6 At the end of questioning by the investigating judge, the suspect must be informed of his or her right to choose a lawyer. If the suspect does not make a choice, the judge must inform the President of the Bar or his or her representative. If the defendant is without means to retain counsel, he or she has the right to free legal assistance. This assistance is usually given by junior members of the Bar, who are then compensated at what is said to be a very low rate by the Government.

Evidence

3.7 The law of evidence in Belgium is an example of a system of "free evidence". The judge is free to appreciate the intrinsic value and procedural significance of the evidence put forward by the prosecutor. However, one limitation on the judge's freedom to assess the evidence is that he or she may only take into account evidence which has been obtained in a lawful way.

3.8 There are no specific rules restricting the admissibility of confessions made to the police during interrogation. Confessions do not have to be corroborated.

3.9 The accused is presumed innocent and cannot be compelled to cooperate in an active way in his or her own condemnation. Silence is not considered evidence of guilt. The prosecution is obliged to prove its case beyond reasonable doubt.

Prosecution/pre-trial procedures

3.10 The pre-trial inquiry can be divided into two parts: the preliminary inquiry carried out by the police under the guidance of the prosecutor, on the one hand, and the judicial inquiry carried out by the investigating judge, usually at the request of the public prosecutor. These inquiries do not take place at the same time. They must take place in succession. Two inquiries do not take place in all cases. In most cases there is only a preliminary inquiry.

3.11 The police perform their investigative duties under the authority of the public prosecutor. As noted above, the police can only arrest a suspect when he or she is caught in the act of committing a crime. In other situations, the public prosecutor – and in the case of a judicial inquiry – the investigating judge direct and supervise the police. They will give very precise instructions to the police as to the tasks to be carried out.

3.12 Once the preliminary inquiry is finished, prosecutors have to decide on one of the following courses of action:

(i) if they are of the opinion that there are good reasons not to prosecute, they can dismiss the case.

(ii) they have the right to settle a case on payment of a sum of money. The sum is fixed by the prosecutor and can vary between 10 francs to the maximum fine that can be imposed for the offence in question. There are conditions on when the prosecutor can make such a settlement:

(a) there must have been complete compensation for the damage that has been caused;

(b) the criminal offence is one which is punishable with a fine and/or maximum five year prison sentence;

(c) the prosecutor is satisfied that, if the case did go to trial, he would recommend only a fine or a fine together with a seizure of goods.

(iii) they can decide that a prosecution should go ahead;

(iv) they can request that the investigating judge make a judicial inquiry. Generally they will only do this in cases that are serious and complicated and where they feel that the powers of the investigating judge are necessary.

3.13 In the case of a judicial inquiry, when the investigating judge comes to the conclusion that the inquiry is complete, he or she returns the dossier to the public prosecutor. If the prosecutor is of the opinion that further inquiries should be carried out, he or she can request that the investigating judge reopen the inquiry. When prosecutors are satisfied that the inquiry is complete, it is they, and not the investigating judge, who then decide whether the case should continue to trial.

3.14 When a prosecutor decides that the case should continue to trial, and the offence is either a contravention or a misdemeanour and there has been no judicial investigation, the case will then proceed directly to the trial court. In the case of serious offences, "crimes", and cases where there has been a judicial investigation, the case must be referred first to the Council Chamber, which is composed of one judge. The Council Chamber decides whether there is enough evidence to justify a prosecution; whether further investigations are necessary and, if the case is ready to go to trial, determines in which court the case is to be tried. The public prosecutor and the civil party have the right to appeal against decisions of the Council Chamber.

3.15 In cases where the Council chamber decides that the offence should be tried by an Assize Court, it refers the case to a special chamber of one of the Courts of Appeal. This Chamber must decide whether the evidence is strong enough to justify the charge. The Chamber must hear the accused. It has the power to order new inquiries. The accused can appeal against the decision of the Chamber to the Court of Cassation.

3.16 Before the trial in an Assize Court, the President of the Court must visit the accused. The President has a duty to interview the accused about

the facts concerned, to ask if a defence lawyer has been chosen and, if not, assign one. The President must also inform the accused of the right to appeal against the decision of the Special Chamber.

3.17 No real empirical research has been done about the working relations between public prosecutors, investigating judges and the police. However, some parliamentary reports and research projects illustrate that these relations are not always that good. In some cases they were very poor.

Disclosure

3.18 Where a suspect is in custody, he or she has the right to inspect the dossier in the course of the investigation every time a judge has to decide upon the continuation of the detention. (This is after five days from the interrogation by the investigating judge and then at thirty day intervals.)

3.19 In any case the defence lawyer has the right of full access to the complete dossier after the summons for his or her client to appear in court has been issued. So that the defence can utilise this right, a period of ten days has to be observed between the issue of the summons and the beginning of the trial, or a period of three days if the suspect is detained in custody.

3.20 A basic assumption of Belgian criminal procedure is that every piece of evidence collected is incorporated into the dossier. However, there is no clearly stated right that the defence must have access to relevant but undisclosed material in the possession of the prosecutor. Nevertheless, if defence lawyers have reasonable grounds for supposing that such material is in the hands of the authorities, no rule prohibits them from asking the trial judge to order an inquiry into this question.

3.21 The defence are under no duty to make advance disclosure of the nature of their case.

Expert evidence

3.22 There are no rules to ensure that scientific evidence is collected in a proper way. The criminal justice system is totally dependent on the personal qualities of the police officers and experts concerned and on the practical arrangements within and between the police forces, the prosecutor/ investigating judges and experts. Recently, in some notorious cases it was revealed that the collecting of evidence had been very poorly done, and as a result, the government has decided to invest more money in the staff, equipment etc. of police laboratories.

