CRIMINAL LAW

Part B: Fundamental Concepts in Western World Criminal Justice Systems

Syllabus and Course Assignments
2025 – 2026

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General Information relating to the Course

COURSE INFORMATION

Objectives

The object of Part B of the course Criminal Law is to study fundamental concepts of criminal procedural law.

Overview

National procedural criminal law systems differ substantially. Nevertheless, all criminal law systems have similar actors and must address similar legal questions and issues. In this course we will study the differences between adversarial and inquisitorial criminal justice systems and their rationales.

The European criminal justice systems must adhere to standards enshrined in the European Convention of Human Rights (ECHR). In this course we will focus on understanding rules of criminal procedure identified in the ECHR and discussed in the jurisprudence of the European Court of Human Rights (ECtHR) as well as the influence of this case law on national systems of criminal procedure.

The following elements of criminal procedure will be discussed: preliminary investigations, preparation of and representation at the trial, evidence, sentencing, appeal and sanctions. We will also discuss the position and competences or rights of the different actors in criminal investigations and prosecutions.

Teaching method

12 hours lecture and 12 hours working group.

Course objectives

Upon completion, students should be able to:

- understand the differences between the inquisitorial and the accusatorial approach of criminal procedure and their rationales, and identify aspects of both approaches in national criminal justice systems;
- understand and analyze relevant jurisprudence of the European Court of Human Rights regarding Articles 3, 5, 6 and 8 ECHR in criminal cases;
- relate aspects of a national criminal justice system to the standards developed by the European Court of Human Rights.

Assessment	Onsite digital exam (further information will be provided on Brightspace)
Lecturers	Dr L.J.J. Peters (l.j.j.peters@rug.nl) – lecturer and course coordinator Part B Mr B.E. Messele, LLM Ms A. Zimmermanns, LLM

OVERVIEW OF WEEK TOPICS

Week Subject

1. Introduction into Criminal Procedure Law and the ECHR
2. Criminal Investigations and Pre-Trial Measures: Articles 5 and 8 ECHR
3. Defence Rights during the Investigation: Article 6 ECHR
4. Prosecution and Victim's Rights
5. The Judiciary, the Trial and Confrontation Rights
6. The Verdict, Sanctions; Alternative Settlement; Exam Preparation

COMPULSORY COURSE AND EXAM MATERIAL

Compulsory Course Material

- The case law mentioned in the separate Case Law Reader (published on Brightspace);
- The Syllabus and Course Assignments (published on Brightspace);
- Additional literature and case law, as far as discussed during lectures and working groups;
- All that has been discussed during the various lectures and working groups.

Useful Website

http://echr.coe.int/echr/en/hudoc (European Court of Human Rights' website)

Recommended Literature

Human Rights and Criminal Procedure, The case law of the European Court of Human Rights, Jeremy McBride, Council of Europe Publishing, 2023 (available at UG Library).

Human Rights in Criminal Proceedings, Stefan Trechsel, OUP, 2005 (available online through the UG library).

Additional information will be supplied via Brightspace (brightspace.rug.nl) and during lectures and/or working groups.

To study for the Exam:

- The case law mentioned in the separate Case Law Reader;
- Other case law, as far as discussed during lectures and working groups;
- All (other) that has been discussed during the various lectures and working groups.
- NB. Additional information on the exam will be supplied via Brightspace and during lectures and/or working groups.

Exam Dates: **21 January 2026 (first sit)**
7 April 2026 (re-sit)
Check Brightspace and the exam schedule at rooster.rug.nl !

OTHER RELEVANT INFORMATION:

Availability of Slides
Slides of the lectures will be posted on Brightspace.

Information on the Working Groups
The assignments and activities in the working groups are directly linked to the main topics covered in the lectures. Their purpose is to help you apply, deepen, and critically reflect on the concepts introduced in class. Some topics will only be discussed in the working groups.
You are expected to prepare for each working group session by completing the assigned tasks in advance (see hereinafter). These assignments are structured per week (1 – 6). Preparation includes answering the theoretical questions, case law questions, and practice questions in writing. Use the working group sessions to discuss your answers, clarify uncertainties, and explore how the different parts of the course relate to one another.

Using the SlimStampen Memory Tool
To help you actively memorize and retain key legal rules from the cases we discuss each week, we strongly recommend you to use the SlimStampen tool developed by the Memory Lab at the University of Groningen. SlimStampen offers a game-like learning environment with flash cards that appear based on your response speed and accuracy, helping you optimize your study time. You can access the tool through the course page on Brightspace. Further information and instructions will be provided during the lectures.

Relevant ECHR-Articles

ARTICLES 3, 5, 6 AND 8 ECHR

Article 3. Prohibition of torture
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5. Right to liberty and security

1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   - a the lawful detention of a person after conviction by a competent court;
   - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
   - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
   - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
   - e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
   - f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6. Right to a fair trial

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

- a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b to have adequate time and facilities for the preparation of his defence;
- c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8. Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Course Assignments

WEEK 1 Introduction into Criminal Procedure Law and the ECHR

Lecture 1 The Law on Criminal Procedure; an Introduction

Topic(s):

- Definition of criminal procedure law; link with substantive criminal law
- Historical foundations and main models of criminal procedure: inquisitorial vs. adversarial systems
- Aims and principles of criminal procedure in comparative perspective
- Introduction to the European Convention on Human Rights: historical background, institutional framework (ECtHR), and scope
- Skills to develop in this course: reading ECtHR judgments and the 'IRAC method'
- Train your brain: the SlimStampen tool

Literature: See Brightspace.

To do: See Brightspace.

Working Group 1: Introduction into Article 6 ECHR: The Right to a Fair Trial, within a Reasonable Time

Topic(s): Models of criminal procedure: the adversarial and inquisitorial system;
The scope of application of the right to a fair trial in criminal cases;
The right to be tried within a reasonable time.

Case Law: ECtHR 21 February 1984, *Case of Öztürk v. Germany*, application no. 8544/79
ECtHR 18 July 1994, *Case of Vendittelli v. Italy*, application no. 14804/89

To do: 1. Read the case law as indicated above
2. Read Article 6 ECHR
3. Answer the questions below

I. Case Law Questions

Öztürk v. Germany

1. Why did Mr. Öztürk enter an appeal against the District Court's decision?

2. What was the role of the European Commission on Human Rights?

3. Why does the European Court of Human Rights (ECtHR) choose an autonomous interpretation of the notion of a criminal charge?

4. According to which criteria does the ECtHR decide whether an offence was a 'criminal' one?

5. How can the word 'charge' (for the purposes of Article 6 (1) ECHR) be defined?

6. Do you agree with the outcome: a right to a free interpreter in a trial regarding the objection to a fine of 60 DM (approximately 25 euro)?

7. Mr. Öztürk had to pay the court costs of DM 184.70 (about 85 euros), consisting of the costs for interpretation (DM 63.90) and other court costs. Does the payment of these costs raise a problem with regard to Art. 6 ECHR?

Vendittelli v. Italy

1. What rationale lies at the heart of the reasonable time requirement of Article 6 ECHR?

2. a. When does 'the period to be taken into consideration' start?
   b. When does it end?

3. Does the Court consider the reasonable time requirement of Article 6 ECHR to be violated? Why (not)?

II. Practice Questions

Read the following cases and answer the questions below.

<u>Case I</u>

FACTS

1. On 17 August 2010 the applicant notified the Lviv City Mayor on behalf of a local human rights NGO of its intention to hold a demonstration every Tuesday from 10.30 a.m. to 1 p.m. near the building of the Lviv Regional Prosecutor's Office

during the period between 17 August 2010 and 1 January 2011. The aim of the demonstration was to draw attention to the issue of corruption in the prosecution service. The number of possible participants was declared as up to fifty persons.

2. On Tuesday 12 October 2010, the applicant informed the City Council about the demonstration to be held on that particular day. He thus organized a peaceful demonstration near the Lviv Regional Prosecutor's Office later that day between 11.30 a.m. and 12.40 a.m. About twenty-five persons took part. They were standing on the pavement in front of the building of the Prosecutor's Office when the police told them that they should remain at a distance of five meters from the building. That would have forced the demonstrators to stand in the road and obstruct the traffic. After some discussion with the police, they crossed the road and stood on a lawn on the opposite side. The police, however, told the demonstrators that they could not stand on the lawn and should move away, which meant standing in the road again and obstructing the traffic, causing temporary traffic-jams.

3. Immediately afterwards, the applicant was called aside by two police officers. They grabbed his arms and took him in the direction of the nearby police station. Some of the demonstrators requested the officers to show them their identification and started filming the incident; the officers then let the applicant go.

