
REPORTS OF THE COURSE

GROUP 1

EFFECTIVE COLLECTION AND UTILIZATION OF EVIDENCE IN CRIMINAL CASES

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I. INTRODUCTION

Group 1 started its discussion on the 9th of September 2013. Upon consensus of the members of the group, Mr. Kawata Hiroshige was elected as Chairperson, Ms. Sudti-Autalsilp Bhorntip as Co-Chairperson, Ms. Svitlana Oliynyk as Rapporteur, and Mr. Vuke Gray Luwabani as Co-Rapporteur.

The theme of the discussion of the group was “Effective Collection and Utilization of Evidence in Criminal Cases”. The agenda for the discussion was as follows: A. Effective collection and utilization of oral statements, 1. Significance of oral statements in criminal cases in each country, 2. Effective methods of interview/interrogation, 3. Obtaining statements of suspects/accomplices — utilization of plea bargaining and immunity, 4. Recorded statements of interviews/interrogation in each country; B. Collection of objective evidence; C. Necessary measures to improve/develop investigation in each country.

II. SUMMARY OF THE DISCUSSIONS

A. Effective Collection and Utilization of Oral Statements

1. Significance of Oral Statements in Criminal Cases in Each Country

All participants emphasized the importance of the statements of witnesses, victims and suspects for successful investigation of a specific criminal case and bringing the person who committed the crime to justice. Most of the group members agreed that to achieve the goal of appropriate sentencing, the following elements of the crime must be established and proved during the pre-trial stage, as well as at trial:

- Person(s) (criminal(s)) who committed the crime
- Motive/cause of committing the crime
- Direct/indirect intention in reference to committing the crime as well as to committing the results of the crime
- Specific actions executed by the criminal(s)
- Time, place
- Accomplice(s)

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During the discussions, participants paid attention to obtaining confessions from suspects. Everyone emphasized the importance of obtaining confessions. Also, most of the group members agreed that a confession given by a suspect during an investigation has to be repeated by the suspect in open court. At the same time in spite of the importance of confessions, corroborative evidence shall prevail.

When a suspect (accused) confesses, the suspect should be granted a lighter sentence by the court. Also participants noted that all statements have to be admissible in court in order to bring a criminal or criminals before the court. All statements are subject to evaluation by the investigator, public prosecutor and especially the judge who makes the final decision and orders sentencing.

Statements of witnesses, victims and suspects must be compared. The group referred to the very important issue of statements of accomplices. During discussions moderated by the adviser, Prof. Iwashita Shinichiro, the participants from each country discussed a criminal case. The group considered situations in which the victim, co-offenders, criminal organizers (masterminds) and witnesses were involved. Everyone agreed that the relationship between the organizer and co-offenders has to be established during the investigation. The points to be proved by an investigator are the intent of the organizer, commands given to co-offenders by the organizer, and the impacts and results of the crime.

The group agreed that corroborative evidence is most important. The investigators as well as judges have to evaluate statements given by the co-offenders as they might merely be seeking benefits for themselves. The statements of the co-offenders as well as of the victims have to be accurate and must be evaluated together with the statements of witnesses and corroborative evidence.

Also the group discussed measures to identify suspects. Generally phone and video recordings as well as fingerprints and DNA are used during the pre-trial stage. However, some countries reported that they do not use DNA evidence to identify suspects (for example, Vanuatu).

2. Effective Methods of Interview/Interrogation

Looking at effective interview/interrogation, the group members discussed not only the current situation but also challenges. Each represented country follows the principles of respect for human rights and the rule of law. In each country, the right to keep silence is provided for and guaranteed by the Constitution or Criminal Procedure Code. There are no doubts in ensuring this right to keep silence. Nevertheless, this is a significant challenge for the investigator to collect corroborative evidence. It often happens that statements of a suspect are helpful for discovering a crime in cases where there are few witnesses.

The group agreed that the task of an investigator is to detect crime. Accordingly, investigators should take statements through the way of effective investigation and interrogation. Usually investigators of each represented country use the P.E.A.C.E. model to conduct investigations. The reason is to ensure the admissibility of statements in court.

