

Salduz, and its effect on Joe Average

For a select company of lawyers and judges as well as representatives of the local police force, attorney Mr. C.H.J. Merx gave a lecture this week at the courthouse about the Salduz-arrest. That's not exactly stuff for a news report, but the subject matter is interesting for anyone who ever lands behind bars and for all parties involved in the judicial process.

Salduz is a 17-year old Turkish boy who was arrested in his country because he was taken part in an illegal demonstration. In court, the prosecution used evidence it obtained from interrogating the boy. The European court of Human Rights ruled that this evidence was not admissible, because police officers had interrogated the young man without giving him prior access to an attorney.

This is the main rule stemming from the Salduz-case: a detained suspect is entitled to consult a lawyer prior to his first interrogation by the police. The arrest does not entitle lawyers to be present during the interrogation, unless the suspect is a minor.

The Salduz-arrest has been quoted by attorneys in local court cases on several occasions. Merx pointed out that the ruling will have far-reaching consequences, especially in terms of logistics. One of the first things that comes to mind, Merx pointed out, is that the police will no longer be able to decide the pace of its own work, because first interrogations will have to wait until suspects have been able to consult with an attorney.

If the attorney has been present during an interrogation (in the case of suspects who are minors), he will have to wait for the written police report, read it and comment on it. That is going to cost a lot of time, Merx pointed out. He suggested that these reports be made by a professional typist who works during the interrogation.

Another possible effect is that the battle between prosecution and defense will increasingly move from the courtroom to the interrogation room at the police station. Attorneys will no longer be able to claim that interrogators have pressured their client if they have been present at the interrogation. There will be less formal defense arguments in the courtroom, Merx said.

The tail of his lecture contained a surprise in the form of article 48 of the Antillean penal code. The third paragraph of this article reads: "When the suspect asked for the assistance of an attorney before he is being interrogated by a detective, the interrogation can only take place after the attorney has advised the defendant."

This rule is similar to the core of the Salduz-arrest. There are only two exceptions. Police is authorized to interrogate without waiting for an attorney if the in-

is unreasonable to expect the presence of an attorney.

An interesting nugget in the Salduz-lecture concerns applicants for a residence permit under the Brooks Tower Accord. Merx pointed out that it has happened more than once that these permits were refused because the applicant had become a suspect of a criminal act—usually involving forged documents like passports. In these circumstances, Merx said, the immigration-case becomes a criminal case—and the Salduz-arrest applies. But this is not happening at the moment. What does happen is that the suspect is offered a transaction to avoid detention. The suspect usually pays fearing imprisonment. He also gets to hear the date by which he must leave the island, and his papers are confiscated. This, Merx said, is a blatant violation of the Salduz-arrest.

In general, this practice goes unnoticed because the suspects are deported, and they are usually not in a position to come back to fight a legal battle. Apart from that, they probably have never heard of Salduz either.

To give suspects access to an attorney within the first six hours after they have been arrested is a challenge, especially when the arrest occurs on one of the smaller islands, Saba and Statia. There are no lawyers living on these islands, reason for the Justice Ministry to set up video conferencing facilities. Whether those same facilities will also become available in St. Maarten is unclear at this moment.

The lecture contained many more of the finer legal points that are of interest to local lawyers, judges, police officers and prosecutors. Interestingly, Chief Commissioner Peter de Witte and the head of the detective department Denise Jacobs attended the lecture, but there was no representative of the prosecutor's office.

While one would expect that the prosecutor's office knows everything there is to know about the Salduz-arrest, the same cannot be said or expected of Joe Average. But all the Joe Averages in our community ought to pay attention to it and remember that, in the unfortunate case they ever get arrested, the Salduz-arrest entitles them to the assistance of an attorney before they say anything to a policeman.