4. According to the applicant, on 13 October 2010, he was invited to the police station. Upon his arrival at the police station at about 5 p.m., the police accused the applicant of having committed the administrative offences of malicious disobedience to a lawful order by the police on 12 October. Between 10 p.m. and 11 p.m. the police drew up reports on those administrative offences. The applicant telephoned his lawyer, but the latter was not allowed onto the premises of the police station. At 11 p.m. the applicant was interrogated by the police and afterwards placed in a cell, where he remained until 3 p.m. on 16 October 2010.

5. On 16 October 2010, before taking him to the court, the police drew up anew the reports on the administrative offences of malicious disobedience to a lawful order by the police. In their reports they referred to Article 185 of the Code on Administrative Offences. The reports were signed by the applicant.

6. At 3 p.m. the applicant was taken to the Galytskyy District Court. He had no opportunity to study the case-file materials before the court hearing. During the hearing, the court rejected the applicant's request to be represented by the lawyer of his choosing on the ground that the applicant was a human-rights expert and could defend himself. The applicant's request to summon and question witnesses and examine a video made during the events of 12 October 2010 was also rejected by the court.

7. By a decision of the same day, the court found the applicant guilty of committing the administrative offence of malicious disobedience to a lawful order by the police. The court noted that the applicant had held a street march without the permission of the Lviv City Council and had ignored the lawful demands of the police to stop breaching the peace. He also refused to follow the police to their station but instead called the participants in the demonstration, who shouted and threatened the officers. The applicant denied all accusations. Having heard the applicant and examined the case-file materials, the court concluded that the applicant's testimony was refuted by the written reports of the police officers and the traffic police officers. Neither the police officers themselves, nor the participants in the demonstration who had eye-witnessed the events of 12 October 2010 and had filmed them had been summoned and questioned by the court,

despite of the applicant's request for their appearance. The court noted that the said reports had been drawn up correctly and therefore had to be taken into account. It sentenced the applicant to three days of administrative detention starting from 6 p.m. on 16 October 2010 with reference to the relevant provisions of the Code on Administrative Offences.

8. At around 6 p.m. on 19 October 2010 the applicant was released.
9. On 20 October 2010 the applicant appealed against the court's decision of 16 October 2010.
10. On 29 October 2010 the Lviv Regional Court of Appeal examined the applicant's appeal in the presence of the applicant and his lawyer and rejected it. (…) The judgment of the Lviv Regional Court of Appeal became final on 29 December 2010.

RELEVANT DOMESTIC LAW

> **Code on Administrative Offences**
> **Article 185:**
> Malicious disobedience to a lawful order or demand by a police officer who is carrying out his official duties (…) shall be punishable by a fine of between eight and fifteen times the minimum monthly wage, or by correctional labour of between one and two months with a deduction of 20% of earnings; or in the event that in the particular circumstances of the case and with regard to the offender's character these measures are found to be insufficient, by administrative detention of up to fifteen days."

Question 1:
Are the rights mentioned in Article 6 paras 2 and 3 ECHR applicable in this case? Motivate your answer by using the IRAC method.

Question 2:
Has the right to be tried within a reasonable time been violated? Motivate your answer by using the IRAC method.

Case II

FACTS

1. The applicant works as a prison officer in the Gotham City prison.
2. In April 1997 the prison authorities discover that a mobile phone has been smuggled into the prison in December 1996. In May 1997 an investigation is opened against the applicant and in June 1997 several investigative measures against the applicant, including camera surveillance, are ordered.
3. On 14 January 1998 the applicant is arrested and on the same day he is interviewed by the police. On 20 January 1998 the applicant is released by the investigating judge.

4. On 13 May 1998 the public prosecutor's office files a bill of indictment on charges of smuggling an object into the prison. This is a minor offence laid down in section 424a of the Penal Code. Charges are also brought against two other accused.
5. The main proceedings are instituted before the District Court on 8 January 2000. On 12 January 2000 the court schedules the trial hearings. It subsequently enquires with counsel for the defence as to which dates might be suitable for further hearings for oral argument in the months of June and July 2000.
6. The first hearing of the main proceedings takes place on 3 September 2000. On 17 September 2000 the first instance court convicts the applicant for smuggling a prohibited object into the prison, and sentences him to a term of imprisonment of four months. On 23 March 2001 the written judgment is filed by the court. In April 2001 the applicant is preliminarily suspended from his duties. In April 2001 the applicant is preliminarily suspended from his duties and his salary is reduced by approximately 25%.
7. The applicant lodges an appeal against the judgment. In addition, two co-accused and the public prosecutor appeal against the respective judgments.
8. In September 2001 the applicant changes his defence counsel.
9. The appeal proceedings commence on 25 October 2001 and end on 18 November 2001. The Appeal Court acquits the applicant as well as his co-defendants. It provides the judgment in writing on 23 December 2001.
10. On the day on which the judgment is pronounced, 18 November 2001, the public prosecutor lodges an appeal on points of law and submits the reasoning on 16 January 2002. Responses to the appeal are submitted by the accused, and the Supreme Court schedules a hearing for 21 January 2003.
11. On 21 January 2003 the Supreme Court sets the judgment of the Appeal Court aside and remits the matter to the Appeal Court.
12. New appeal proceedings commence on 11 February 2005 and end on 2 April 2005. The Appeal Court convicts the applicant for the offence of smuggling a prohibited object into the prison, and sentences him to three months and two weeks imprisonment.
13. In its reasoning concerning the sentence the Appeal Court holds that it has to be taken into consideration in favour of the applicant that more than eight years have elapsed since the commission of the offence and that he has been subjected for many years to a criminal investigation and court proceedings that have been pursued against him. The court also takes into account that the applicant has been suspended from service as soon as he was convicted by the first instance court and as a consequence has been receiving only a reduced salary since then. Lastly, the court declares two weeks of the prison sentence as having been served in order to compensate for the excessively long proceedings.
14. The applicant lodges an appeal on points of law against the judgment of the Appeal Court on 2 April 2005 and submits his writ of appeal on points of law on 8 April 2005.
15. On 29 December 2005 the Supreme Court dismisses the applicant's appeal. The judgment of the Appeal Court becomes final on 14 January 2006.

Question:
Suppose the applicant's complaint is admissible before the Strasbourg Court. Has the applicant's right to be tried within a reasonable time (Article 6 (1) ECHR) been violated? Please motivate your answer by using the IRAC method.

WEEK 2 Criminal Investigations and Pre-Trial Measures: Articles 5 and 8 ECHR

Lecture 2 **Criminal Investigations; Search & Seizure, Arrest & Pre-Trial Detention**

Topic(s):
- Purpose and structure of the investigative phase
- Arrest, detention and pre-trial custody (Article 5 ECHR)
- Search, seizure, and privacy (Article 8 ECHR)

Case law:
- ECtHR 29 November 1988, *Case of Brogan and others v. the United Kingdom*, application no. 11209/84; 11234/84; 11266/84; 11386/85

To do: Read the case law as indicated above.

Working Group 2: Search & Seizure, Arrest & Pre-Trial Detention and the ECHR

Topic(s): Preliminary Investigations and Articles 5 and 8 ECHR

Case law:

- ECtHR 26 June 1991, *Case of Letellier v. France*, application no. 12369/86
- ECtHR 12 May 2000, *Case of Khan v. the UK*, application no. 35394/97
- ECtHR 16 December 1992, *Case of Niemietz v. Germany*, application no. 13710/88

To do:

1. Read Articles 5 and 8 ECHR
2. Read the case law as indicated above
3. Answer the questions below

I. Case Law Questions

Letellier v. France

1. Briefly summarize the relevant facts of the case.
2. How long was Mrs. Letellier deprived of her liberty during the proceedings?
3. Which complaints did Mrs. Letellier file to the ECtHR?
4. What is the difference with the legal question underlying the Letellier-case and the one underlying the Brogan-case?
5. Which grounds for pre-trial detention (mentioned by the domestic courts) are considered by the Court in this judgment?
6. Why did they not constitute relevant and sufficient grounds according the Court, at least from 23 December 1986?
7. What is the name of the procedure mentioned in Article 5 (4) ECHR?
8. What does the term 'speedily' mean as laid down in Article 5 (4) ECHR?
9. Was Article 5 (4) ECHR violated as well? Why (not)?

Niemietz v. Germany

1. Why was Mr. Niemietz's law office searched?
2. How was this search carried out?
3. Why did the search of the law office of Mr. Niemietz constitute an interference with his rights under Art. 8 (1) ECHR?
4. Why was the interference not considered necessary in a democratic society and why is it relevant to the Court that Mr. Niemietz was a lawyer?
5. Can you think of other professions which require special safeguards during pre-trial investigations? What special safeguards can you think of?

