Criminal investigation - what to do?

The minimum you need to know: the bulletin – to download, print off and refer to

A robbery in the department store? Drugs? Bodily harm? Property damage? Flash bombs set off in the football stadium? Or violence against a state official? Have you trespassed on someone else's property or participated in an illegal demonstration? Were you caught drink driving?

If you are spotted by the law, you will practically be facing a fairly well organized machine on your own. The police and the public prosecution service may detain you as an accused person. They may even confiscate your property; fines, imprisonment, high costs, a criminal record and social repercussions are possible. If you are not a Swiss passport holder, you may also face deportation.

Sunday evening police mysteries on the television have little to do with reality: childish tactics such as false alibis rarely work, justice will always prevail, and your lawyer can only make the impossible possible in very rare cases. Criminal proceedings are at first glance less harmful than portrayed in films, and at second glance much harsher. For you as an accused person, knowledge of criminal proceedings is therefore not only helpful but essential.

This bulletin provides a short description of what you could experience and what factors could affect the trial. You can find more information in our book *Strafuntersuchung – was tun?* (*What to do in a Criminal Investigation*). One thing is clear: you must know your rights in order to protect them.

Why it helps to say you deny the allegations

If the police suspect you, they begin to investigate and initiate criminal proceedings. Even a private person or a state official can bring a complaint against you. You then usually receive a summons or are detained – and suddenly you have to stand trial.

During criminal proceedings the presumption of innocence is a basic tenet; as long as you cannot be proven guilty, you are presumed to be innocent.

Remember that you have various rights. Of central importance is your right to deny the allegations. This can be very useful, since the judicial system must ultimately prove your guilt, which is usually not very easy without your testimony.

This is good to know! Denying allegations means that you provide no testimony. That means that you must say neither “yes” nor “no”. You answer each question simply with “No comment” or “I am not saying anything”. Replying “yes” or “no” or saying “I cannot remember” is, however, a statement of sorts, which can later be used against you.

Do not underestimate your power to go through with the denial of allegations. And do not wrongly estimate the authorities’ strength; it often cannot be recognized initially, as the police and public prosecution service frequently act in a subtle, friendly and helpful way at first – and not at all rudely.

If you lie, it usually does not have any large implications for you; however, you have, for example, weakened your innocence in the matter of the crime. But beware: the saying “The truth will out” is often true. Lying is usually discovered.

Your statements can be used as evidence, and the judicial system makes a note of them in detail; at the start of a trial you do not know anything about any existing evidence that is held by the authorities (e.g. DNA traces, video/CCTV footage or telephone analyses). The danger of unguarded statements is high with such forms of evidence. To maintain a continuous web of lies is also difficult, or almost impossible. The risk of contradicting yourself is extremely high. The authorities are experienced and not stupid.

What is never wrong: I am saying nothing without my lawyer present

If you receive a summons, you should ask a lawyer to clarify whether you need a defense for the trial and what you should do. If you are detained, first deny the allegations as best you can, and insist upon a lawyer from the very beginning. If possible, show the lawyer

that he/she can trust you. At the start of the trial the course is very often set – it is then extremely important for you to find your defense lawyer swiftly.

Remember that you have rights! You should deny the allegations, but you should also allow yourself to be defended on each legal point from the beginning. Your lawyer protects your interests within a legal framework; essentially this means you and what it important for you. Your defense is independent and obliged to act only to you, and you are subject to legal privilege.

An initial 30-minute meeting with a lawyer from the Zurich Collective Legal Practice (www.anwaltskollektiv.ch) costs 60.00 CHF. On the following site you will find a list of all the defense lawyers in the practice: www.strafuntersuchung.ch.

In almost all cantons there is a local group of on-call defense lawyers; you will find the group addresses in the appendix to our book *Strafuntersuchung – was tun?* or on the internet. There you will also find addresses of defense lawyers you can contact. You can discuss the fees individually at your first meeting with the lawyer.

Remember that in certain cases it is mandatory for your defense to be handled by a lawyer; for example, if you are remanded in pre-trial custody for a long time, if a heavy sentence or long-term residential measures are likely (such as treatment in a closed facility) or if deportation is to be expected to occur. This also applies if you cannot protect your own interests. If you have no lawyer in such cases and/or cannot appoint one, an officially appointed defense lawyer (mandatory defense) will be assigned to you; this means that the state pays the lawyer's fees in the meantime. It is important to know that a mandatory defense lawyer also protects your interests alone.

You can also apply for an officially appointed lawyer in other cases, if you do not have enough money to pay the legal fees. Ask your lawyer whether such an application would have any chance. Your request for a specific officially appointed defense lawyer should theoretically be taken into account. This means that in principle you can choose your own defense lawyer.

Your opponents: the police and public prosecution department

At the beginning of the trial you will mainly deal with the police and public prosecution service. They investigate, and their aim is "to uncover the truth". The police and public prosecution service should investigate the incriminating and exonerating facts against you; this implies the presumption of innocence. Their working hypothesis, however, because of their duty to investigate, is that something must have happened. And it is not just about your innocence. That is why a defense is so important: they "adjust" things in

your favor, and they try to have a fair trial and ensure a certain equilibrium. Beware: if there is no defense at the start of the investigations, you should at all times note down the names of the policemen and an outline of their statements.

