

POLICE DETENTION

A COMPARATIVE ANALYSIS OF THE EFFECTS OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984 AND THE TURKISH CRIMINAL PROCEDURE ACT

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By

Mehmet ARICAN

**Scarman Centre for the Study of Public Order
Faculty of Social Science
University of Leicester**

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Abstract

The Police and Criminal Evidence Act (PACE), 1984, in England and Wales and amendments to the Turkish Criminal Procedure Act (TCPA) in 1992 in Turkey are regarded as fundamental law reforms in the field of police powers and rights of suspects. Both legislations aimed to set up a balance between police powers and the rights of the individual, whilst regulating police procedures. Furthermore, both Acts were intended to end police malpractices, with the larger aim of preventing miscarriages of justice.

The thesis attempts to measure the impact of these legislative reforms on police practices with particular reference to detention and interrogation procedures. In doing so, it tries to reveal how far the rule changes under PACE and TCPA have affected police practices. In addition, the question is raised of how far policing can be shaped and controlled through the policy derived from the law. The study finds that in some police procedures there is a great deal of difference between the rhetoric of law and the actual police practice. It is therefore argued that the extensively-designed legal provisions regulating detention and questioning may not always constitute an effective restraint against the police applying the law to suit their own objectives.

Consequently, it is apparent that there is a need to support legal regulation with other procedures and measures if any legislative reform of the police and policing is to be effective. For successful reform, on the one hand the rules must not be ambiguous and confusing, and on the other hand they must be endorsed by effective legal sanctions and administrative supervision. Moreover, improved adherence to the law will require a better calibre of police recruit, while design of the organisation in which the police operate should be enhanced. Finally, ensuring that the general public know about their legal rights will also be an important element in compelling the police to act within the boundaries of the law.

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ABBREVIATIONS

AI	Amnesty International
CE	Council of Europe
CJPOA	Criminal Justice and Public order Act, 1994
CLRC	Criminal Law Revision Committee
Code C	Code of Detention and Questioning (PACE)
DWU	Detention Watch Unit
EC	European Community
ECHR	European Court on Human Rights
ECPT	European Committee of Prevention of Torture
EHRC	European Human Rights Convention
EU	European Union
GMP	Greater Manchester Police
HRW	Human Rights Watch
MET	Metropolitan Police
NPD	National Police Directorate (of Turkey) (EGM)
PACE	Police and Criminal Evidence Act, 1984
PP	Public Prosecutor
PPDA	Police Powers and Duties Act (of Turkey)
PPO	Public Prosecution Office
RPC	Royal Commission on Police
RCCJ	Royal Commission on Criminal Justice
RCCP	Royal Commission on Criminal Procedure
SSC	State Security Courts
SSCA	State Security Courts Act
TCPA	Turkish Criminal Procedures Act
UN	United Nations

‘The Act’ refers to the Police and Criminal Evidence Act, 1984, unless the context shows otherwise.

LIST OF CASES

Miranda v Arizona (1966) 384 US 459.

Holgate Mohammed v Duke (1984) 1 ALL ER 1054.

Ibrahim R V (1914) AC 599.

Dallison v Caffery (1965) 1 QB 348.

CHAPTER 1

INTRODUCTION

Police powers have always been a matter of controversy as these powers often interfere and conflict with personal liberties. It seems obvious that if the police misuse or abuse the powers which they legitimately possess, it will be hard to maintain justice in a society, because even if some powers such as arrest, detention and questioning are exercised within the limits of the law, it is still a humiliating and upsetting experience for the person involved (Bal and Eryilmaz, 2002). For instance, a suspect who has been arrested and detained by the police is likely to feel aggrieved by the process to which he was subjected, irrespective of whether or not he was charged and the case was referred to the court (Ashworth, 1998:23). From the suspect's point of view, being in police custody is a denial of personal freedom and represents a major disruption to his or her life, since it could involve humiliation, publicity, disgrace, mental suffering, injury to reputation and pain to family and friends (Taylor and Wood, 1999:249). Ashworth employs the term 'punishment' to describe the feelings that suspects may have in such circumstances:

Suspects and defendants often feel that the way in which they are treated is equivalent to punishment, in the sense that it inflicts on them deprivations (of liberty, of reputation) similar to those resulting from a sentence (Ashworth, 1998:23).

Indeed, a police investigation does not usually begin with the collection of physical clues that lead to the identification of a suspect (Maguire and Norris, 1992). Instead, investigations very often begin with the presumed identity of a suspect, which allows the police to collect information that will support the investigation and lead to an arrest. Research suggests (RCCP, 1981b; Bayley, 1994) that the police have a pronounced tendency to find and arrest a suspect as soon as possible at the beginning of an investigation, because having a suspect in custody provides a great advantage to them in solving a crime. For this reason, the police usually keep their list of potential suspects as wide as possible, and this list inevitably includes innocent people. It is therefore imperative that individual citizens must, regardless of whether or not they are subject to police investigation, have protection and adequate safeguards against the abuse of police powers. In particular, as they are in a vulnerable position, people in police custody need extra protection from any form of mistreatment, torture, or brutality that might result in the extraction of a false confession.

For many law-abiding ordinary citizens, special police powers such as arrest and detention will mean little as they may be of the opinion that such things are the criminals' problem, and nothing to do with them as they are not law-breakers. However, in life there is always the possibility of becoming a suspect detained by the police, regardless of whether or not a crime has been committed. Not only are genuine offenders subject to police investigation, sometimes an innocent person might be arrested for a crime that he or she did not commit. This situation was well understood by Hain (1979), who once considered the erosion of civil liberties as an 'abstract issue' but changed his mind dramatically when the police wrongly arrested and detained him:

My attitude to the police changed abruptly one Friday in October 1975 when they descended on my home while I was having lunch, forced me to accompany them to Wandsworth police station, held me in solitary confinement for some eleven hours, and finally charged me for a bank theft I had not committed.

Before then, my experience of the police had been confined to the area of political protest - where, admittedly, I had seen for myself the way that their powers can be abused. But this was an accepted part of the rough and tumble of radical politics. Only when I suddenly found myself a victim of mistaken identity, on the receiving end of a false police prosecution, did I fully appreciate the vulnerability of the ordinary citizen to being deprived of his freedom. 'We are glad this happened to you because you are publicly known,' another victim told me after my arrest, 'At last people will believe that this is happening all the time.' Previously, the erosion of civil liberties had been a somewhat abstract issue for me. Now *I know* what it means (Hain, 1979:1).

There is no doubt that the police must be given adequate legal powers and resources to investigate crimes, to maintain law and order, to protect the public, to prevent crime, to apprehend offenders, and to perform various other duties, all of which preclude the possibility that innocent people should be wrongly imprisoned (Sanders and Young, 1994:20).

However, the issue here is not that the police should have powers, but how these powers should be supervised and balanced with effective safeguards against any probability of misuse or abuse. Surely convicting the innocent, especially when intentional, is a crime in itself and must be prevented (Robilliard and McEvan, 1986:260-1; Davies, *et al.* 1998:105-6).

Control of the Police through Legislation: PACE and TCPA

Using legal reforms to control the police and restrain the powers they have is a method that is commonly used by governments throughout the world. The Police

and Criminal Evidence Act, 1984 (PACE) in England and Wales and the 1992 amendments of the Turkish Criminal Procedure Act (TCPA) in Turkey are two examples of this effort. As one of the pioneering researchers of PACE, Dixon stated that PACE was a notable example of 'a trend in common law jurisdictions towards changing and controlling policing by using techniques of legal regulation' in England and Wales. This technique involved the extension, formalization, clarification and specification of police powers and the rights of suspects by means of statutes, codes of practice, governmental circulars, and internal force orders (Dixon, *et al.*, 1990:345). Similar views are expressed by other researchers (i.e. Bottomley *et al.*, 1991, McConville *et al.*, 1991; Reiner, 1992a and Brown, 1997), who have carried out extensive work on the impact of PACE and who identified the Act's designers as wishing to influence police activities by means of legal reform:

It is implicit in PACE and the fine level of detailed rules and guidance in the accompanying Codes of Practice that those who drew up the legislation placed faith in the capacity of legal rules to influence police conduct (Brown, 1997:250).