Khan v. the UK

1. Briefly summarize the relevant facts of the case.
2. Why was Art. 8 violated, according to the Court?
3. Why did the use of the obtained evidence not conflict with the requirements of fairness guaranteed in Art. 6?

III. Practice Questions

Case I

FACTS ***(NB. Same fact pattern as week 1, case 2)***

1. The applicant works as a prison officer in the Gotham City prison.
2. In April 1997 the prison authorities discover that a mobile phone has been smuggled into the prison in December 1996. In May 1997 a criminal investigation is opened against the applicant and on 1 June 1997 several investigative measures

against the applicant are ordered, including a non-stop camera surveillance of his work areas within the prison, including his private office, for six months. This surveillance was carried out by the police under the supervision of the public prosecutor and with the authorization of the investigating judge.

3. On 14 January 1998 the applicant is summoned for questioning and on the same day he is interviewed by the police.
4. On 13 May 1998 the public prosecutor's office files a bill of indictment on charges of taking a bribe (section 170 Penal Code) and of having smuggled a mobile phone into the prison and of having provided it to an inmate.
5. On 8 January 2000 the main proceedings are instituted before the first instance court.
6. The first hearing of the main proceedings takes place on 3 May 2001. During the hearing the relevant parts of the case file – which includes two witness statements and the results from the surveillance operation - are being discussed. On 17 May 2001 the first instance court convicts the applicant for having taken a bribe (section 170 Penal Code), and sentences him to two years imprisonment. The results from the camera surveillance operation form the decisive evidence in the case.
7. Both the prosecutor and the applicant lodge an appeal against the judgment. The defendant states that the evidence has been illegally obtained.
8. The appeal proceedings commence on 25 October 2001 and end on 18 November 2001. The Appeal Court confirms the verdict of the first instance court and convicts the applicant for having taken a bribe (section 170 Penal Code) and for the regulatory offence of smuggling a prohibited object into the prison (section 424a Penal Code). The Appeal Court sentences him to one year and nine months' imprisonment.
9. The applicant lodges an appeal on points of law against the judgment of the Appeal Court on 2 April 2005. This appeal is dismissed.

RELEVANT DOMESTIC LAW

Section 170 Penal Code:

> Everyone is guilty of a punishable offence and liable to imprisonment for a term not exceeding
> six years who
> (a) being (…) an officer working in a penitentiary institution (…) directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by them in their official capacity (…).

Section 424a Penal Code:

> Anyone who brings or attempts to bring objects within a penitentiary institution or a Department thereof to which the Penitentiary Act or the Act for Penitentiary Juvenile Institutions applies, the possession of which is prohibited within that institution or department, is punishable by an imprisonment sentence not exceeding six months or a fine of 8.700 euros.

Section 165 Code of Criminal Procedure:

> During the preliminary judicial investigation, the investigating judge is empowered, on the request of the public prosecutor, if the investigation urgently so requires and if it concerns a criminal offence in respect of which detention on remand is permitted (NB. The crime

mentioned in Section 170 Penal Code falls within this scope), to authorize an officer with powers of investigation to
monitor a person systematically or systematically observe the person's presence or behavior by camera surveillance.

Question: The applicant complains that the camera surveillance operation had involved an unlawful intrusion into his private life. He alleges a violation of Article 8 ECHR. Is he right? Please motivate your answer by using the IRAC method.

Case II

FACTS

The applicant's pre-trial detention

1. On 22 March 2000 the applicant was arrested on suspicion that he had robbed and then killed his neighbour, Mrs. X.
2. Upon his arrest, the police appraised him of his rights to remain silent and his right to legal counsel. He responded that he wanted to remain silent, but he did not want to make use of any assistance of legal counsel. Instead, he wanted to speak with his wife, Mrs. L. The police officers allowed this. While letting her in the room, they instructed Mrs. L to have 'a good conversation' with her husband. Then, they cautioned the applicant and his wife that for security reasons, a police officer would have to be present while they spoke with each other. This officer openly recorded the conversation. In this conversation the applicant told his wife that he had been fully aware of his actions in the neighbour's house on the early morning of 22 March, that he felt embarrassed about it. Then he warned his wife against saying anything without a lawyer.
3. On 24 March 2000 he was remanded in custody by the District Court on the above mentioned suspicion that he had robbed and then killed his neighbour. His pre-trial detention was subsequently extended by the Regional Court on 19 June 2000, by the Court of Appeal on 6 September 2000, by decisions of the Regional Court of 5 March and 13 July 2001, and by decisions of the Court of Appeal of 13 March, 29 May, 10 July and 28 August 2002 and of 20 March, and 21 June.
4. The domestic courts justified the applicant's pre-trial detention in its initial phase by the existence of strong evidence against him and the likelihood that a severe penalty would be imposed, as well as by the need to secure the proper course of the proceedings. During that time, an autopsy, a number of unspecified biological tests and an inspection of the crime scene were carried out.
5. At the later stage of the applicant's detention, the authorities solely referred to the severity of the sentence likely to be imposed on him. In addition, they emphasised that the investigation could not be completed for reasons beyond the prosecutor's control, namely delays in obtaining expert reports and in viewing the applicant's testimony recorded on video tape.

Criminal proceedings against the applicant

6. The applicant was summoned for trial on 20 November 2000. The indictment included the accusations of robbery (Article 343 of the domestic Criminal Code) and voluntary manslaughter (Article 232 of the domestic Criminal Code).
7. On 14 August 2003 the Regional Court convicted the applicant of robbery (Article 343 of the domestic Criminal Code) and voluntary manslaughter (Article 232 of the domestic Criminal Code), and sentenced him to fifteen years' imprisonment.
8. On 19 December 2003 the Court of Appeal upheld that judgment. A copy of the judgment was served on the applicant on 17 January 2004.
9. On 20 March 2004 the applicant lodged a cassation appeal at the Supreme Court. The Supreme Court upheld the judgment of the Court of Appeal.
10. The Supreme Court's judgment was served on the applicant by the prison administration on 1 May 2004.

Question: The applicant complained that the length of his detention pending trial had been excessive. Is his right to be tried within a reasonable time or to release pending trial under Article 5 ECHR violated? Please motivate your answer by using the IRAC method.

Case III

FACTS

1. The applicant has been a practicing lawyer (*advocaat*) since 1979.
2. At the beginning of November 1993, the applicant agreed to act as defence counsel for a Mr K. in criminal proceedings brought against the latter. At that time, Mr K. was in pre-trial detention. In connection with this case, the applicant met several times with Mrs S., who at that time was Mr K.'s wife.
3. At some point Mrs S. told Mr K. that on 9 November 1993 the applicant had made sexual advances towards her. Mr K. informed the police officer investigating his case, Officer N., of this, who in turn informed the public prosecutor in charge of the investigation against Mr K., Public Prosecutor T.
4. Mrs S. was initially reluctant to lodge a criminal complaint against the applicant as she feared that her word would be insufficient against that of the applicant.
5. Following discussions between Officers R. and R.K. of the vice squad and Public Prosecutor T., the suggestion was made to Mrs S. to connect a tape recorder to her telephone in order to allow her to tape incoming conversations with the applicant. Police officers subsequently connected a cassette tape recorder to Mrs S.'s telephone in her home and suggested that she steer her conversations with the applicant towards the latter's advances. Mrs S. was shown how to operate the device. The police came to her home twice in order to collect the recordings and load new cassette tapes into the tape recorder.
6. Mrs S. recorded three conversations with the applicant, which were transcribed by the police. These transcripts were added to the case-file on the investigation against the applicant.

RELEVANT DOMESTIC LAW AND PRACTICE

7. At the relevant time, Articles 125f-h of the Code of Criminal Procedure (*Wetboek van Strafvordering*) provided as follows:

> Article 125f: "1. In case of discovery *in flagrante delicto* of a criminal offence in respect of which detention on remand is permitted (..), any person employed by the holder of the concession referred to in Article 3, first paragraph, of the Telecommunication Services Act shall, when so required, provide to the Public Prosecutor, or during the preliminary judicial investigation to the investigating judge, all desired information concerning all traffic not intended for the public that has taken place through the telecommunication infrastructure and in respect of which there is a presumption that the person suspected of the offence has taken part in it. (..)
> (…)
>
> Article 125g: "During the preliminary judicial investigation the investigating judge is empowered, if the investigation urgently so requires and if it concerns a criminal offence in respect of which detention on remand is permitted, to determine that data traffic through the telecommunications infrastructure that is not intended for the public, and in respect of which there is a presumption that the person suspected of the offence is taking part in it, shall be tapped or recorded by an officer with powers of investigation. An official record of the tapping or the recording shall be made within forty-eight hours."
>
> (…)
>
> Article 125h: "1. The investigating judge shall order the destruction in his presence, as soon as possible, of the official records and other objects from which information can be derived that he has obtained as a result of the information referred to in Article 125f, or that has been obtained by tapping as referred to in the preceding Article, and which is of no importance to the investigation. An official record of the tapping or the recording shall be made without delay. 2. The investigating judge shall, in the same way, order the destruction without delay of official records and other objects as referred to in the previous paragraph in so far as they relate to statements made by or to a person who, pursuant to Article 218, would be able to decline to give evidence if he were questioned as a witness as to the content of those statements. (..)