What happens: the proceedings

If proceedings are initiated, the preliminary inquiry is begun by the public prosecution office and the police. If you are detained, a coercive measures court (presided by custodial judge) usually pronounces a judgment after four days on the legality of pre-trial custody; insist upon an oral hearing before this court, if the public prosecution office asks you to. If you are detained in pre-trial custody, you must at all times ask for custody to be lifted; ask your lawyer for advice if this is considered useful.

The preliminary inquiry can be stopped by the public prosecution service using one of the following basic methods:

- By abandoning the trial if there is no longer any clear evidence of the criminal act or if no complaint has been lodged in cases that require the victim to file one. The complaint is often withdrawn if you can come to an agreement with the victim.

- By indictment of the court.

- By a penalty order from the public prosecution department, if the case is sufficiently explained by a confession or another means and the penalty is no longer than six months of imprisonment or a monetary fine or voluntary work equivalent to the same amount. A penalty order is, so to speak, a judgment by the public prosecution service in minor cases. You can object to a penalty order within ten days. Further evidence must then be acquired, after which the public prosecution service can close the trial by abandoning it, by indictment or by penalty order. Pay attention: do not take part in questioning without permission, or your objection will be withdrawn.

Where you need to pay particular attention: evidence and your appraisal

The most important forms of evidence in a large number of cases are your statements as an accused person, but also the statements of informants and witnesses. You should therefore always read the protocol for your questioning closely and carefully. Make sure you do not contradict yourself. Other important forms of evidence are DNA traces,

computer/telephone analyses, video/CCTV footage, house searches, information from your bank, and expert reports.

Thanks to these technical aids and routine appraisals of the statements by the courts and public prosecution service, lies are often unearthed. It is therefore often useful to remain silent, since even the smallest of lies can shatter your credibility (if you lie once, you won't be believed later on, even if you are speaking the truth).

The conclusion of proceedings: not always a happy ending

At the end of the court hearing, the judge will pronounce you either innocent or guilty; he/she issues a judgment in either case. A shortened court hearing (a deal with the public prosecution service) is a rare occurrence: it is necessary to be represented by a lawyer for such proceedings. Ask your defense lawyer to advise you whether this is a useful option.

If the court proceedings finish with a judgment, you as an accused person (but also the public prosecution service and the victims) basically have the possibility of transferring the case to a second-instance cantonal court (appeals court, cantonal court). This leaves the path open for all participants to the federal court, where the case can no longer be examined entirely freely as at the cantonal courts, but only in the context of certain judicial questions.

What happens and what you must expect: sentences and measures

Swiss law comprises a sentence and/or measures as a legal consequence of a crime.

Sentencing includes custodial sentences, fines, voluntary work and repentance. All sentences except for repentance may be negotiated with a probation period of between 2 and 5 years. A custodial sentence can, however, can only be negotiated as probation if it is under 2 years; if it is between 2 and 3 years, it can also partly be considered probation. If nothing happens within the probation period, the sentence is not fulfilled; that means that you do not need to serve the sentence.

The level of fines depends partly on your debts, and partly on your income and wealth; this is only considered if the sentence involves no more than 1 year of imprisonment. Voluntary work is possible if the sentence is for no more than 6 months in custody. With short custodial sentences there is also the possibility of semi-detention.

As well as sentencing, the court may also order therapeutic measures, custodianship or deportation. Custodianship means an undetermined period of incarceration; this, however, only applies to major crimes and is reviewed regularly. Therapeutic or so-called in-patient measures for addictive disorders or treatment of mental disorders may be long-lasting and may considerably infringe on your freedom.

As well as such therapeutic measures, out-patient treatment is also possible in minor cases, allowing you to remain at home. For young adults there are specific measures giving them the chance to live responsibly and crime-free. Other measures such as employment or travel bans may also be imposed. Foreign nationals may also carry the risk of being extradited as a result of the judgment.

For crimes and offences committed after October 1st, 2016, the criminal court will in most cases issue a deportation order. Crimes and offences committed before that date are subject to assessment by the Migration Office as to whether the offender is to be deported as a result of the sentence. Foreigners are strongly advised to consult with a specialized lawyer sooner rather than later and obtain a professional opinion on the question of deportation.

What is vital: knowing your rights

The judiciary has a large arsenal at its disposal to use in cases against you. The better you know the options as well as your opponents' tricks and ruses, the better placed you are to defend yourself. Therefore allow yourself the time to learn what you need to know. Gather the advice you need. It is worth it!

This is good to know! This bulletin can only provide you with the most important pieces of information. Detailed information can be found in our book *Strafuntersuchung – was tun?*, which you can find on our website (www.strafuntersuchung.ch), on the website of the Zurich collective legal practice (www.anwaltskollektiv.ch) or in any bookstore. It costs approximately 25.00 CHF and in the space of about 200 pages explains criminal proceedings in a very practical way. We show you how the police work, what the court does, what the limits of the authorities' power are, how evidence is assessed, and how sentences are determined. And, very importantly, we tell you what rights you and your defense have.

If you require personal advice, we recommend, as mentioned above, a 30-minute advisory meeting costing 70.00 CHF with us at our collective legal practice located at Kernstrasse 8/10, 8004 Zürich, Switzerland, tel. 044 241 24 33; prior notification is not required. You can drop by any afternoon between 12:30 and 6:30 pm. We usually give advice in German, but you can talk to many of our lawyers in English or French and

some of them in Italian or Spanish. If you only speak another language, bring someone along to interpret for you.

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