Following the detailed analyses and recommendations of the RCCP, the PACE Act erected quite a formidable framework of legal rules, both substantive and procedural, in the firm belief (or, at least, with the hope!) that it would successfully change and / or regularise police practices across a wide spectrum of their work and provide effective safeguards to counterbalance the extension of police powers (Bottomley *et al.*, 1991:190).

The PACE developments in England and Wales were echoed quite independently in Turkey in 1992, when the Turkish Legislator amended those sections of the Turkish Criminal Procedure Act (TCPA) concerned with the arrest, detention and interrogation of suspects. The Legislator was particularly concerned with changes that would improve the legal status of suspects who are arrested and subsequently

detained. This attempt at reform was driven by political as well as legal factors. The government's original proposals for the amendments had referred to the damage done both at domestic and international level by allegations of torture and mistreatment of suspects in Turkish police custody. Although the situation was not as dreadful as illustrated in the infamous movie '*Midnight Express*'¹, the Turkish police have often been criticised for their ill-treatment of suspects in custody, a criticism levelled by both internal and external bodies such as the media, human rights organisations, the European Council, and Amnesty International. Most of the criticisms have focused on the allegation that, during the investigation of a criminal case, police officers often used illegal methods to obtain a confession or information about the case; and were able to do so because of inadequate safeguards for suspects and poor restraints on the powers of the police. The critics have stressed that, since the legal framework of police powers was at the root of police misconduct, the existing detention and interrogation procedures should be re-designed with extra legal safeguards to ensure the effective protection of individuals (Adalet Bakanligi, 1992:4-5).

Undeniably, the need for reform was even more pressing in Turkey than in England and Wales since the realisation of police reforms is a crucial factors in Turkey's democratisation process itself and an integral part of Turkish efforts to join the European Union (EU)². In the context of Turkey's infamous reputation in the field of human rights, successful reform would, therefore, have profound political and economic repercussions in addition to the more immediate structural and practical improvements in different policing issues.

¹ In the view of many, this is certainly an unfair movie.

² Recognised as a candidate for EU membership in 1999, Turkey is pressing for a date to begin accession talks.

Regulation of Police Detention and the Rights of Suspects in Turkey

Until the amendments to the Turkish Criminal Procedure Act in 1992, the concept of suspects' rights in police custody was neither adequately understood by the police and the judiciary nor was it codified by an Act. Although there were some rights to which suspects were entitled when they were in custody, it was claimed that this did not effectively protect suspects against the misuse of police powers because there was a public perception that police stations themselves were places where people got beaten up. Naturally, these criticisms were very disturbing for the police and the government.

As a result of growing concerns over the human rights issues in policing, in early 1992 the then newly-formed coalition government decided to improve the law relating to human rights including the rights of suspects, as promised in their election manifesto. A commission was set up to prepare a draft bill, and this Commission worked hard and presented the draft in the summer of 1992. Owing to the Government's intention to pass the Act through Parliament as soon as possible, no detailed and comparative research was carried out, nor were concerned bodies like the police and academics consulted sufficiently during the preparation of the Act. As stressed by one of the Commission members, Yenisey, in the first meeting of the Commission, there was a great necessity to carry out research to find out what was required. However, the Commission ruled out this option because of pressure from the Government to enact the legislation as quickly as possible. In fact, the Government feared that any delay might cause the legislation to be blocked, as opposition to the changes was becoming stronger (Yenisey, 1993:2). Eventually, the

Turkish Criminal Procedure Act (TCPA) was amended by the Parliament on 18th November 1992. The amendments became effective on 1st December 1992.

Among the other new provisions, the most important changes concerned the detention procedure of a suspect. To prevent the further likelihood of police mistreatment of suspects in custody the Legislator decided on the option of increasing the amount of legal safeguards for the individual being detained by the police. Accordingly, TCPA introduced a number of new rights for suspects and acknowledged that any methods of collecting evidence that humiliated or demeaned suspects were illegal and any evidence collected which involved the use of any form of mistreatment, violence, or torture would result in its exclusion by the courts. The major changes involving the rights of suspects under police custody were: the right to see a solicitor; the right to silence; the right to ask for collection of certain evidence; and the right to have someone informed (TCPA, article 135). The old time limit on detention without charge for offences committed individually remained at 24 hours, but for offences committed collectively by three or more people, the limit was reduced from 15 days to 8 days³. However, after 24 hours, a prosecutor's written permission was needed to extend the detention time up to four days, and after the 4-day limit a judge's decision was required to extend it up to eight days⁴ (TCPA, article 128).

³ For those detained for individual crimes that fall under the Anti-Terror Law, the initial detention limit is 48 Hours. After this initial period, for those charged with crimes of a collective, political, or conspiratorial nature, detention may be extended by up to 4 days at a prosecutor's discretion and after 4 days, it can still be extended by up to 7 days with a judge's decision in provinces which are not under a state of emergency. However, in the provinces, which are under a state of emergency, this maximum limit can be extended by up to 10 days (Code of Conduct of Arrest, Detention and Interrogation, articles 13 and 14).

⁴ In 1997, a further change in TCPA (amendment Act number 4229 – 06.03.1997) reduced the 8-day maximum detention limit to seven days. At the end of seven days the suspects must either be released or brought before a judge. If the judge finds no reason to continue with detention or the initial

The new provisions of TCPA were widely welcomed and regarded as the first serious attempt to provide better safeguards for suspects who are in police custody (Yenisey, 1993:26; Erem, 1993:35). In connection with the important changes in detention procedure, the introduction of new safeguards for suspects in police custody were indeed remarkable and historic, not only because the concept of suspects' rights in the Turkish Criminal Justice System was recognized for the first time on such a comprehensive scale, but also because it opened new doors for further reforms in similar areas of the police law (Kazan, 1992:851; Sahin, 1995:79).

Since then, over the years, Turkish legislators have produced a number of new regulations as part of additional attempts at improving human rights standards in the country. For instance, a major step in the regulation of detention procedure was taken in 1998 by the acceptance of a Code of Conduct of Arrest, Detention and Interrogation. More recently, a new draft bill of the Criminal Procedure Act was presented to the government by the Criminal Procedure Act Preparation Commission, which was set up for this sole purpose.

Regulation of Police Powers and the Rights of Suspects in England and Wales

In contrast to the infamous reputation of Turkey's police, England and Wales have been regarded as among the most fortunate of states in respect of their police (Regan, 1993:1). The British bobby⁵ has been a figure representing 'political continuity, cultural homogeneity, and moral consensus: alone, unarmed, he walked

reason(s) for detention has deteriorated, the suspect has to be released from custody (TCPA, s. 128/3).

⁵ As typified by PC George Dixon of Dock Green.

the beat', and people ask him the time (Morgan and Newburn, 1997:1). A survey conducted for the Royal Commission on the Police in 1960 found that 80% of the public in the rather representative sample thought that the British police were the best in the world:

The findings of the survey constitute an overwhelming vote of confidence in the police...relations between the police and the public are on the whole very good, and we have no reason to suppose that they have ever, in recent times, been otherwise. This is a finding which we believe will give great satisfaction to your Majesty, to the police, and to the public (RCP Report, 1962: Para 3.38).

In fact the RCP survey reflected the public view of a so-called 'Golden Age' of policing in the '50s in this country (Benyon, 1986:7). As Reiner (1985:49) puts it:

... as far as police acceptance by the public is concerned, the 1950's seem a 'Golden Age' of tranquility and accord, with only hesitant harbingers of coming crises.