In some countries, interrogation techniques like REID are used as well. On the one hand, there are no doubts that these techniques are very helpful. On the other hand in some countries the usage of the REID technique raises a question of admissibility of statements in a court (violation of human rights as well as the right to keep silence at any moment of interrogation without being forced to give statements by an investigator).

The group discussed an issue on improving interrogation. This goal could be reached by participation of officials in need to improving their skills in special training programmes, including the exchange of knowledge at the international level. Also, textbooks/manuals are very helpful not only for junior but also senior investigators. At the same time, the junior investigators must be taught by the senior investigators how to conduct interrogation properly.

During the group workshop, participants shared their best practices in the field of successful interview/interrogation. One more question was raised concerning persuading the suspect to confess. Speaking about confession, Japanese participants emphasized the necessity to persuade the suspect to confess, especially in cases where the suspect denies having committed the crime. Also, confession is

not only a way to collect evidence but also to discover other criminals. At the same time there is no need to persuade the suspect to confess if other evidence is sufficient.

The Ukrainian participants explained that confession is not obligatory; much more important is corroborative evidence which proves guilt. Confession is the right of an offender for whom the right to keep silence is guaranteed under the law. Deliberate and voluntary confession is a good way to collect sufficient evidence. The Nepalese participants also agreed that it is reasonable to persuade suspects to confess. If there is corroborative evidence in a case, a confession is evidence which is taken into account by the court. Representatives from Thailand also agreed that the decision has to be made by a judge on the basis of corroborative evidence, and confessions should not prevail in a specific criminal case. Confession must be considered as one form of sufficient evidence. The participants from Vanuatu and Guinea stated that in cases with enough corroborative evidence, confessions are not necessary. In any case it is obvious that, using all investigative techniques for effective interrogation and effective collection of evidence, an investigator must follow the rules of the criminal procedure code of the country in which the investigator operates.

3. Obtaining Statements of Suspects/Accomplices — Utilization of Plea Bargaining and Immunity

After discussion, it was found that plea bargaining is utilized in the following countries: **Ukraine** (covered by the Criminal Procedure Code), **Guinea** (covered by the Criminal Procedure Code), **Nepal** (there are no provisions of general criminal procedure but it is provided for in specific laws regarding narcotic drugs, human trafficking, money-laundering, corruption and organized crime), **Vanuatu** (there are no provisions in the criminal procedure code, but it is used in practice).

As for **Japan**, currently there is no plea bargaining in the criminal procedure code. This question is under discussion for adoption by the Legislative Council. As for **Thailand**, there is no plea bargaining in the Criminal Procedure Code. Whether or not to adopt plea bargaining is a question that is under discussion. However, there are provisions which empower the court to lessen the sentence if the accused gave useful information to the investigator or the court.

In Ukraine the following types of agreements may be concluded in criminal proceedings:

- reconciliation agreement between the victim and the suspect or the accused
- plea agreement between the public prosecutor and the suspect or the accused about pleading guilty

The plea agreement may be concluded upon initiative of the public prosecutor, the suspect or the accused. The plea agreement between the public prosecutor and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanors, as well as crimes of minor or medium gravity, grave crimes, the perpetration of which caused damage only to state or public interests. Conclusion of the plea agreement in criminal proceedings with the participation of the victim shall not be allowed. Conclusion of a reconciliation agreement or a plea agreement may be initiated at any time between the moment of notifying the person of the suspicion and retirement of judges into the deliberation room to pass the sentence/judgement. In case of failure to reach an agreement, the fact of initiating conclusion of the agreement and the statements which were made to arrive at an agreement may not be considered as refusal from prosecution or pleading guilty. The agreement shall indicate the date of its conclusion and shall be signed by the parties. If an agreement was reached at the stage of pre-trial investigation, the indictment together with the agreement signed by the parties to it shall be referred to court without delay. The court shall verify whether the agreement complies with the requirements of the law. If the court makes sure that the agreement may be approved, it shall pass the judgement by which it approves the agreement and imposes the punishment agreed between the parties.