8. Article 218 of the Code of Criminal Procedure, which is referred to in the provisions quoted above, provides as follows: "Persons who, by virtue of their position, their profession or their office, are bound to secrecy may ... decline to give evidence or to answer particular questions, but only in relation to matters the knowledge of which is entrusted to them in that capacity."

Question 1:
The applicant claims that Article 8 ECHR was violated. The Dutch government claimed Article 8 (1) ECHR does not apply.
Do you think Article 8 ECHR applies, and if so, if it is violated in this case?
Motivate your answer by using the IRAC method.

Question 2:
If the evidence obtained in violation with Article 8 ECHR was used for the conviction of the applicant, would Article 6 ECHR thus be (automatically) violated as well? (Answer the question with a simple yes or no and by mentioning the relevant Case law.)

WEEK 3 Defence Rights during the Investigation

Lecture 3 Pressure during Police Interrogations and the Right of Defence

Topic(s):

- The collection of testimonial evidence (and AI)
- Police interrogations and pressure on the defendant
- The privilege against self-incrimination
- The right to legal counsel during police interrogations and beyond

Case law:

- ECtHR 17 December 1996, *Case of Saunders v. the United Kingdom*, application no. 43/1994/490/572
- ECtHR 11 July 2006, *Case of Jalloh v. Germany*, appl.no. 54810/00
- ECtHR 5 November 2002, *Case of Allan v. the UK*, appl. no. 48539/99
- ECtHR 27 November 2008, *Case of Salduz v. Turkey*, appl.no 36391/02

To do: Read the case law as indicated above.

Working Group 3: **Article 6- and Article 3-Rights related to Criminal Investigations**

Topic(s):

* the right to silence
* the privilege against self-incrimination
* the prohibition of inhuman or degrading treatment and evidence

Case law:

- ECtHR 11 July 2006, *Case of Jalloh v. Germany*, appl.no. 54810/00
- ECtHR 1 June 2010, *Case of Gäfgen v. Germany*, appl.no. 22978/05
- ECtHR 27 November 2008, *Case of Salduz v. Turkey*, appl.no 36391/02

To do:

1. Read the case law as indicated above
2. Read Articles 3 and 6 (2) and (3) ECHR
3. Answer the questions below

I. Case Law Questions

Jalloh v. Germany

1. Briefly summarize the relevant facts of the case, and the applicant's complaint before the ECtHR. (Max. 300 words)
2. How does the Court assess whether ill-treatment falls within the scope of Article 3?
3. According to the Court, what is considered to be inhuman or degrading treatment within the meaning of Article 3?
4. Why was Art. 3 ECHR violated, according to the Court?
5. Why did the Court conclude that Art. 6 ECHR was violated?
6. The Court found it necessary to address Jallohs argument that the specifically the privilege against self-incrimination was violated. It stated that Mr. Jalloh was right. Why?

Gäfgen v Germany

1. Briefly summarize the relevant facts of the case and the applicant's complaint before the ECtHR in max. 550 words.
2. Why was Art. 3 ECHR violated, according to the Court?
3. Why did the Court conclude that Art. 6 ECHR was not violated?

Salduz v. Turkey

1. Why does Art. 6 ECHR apply to pre-trial proceedings, and to what extent does Article 6 apply to pre-trial proceedings?
2. Is the right of everyone charged with a criminal offence to be effectively defended by a lawyer applicable in pre-trial proceedings?
3. What is the connection between assistance of a lawyer and the privilege against self-incrimination?
4. Can incriminating statements made during police interrogations without access to a lawyer be used for a conviction, after *Salduz*?

II. Practice Questions

Read the following cases and answer the questions below.

<u>Case I</u>

FACTS

1. In 2022, A., a prominent criminal defence lawyer, was suspected of bribing judges to influence outcomes in her clients' cases.
2. Acting on a prosecutor's national-security authorisation, the Romanian Intelligence Service (RIS) intercepted her phone calls for several months. Several conversations between A. and Judge V. hinted at "help" in pending cases.
3. On 3 May 2022, at about 10 p.m., anti-corruption officers stopped A. on her way home and brought her to the prosecutor's office for questioning.
4. She was not informed of her right to legal assistance until she had already been in the office for almost two hours.
5. At midnight, the prosecutor began questioning her without a lawyer present.
6. During this questioning, A. appeared tired and confused. The prosecutor read portions of the RIS report and suggested that if she cooperated, the judges implicated might only face disciplinary rather than criminal action. After several hours, A. signed a written statement acknowledging that she had given "money or gifts" to some judges, but she added that these were "tokens of appreciation," not bribes.
7. The next day, at 10 a.m., A. finally met with her lawyer, T. After consultation, she immediately retracted her earlier statement, claiming she had been overwhelmed and had not understood the legal significance of her words.
8. Months later, she was charged with bribery and trading in influence.
9. At trial, the prosecutor introduced wiretap transcripts, bank transfers, and witness statements. The trial court convicted her, among other, on the basis of her overnight statement.

Question 1:

A. complained that during the first interrogation on the night of 3 May 2001, she had not been effectively assisted by counsel.
Has there been a violation of the right to access to legal counsel as interpreted in the Salduz judgment (Article 6(3)(c) ECHR)?

Question 2:

Suppose: the trial court excluded A.'s overnight statement, finding it had been taken without counsel and without caution, and instead convicted her on the basis of independent evidence (wiretaps, witnesses, financial records). Did the overnight questioning, and the subsequent use of evidence, violate A.'s privilege against self-incrimination under Article 6(1)?

Case II

FACTS

1. On 11 June 1996 the applicant was arrested by police officers of the national Security Directorate.
2. The applicant was sought after by the Security Directorate. The applicant was on board of a vehicle which was stopped at the exit of a highway for a search and verification of his identity documents by six policemen from the Security Directorate. One of the other passengers got out of the vehicle and they each shot a policeman. Then, two other passengers, including the applicant, also left the vehicle and an armed confrontation took place between them and the policemen. During the clash, two police officers as well as two other passengers were wounded.
3. The passengers of the vehicle were arrested in possession of, among other things, weapons, bullets and false identity documents. The injured persons were transported to a nearby hospital, while the others were taken to the Security Branch.
4. The search report of 11 June 1996 stated that during his interrogation the applicant had confessed, and stated that weapons were stored in an apartment in the city of A. Police officers from the Security Directorate informed their colleagues of the Security Directorate in the city of A. to conduct a search. During the same-day search at 2 pm, the police found in the vacant apartment various firearms, magazines and explosives, as well as a driver's license, eight pieces of ID from "Academy and Police Colleges" and an old identity document. They also found an ID of the national Medical Association, and two bank cards.
5. On 26 June 1996 the applicant was heard by the judge who ordered his detention on remand. The applicant challenged the charges against him and stated that he had not killed anyone. He also challenged his statements made to the police on 11 June 1996, claiming that he had signed them under pressure. The judge read the medical report of 25 June 1996 indicating no evidence of beatings or violence. The applicant stated that he had been held in police custody for sixteen days and that the traces of torture must have disappeared sometime later.
6. While in police custody, the applicant was not assisted by a lawyer nor was he able to contact a third party. This was not contested by the national Government.
7. The medical report prepared on 27 June 1996 by the prison doctor stated that the applicant had two old bruises, one of 1 x 1 cm on the left arm, the other of 2 x 1 cm on the side right of the chest.
8. In his statement of 18 October 1996, the applicant stated to the public prosecutor that he had been arrested on 11 June 1996 in the city of P, then taken to the Security Directorate where he had been heard by policemen. He mentioned that he was tortured while in police custody. He specified that he had been insulted and that the policemen told him he would be beaten with the plank used for the Palestinian hanging, given electroshocks on the penis and toes, watered with water and placed in blocks of ice and then sprinkled with water again. He stated that he had then signed certain documents.
9. On 26 March 1997 the complainant wrote a 23-page handwritten document in which he challenged the charges against him, claimed his innocence and maintained that he had been subjected to torture while in police custody.

10. During the proceedings before the Assize Court, the applicant's statement which was made during police custody was one of the elements that served as the basis for his conviction. The Assize Court did not consider the admissibility of this evidence.

Question:
Suppose that the conditions of the applicant's detention constituted a violation of Article 3 ECHR. Does the Assize Court's conviction, for this reason, constitute a violation of Article 6 (1) ECHR? Motivate your answer by using the IRAC method.