Although the 1950's may have been the 'Golden Age' of policing, the same survey (RCP) found that one in five of the sample still did not have satisfactory views of the police, 42% thought some policemen took bribes, and 35% thought that unfair methods were used on occasion to get information (RCP, 1962: paras. 3.44-3.48). In particular, the following two decades, after the Royal Commission on Police in 1960, have witnessed a significant number of miscarriages of justice in which police conduct played a role. The following cases were publicly well-known examples that occurred in this period: *Hanratty* (1962), *Stafford and Luvaglio* (1967), *Murphy, McMahon and Cooper* (the London post office murder in 1970), *Lattimore, Salih and Leighton* (the Confait case in 1972), *Dougherty* (1973), and *Maynard and Dudley* (the Legal and General gang in 1977). Amongst these miscarriage of justice

cases, the Confait case has a particular importance because it was the triggering event which led to the reform of the criminal justice system and policing after the '80s (Walker, 1993:7; Regan: 1993:1; Asworth, 1994:91-92).

In 1972, a person called Maxwell Confait was murdered and the house in which he lived burnt down. Later, two youths were charged with the murder and another boy was charged with causing the fire. The charges were the result of confessions made during police interviews. One of the boys was mentally retarded with a mental age of eight (his actual age was 18) and the other boys were 14 and 15 years old. They were all convicted on the basis of their confessions (Price and Kaplan 1977:11). Three years later, after a lengthy campaign to re-open the case, the Court of Appeal quashed the convictions. The Court evaluated the case according to the standard burden of criminal cases, namely whether the charges were proven beyond reasonable doubt and came to the conclusion that it did not meet the criteria (Baxter and Koffman, 1983:11).

The miscarriage of justice occurring in the Confait case led to the setting up of an inquiry that was conducted by Sir Henry Fisher and this inquiry raised serious questions about the police and their investigation of crime, particularly in relation to the treatment of juveniles and mentally-handicapped suspects. Its criticisms were that the boys were questioned unfairly and oppressively, there was no independent adult present, and they were not informed of their right to make a telephone call. These all meant that the Judges' rules were ignored and abused by the police (Benyon, 1986:34).

The Fisher Report (1977) acted as a 'catalyst' for the setting up of a Royal Commission on Criminal Procedure, chaired by Sir Cyril Philips, whose report 'lies at the base of PACE' (Powell and Magrath, 1985:1). Therefore, the outcome of the Confait case was seen by many writers as the starting point of the events which led to the establishment of the Royal Commission and eventually, the preparation of PACE (Leigh, 1985:37; Lambert, 1986:8; McConville, *et al* 1991:3; Walker, 1993:7; Dixon, 1998). Rainer's following comment summarises all:

The 1977 Fisher report on the Confait case was the immediate trigger for the establishment of the RCCP, the predecessor of PACE (Reiner, 1992:11).

When RCCP had its first meeting in 1978, it had the following terms of reference:

- i. to examine the powers and duties of the police in the investigation of offences and the way that these affect the rights of the suspect;
- ii. to study the existing system for prosecuting criminal offences;
- iii. to bear in mind the national need to use resources efficiently and economically;
- iv. to give regard to the proper balance between the interests of the community in seeking to bring offenders to justice and the protection of the rights and liberties of persons suspected or accused of crime (RCCP, 1981a: iv).

RCCP reported in 1981 and this proved controversial because the report recommended an increase in police powers as well as additional rights for individuals. While the police welcomed the report, wide criticisms were raised by left-wing and liberal commentators inside and outside Parliament (Morgan and

Newburn, 1997:51). In short, as Bottomley et al. (1991) stated, the overall objective of the Commission's recommendations was to achieve a 'fundamental balance' between police powers and the rights of individuals while setting up an open, fair, and workable criminal procedure. This was pointed out in the report itself as follows:

The Commission's task has been to try to achieve a balance between a host of competing rights and objectives ... On the one hand there are those who see the fight to bring criminals to justice as being of paramount necessity in today's society. ... On the other side are those who believe that the cards are in practice stacked in favour of police power, and that the safeguards against abuse and oppression are inadequate. The majority of public and professional opinion is inevitably between the two (RCCP, 1981a:2).

Consequently, the Commission was very successful and PACE and associated Codes of Practices were based on many of the recommendations of its report and the Government very often used it as justification of provisions (Morgan and Newburn, 1997:51).

Following careful preparation and consideration, the first Bill was introduced in November 1982, but failed to pass owing to an early general election which was called in May 1983. After about five months, the second Bill emerged. The new version of the Bill was pushed through Parliament in the face of tough opposition from a wide range of organisations such as the Law Society, the British Medical Association, and the Labour Party (Zander, 1985: xvii; Leigh, 1986). Eventually, the Bill became law in October 1984 and came fully into force in January 1986 (see Figure, 1.1).

Figure 1.1: Chronology of PACE

1964 - Criminal Law Revision Committee set up.
1972 - CLRC's 11th report.
1972 - Murder of Maxwell Confait and convictions of three youths.
1975 - Convictions quashed.
1975 - Fisher inquiry set up.
1977 - Fisher's report.
1977 - Royal Commission on Criminal Procedure set up.
1981 - RCCP's report.
1982 - First Bill introduced.
1983 - Second Bill introduced.
1984 - Bill became law.
1986 - PACE came into force.
1988 - Codes of practice on tape recording of interviews came into force.
1991 - Codes of practice revised.
1995 - Codes of practice revised.

As seen, it took PACE a general election and many tens of amendments to complete its journey into the Criminal Justice System. Even though some would argue that it was one of the most controversial pieces of legislation (Freeman, 1985; Zander, 1991), it was regarded as a fundamental law reform in the field of police powers and suspects' rights and a landmark in the history of modern policing in this country (Benyon, 1986; Reiner, 1992). Notably, as a statutory codification and rationalisation of police powers and the safeguards over their exercise, it had a symbolic and a practical importance (Asworth, 1994; Morgan and Newburn, 1997).

Whilst clarifying the existing law, PACE introduced new procedures and provisions (Morgan and Newburn, 1997:51). Together with its associated codes of practice, it not only provided for the first time a detailed legislative framework for the operation of police powers and rights of suspects, but also set up a framework of rules designed to provide a tighter regulation of police powers and new controls on the treatment of suspects in custody (Sanders and Young, 1994:1, Davies *et al.*, 1998:107). The Act introduced the new post of Custody Officer whose job it was to inform the suspects of their rights and ensure that they were being treated fairly whilst in custody. Accordingly, the suspects were given the right to one phone call, free legal advice, and, for under-eighteens or mentally-handicapped adults, the right to have a responsible adult present with them. In addition, all interviews were to be tape-recorded and the suspect was to be detained for only twenty-four hours without charge. Finally, the job of prosecution was removed from the remit of the police to an independent body, the Crown Prosecution Service.

The new Act attracted a mixed response. Representative police bodies criticised the Act for reducing the powers of the police to prove a case against a guilty person whereas the civil liberties lobby criticised it for extending police powers. Critics maintained the new powers represented a serious danger to civil liberties and safeguards made available to the suspects would be largely ineffective. On the other hand, the police thought that these safeguards would most likely harm their efforts in fighting crime and criminals (Morgan and Newburn, 1997:51). These contradictory views were possible because PACE both extended police powers and attempted to regulate police behaviour more effectively in order to ensure a balance between suspects' rights and police powers (Asworth, 1994:91-92; Reiner, 1992:223; Jones *et al.*, 1994:23-24).

Figure 1.2: Chronology of Significant Dates in Criminal Justice Legislation between 1980 and 1999.

1981 – Scarman Report.
1981 – Royal Commission on Criminal Procedure.
1982 – Criminal Justice Act.
1984 – Police and Criminal Procedure Act.
1985 – Prosecution of Offences Act.
1986 – Public Order Act.
1988 – Criminal Justice Act.
1990 – White Paper: Crime, Justice and Protecting the Public.
1991 – Criminal Justice Act.
1991 – Criminal Procedure Act.
1993 – Royal Commission on Criminal Justice (Runciman).
1994 – Criminal Justice and Public Order Act.
1994 – Police and Magistrates' Courts Act.
1996 – Criminal Procedure and Investigations Act.
1998 – Crime and Disorder Act.
1998 – Human Rights Act.