4. Recorded Statements of Interviews/Interrogation in Each Country

At the end of discussion of Chapter A, participants also paid attention to the recording of statements. All participants noted that statements should be in a written form. At the same time video recording is not used in Nepal and Vanuatu. These written and video records are admissible evidence in a court. Also such video records prove the legality of the process of taking statements and prevent

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ill-treatment.

In Japan police officers and prosecutors conduct interviews or interrogation of suspects, victims, witnesses and accomplices. Police officers and prosecutors write the statements, which have to be checked by the interviewed or interrogated person. If there are no mistakes, the statement is signed by the interviewed or interrogated person. Interviews or interrogation of suspects may be video recorded. Also statements have to be disclosed to defence counsel. At trial the defendant has to be examined. Video recording is a measure to prove at court that the statements were taken voluntarily and legally.

In Thailand it is required by law that the statements of suspects, victims, witnesses and accomplices have to be recorded in written form. Interviews might be video recorded. However, in the case of a child victim/witness, the law requires that the investigator arrange a video and voice recorder for the interview which is able to be continuously transmitted as evidence. All evidence collected during investigation can be used at trial provided that they were obtained lawfully.

In Nepal suspects' statements are recorded in written form by a police officer at the prosecutor's office. The statements are not audio-visually recorded. The written statements are signed by the investigator, the public prosecutor and the suspect as well. Suspects must repeat the statements before the judge at trial as well.

In Vanuatu whether or not there is a confession, there must always be sufficient evidence. At the same time, corroborative evidence is very important. If there is no confession taken from the suspect and only circumstantial evidence is provided, then a decision to prosecute depends on how much circumstantial evidence exists.

In Guinea a confession is not needed as evidence, but corroboration of evidence is important. Offenders can be taken to court without having confessed. Suspects can be released and personal details must be obtained by police to appear in court when all elements are established.

In Ukraine the course and results of a procedural action shall be entered in the record. If during pre-trial investigation procedural action may be recorded with technical means, the appropriate entry should be made in the record. Before signing the record of procedural action, participants shall be given the possibility to review its text. Comments and amendments shall be placed in the record before signatures. The record is signed by all participants to the conducted procedural action. If a person, because of his physical disabilities or any other reasons, cannot personally sign the record, such person may review the record in the presence of defence counsel (legal representative) who attests with his signature contents of the records and to the fact that the disabled person cannot sign the record personally. If a person who participated in the procedural action refuses to sign the record, this is mentioned in the record, and such person shall be given the right to explain in writing the reasons therefore, these explanations being entered in the record. Refusal to sign the record or to provide written explanations with regard to the reasons for the refusal shall be attested by the signature of defence counsel (legal representative), and where such is not available, this shall be signed by attesting witnesses. Procedural actions during criminal proceedings may be recorded with the use of technical means including video. Photographing, audio or/and video recording may be made during interviewing.

The decision on recording procedural action with the use of technical means during pre-trial proceedings including examination of matters by the investigating judge, shall be made by the person who conducts the procedural action concerned. Upon motion of the participants to a procedural action, the use of technical means for recording is compulsory. If interrogation is recorded with technical means, the text of the testimony may not be entered in the relevant record on condition that none of the participants in this procedure insist upon this. In such case, entry should be made in the record that the testimony has been recorded on a medium that is attached to the record. The testimony of a suspect which has been obtained by an investigator during an interviewing is evidence. If the examination is conducted in compliance with the law and it contains information that is relevant to criminal proceedings, the results of this investigation may be evidence of the guilt of the suspect. Simultaneously the court may base its findings only on testimony taken directly during court sessions or those obtained

under the rules of the Criminal Procedure Code of Ukraine. The court may not base court decisions on testimony given to investigators, public prosecutors, or refer to such.