WEEK 4 Prosecution and Victim's Rights

Lecture 4 The Prosecution of Criminal Cases and the Position of Crime Victims

Topic(s):

- Prosecution services: organization and structure in a comparative perspective
- Principles and limitations underlying the prosecution of criminal cases
- Article 6(3)(a)–(b) ECHR: right to be informed and to prepare the defence
- The position and rights of crime victims; positive obligations stemming from the ECHR

To do: No preparation required.

Working Group 4: Defence Rights with regard to Prosecution; Positive Obligations

Topic(s): ECtHR rights related to the preparation of the trial, positive obligations and the role of the victim

Case law:

- ECtHR 24 October 1996, *Case of De Salvador Torres v. Spain*, application no. 21525/93
- ECtHR 25 March 1999, *Case of Pélissier and Sassi v. France*, application no. 25444/94
- ECtHR 7 January 2010, *Case of Rantsev v. Cyprus and Russia*, application no. 25965/01

To do:

1. Read Article 6 (3) (a) and (b) ECHR
2. Read the case law as indicated above
3. Answer the questions below

I. Case Law Questions

Salvador Torres v. Spain

1. In the proceedings in first instance, the investigating judge, the public prosecutor, and the hospital (the defendant's employer) maintained identical positions on the question which offence the defendant had committed. Which offence exactly was that?
2. The private prosecutor (on behalf of the State's finances) held another opinion. Which offence did it deem applicable?
3. For which offence was the defendant convicted by the Audiencia Provincial?
4. In which ways differed the Supreme Court, judging on appeal, from the Audiencia Provincial in qualifying Mr. Salvador Torres' behaviour? How did it justify that in doing so it responded to a request by the prosecutor?
5. Try to pinpoint the difference between the accusation in first instance and the Supreme Court's final classification of the offence. Do you agree with the ECtHR that the Supreme Court did not violate Article 6 (3)(a) ECHR?

Pélissier and Sassi v. France

1. Explain in which ways relevant to Article 6(3)(a) ECHR the proceedings in Pélissier and Sassi v. France differed from the proceedings in Salvador Torres v. Spain.
2. Would you agree with the government in this case that aiding and abetting constitutes an element intrinsic to the initial accusation and therefore does not need to be communicated to the defendants separately?
3. Which procedural steps could the Court of Appeal have taken in order to avoid a violation of Article 6 (3)(a) of the ECHR?
4. Is there a difference in the way the Court understands Article 6(3)(a) ECHR between its judgments in Salvador Torres on the one hand and Pélissier and Sassi on the other hand?

II. Practice Questions

Read the following cases and answer the questions below.

Case I

FACTS

1. In 2007 the municipal utilities company instituted proceedings against the applicant, seeking recovery of utilities arrears.
2. On 1 June 2007 a preliminary hearing in that case was held before Judge M., sitting in a single-judge formation; it was audio-recorded at the applicant's request.
3. The applicant appeared before the court and, at the opening of the hearing, challenged the presiding judge, M.
4. The hearing was adjourned at 9.30 a.m. Upon the adjournment Judge M. instructed her secretary, Ms P., to draw up an administrative-offence report in respect of the applicant for contempt of court.
5. The report charged the applicant with contempt of court. The report stated that the applicant "on 1 June 2017 in the course of a court hearing ..., while challenging the presiding judge, accused [her] of delivering unlawful judgments [and undertaking] unlawful actions, uttered knowingly false statements detrimental to the judge's honour and dignity, failed to react to the court's admonishment to be balanced, [and] continued making statements which demonstrated her clear contempt for the court", and in doing so committed an offence under Article 185-3 of the Code of Administrative Offences (hereinafter "the Code"). The report stated that the applicant's rights as a person accused of an administrative offence, as set out in Article 268 of the Code, had been explained to her and that her case would be examined on the same day. According to the applicant, the report was drawn up at 10.04 a.m. Having read it, she refused to sign it.
6. The report was accompanied by written statements by Ms S. and Ms Me. (Judge M.'s trainee), who had been present at the hearing and who affirmed the information in the report.
7. According to the applicant, the witness statements had not been in the file when it was transferred to Judge B., who examined her contempt case; rather, they were obtained subsequently under Judge B.'s direction.
8. The applicant alleged that the case file had been transmitted from Judge M.'s secretary to Judge B. directly, without being registered at the court registry and without being assigned by the court president in accordance with the usual procedure. She also alleged that she had not been given access to the case file before the contempt hearing.
9. On the same day Judge B. held a hearing in the presence of the applicant. According to the applicant, the hearing commenced at 11.27 a.m. In the course of the hearing the applicant pleaded not guilty of the administrative offence of contempt of court and made oral submissions in respect of the charge against her. It appears that in the course of the hearing the applicant secretly audio-recorded the proceedings, producing a recording of a rather poor quality which she provided to the Court on a CD disc.
10. At 11.46 a.m. Judge B. gave her judgment, by which the applicant was found guilty of contempt of court and sentenced to administrative detention for five days. Judge

B. found that the applicant "in the course of a court hearing, in making a challenge, had accused Judge M. of adopting unlawful decisions [and undertaking] unlawful actions, had made false statements detrimental to the judge's honour and dignity, had failed to react to the court's admonishment to be balanced, and had continued making insulting statements which had demonstrated clear contempt for the court." In convicting the applicant, the court relied on the report, the statements of the witnesses Me. and S., and the audio recording of the hearing.

11. The applicant then spent five days in detention.
12. On 2 July 2007 the First Vice-President of the Kherson Regional Court of Appeal, acting on his own motion within the meaning of Article 294 of the Code, reviewed the case. He examined the case-file materials without holding a hearing and upheld Judge B.'s judgment.

Question 1: Is Article 6 ECHR applicable? Motivate your answer by using the IRAC method.

Case II

FACTS

1. On 22 March 2000 the applicant was arrested on suspicion that he had robbed and then killed his neighbour, Mrs. X.
2. Upon his arrest, the police appraised him of his rights to remain silent and his right to legal counsel.
3. On 24 March 2000 he was remanded in custody by the District Court on the above mentioned suspicion that he had robbed and then killed his neighbour. His pre-trial detention was subsequently extended by the Regional Court on 19 June 2000, by the Court of Appeal on 6 September 2000, by decisions of the Regional Court of 5 March and 13 July 2001, and by decisions of the Court of Appeal of 13 March, 29 May, 10 July and 28 August 2002 and of 20 March, 21 June and 20 August 2003.
4. The applicant's sons were witnesses in the investigation. In May 2002 the prosecutor decided that a psychologist should be present when the applicant's younger son was to be interviewed by the prosecution. Apparently the applicant's eldest son was also interviewed by the prosecutor on an unspecified date.
5. The applicant was summoned for trial on 20 November 2000. The indictment included the accusations of robbery (Article 343 of the domestic Criminal Code) and voluntary manslaughter (Article 232 of the domestic Criminal Code). In the proceedings before the first- and second-instance courts he was represented by a legal-aid lawyer.
6. On 14 August 2003 the Regional Court convicted the applicant of robbery (Article 343 of the domestic Criminal Code) and first degree murder (Article 231 of the domestic Criminal Code), and sentenced him to fifteen years' imprisonment. His recorded statements to his wife (mentioned in consideration 2) were used at trial to rebut his defense that he was insane.
7. On 19 December 2003 the Court of Appeal upheld that judgment. A copy of the judgment was served on the applicant on 17 January 2004.

8. On 20 March 2004 the applicant lodged a cassation appeal at the Supreme Court. The Supreme Court upheld the judgment of the Court of Appeal.
9. The Supreme Court's judgment was served on the applicant by the prison administration on 1 May 2004.

RELEVANT DOMESTIC LAW

10. Article 343 of the domestic Criminal Code rules:
Every one commits robbery who:
    (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
    (b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;
    (c) assaults any person with intent to steal from him; or
    (d) steals from any person while armed with an offensive weapon or imitation thereof.
11. Article 231 of the domestic Criminal Code reads:
    (1) Murder is first degree murder or second degree murder.
    (2) Murder is first degree murder when it is planned and deliberate.
12. Article 232 of the domestic Criminal Code reads:
    (1) Culpable homicide that otherwise would be murder may be reduced to voluntary manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

Question: Has Article 6 (3) (a) ECHR been violated in the proceedings before the Regional Court? Please motivate your answer by using the IRAC method.

Rantsev v. Cyprus and Russia

1. The ECtHR finds a violation by Cyprus of its procedural obligations under Article 2 ECHR. It does not find that Russia violated these obligations. Why?
2. What arguments did the Court use for its judgment that trafficking is covered by Article 4 ECHR? (Which methods of interpretation can you identify?)
3. Which actions should the Cypriot police have taken in order to comply with its positive obligation to take protective measures under Article 4 ECHR?