It has now been more than 15 years since the Act came into force and inevitably the Act has, in a number of important aspects, affected the police function as well as the police culture. The specific practices and circumstances of the Act have, however, had a ranging impact because since PACE became law in 1984, the Court of Appeal has quashed convictions in a number of highly-publicised cases, including some

miscarriages of justice which nevertheless occurred in the post-PACE period⁶ (Bridges, 1994:20). The cases of Stefan Kiszko⁷, The Guildford Four⁸, The Birmingham Six, the Maguires and the Tottenham Three⁹ - together with serious allegations concerning the techniques of the West Midlands Serious Crime Squad - caused widespread concern over the handling of criminal investigations by the police and the reliability of police methods of collecting evidence (Morgan and Newburn, 1997:53-4). Thus, even though most of the well-known miscarriage of justice cases belong to the pre-PACE period, the question is still wide open as to whether the Act has been successful in preventing miscarriages of justice since it became law¹⁰.

⁶ Among the most prominent cases were the following: (1) The Guildford Four (murder caused by IRA pub bombings) (1990). (2) The Birmingham Six (murder caused by IRA pub bombings) (1991). (3) The Maguire Seven (possession of explosive substances which linked to bombings in London) (1992). (4) Judith Ward (IRA M62 bombings) (1992). (6) The Cardiff Three (murder of a Cardiff prostitute). (7) Tottenham Three (murder of a police officer during disturbances on the Broadwater Farm estate). (8) The Taylor sisters (murder of Alison Shaughnessy). (9) The Darvell brothers (rape and murder of a shop manageress). (10) Stefan Kiszko (sexual assault and murder of a schoolgirl). (11) Jacqueline Fletcher (infanticide of her baby). (12) Winston Silcott (murder of PC Keith Blakelock). (13) The Bridgewater Four (murder of a newspaper boy) (1997). (Except for the 'Cardiff Three', all cases above occurred in the pre-PACE period).

⁷ In the mid 1970's Stefan Kiszko was charged and convicted with the rape and murder of a thirteen-year-old schoolgirl. He was known to the police as he had previously had one unfortunate incident of indecent exposure. He was also socially inadequate but physically capable of committing this type of crime. So he was a perfect scapegoat. He spent fourteen years in prison and had a very hard time due to the fact that he had been convicted of a sex offence. A number of years later, while Kiszko was still in prison, the case was brought to light again and it emerged that Stefan Kiszko was impotent, and therefore it would have been impossible for him to commit the crime. He was eventually released as his innocence had been proved (Eddleston, 2000).

⁸ In 1974/5 three Irish men and one woman were charged and convicted with murder. They stood trial accused of bombing an army pub in Guildford. In 1989 an appeal trial took place and the four were released. At the time of the Guildford Four case, members of the suspects' families were investigated to rule anyone else out of the picture. A member of one of the families was imprisoned for about six years after traces of explosives were found on their hands. It arose that the pathologist had made a mistake and the chemical found could have been derived from household soap. It was still possible that the Guildford Four were guilty, but the point was that this was not proved in court beyond reasonable doubt (Eddleston, 2000).

⁹ In the case of the 'Tottenham Three' which occurred in 1985, three black men were convicted of stabbing and murdering a police officer during an inner-city riot. They were interrogated for a long time with lots of repetitive questioning: one educationally-subnormal man confessed and all three were convicted on the basis of this one confession. It was only during the retrial that the interview tapes were listened to (Walker, 1993).

¹⁰ According to the 1999 AI report about the UK, deaths in custody are reported: In April 1999, a suspect named Christopher Alder died in custody in Hull. It was reported that, after being restrained, he was dragged from a police van and left lying motionless for about 10 minutes, face

Aims and Objectives of the Research

This study attempts to contribute to a knowledge of how the law affects policing and police powers. Accordingly, the main aim of the research, within a criminological and comparative context, is *to study the impact of PACE in this country and TCPA in Turkey on police detention and interrogation procedures in an attempt to analyse how far reformation of the law affects the implementation of the rules and how effective the law is in influencing police practices*. In accordance with this aim, the research:

- i. measures analytically the impact of PACE and TCPA and their Codes of Conduct, to find out whether they have provided a remedy for the problems related to the whole procedure of police detention and,
- ii. reveals the differentiation between what the law says the police may do and what is actually done (how ‘legal rhetoric’ is separated from actual practice).

With regard to the aim of the study, the broad research question can simply be defined as ‘*Can legal rules change police practices, and if so, to what extent?*’ The research tackles this question through an examination of police detention and interrogation procedures under PACE and TCPA.

This general aim and question can be broken down into several lower-level objectives and questions, as detailed below.

down, before officers attempted to give assistance. In another case in July of the same year, Nathan Delahuntly died, reportedly after being restrained by the police officers (AI, 1999).

The objectives are:

- i. to explore the extent to which law reforms and new regulation may affect and influence police practices;
- ii. to determine what factors play a role as to whether the legal rules are applied, avoided, or resisted by the police;
- iii. to suggest how governments could enforce a successful legal reform and make legal regulation work.

Interrelated with these objectives are the following questions, which the research attempts to answer:

- i. *Can police powers be restrained and controlled by means of legal regulation alone?*
- ii. *What is the workability and practicability of the new regulations in a well-established police world?*
- iii. *Do rules introduced by the legal reforms have the effects they are supposed to have?*
- iv. *What determines whether legal rules are obeyed or resisted?*
- v. *What should be done to make legal rules function effectively?*

Achieving the research objectives and answering the questions set out in the conceptual framework will also provide an opportunity to test the following hypotheses regarding the effects of legal reforms on the police and policing:

- i. Legal reforms have an insignificant impact on the police and their work because no matter what the aims of the law reform, the police will act in

accordance with their occupational sub-culture, which eventually determines what the police do and how they do it. The legal reform therefore achieves nothing in the end.

- ii. Legal reforms have a decisive impact on the police and their work because the police are legally tied to all the rules imposed by the law, so they obey the rules introduced by a law reform, even when this conflicts with their police sub-culture. Hence, the legal reform can be used successfully to control and to shape policing.
- iii. Legal reforms have an uneven impact on the police and their work because the workability of the new rules are subject to or depend upon various criteria and factors. Thus, the impact of the reform will change in accordance with different variables, such as the relationship of the rules to existing working practices and the way that the rules are enforced.

Table 1.1: Research Objectives and Questions

Objective	Question
To explore the extent to which law reforms and new regulation may affect and influence police practices.	<i>Can police powers be restrained and controlled by means of legal regulation alone?</i>
To determine what factors play a role as to whether the legal rules are applied, avoided, or resisted by the police.	<i>What is the workability and practicability of the new regulations in a well-established police world?</i> <i>Do rules introduced by the legal reforms have the effects they are supposed to have?</i>
To make suggestions as to how governments could enforce a successful legal reform and make legal regulation work.	<i>What determines whether legal rules are obeyed or resisted?</i> <i>What should be done to make legal rules function effectively?</i>

Limitations of the Study

In this study, police detention is chosen as a measure because the exercise of detention power directly involves the invasion of personal liberty and, more importantly, detention is probably the most crucial stage of a criminal investigation because it is during this period that critical decisions are made to justify the commencement of further proceedings (Phillips and Brown, 1998:1; Fenwick, 1998:393). While suspect behaviour or some other reason may lead to the arrest, detention may provide an opportunity for the police to convert 'reasonable suspicion' into 'sufficient evidence'. The part of the investigation where the interrogation of the suspect takes place is the one most likely to bear fruit, because a confession could be forthcoming (Belloni and Hodgson, 2000:63). As Holdaway (1983) stated, detention and interrogation have a special place in the occupational police culture:

Although the questioning and charging of suspects at the police station are the dominant aspects of an officer's work, ... they do have a central place in the occupational culture (Holdaway, 1983:169).

Evidently, in everyday policing, the police rely heavily on arrest and detention powers as a technique and tool of criminal investigation. As suggested by research (RCCP, 1981b; McConville *et al.*, 1991; Maguire and Norris, 1992; Bayley, 1994) the police have a pronounced tendency to find and arrest a suspect as soon as possible at the beginning of an investigation, because it is believed that a crime's perpetrator may destroy evidence, interfere with witnesses or commit similar crimes unless he/she is caught, otherwise this may result in the failure of the investigation. (Maguire and Norris, 1992; Uglow, 1995). As a consequence of this the police

usually keep the suspect list as wide as possible, which will inevitably include innocent people:

Although the police begin investigation with many actual offenders and many who have behaved ‘suspiciously’, the raw material with which the police work is a police construct. The suspect population is *not* a sub-set of the criminal population (McConville *et al.*, 1991:14).