3.23 There is no official assistance to ensure that the defence have adequate assistance from forensic or scientific experts.

3.24 Experts are appointed by the investigating judge. The defence may suggest to the investigating judge that a certain expert be appointed or assist the judge's appointee or that certain investigations be carried out, but the judge is free to refuse. The defence may appoint their own experts.

3.25 There is no system for attempting to get the investigating and defence experts to agree on their evidence. In general the experts of the defence will make their comments to the investigating experts, who are free to take them into account or not. In practice, it is at the time of the trial that the report from the investigating experts will be criticised.

3.26 There is no system for the court to commission expert evidence either instead of, or in addition to, expert evidence commissioned by the investigating judge or the defence.

Detention pre-trial

3.27 The population of Belgium is approximately 10 million. In 1989, 7,997 people were detained in custody awaiting trial.

3.28 One witness estimated that there were at any one time approximately 3,000 people in custody who had been convicted but were awaiting sentence.

Courts/juries

3.29 There are three courts which try cases at first instance. The Police Courts are competent to try petty offences (contraventions). The Correctional Courts are competent to try misdemeanours. The Assize Courts are competent to try very serious offences, political crimes, and crimes and misdemeanours against the press code.

3.30 Juries sit only in the Assize Court. The Assize Courts are temporary courts. They are established on a case by case basis. They consist of a Court of Appeal judge, who is the President of the Court, two judges from the Correctional Court in the city where the tribunal is established, and a jury of twelve lay persons.

3.31 Jurors are drawn from the electoral list by lot. There are no provisions for the court to ensure that the jury is racially balanced. However, the accused can challenge six members of the proposed jury.

Trial

3.32 Before the trial the judge has the opportunity to read the dossier. At the trial the judge is responsible for calling and questioning the accused and

the witnesses. The judge can decide which witnesses to call. The prosecutor, the defence and any civil party cannot directly question a witness. They can merely ask the judge if he or she is willing to ask the witnesses the questions they would like to be answered. In practice, witnesses are not called to give evidence at the trial. The court relies on the dossier containing statements taken by the police. However, in serious cases witnesses will be heard again.

3.33 In the Assize Court the prosecution lawyer will, at the opening of the trial, set out why he or she is requesting that the person charged be convicted and refer to the evidence in support. In the lower courts, he or she usually does this at the end of the hearing.

3.34 In the Assize Court, after the end of the trial, the President of the Court formulates the questions which the jury have to answer with "yes" or "no". It is not customary for the judge to sum up the facts for the jury. The judge is not permitted to make personal comments. The jury deliberates alone on the a question of guilt. However, if the accused is found guilty by the jury only by a simple majority, the judges deliberate among themselves on the same questions. If a majority of them do not agree with the majority of jurors, the accused must be acquitted. The jury decides together with the judges upon the penalty to apply when the accused has been pronounced guilty.

Previous convictions

3.35 Judges will have before them the accused's prior convictions. There are no specific rules about the admissibility of previous convictions. The dossier will contain the police record mentioning the previous convictions. The prosecutor may refer to them. It is up to the judge to determine the weight of this evidence.

Appeals

(i) Appeals from the Police and Correctional Courts

3.36 A defendant convicted in the Police Court can appeal to the Correctional Court. A defendant convicted in the Correctional Court can appeal to one of the five Courts of Appeal.

3.37 In 1988, 4,104 cases were brought before the Courts of Appeal. In 1,052 (25.6%) cases, the accused person was acquitted.

3.38 Appeals from both the Police and the Correctional Courts are of right. Leave is not required.

3.39 The appeal courts do not have power to discourage hopeless appeals.

3.40 Evidence which was available at the trial but not used can be invoked by the defence before the appeal courts.

3.41 The appeal courts are free to decide how to deal with the case. They can therefore decide that the appeal will take the form of a retrial (hearing witnesses) but in practice the court will examine the case on the basis of the existing file and the proceedings of the court of first instance.

3.42 There is no statutory formula for the appeal courts to apply before quashing a conviction.

3.43 A person may appeal only once. However, after the appeal courts, there is a special procedure before the Court of Cassation for recourse against a judge in cases of alleged miscarriages of justice. This court does not judge the facts of the case but is only concerned with the lawfulness of the decisions appealed against. If a decision is unlawful, the court can quash the decision and in some cases send the case for a retrial.

3.44 There is no procedure for cases to be referred back to the appeal courts by the Executive.

(ii) Appeals from the Assize Court

3.45 There is no appeal on the facts from the Assize Court. However, an appeal can be made on matters of law to the Court of Cassation, as above (paragraph 3.43).

Training

3.46 In the training of judges and police no special attention is given to the problems of false confessions, unreliable eye identification, bias of police officers, prosecutors, experts etc.

Reform

3.47 In 1985, in Belgium there was a number of attacks from left-wing terrorist groups. There was also a large number of armed robberies in supermarkets and banks. These were not cleared up by the police and the judiciary. This led to a great deal of public unrest and debate.

3.48 After two years, Parliament decided to establish a committee of inquiry to examine the way the criminal justice system was organised with a view to the fight against terrorism and banditry. In May 1990, this committee published a report very critical of the judiciary and criminal procedure (notably the pre-trial proceedings). In answer to this report the Government made public in June 1990 the "Whitsun-plan". This policy

plan stated that further deliberations were necessary into issues relating to pre-trial proceedings. To this end the Minister of Justice set up, on 23 October 1991, a committee to examine several questions in relation to criminal procedure. The committee is composed of university professors, a public prosecutor, a defence lawyer and an investigating judge.