



Third Study Commission
Criminal law and procedure

Meeting in Sao Paulo (Brazil), 6-9 September 1993

Conclusions

THE PROTECTION OF HUMAN RIGHTS IN THE COURSE OF THE POLICE INVESTIGATION

The Associations of the following countries were represented: Germany, England, Australia, Austria, Belgium, Brazil, Canada, Denmark, Scotland, Spain, the United States of America, Finland, France, Ireland, Iceland, Italy, Japan, Liechtenstein, Luxembourg, Morocco, Norway, New Zealand, Senegal, Sweden, Switzerland, Tanzania and Tunisia.

On the basis of the national reports and the general report prepared by its president Raymond Screvens, and after considering the different systems for

The term 'police' embraces both the organs and institutions responsible for maintaining public order and those whose specific duty is to combat crime.

Police investigations cover the various duties which it falls to the police to perform in dealing with offences before a judicial authority intervenes.

The organs of the police called upon to intervene in the first instance must enjoy the powers necessary to protect society which enable them to ascertain that offences have been committed and identify those responsible for them. These activities on the part of the police are in potential conflict with the rights enjoyed by the individual citizen. In order to safeguard those rights it is necessary to impose restrictions on the powers of the police.

The rights which each individual is entitled to have recognized are proclaimed by the Universal Declaration of Human Rights, by regional conventions such as the European Convention on Human Rights and by individual national charters.

1. In many countries statutory regulations, often of recent origin, determine precisely and in detail the powers enjoyed by the police, but in other countries the limitations on these powers derive from principles of general application.

2. The police are usually entitled to ask questions of anybody who is in a position to provide information about an offence. The law often requires that the person being questioned be informed of the basis upon which this is being done - as a witness or as a suspect.

The initial questioning by the police of a suspect or a witness is often of critical importance in eliciting the material facts relating to the offence.

It is becoming increasingly accepted that the suspect should be entitled to the assistance of a lawyer at this stage.

Countries which refuse to permit a lawyer to be present do so because they fear that his intervention will impede the investigation.

This demonstrates the difficulty in achieving the correct balance between the need to ascertain the facts and the need to protect the individual.

3. All countries recognize that a suspect has no obligation to answer questions although this may not be expressly stated in legislation. In some countries he has to be specifically informed of this fact at the outset of the interrogation.

4. The police are normally entitled, for good reason, to stop a person to establish his identity and, if necessary, to escort him to a police station.

Detention by the police is usually subject to strict regulation.

Recognized safeguards for a suspect are more frequently encountered where the suspect has been arrested.

5. In the case of all countries there are statutory limitations on the length of time that a person may be held in custody by the police.

6. Respect for the right of the individual requires that no search be carried out on private property without the authorization of a judge.

This requirement yields however where immediate action is necessary.

7. There are two different types of personal search and once again the rights of the individual come into conflict with the paramount need for immediate action.

Simple or superficial search is restricted to clothing. It is usually authorized in the case of anyone who has been arrested or is reasonably suspected of hiding on his person unlawful or dangerous objects.

Body search or intimate search, which includes internal examination, is only permitted in more restricted circumstances.

8. The police are usually entitled to seize objects found in the course of such searches.

9. In many countries the police have no right to insist upon the provision of personal samples (blood, saliva, urine, hair, nail clippings...) without the permission of the person supplying the sample.

In those countries where the police are entitled to do this, such powers are subject to strict regulation.

Special regulations in respect of the provision of blood samples in relation to road traffic offenses exist in all jurisdictions. At the same time the struggle against drugs has often justified the introduction of special measures.

10. In most countries the control of the manner in which the police exercise their powers is entrusted to the prosecuting authority.

In almost all countries the trial judge is entitled to reject or exclude evidence that has been improperly obtained by the police.