WEEK 5 The Judiciary and the Trial

Lecture 5 The Judiciary and the Trial

Topic(s):
- Composition and organisation of the judiciary (professional judges, lay participation)
- Judicial independence and impartiality
- Preparation for and presence at trial (Article 6(3)(c))

Working Group 5: Minimum Rights connected to the Trial

Topic(s): Defence rights connected to the trial

Case law:

- ECtHR 26 October 1984, *Case of De Cubber v. Belgium*, appl. no 9186/80
- ECtHR 12 February 1985, *Case of Colozza v. Italy*, appl. no. 9024/80
- ECtHR 22 September 1994, *Case of Lala v. the Netherlands*, appl. no. 14861/89

To do:

1. Read Articles 6 (3) ECHR
2. Read the literature and case law as indicated above
3. Answer the questions below

I. Case Law Questions

De Cubber v. Belgium

1. In De Cubber v. Belgium (and previous case law), the ECtHR specified that impartiality can be tested in various ways, and that a distinction should be drawn between a 'subjective approach' and an 'objective approach'. Explain these notions.
2. Mr. Pilate, the investigating judge, had already dealt with Mr. De Cubber before in connection with various offences. Does that affect his impartiality?
3. Mr. Pilate had been an investigating judge in the case as well as one of the judges of the Chamber which convicted Mr. De Cubber. Does that affect his impartiality?

Colozza v. Italy

1. a. Which offence was mr. Colozza accused of?
   b. Why was he considered *latitante*?
   c. What consequences did Italian law attach to that?
2. The right to be present at the trial is not expressly mentioned in Art. 6 (1) ECHR. Why does the ECtHR assume that a right to take part in the hearing is inherent to Art. 6 ECHR?
3. Why does the Court consider Art. 6 infringed?

Lala v. Netherlands

1. Why was mr. Lala's counsel not allowed to conduct the defence before the Court of Appeal?
2. Which purpose did the prohibition to conduct the defence when the defendant is absent serve?
3. Why does the ECtHR consider Art. 6 ECHR violated?

II. Practice Questions

Read the following cases and answer the questions below.

Case I

NB. The facts of the case take place in the state of X. The state of X is a member of the European Union and a signatory to the European Convention on Human Rights. It recognizes the European Court of Human Rights. The official language of the state of X is English. All persons mentioned in this fact pattern are native English speakers.

FACTS

1. On 30 November 2003 a woman later identified as Sarah Smit was found dead outside of a grocery store. The cause of death was multiple gunshot wounds to the head and chest. A handgun and several fired cartridge casings were lying next to Ms. Smit's body.
2. Al Jones, a cashier working at the grocery store witnessed the entire crime and called the police to report what he saw. He also identified the applicant (Jan de Jong) as the one who committed the crime and stated that he knew the applicant from the neighborhood.
3. The police brought the applicant in for questioning relating to the death of Sarah Smit. The applicant refused to answer questions posed by the police and requested to speak with an attorney.
4. Al Jones also came to the police station and gave a full statement. In his statement, Al stated that the applicant pulled out a handgun and threatened to shoot Ms. Smit if she did not give her money to the applicant. When she refused, the applicant shot her multiple times in the head and chest, took her purse and threw the gun down next to the body.
5. On 1 December 2003 the applicant was arrested on suspicion of robbery and manslaughter and held in custody.
6. On 8 December 2003 the applicant was brought before Judge Flinders for a pre-trial detention hearing. Judge Flinders informed the applicant that he was arrested on suspicion of robbery and manslaughter which are crimes within the state of X. Judge Flinders also explained the elements of those crimes and the alleged factual basis for the applicant's arrest. The applicant requested release pending trial. Judge Flinders ruled that the applicant may be conditionally released pending trial so long as he remained confined in his own home (house arrest). The applicant was only permitted to leave his home to attend court hearings. The applicant agreed to Judge Flinders' condition.
7. On 12 December 2003 the police obtained a search warrant to get a DNA sample from the applicant. The applicant complied with the police officer's request to retrieve a DNA sample. The police officer obtained a DNA sample from the applicant by swabbing the inside of the applicant's cheek with a cotton swab.
8. On 17 December 2003 the Ballistics Unit of the police department test fired the handgun found at the crime scene against ballistic evidence (fired cartridge casings) found by Ms. Smit's body. The Ballistics Unit was able to conclude that the handgun was the gun used in the death of Ms. Smit.

9. On 25 December 2003 Al Jones dies in a car accident before giving testimony at the investigative hearing. The statement that Al Jones gave to the police on 30 November 2003 is added to the dossier by Judge Draper.
10. On 27 December 2003 the pre-trial investigation was completed by Judge Draper.
11. On 1 January 2004 Judge Draper approved the bill of indictment which read as follows:

> It is alleged that on 30 November 2003 around 20.30 at or near the location of 333 W. 40TH Street in the town of Smallville, Jan de Jong demanded the purse of victim Sarah Smit. When Sarah Smit refused, Jan de Jong shot her multiple times in the head and chest with a handgun and fled the scene with her purse. As a result of these gunshot wounds, Sarah Smit died.
> Accordingly, Jan de Jong is charged with the following offenses:
> 1 Manslaughter (pursuant to section §2502 of the Criminal Code)
> 2 Robbery (pursuant to §3503 of the Criminal Code)

12. The applicant was given a copy of this indictment on 1 January 2004. He was also properly informed by Judge Draper of the date, time and location of the trial. The applicant signed a subpoena stating that he would appear for trial on 4 August 2004.
13. On 4 August 2004 a public trial was held. The prosecutor, the applicant's defense counsel and the judges were all present. The applicant did not appear for the hearing. The police then went to the applicant's home to bring him to the courthouse. On the front door of the applicant's home was a note:

> "Catch me if you can suckers… I am never coming to court!
> - Kind regards,
> Jan de Jong"

This signature was checked by the police and was proven to be the applicant's signature.
14. After learning of the note on Jan de Jong's door, the three-judge panel of the District Court (Judge Waters, Judge Rodriguez and Judge O'Neil) proceeded to have a trial in absentia. The applicant's defense attorney objected to proceeding without the presence of his client. The judges told the defense attorney to leave the courthouse if he would not defend his client. The applicant's attorney then agreed to stay and continue with the trial.
15. The applicant's attorney requested the three-judge panel to leave out the witness statement of Al Jones from the dossier, since this witness could not be examined anymore by the defense during the trial.
16. The three judge panel, however, unanimously convicted the applicant of robbery and manslaughter, having taken into account the Al Jones' statement to police, the DNA evidence found on the gun located next to Ms. Smith's corpse, ballistics evidence and a video recording of the robbery and killing which was recorded on the grocery store's surveillance system. Each piece of the evidence formed an important part of the prosecution's case against the applicant but the most decisive evidence according to the court was the video footage. The applicant was sentenced to 30 years confinement.
17. On 1 September 2004 the applicant was apprehended and placed in to confinement to serve his sentence.
18. The applicant appealed his conviction. In his appeal, the applicant unsuccesfully complained about the violation of his right to be present at the hearing.
19. After exhausting national remedies, the applicant files a case with the ECtHR.

Question:
The applicant alleges a violation under Article 6 (1) in conjunction with Article 6 (3) (c) ECHR because the national court at first instance held a trial and convicted the applicant even though he was not present at the hearing.
Suppose the applicant's complaint was dismissed by the national courts.
Has the applicant's right to be present at the trial been violated? Why (not)?
Motivate your answer by using the IRAC method.

Case II

FACTS

1. In 2017 Mr. Peter Long is serving a prison sentence of ten years. On 8 March 2017 he applies for a temporary leave of the prison in order to attend his daughter's wedding.
2. On 8 April 2017 a penitentiary judge, Judge Y, refuses the application.
3. On 28 April 2017 the applicant lodges an appeal against that decision.
4. On 8 May 2017 a hearing takes place before the Penitentiary Court, a three-judge bench, consisting of Judges M, L and Y. During this hearing, the applicant refers to a paragraph in Judge Y's decision of 8 April 2017 in which the judge had referred to his daughter's situation instead of his own. Subsequently, the applicant adds:

   > "*As to page 2 of the reasoning of the decision, I claim that Judge Y must have drafted it under the influence of intoxicating substances, for instance alcohol or other narcotic substances. (...) His mental functions clearly being impaired, I therefore request the Court to examine the capacity of that judge to decide cases!*"

5. On 15 May 2017, the Penitentiary Court finds the applicant guilty of insulting a court. The Court gives a decision imposing on the applicant, as a punishment for his accusation during the hearing, twenty-eight days' additional solitary confinement, referring to section 49 of the Act on Common Courts. This decision is immediately executed. The Court rejects the applicant's application for leave.