5. Some Basic Provisions of the Criminal Procedure in Selected Countries

JAPAN

Effective collection and utilization of oral statements

- The police are the primary investigative agency in Japan. The vast majority of criminal cases are investigated by the police and referred to public prosecutors. As the police do not have the power to make charging decisions, all cases investigated by the police must be sent to public prosecutors for disposition. Public prosecutors are fully authorized to conduct criminal investigations, and they actively supplement police investigation by directly interviewing witnesses and interrogating suspects.
- Police officers and public prosecutors may ask suspects to appear in their offices for interrogation, and suspects under arrest or detention are obligated to comply. However, the Constitution guarantees the right against self-incrimination, and the CCP requires investigators to notify the suspect, in advance of the questioning, that he or she is not required to make any statement against his or her will.
- In order to be admissible at trial, confessions must be voluntarily made. In this regard, CCP provides that “confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence.”
- Written statements are admissible as evidence if the defendant consents to their use, or they are admissible as one of the hearsay exceptions provided for in the CCP.
- When a witness is unavailable to testify at trial, written statements taken by a public prosecutor and signed by the witness may be admitted as a hearsay exception. Likewise, if the witness takes the stand but the testimony differs from previous statements, prior inconsistent statements taken by a public prosecutor and signed by the witness may be admitted as hearsay exceptions, provided there is a circumstantial guarantee of trustworthiness.

UKRAINE

On 20 November 2012, the New Criminal Procedure Code of Ukraine came into force. This Code established a new procedure for an electronic record of crime that is an Integrated Register of Pre-Trial Investigations. Most important aspects of the Criminal Procedure Code of Ukraine are the following:

- enhancing protection of victims
- widening rights of defence
- specialization of the investigators and judges in criminal proceedings in respect of minors (juvenile justice)
- humanization of preventive measures (detention is an exceptional restraint measure)
- investigative judges
- reasonable period of time
- jury trial
- agreements in criminal proceedings (reconciliation and plea agreements)

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- cancellation of additional investigation
- public prosecutor leads an investigation

VANUATU

- Victim impact statement and protection of victims
- Juvenile legislation
- Modern technology legislation (phone calls, video recording, etc.)
- Evidence Act
- Leadership Code Act

B. Collection of Objective Evidence

The main aim for collection of objective evidence is to establish the objective truth in a specific criminal case. Scientific investigation techniques gain importance in the course of effective investigation. Nowadays DNA, fingerprints, autopsies, analysis of security camera footage, GPS, digital forensics, etc., are widely used and support the sufficiency of the effective investigation.

In Thailand all types of possible scientific techniques are used, for example, fingerprints, autopsies, forensic pathology, toxicology and chemistry, document examination, firearms and gunshot residues, analysis of security camera footage, GPS, and DNA analysis. Usage of DNA started about twenty years ago. The new DNA testing techniques have been used over the last ten years. DNA analysis is mostly used in criminal case. This technique is also used in other cases including missing-person identification and parentage testing. However, DNA analysis can be used only in identifying whose DNA it is. But why it was attached to such evidence is the responsibility of the investigator to find out. The challenge of DNA analysis is to establish a DNA database system and legislation, and standardize the system as an intelligence tool in order to solve and prevent crime before crime commission occurs, to save money and to exonerate the innocent from accusations of crime. Since digital evidence is in its infancy in Thailand, another challenge is the improvement of digital forensic techniques to keep up with the development of technologies.

In Nepal there are two forensic labs. Forensic techniques such as DNA analysis are widely used in cases of identification of the deceased as well as for the purpose to identify bodies in criminal cases. DNA examination facilities are available at the National Forensic Laboratory only. A DNA database is being established. Also, autopsies are used in Nepal, and they are done in every district at the hospital (a separate Autopsy Department is situated in Kathmandu). There is also the group SOCO (scene of crime officials) in Nepal which is very effective for observation and investigation of a crime scene with appropriate tools. SOCO exist in each district of Nepal. At the same time fingerprint experts are available only in the capital of Nepal — Kathmandu. Security cameras are used in some public places and offices but are not very sufficient. GPS and digital forensics are used. In Nepal, it is also possible to determine the location of a suspect who uses a cell phone at the moment it is being used.

In Japan effective investigation includes scientific investigation techniques. But some scientific forensic techniques such as GPS must still be adopted. Currently, it is necessary to enhance wiretapping for specific criminal cases.