McConville *et al.*, (1991:55) argues that, unlike the rhetoric of law, which describes the police as unbiased investigators, ‘the first concern of the police is to place the suspect into an environment which is hostile for the suspect and favourable to the police themselves’. According to the Home Office’s annual statistical records, in England and Wales every year at least more than one million people suspected of committing offences are arrested by the police and about a quarter of those arrested are released without charge (Home Office, 1999; 2000; 2001)¹¹. Thus, well over 300 thousands people are deprived of their personal liberty without apparently having committed a crime, which raises the question of how effectively the police are fulfilling legislative requirements in the exercise of their arrest and detention powers.

Furthermore, PACE in England and Wales and TCPA in Turkey have been chosen as yardsticks in this study, because many aspects of these legislations have attracted great attention among researchers since they became law. Many writers (i.e. Benyon, 1986; Reiner, 1992; Zander, 1991; Asworth, 1994) have regarded PACE as a ‘fundamental law reform’ in the field of police powers and suspects’ rights and a ‘landmark’ in the history of modern policing in England and Wales. Before PACE,

¹¹ Around 1.264.200 persons were arrested for notifiable offences in 2000/01. Only one per cent fewer than 1999/00 (Home Office Statistical Bulletin, 25.10.2001).

detention was not regulated by an Act and the police had no clearly-defined power to hold a person for questioning. Although section 43 of the Magistrates' Courts Act, 1980, and prior to that the Judges' Rules and case law had developed a detention scheme, the rules lacked clarity (Bourn, 1986:284; Fenwick, 1998:421). For the first time, PACE regulated the conditions and duration of detention and also made provision for the questioning and treatment of detainees (Leigh, 1995:100).

Similarly in Turkey, TCPA changes have been evaluated as historic and significant, because many of the provisions brought by the amendment Act were introduced for the first time, and the ultimate aim of these new legal rules was to prevent the mistreatment of suspects in police custody (Kazan, 1992; Yenisey and Icel, 1993; Erem, 1993; Ozturk, 1993; Sahin, 1995).

Comparison of PACE and TCPA

The rationale behind the comparison of PACE with TCPA is that international comparative analysis of policing issues affords an opportunity for developing theoretical models. Although it is relatively new in police studies, comparative analysis has been widely used in sociological research (May, 2001: 200-9). According to Mawby, there are three ways of conducting comparative analysis in police studies; two or more countries can be compared *vis-à-vis* their police systems; research can be focused on one specific country, but with implicit or explicit reference to other countries, or there can be an interest in a specific issue whereby policing can be compared across two or more societies (Mawby, 1990:190). This last method is applied in my study.

Even though the background events and the scale of reform may differ to a certain extent, in general terms, the PACE and TCPA reforms have some similarities in their content and in their ultimate aims and objectives, as well as in their possible effects on the police and their activities. The similarities can be summarised as follows:

Originally, PACE and TCPA amendments were considered a breakthrough and a landmark in the history of criminal justice in England and Wales and in Turkey. Both reforms intended to codify and clarify some police procedures and powers alongside suspects' rights, and many of the provisions were introduced for the first time. Although TCPA amendments did not provide additional powers to the police while providing suspects with extended safeguards, PACE tried to set up a balance between police powers and the rights of individuals by providing more power for the police to work efficiently and more safeguards for the individuals to protect them against the abuse of those powers.

Secondly, in the early days, there were great expectations on the side of the legislators that the new Acts would have a profound impact on the police and policing. Lord Scarman's account in a foreword to the book by Benyon and Bourn about PACE (1986) is an apparent example:

The Police and Criminal Evidence Act 1984 and the Prosecution of Offences Act 1985 are landmarks in the progressive development of English and Welsh systems of criminal justice. The two Acts will in due course work great changes in the way the criminal law is enforced. They will re-structure the whole criminal process from arrest to summons up to the moment at which the trial begins. Our police and prosecution services will be changed irreversibly: the old pattern will fade into history (Quoted in: Benyon and Bourn, 1986: xix).

Thirdly, both legislative reforms in both of these jurisdictions aimed to control and influence police practices by means of comprehensive legal regulation of the police powers.

Finally, aside from the similarities between the two Acts shown above, another important factor that makes this worthy of comparison is the following: The Turkish Criminal Justice System has long been and is still regarded as being closely allied to Continental European Law. However, the changes made in TCPA via the 1992 amendments have been seen by most Turkish academics as a major shift from the Continental law towards Anglo-Saxon law (Yenisey, 1991; Safak, 1993; Camci, 1993, Eryilmaz, 1999). In particular, this is because the due process values have been given priority by the amendments. Previously, most of the due process values did not exist in Turkish police law and crime control was the dominant philosophy that was adopted by both the law and the police. Given the fact that PACE is also a product of due process, there are important lessons to be learned from the experiences of PACE in England and Wales for future policing reforms in Turkey.

Conclusion

The criminal justice system in England and Wales has seen a move from a system of largely-unregulated police conduct and control of investigations, to one of apparently comprehensive legal regulation of policing under PACE and subsequent legislation (Bridges, 1998:76). As a result, the legislative framework of pre-trial investigation has altered quite significantly. A similar attempt was undertaken in Turkey with the 1992 amendments to TCPA.

Over the years there has been considerable debate as to whether or not the PACE reform has really achieved its highly-publicized objectives, which include controlling and influencing the police and their conduct in practical terms. The vast amount of research on the impact of PACE suggests that it had significant effects on certain elements of police work, but there are still serious doubts about the overall efficiency of such legislative reforms on policing (Dixon, 1997; Morgan and Newburn 1998:51-52).

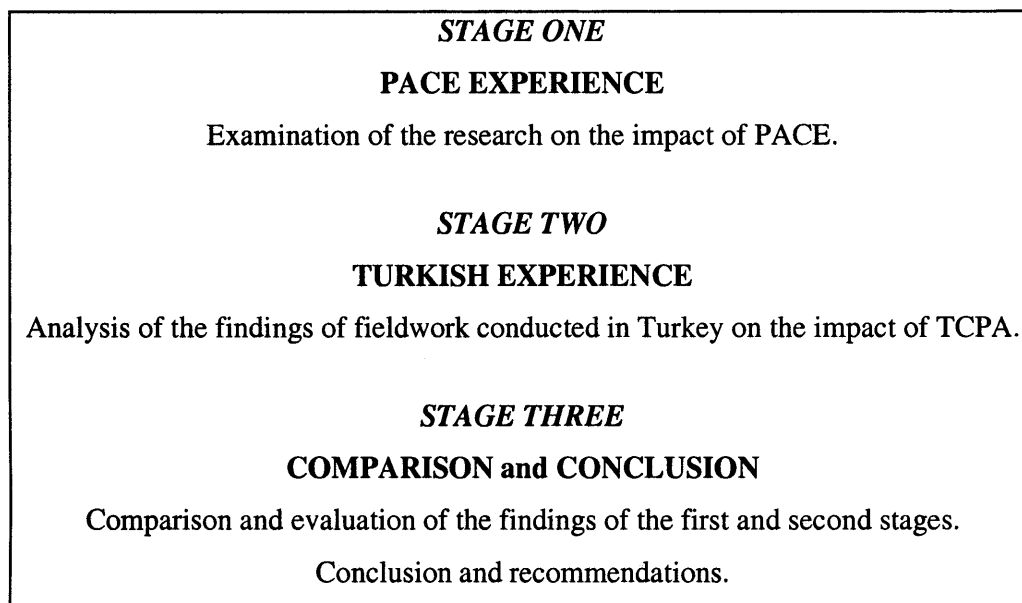
This thesis therefore intends to examine the effects of PACE provisions and TCPA amendments on the detention and interrogation of suspects in order to prepare a basis for an understanding of the impact of legal reforms on police practices and the police culture, and to provide an answer to the question of whether or not policing can be shaped and controlled through rules of procedure derived from the law itself.