RELEVANT DOMESTIC LAW AND PRACTICE:

6. Section 49 (1) of the Act on Common Courts 2001 reads:

   > "In case of insulting a court, that court is empowered to impose a penalty by fining the person the amount of up to twice the minimum wage established by law or by depriving that person of his or her liberty for a period of up to seven days; in the case of persons already deprived of their liberty by either a final judicial decision or who are in pre-trial detention, the court is empowered to impose on them the penalties provided for by the provisions governing, respectively, the execution of prison sentences or pre-trial detention."

7. Article 142 (1) of the Code of Execution of Sentences provides that solitary confinement can be imposed on a prisoner for a maximum period of 28 days.
8. The Act on Common Courts empowers judges to take measures to maintain good order during judicial proceedings. The offence of insulting a court is classified as a disciplinary offence under domestic law.

Suppose that it follows from the documents that Judge Y clearly offended by the allegations made by the applicant during the hearing before the Penitentiary Court. The applicant lodges a formal complaint against the State of Z before the European Court of Human Rights. He argues that he has not received a hearing by an impartial tribunal within the meaning of Article 6 (1) ECHR, since Judge Y was part of the three-judge bench of the Penitentiary Court.

Question 1:
Is Article 6 ECHR applicable? Motivate your answer by using the IRAC method.

Question 2:
Is the applicant's right to an impartial tribunal (Article 6 (1) ECHR) violated? Why (not)? Motivate your answer by using the IRAC method.

Case III

FACTS

1. On 27 May 2003 the University of Tenerife - a small university on the Island of Tenerife, consisting of four faculties and a total of sixty four employees - lodged a criminal complaint against the applicant, Mr. Carlos Rodríguez, a professor at the University's Faculty of Pharmacy, accusing him of committing forgery. The university claimed that the applicant had presented a falsified curriculum vitae in the framework of a public tender for the allocation of pharmaceutical establishment licences.
2. On 5 June 2003 three students reported to the police that the applicant stored heroin in his private laboratory. The police officers requested the public prosecutor to immediately issue a search warrant pertaining to the applicant's private laboratory, located outside of university grounds. After receiving the authorization of the public prosecutor, the police searched the premises on the same day. They did not find any incriminating evidence. For this reason no further authorization with regard to this search was requested.
3. On 6 February 2004 the investigating judge D ordered the suspension of the criminal investigations related to both accusations, considering that there were no objective reasons to believe that any crime had been committed.
4. On 5 May 2006 the private prosecutor, acting on behalf of the university, submitted an appeal to the Santa Cruz de Tenerife Audiencia Provincial (= the first instance criminal court). In a decision of 19 May 2006, the Audiencia Provincial allowed the appeal and quashed the investigating judge's decision declaring the suspension of the criminal investigations related to the alleged forgery, holding that additional investigation proceedings were necessary. The Audiencia Provincial's chamber was composed of judges A. (president), B. and C.
5. On 7 July 2006, two of the applicant's former colleagues X. and Y. reported to the police that in the past they had seen the applicant putting a little bag with white powder in a grey storage box in the university's laboratory several times. On 9

July 2006, a lawful search warrant was issued and the laboratory was searched. The police found 1 gram of illegal narcotics in the grey storage box which X and Y had indicated.

6. On 19 January 2007, the investigating judge D issued a decision confirming the conclusion of the investigatory stage. The investigating judge found that the facts established by him disclosed the offence of forgery and illegal possession of heroin. He ordered the continuation of the proceedings. The applicant lodged an appeal against the decision of the investigating judge.

7. On 21 June 2007 an Audiencia Provincial chamber composed of judges B (president), M, and C declared the appeal inadmissible.

8. On 8 June 2010 the Audiencia Provincial issued an order that the applicant's case be sent for trial. The indictment mentioned the same offences as established by the investigation judge (see consideration 6). It was also indicated in the order that the bench of the Audiencia Provincial that would try the applicant would be composed of judges A (president), B and G

9. On 1 July 2010 the Audiencia Provincial held a preliminary hearing for the examination of evidence prior to trial. Contrary to what had been indicated in the Audiencia Provincial's order of 8 June 2010, the trial bench was composed of A (president), G and M, the latter acting as substitute judge. The defence lawyer was informed at the beginning of the preliminary hearing that the composition of the Audiencia Provincial bench had been modified. The applicant had not, however, been personally given the names of the judges sitting on the modified bench.

10. On 20 July 2010 the trial hearing was held before the Audiencia Provincial's bench. The judges sitting on it remained the same as in the preliminary hearing (A, G and M).

11. On 27 July 2010 the same Audiencia Provincial bench found the applicant guilty of forgery and the illegal possession of 1 gram of heroin. The applicant was sentenced to four years' imprisonment, a suspension from office for the same period of time, and a fine of 25 euros per day for eight months.

12. The applicant appealed on points of law to the Supreme Court. During the appeal court hearing he was represented by his defence counsel.

13. On 20 May 2011 the Supreme Court rejected the applicant's appeal.

RELEVANT DOMESTIC LAW

14. The relevant provisions of Organic Law 6/1985 on the Judiciary read as follows:

> Section 217
> Judges and magistrates must withdraw and may, where appropriate, be challenged on the grounds prescribed by law.
>
> Section 219
> Grounds for withdrawal or, where appropriate, a challenge include:
> a. Friendship or self-evident enmity between the juror and any of the parties.
> b. The fact of having a direct or indirect interest in the dispute.
> c. Having participated in the investigation stage of the proceedings or having rendered a decision on the merits in a previous instance.

d. Having held public office or an administrative post where he or she previously could have known about the dispute and form an opinion likely to undermine his or her due impartiality.

Section 221

A judge or magistrate who believes that he falls within the scope of one of the grounds set out in the preceding sections shall withdraw from the case without waiting to be challenged.

Question: **Judge M was an associate professor at the Faculty of Law and the Faculty of Philosophy, and he performed administrative duties for the university. The applicant claimed his right to an impartial tribunal as laid down in Article 6 (1) ECHR had been violated. He argued that the professional and financial relations between Judge M and the university had infringed his right to an independent and impartial tribunal. Is he right? Why (not)? Motivate your answer by using the IRAC method.**

NB. You may assume that domestic remedies were exhausted by the applicant and that his complaint can be declared admissible.

WEEK 6 Confrontation Rights; Alternative settlement; Verdict and Sanctions; Exam training

Lecture 6 **Testimonial Evidence in Criminal Cases; Verdict and Sanctions; Exam Training**

Topic(s):
- Witness evidence at trial and confrontation rights revisited (Article 6(3)(d))
- The verdict and sanctions
- Closing discussion
- Q&A/exam training

Case Law:
- ECtHR 15 December 2015, *Case of Schatschaschwili v. Germany*, appl.no. 9154/10

To do: Read the case law as indicated above.

Working Group 6: The Right to test Witness Evidence; Alternative Settlement of Criminal cases

Topic(s): The right to test witness evidence; alternative settlement of criminal cases: 'negotiated justice' and summary criminal proceedings

Case Law:

- ECtHR 15 December 2015, *Case of Schatschaschwili v. Germany*, appl.no. 9154/10
- ECtHR 29 April 2014, *Case of Natsvlishvili and Togonidze v. Georgia*, appl. no. 9043/05

To do:

1. Read Articles 6(3)(d) ECHR
2. Read the case law as indicated above
3. Answer the questions below

I. Case Law Questions

Schatschaschwili v Germany

1. Read the Grand Chamber's assessment under paras 100-109. What are the steps developed in the Al-Khawaja and Tahery judgment to examine the compatibility with Article 6(1) and 6(3)(d) of the Convention of proceedings in which absent witnesses' statements were used as evidence?
2. Read paras 110-118. Why did the Court find it necessary to refine its 'Al-Khawaja-test'?
3. In what way did the Court clarify the 'Al Khawaja-test' in the Schatschaschwili-judgment?
4. Why was Article 6 ECHR violated in Schatschaschwili v. Germany?

II. Practice Questions

Read the following cases and answer the questions below.

