

## Research Project

### Securing a fair trial through excluding evidence? A comparative perspective

#### Third-party funded project

**Project title** Securing a fair trial through excluding evidence? A comparative perspective

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**Project start** 01.09.2015

**Probable end** 31.08.2017

**Status** Completed

The criminal process is characterized by conflicting interests, namely comprehensive fact-finding on the one hand and safeguarding individual rights, especially those of defendants, on the other, characterize the criminal process. In all criminal justice systems, there exists a strong public interest in determining the truth, because it is only on the basis of “true” facts that a court can decide whether the suspect is guilty or innocent. The interest in finding the truth has led to procedural rules that expose suspects and witnesses to coercive measures, which frequently interfere with individual rights.

Yet respect for human rights must not cease when the bearer of those rights is suspected of having committed a criminal offence or is needed as a witness. In the context of the criminal process, human rights prominently include the right to have one’s human dignity respected, to be free from physical force and torture, not to be forced to incriminate oneself, and to have the privacy of one’s home and intimate sphere respected. Since it is these rights in particular that tend to inhibit the authorities’ quest for the truth, there is an ever-present risk that the relevant human rights will be disregarded. Therefore, preventing human rights violations remains a challenge for the law and practice of criminal procedure worldwide. The means to prevent violations, however, are limited: The most promising means for obviating human rights violations appears to be the exclusion of illegally obtained evidence from the criminal process. The rationale of so-called exclusionary rules is the expectation that law enforcement officers will refrain from employing methods of evidence-gathering that infringe human rights if they know that the physical or testimonial evidence they may extract or obtain is useless because it will not be admitted as evidence at the trial.

Based on the hypothesis that the exclusion of evidence obtained by illegal means is an effective tool for safeguarding human rights in criminal proceedings, the core question of the project is: How do criminal procedure systems ensure respect for relevant human rights in the criminal process, and what role does the exclusion of illegally obtained evidence play in this regard? In order to answer this question in a context that reaches beyond central Europe, we have selected three European (Switzerland, Germany, England) and three Asian (People’s Republic of China [PRC], Taiwan/Republic of China [ROC], Singapore) legal systems as reference points for our inquiry. We intend to compare the policies of these systems with respect to human rights protection in the criminal process and to draw conclusions on ways of optimizing protection without jeopardizing the purpose of the criminal process. The aim of our study is not to find a single universally applicable model of human rights protection, but to determine features of the criminal process that are conducive to enhancing respect for human rights in different legal and cultural environments.

The project ended on 31 August 2017.

**Financed by**

Swiss National Science Foundation (SNSF)

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