As Coleman *et al* (1993:17) pointed out, the impact of PACE should be studied in order to answer questions relating to criminal justice issues. Although a considerable amount of literature on the impact of PACE has been published, there is still a need for analytical research exploring the theoretical aspects of the relationship between the law and the police. Moreover, the need to study the impact of the TCPA amendments is even greater in Turkey, where the government is still under pressure to implement more legislative reforms on the police and policing, because serious allegations of human rights violations in police custody still occur.

Overall, to achieve the research aims and objectives set out above, the thesis will go through three stages. The first stage will deal with an examination of research already carried out in England and Wales to measure the impact of PACE. The

second stage will deal with the collection and analysis of Turkish data. Finally, the third stage will compare and evaluate both English and Turkish experiences, leading to the conclusion which will then reveal the validity of the hypotheses of the study.

Figure 1.3: Stages of Research



After examining background events that led to the preparation of the PACE and TCPA law reforms in an attempt to explain the rationale behind the two Acts, this first chapter has exposed the research problem with an explanation of the research aim and objectives. The next chapter will continue with an overview of the theoretical approaches to the relationship between legal rules and the police and then move on to consider the theoretical context of the criminal justice process, of which the police are a part, for use in later analysis and discussion.

In the third chapter, the impact of PACE on new detention procedures and interrogation of suspects is explored by reviewing a relatively wide range of

research carried out in order to understand the effects of PACE in England and Wales. The elements of the detention procedures which are considered in the chapter are authorisation and review of detention, detention time limit, the outcome of detention, the role of custody officers, and police interrogation. The chapter also takes account of the right of access to legal advice as this is closely related to the interrogation of detainees. Although suspects' other rights are also a part of the police detention and interrogation procedure, there will be no particular focus on the issues related to the use of suspects' rights, in order to keep the scale of the research to a manageable size.

The methodological issues regarding the fieldwork carried out in relation to this study are explored in the fourth chapter, while the findings chapter, which is the fifth, analyses the data gathered by the empirical research carried out by myself in Turkey in three Turkish police stations. The chapter begins with a brief assessment of the Turkish criminal justice system and amendments to T CPA. This is then followed by an exploration of the impact of T CPA on police detention and interrogation procedures, basically in the light of my own field research.

Having completed the analysis of my own research about T CPA in chapter five, the subsequent chapter will continue to examine the research findings within a theoretical and comparative context, in an attempt to understand the sensitive relationship between legal regulation and policing.

The final chapter, chapter seven, will bring the thesis to a conclusion drawing upon the findings and relating them back to the broader issues. This will include a discussion and some suggestions about the implications of possible future legal

reforms on policing. Meanwhile, as PACE is a more advanced and comprehensive legislation, its experiences in England and Wales will be examined to discover whether any lessons can be learned.

CHAPTER 2

LEGAL REGULATION AND THE CRIMINAL PROCESS: THEORETICAL PERSPECTIVES

Introduction

The impact of legal reforms on policing is closely linked to the debate surrounding the issue of the relationship between legal rules and the police and policing practices, an understanding of which is clearly relevant to any further reforms in the statutory context of policing (Brown, 1997:250). This debate on legal rules and policing is also linked to the debate on the models of criminal justice process, which are formulated in order to explain the differences between the rhetoric of the law and how the criminal justice system operates in practice (Low, 1978). Thus, any explanation of the difference between what the law says and the way it operates in practice must take account of the working practices of criminal justice agents such as the police and the law itself.

Basically, there are several models of the criminal justice process developed as a framework principally by Parker (1968) and later developed and modified by others such as Bottoms and McLean (1976) and King (1981). These theoretical models,

which this chapter intends to examine, are useful tools in the discussion and analysis of issues arising in this thesis. Particularly, Parker's models of due process and crime control are useful as they straightforwardly identify the conflicts and the competing demands that lie within the criminal justice system. This enables any analysis of the relationship between the legal rules and the police to be placed in a wider context when achieving the aims and objectives of this research.

The Impact of Legal Regulation on the Police

Given that the relationship between the legal rules and the police is a multifaceted matter which varies as to time and place, and different aspects of the law and practice, there is a great deal of theoretical division among writers in the understanding of how the legal rules affect the policing practices. As categorised by Dixon (1992b:2), four main theoretical approaches can be distinguished: *legalistic*, *culturalist*, *structuralist* and *functional/situational*.

At one extreme are those whose view of policing might be described as *legalistic*, who believe that the law is the central and organizing determinant of police activity and consequently that legal rules significantly affect policing practices. They assume that as long as the legal rules have been clearly formulated, the police will act in accordance with them because, simply, the police are accountable to the law. Thus, police work is presented as being 'the application of an objective set of laws' (Grimshaw and Jefferson, 1987). The legalistic approach was once influential in some American police studies in the 1950s and 1960s (Goldstein, 1960). It is also implicit in some official reports and lawmakers' debates in England and Wales, such

as the report of RCCP (1981). According to Dixon (1992b) the legalistic view is, at best, 'simplistic' because it idealistically assumes that law is the major determinant of police work:

A weakness of these approaches is that they take for granted a relationship between law and policing: it is assumed that law is the major determinant of police activity and consequently that legal change (either intensification or reduction of control) will effect change in policing practice (Dixon, 1992:3).

On the other side of the legalistic approach are those, described as *culturalist*, who advocate that legal rules are largely irrelevant to what the police actually do, because their actions are governed so strongly by cultural norms and imperatives. Hence, the influence of the law is only marginal (McConville, *et al.*, 1991). As Sanders argues (1998), legal rules generally change practices 'only in matters of unimportant detail or in ways which still allow the police to follow their working rules'. The culturalist perspective maintains that the effect of legal regulation on police practice should not be over-estimated. It is argued that legal rules and departmental regulations are incidental to an account of how police work operates. However stringent the legal regulations may be over the way in which the police operate, officers will usually try to find ways to get around them and will modify their behaviour to conform to those rules which they perceive do not conflict with their occupational sub-culture¹ (Baldwin and Kinsey, 1982; Reiner, 1985). In particular, the occupational sub-culture appears to be resistant to the obligations imposed by the law especially in cases where the needs of investigation directly conflict with the rules which regulate the rights and protections of suspects (Reiner 1985:69; Brown, 1997:251-252).

¹ A central principle of police culture is that 'you can't play it by the book' (Brown, 1997).

According to Dixon, (1992b:4) the major contribution of the *culturalist* perspective is its acknowledgment that the law is only one among several determinants of police behaviour². The *culturalist* perspective, however, has come under fire from the *structuralist* approach (Dixon and Smith, 1998). McBarnet (1978; 1981a; 1983) putting the *structuralist* perspective, disagrees with the analysis that the law or the police culture is the difficulty, and suggests instead that the real problem lies with the upper echelons of the system, namely senior officers, judges, and other lawmakers whose poorly-drafted and elastic laws enable an easy departure from the idealised values of due process. In other words, the root causes of the problems in policing are not with the law but with the other factors involved with people and the environment in which they find themselves (McBarnet, 1983:156). The main responsibility therefore rest with 'the judicial and political elites who make rules of sufficient elasticity to assimilate departures from idealised values of due process legality, which the law effectively condones or even demands:

Champions, critics, and students alike of the criminal process, then, base their arguments on *assumptions* about the law. But does the law incorporate due process, safeguards for the accused, and civil rights? The vague notion of 'due process' or 'the law in the books' in fact conflates two quite distinct aspects of law into one: the general principles around which the law is discussed – the rhetoric of justice – and the actual procedures and rules by which justice or legality are made operational. The rhetoric used when justice is discussed resounds with high-sounding principles but does *the law* incorporate the rhetoric? This cannot simply be assumed; the law itself, not just the people who operate it, must be put under the microscope for analysis (McBarnet, 1983:6).