<u>Case I</u>

FACTS

1. On 19 February 2003 the Kaišiadorys District Court convicted the applicant, together with his accomplice M., of attempted drug dealing in large quantities. The court established that the offence had been disclosed using a "criminal conduct simulation model" ("the model"), which had been authorised against M. by the supervising officer of the police department on 29 May 2002.
2. The court found that on 4 June 2002, V., a policeman acting as an undercover agent under the model, had approached M. and, during their conversation on various topics, asked where he could get psychotropic drugs. M. had said that he and his friend (the applicant) run 'a little business' and that he could procure and sell samples to the policeman straight away and more thereafter if the samples were good. The samples would cost from 15 to 21 Lithuanian Litai (about 5 euros) per gram, depending on the quantities required. He had refused to lower the price for the first transaction, but suggested that it might be cheaper if V. needed a regular supply. However, the officer had replied that he could not wait and they had agreed to telephone each other on the matter. V. had to undergo a hospital intervention. Thereafter, it was M. who contacted V., suggesting a meeting so that he could provide V. with drug samples.
3. On an unknown date, M. had contacted the applicant with a request to obtain the drugs (0,5 kg), as V. liked the samples. The applicant had agreed to procure the narcotics and had contacted an acquaintance who had provided him with drugs.
4. On 21 June 2002, the applicant and M. had sold V. a few samples. The applicant provided just one sample of amphetamines and had stayed in the car while M. went to V.'s car.
5. On 23 June, V. had telephoned M., requesting more drugs for a total sum of USD 3,000. On 25 June the applicant and M. had provided V. with 250 grams of

amphetamines. The applicant and his accomplice had been arrested immediately. Both had pleaded guilty to the attempted drug offence.

6. The court questioned V. as an anonymous witness in private, outside the courtroom via an audio relay. His identity was not disclosed in order to protect him and the proper functioning of the police drug squad. At that stage the defence did not put any questions to V. After V.'s testimony had been read out by the trial judge, the defence formulated some questions which were put to him by the judge and answered. The other evidence examined by the court included the transcripts of the conversations between V. and M., the testimony of another police officer who had acted as V.'s back-up during the operation, of their supervising officer and of the applicant and his co-accused, as well as an expert's findings.
7. The documents relating to the use of the model were classified as secret and were not disclosed to the defence because they would have disclosed the identity of the police officers involved and the operational methods of the drug squad.
8. During the trial the defence counsel contended that the undercover police officer V. had acted unlawfully and that the applicant had been incited to commit the offence. Consequently, the officer's evidence could not be relied on. Furthermore, counsel contended that the applicant had never been involved in drug dealing before. (…)
9. The trial court concluded that the use of the model in the case had been lawful.
10. The court acknowledged that the applicant's and his accomplice's conduct had been influenced by Officer V. from the outset, and commented at the sentencing stage that it had not been established that the applicant and M. had sold or tried to sell drugs to anyone other than this officer.
11. The applicant was convicted of the attempted offence and sentenced to three years' imprisonment, as well as to the confiscation of LTL 2,000 (approximately 580 euros). The conviction was mainly based on V's testimony.
12. The applicant appealed to the Kaunas Regional Court. His defence counsel argued that the sentence imposed was too heavy, taking into account the established circumstances of the case.
13. On 10 June 2003 the Kaunas Regional Court upheld the conviction. With respect to the applicant's entrapment allegations, the court noted:
"The court finds the applicant's arguments that he was drawn into committing the crime by M. unfounded. The evidence shows that M., as the person who carried out the crime, had already been detected when drug-related crimes were being investigated. The case file shows that both M. and the applicant actively carried out the crime. In establishing the persons involved in drug-dealing, the officers did not overstep the limits of the Criminal Conduct Simulation Model. The police have only uncovered the ring of persons committing crimes and brought to an end their criminal activities. The officers joined in the crime that was already taking place. Having established the group of accomplices, the officers brought to an end their criminal activities, but did not influence or incite them."
14. The applicant lodged a cassation appeal.
15. The Supreme Court dismissed the applicant's cassation appeal on 14 October 2003.

Question:
Do you consider Article 6(3)(d) ECHR violated with regard to the examination of V? Motivate your answer by using the IRAC method.

Case II

FACTS

1. On 8 February 2001 a certain X. and his son Y. filed a complaint with the Public Prosecutor's office, claiming that they had been threatened by members of a criminal organisation, including the applicant, who had acted under his boss, B., and that they had had to give them a substantial amount of money and property as a result.
2. On 20 March 2001 the Public Prosecutor at the State Security Court requested the Security Directorate to investigate the matter within the context of an investigation concerning a bigger criminal organisation and gave authorisation to search certain indicated buildings.
3. Following this order on 21 March 2001, police officers from the Security Directorate conducted a search at B's garage. The police officers found a large quantity of marijuana plants. It appeared that the applicant grew large quantities of marijuana and held a small office in the garage from which he regularly sold weed and growing tools to his customers and earned income. The police officers also found an unlicensed semi-automatic weapon which belonged to the applicant. The applicant was immediately arrested after the search and was placed in police custody on the same day.
4. On 24 March 2001 the applicant gave his police statements after he was informed of his right to remain silent and he waived his right to legal counsel in writing. Then he described the course of the events in detail and stated that he and certain people that he worked with had visited X and Y at their homes several times in order to obtain money by threatening them.
5. After a second police interrogation on 25 March 2001 the police custody was extended.
6. On 28 March 2001 the applicant was detained on remand.
7. On the same day the applicant wished to contact a lawyer. In the presence of his lawyer, the applicant gave his statements before the Public Prosecutor. He reiterated his account of the events, but denied certain parts of his previous police statements, whereby he had admitted to being a member of a criminal organisation and having threatened X.
8. On 21 June 2001 the Public Prosecutor filed an indictment with the State Security Court, accusing the applicant of armed robbery, membership of a criminal organisation and illegally carrying a weapon. He requested the opening of criminal proceedings against a total of thirty-one people, accusing them of being members of two separate criminal organisations.
9. On 13 September 2001, X. stated before the Public Prosecutor that he had asked for help from the applicant's boss, B., to sell some of his property in order to pay his debts and that he had paid him a certain amount in return. He claimed that after the transaction, the applicant had threatened him to obtain more money.
10. At the first trial hearing, held on 6 December 2001, the applicant requested that X be called to testify in open court.
11. At the same hearing, the applicant stated before the court that he maintained that he and his boss had helped X. pay his debts and that he had just asked him to pay their share, without making any threats. He confessed to having illegally carried a

weapon. He further retracted the previous statements he had made before the police and the Public Prosecutor.

12. During the same hearing, Y, who was present at the trial, submitted that his father had been threatened by the applicant. The applicant was not given an opportunity to comment on these submissions.
13. By letter of 2 March 2002 the defence asked the court again to hear X. The court, however, concluded that X. could not appear in court because he was terminally ill and stayed in a hospice.
14. On 9 April 2002 the Public Prosecutor submitted his written opinion to the State Security Court. He stated that from the witness statements of X. and Y. it followed that the applicant had threatened X. upon an order from B. He further indicated that the unfolding of the events had been corroborated by the statements of all of the accused, but that they had all denied having threatened X. and Y. The Public Prosecutor proposed that the applicant should be found guilty of armed robbery and membership of a criminal organisation. Furthermore, relying on the weapon which was found during the search and the applicant's confession, the Public Prosecutor proposed that the applicant should be found guilty of illegally carrying a weapon and the threathening of X.
15. At the hearing on 3 September 2002 the State Security Court, relying predominantly on X's statement, corroborated by the results of the search and the statements of the other accused, found the applicant guilty of armed robbery, membership of a criminal organisation and illegally carrying weapons, and sentenced him to twenty years and ten months' imprisonment and a judicial fine. In assessing the penalty, the court considered as mitigating circumstances the applicant's partial confession of the charges. As aggravating circumstances, the court considered the applicant's criminal record.
16. On 20 September 2002 the applicant filed a plea of nullity and an appeal against the sentence. In his plea of nullity, the applicant complained that the State Security Court had failed to provide for good reasons so as to not provide him with any opportunity to test X.'s statements during the trial proceedings. In his appeal against the sentence the applicant submitted that the State Security Court had failed to give sufficient weight to his partial confession.
17. On 6 December 2002 the Court of Appeal, after having held a hearing in the absence of the applicant but in the presence of his defence counsel, dismissed the appeal against the sentence. The defence counsel had not submitted a request to examine any witnesses. As regards the weighing of mitigating and aggravating circumstances by the District Court, the Court of Appeal found that the applicant's partial confession was merely a contribution to the establishment of the truth and did not qualify as a mitigating circumstance.
18. On 12 August 2003 the Court of Cassation upheld the judgment after holding a hearing, during which the applicant was not present.

Question:
Has the right to examine or have examined witnesses as mentioned in Article 6 (1) in conjunction with Article (3) (d) ECHR been violated by allowing X's statement as evidence for the conviction by the Security State Court? Why (not)? Motivate your answer by using the IRAC method.

III. Back to Case Law

Natsvlishvili and Togonidze v Georgia

1. What are the minimum standards of the ECtHR on plea bargaining?
2. Read the Court's assessment under paras 90-103. Was Article 6(1) violated? Why (not)?