In Vanuatu DNA is not used, in situations where DNA is collected it is send to Australia for analyzing. Fingerprints are widely used but fingerprint experts need to spread across the country. There are no security cameras anywhere, but they exist in the airport.

In Guinea DNA analysis, fingerprint analysis and video recording are essential technologies used to identify and locate the suspect. The central information committee is in charge of collecting and analyzing evidence.

In Ukraine a variety of forensic techniques are used, especially DNA analysis, fingerprint analysis, autopsies, digital forensics, analysis of security camera footage, etc. At the same time there is no general DNA database.

C. Necessary Measures to Improve/Develop Investigation in Each Country

Most of Group 1 agreed on the necessity to improve investigation, especially through upgrading of personal skills of officials.

In Japan

- a) The necessity to analyze the methods of interrogation. There must be training for investigators and prosecutors to upgrade their skills.
- b) Reasonableness of recording the interrogation and to conduct effective interrogation.
- c) The scientific investigation — necessity to draft it in case it is not covered by the law.
- d) Organized crime. Suspects and accomplices do not tell the truth.
- e) Introduction of plea bargaining. But before doing so, it is necessary to study foreign experiences and to consider the effectiveness of plea bargaining.

In Vanuatu

There are laws that have been adopted for the apprehension of offenders and

- a) there are still trainings to be done in investigation;
- b) video and audio recording of interrogation,
- c) Interrogation methods,
- d) Forensic analysing of computers and mobile phones.

Though there are a number of laws that address the collection of evidence, there is a need to develop an evidence act and other legislation.

In Guinea legislation provides for practices of investigation, such as phone call information, verbal questioning, video recording, photographs, biomedical analysis, which are gathered by the police and the general investigation service throughout the country. The service is under the control of the Attorney General.

In Thailand

- a) Continuous training for personnel involved in law enforcement
- b) Domestic and international cooperation
- c) Amendment of laws to catch up with the new technologies

In Nepal

Evidence-based investigation and prosecution:

- a) Creating a separate Crime Investigation Police Branch of the Nepal Police.
- b) Establishing well-equipped forensic labs in the five regions throughout the country.
- c) Enhancing public security using security cameras in most public areas, offices and streets.

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- d) Enabling the Nepal Police to use digital forensic evidence by strengthening their capacity and building infrastructure for it.
- e) Establishing well-equipped separate detention centres throughout the country.
- f) Making well-equipped office buildings for every District Public Prosecutor's Office and District Police Office with sufficient physical resources including separate interrogation rooms in every District.
- g) By strengthening interviewing and interrogation techniques by using the PEACE and REID models and improving other skills of Public Prosecutors and Investigating Police Officers through On the Job Training (OJT) and making international training courses available to them.
- h) Enacting as soon as possible legislation (three unified bills) which have already been submitted to Parliament and which are necessary to modernize the criminal justice system of Nepal. (Criminal Code, Criminal Procedure Code and modernized sentencing and victim friendly sentencing bills). Witness protection and perjury laws are also necessary to improve the criminal justice system of Nepal.
- i) Creating working environments in which the Nepal Police and Public Prosecutor can function independently and effectively for the interest of society.
- j) Creating effective cordial relationships between the Nepal Police and Public Prosecutors.
- k) Developing international cooperation.

In Ukraine

- a) Improving, upgrading skills of investigators and prosecutors through personal studying as well through specific training
- b) Setting up the general DNA database
- c) Developing investigative and interrogation techniques, including the REID and P.E.A.C.E. models
- d) Adoption of the New Criminal Misdemeanors Code
- e) Establishing the State Bureau of Investigation within the New Criminal Procedure Code

III. CONCLUSIONS AND RECOMMENDATIONS

At the end of the discussion, Group 1 agreed on the following recommendations —

- Taking every possible measure to follow the rule of law in each presented country.
- Enhancing the effectiveness of the investigation of criminal cases in each presented country; adoption of appropriate legislation for effective interrogation methods.
- Sharing the best practices in the field of criminal justice and criminal law.
- Developing international cooperation in the field of criminal justice and criminal law.