² Some important sociological studies (i.e. Skolnick, 1975, 1994; Holdaway, 1983) have attempted to explain how important is the influence of police culture in determining the level and shape of the relationship between legal rules and policing. The finding of these studies will be examined in chapter 6.

McBarnet even challenged Packer's two polar types for describing law-enforcement, due process and crime control, because her empirical analysis of the process revealed them as a false distinction. She argued that most accounts of criminal justice were mainly constructed around false dichotomies such as 'law in the books and law in action', 'due process and crime control', 'law and order'. However, such dichotomies reflected 'ideology rather than reality, and their use in academic accounts was a product of the political and methodological narrowness of culturalist studies' (McBarnet, 1983:156). The relevant contrast is, in fact, not between 'law in books' and 'law in action' but rather between the rhetoric of legality on one side and the reality of legal rules and their application on the other:

The law on criminal procedure in its current form does not so much set a standard of legality from which the police deviate as provide a licence to ignore it. If we bring due process down from the dizzy heights of abstraction and subject it to empirical scrutiny, the conclusion must be that due process is *for* crime control (McBarnet, 1983:156).

It is evident that McBarnet's approach to the role of law in policing practices opens a fundamental debate on the nature of criminal process, as her detailed examination of the content and operation of the rules of criminal procedure is of immense value (Coleman and Norris, 2000:144). Nevertheless, it does not displace the need for analysis of the police sub-culture and of situational pressures on police officers. To say that the laws governing police behaviour are so 'permissive' is only to suggest that they appear to have little effect on practical policing. Hence, this generates the opportunity for police culture to mould police practice according to situational demands (Dixon, 1997).

In between culturalists and structuralists are those who argue that legal rules may influence police conduct, but that different factors affect the nature of this impact. This view is labelled by Dixon (1992b) as *functional/situational*. It was developed in the PSI study of the Metropolitan Police (Smith and Gray, 1983) and subsequent academic studies of police work (i.e. Brown, 1989; Dixon *et al.*, 1990; Young, 1991; Bottomley *et al.*, 1991; McConville *et al.*, 1991; Dixon, 1997; Brown, 1997), which combined observational and interview data with an understanding of political and administrative factors such as the significance of training and supervisory officers' ability to enforce rules (Dixon, 1992b; 1997).

These empirical studies suggested that legal rules have a variable influence on police behaviour depending on whether they are treated as 'working rules', 'inhibitory rules' or 'presentational rules'. As the PSI study of Smith and Gray (1983) described, '*working rules*' are ones which police officers actually have internalised so that they become the effective principles which guide their actions. '*Inhibitory rules*' are external ones which have a deterrent effect and officers must take them into account in their conduct, because they are specific and refer to visible behaviour. In addition, '*presentational rules*' are used to put an acceptable gloss onto actions actually informed by different 'working rules'. However, it should be noted that the relationship between any of these sets of rules and the law is not straightforward; 'legal rules may well be used presentationally, rather than being operational working rules or inhibitors' (Smith and Gray, 1983: 169-72).

In practice, the distinction to be made is often between three functions of the rules rather than between three types of rule, because the same rule may perform more

than one function, or may be used differently by different officers or at different times, for instance, inhibitory rules often perform a presentational function as well.

Consequently, *functional/situational* theory offers a view of the law not as an immutable code but rather an assembly of approaches, procedures and styles of regulation, facilitating on the one hand pragmatism and on the other a well-defined regime. As Dixon (1997) suggests, its strength comes from in its ease of use as both an ideology and a method of control simultaneously.

Crime Control vs. Due Process

In an attempt to discriminate the competing values of the criminal justice process, in 1968 Herbert L. Packer formulated two theoretical models: *crime control*³ and *due process*⁴ (Packer, 1968:153). Although the polarity of the two models is not absolute and the ideology of due process is not the converse of that underlying the crime control model, this theoretical approach developed by Packer, as stated by Coleman and Norris (2000:140), is 'one of the most enduring yardsticks for evaluating the operation of legal rules and the criminal justice system'.

Simply, as outlined by Sanders and Young, the crime control model prioritises the conviction of the guilty, even at the risk of the conviction of the innocent, and with the cost of infringing the liberties of the citizen to achieve its goals, whilst the due process model prioritises the acquittal of the innocent, even if risking the frequent

³ Assembly-line justice.

⁴ Obstacle-course justice.

acquittal of the guilty, and giving high priority to the protection of civil liberties as an end in itself (Sanders and Young, 1994:17-18).

The models are, however, not meant to be prescriptive and Parker himself suggested that anyone who supported one model to the complete exclusion of the other would be viewed as excessively doctrinaire.

Two models of the criminal process will let us perceive the normative antinomy at the heart of the criminal law. These models are not labelled I and Ought, nor are they to be taken in that sense. Rather, they represent an attempt to abstract two separate value systems that compete for priority in the operation of the criminal process. Neither is presented as either corresponding to reality or representing the ideal to the exclusion of the other. (Packer, 1968: 153)

The models are polarities, and so are the schemes of values that underlie them. A person who subscribed to all of the values underlying one model to the exclusion of all of the values underlying the other would be rightly viewed as a fanatic. (Packer, 1968: 154)

Indeed, the ultimate aim of both models is to convict the guilty and set the innocent free. The aspiration of crime control is to remove the criminal from the street and to protect the innocent, while the due process model of criminal justice is more like an obstacle course, that is, it grinds on through legal obstacles to ensure in the end the right person is convicted. Accordingly, the two models share four common values which are:

- i. Only the law can define the crime
- ii. Crime can lead to some form of legal intervention
- iii. The powers of the criminal justice system can be legally limited
- iv. The criminal justice system can be adversarial

Packer's models can therefore be seen as idealized types in the sense that they are 'two ends of a continuum, that is to say they are two extremes and in reality most processes will lean more towards one extreme than the other' (Packer, 1968: 154-5).

Crime Control

According to the value system underlying the crime control model, 'the repression of criminal conduct is by far the most important function to be performed by the criminal process' (Packer, 1968: 158). Under this model, the whole of the criminal process from arrest to sentencing should facilitate the processing of the offender in the interests of the ultimate objective of the system, namely that of controlling crime:

In order to achieve this high purpose, the Crime Control Model requires that primary attention be paid to the efficiency with which the criminal process operates to screen suspects, determine guilt, and secure appropriate dispositions of persons convicted of crime (Packer, 1968:158).

Thus, in the Crime Control model the major function of the criminal justice process is the repression of criminal conduct. Such repression ensures the rule of law and requires a high rate of arrest and conviction, with speed and finality taking a high priority, leading to the use of informal rather than formal procedures (Packer, 1968:159).

The Crime Control model takes for granted that the preliminary process operated by the criminal justice system contains adequate safeguards in determining the question of whether a suspect is actually guilty. Accordingly, it assumes there is no harm in

placing reliance on the ability and skills of the police and the prosecution in constructing the facts of the case in an informal setting. Moreover, it does not see a need to put too many restrictions in the way of the police during the informal fact-finding process, even though it is expected that some mistakes might be made in identifying the guilty party. Such mistakes will be tolerated for the sake of the overall goal of repressing crime (Packer, 1968:160).

In the Crime Control Model, it is believed that the police are in the best position to judge the guilt of a person. Having done their own investigation, if they are convinced that the suspect is guilty, then the subsequent stages of the process are considered to be not so important and should be completed as quickly as possible, a goal best achieved by allowing the police to establish the facts through detention and interrogation:

Facts can be established more quickly through interrogation in a police station than through the formal process of examination and cross-examination in court. It follows that extra-judicial processes should be preferred to judicial process, informal operations to formal ones. But informality is not enough; there must also be uniformity. Routine, stereotyped procedures are essential if large numbers are being handled (Packer, 1968:159).

During the early stages of a criminal investigation, the Crime Control values dictate that a suspect should be found as soon as possible because the suspect is seen as the best source of information in leading to a solution of the crime. Furthermore, the suspect should be interrogated as soon as possible by the police, and preferably before he/she has a chance to make any outside contact:

The police must have a reasonable opportunity to interrogate the suspect in private before he has a chance to fabricate a story or to decide that he will not co-operate. The psychologically-optimal time for getting this kind of co-operation from the suspect is immediately after his arrest, before he has had a chance to rally his forces (Packer, 1968:187-8).

Although a suspect's family is entitled to know where he, he should not be entitled to talk with family or friends or seek legal advice from a lawyer, as any kind of outside interference is likely to diminish the prospect that the suspect will co-operate in the interrogation and the effectiveness of the investigation might be impaired. Similarly, in cases when a confederate is still at large and does not know that his criminal cohort has been arrested, it may be justifiable not to notify anyone at all, in the interest of the investigation. In any case, if there is anything illegal about an individual's detention, that can be considered by his applying for *habeas corpus* (Packer, 1968:202).

Due Process

The Due Process model is at the opposite end of the spectrum from the Crime Control model. Under this model, the major function of the criminal justice process is to safeguard the liberty of the individual by insisting on formal adjudicative fact-finding in which the case against the accused is tested before a public and impartial court. Packer neatly sums up this perception:

If the Crime Control model resembles an assembly line, the Due Process model looks very much like an obstacle course. Each of its successive stages is designed to present formidable impediments to carrying the accused any further along in the process. ...The ideology of due process is far more deeply impressed on the formal structure of the law than is the ideology of crime control; yet an accurate tracing of the strands that make it up is

strangely difficult. What follows is only an attempt at an approximation (Packer, 1968:163).

Unlike the crime control model which prioritises the arrest, detention and conviction of the guilty, even at the risk of violating the liberties of an innocent individual to achieve its goals, the due process model does not accept the conviction of a guilty person at any cost, giving priority instead to the protection of civil liberties as an end in itself (Packer, 1968:163-4). In short, the integrity of the system is much more important than obtaining convictions of the guilty by certain uncivilised and unacceptable methods. Thus, Due Process could allow a guilty man to be set free for the sake of the integrity of the justice system. As famously phrased, 'it is better that ten guilty people go free than that one innocent person be convicted':

The aim of the process is at least as much to protect the factually innocent as it is to convict the factually guilty. It is a little like quality control in industrial technology: tolerable deviation from the standard varies as the importance of conformity to standard in the destined uses of the product. The Due Process model resembles a factory that has to devote a substantial part of its input to quality control. This necessarily cuts down on quantitative output (Packer, 1968: 165).

The Due Process model does not see any contradiction between the need to protect individuals from crime and the policy of exclusion of evidence obtained by means of torture and inhuman and degrading treatment. It is believed that if the police collect evidence by breaking the rules and/or violating the law of personal liberties, the court should exclude the evidence from the hearing, even if that evidence would help or prove that the person is guilty. It would only be a contradiction if the system were to take advantage of rule-breaking by its agents and yet claim the rule of law. Adherence to the rule of law can only be guaranteed by proving to the officials that

there is not much to be gained by abusing power and breaking rules (Packer, 1965-6).

According to the Due Process model, legal regulation should not be left vague, but should cover specifically every possible situation in order to prevent the police, who see their role primarily as that of crime control, from filling the gaps through the subjective exercise of discretion. For this reason, this model is not sympathetic to the idea that wide powers of arrest and detention are necessary for effective investigation, because these powers result in an inconsistent application of police procedures. This in turn leads to support by the police for changes in the law to justify their inconsistent practices (Packer, 1968: 171).

The Due Process model postulates that a person can only be arrested if it seems likely, first of all, that a crime has been committed, and secondly, that he is the most likely suspect. If this is the case and the person has indeed been arrested, then he must be brought before a judge without unjustifiable delay to facilitate the opportunity for him to challenge the legality of his arrest:

The decision to arrest, in order to be valid, must be based on probable cause to believe that the suspect has committed a crime. To put it another way, the police should not arrest, unless information in their hands at that time seems likely, subject to the vicissitudes of the litigation process, to provide a case that will result in a conviction (Packer, 1968: 190).

Under this model, though it is accepted that a suspect must be held in custody for some period of time between the time of arrest and the charge, nevertheless it is unacceptable for the suspect to be detained solely for the purpose of interrogation. If he must be detained, it must be only for a short period of time and no coercion

should be used, such as keeping him incommunicado until his nerve gives out and he expresses a desire to confess. Thus, due process does not allow the holding of a suspect solely for the purpose of interrogation or to get the suspect to break his silence or even to confess (Packer, 1968; 190-1):

The practical consequence of enlarging police authority to detain individuals for questioning is not likely to be that all classes of the population will thereupon be subjected to interference. The danger is rather that that authority will be applied in a discriminatory fashion to precisely those elements in the population – the poor, the ignorant, the illiterate, the unpopular – who are the least able to draw attention to their plight and to whose suffering the vast majority of the population are the least responsive (Packer, 1968: 180).

Again due process promote the idea that in cases where individuals are wrongly arrested or detained, a variety of devices should be made available to provide effective sanctions, for example civil actions or direct disciplinary measures. Nevertheless, the Due Process model does not see these remedies as effective mean of securing police compliance with the rules. The only effective way of compelling the police to act within the boundaries of the law is the exclusion of any evidence obtained by improper means. It is believed that this policy provides an adequate enough incentive to the police to abandon any illegal methods that might jeopardize their ultimate aim of convicting the criminal (Packer, 1968:180).

Finally, since the State and its agents must safeguard individuals against the exercise of arbitrary power, suspects need to be provided with the right to legal advice to ensure a fair and just treatment in the hands of the police or prosecution. Thus, a suspect is entitled to the services of his/her own or an appointed lawyer as soon as possible following the arrest. The rationale behind this principle is that ensuring an

expert third party's involvement with the case provide checks or remedies or sanctions against any malfunction of the law by the police, since a lawyer is professionally aware of what actually happens when the suspect is taken into custody at the police station. Indeed, lawyers play an important role in the criminal process, as they are essential to bring into play the remedies and sanctions which due process offers as checks against the operation of the system (Packer, 1968:172, 190-1).

Table 2.1: Crime Control vs. Due Process.

CRIME CONTROL	DUE PROCESS
Efficiency of operation (disregard of legal controls)	Rules protecting suspects and defendants against error
Expertness (few restrictions on fact finding)	Restraint of arbitrary powers
Support for the police	Equality between parties
High conviction rate	Quality control (no emphasis on finality)
Presumption of guilt	Presumption of innocence

Further Models of The Criminal Justice Process

Even though they have not been as popular as crime control and due process models, other models of the criminal justice system have been suggested, notably by King (1981) who expanded Packer's two models to six models by adding in four other models: medical, bureaucratic, status passage and the power model. In the meantime, a number of other modifications and variations of these models have

been suggested by others such as Bottoms and McLean (1976) and McBarnet (1979, 1981a, 1983).

King (1981:8-11) used and interpreted the crime control and due process models from the point of view of the English criminal justice system. In line with Packer's account, his models are also 'ideal types', which do not describe the exact operation of the system in reality. They can only be used as explanatory tools to provide types for identifying the participants in the criminal justice process. King also postulated other models in his book, some of which are described below.

Medical Model

According to the medical model, people are seen as products and, in some cases, victims of events outside their control, and therefore they are not held responsible for their actions. The criminal process is concerned with treating defendants by providing them with the qualities necessary to control their behaviour:

Rather than punishing people for committing crimes, therefore, society should find ways of meeting their needs by providing them with the requisite human social qualities for them to control their future behaviour and so convert them into law-abiding citizens (King, 1981:19).

Guilt and punishment have no place in the process as the outcome is seen as beneficial to the offenders. Crime is simply an occasion for social intervention and the major function of the criminal process is rehabilitation. Accordingly, 'the court is like a clinic where diagnosis and prognosis take place and treatment programmes and a cure are defined by the experts in the field' (King, 1981:20).

Bureaucratic Model

This model is similar to the due process model since any discretionary decision-making is restricted by a set of rules. As King points out, although due process ideals and the bureaucratic model are related, nevertheless each views the criminal process from a completely different angle:

...whereas the primary concern of due process is the protection of the individual against the arbitrary power of the state, the bureaucratic objective is to process defendants according to standard procedures, a closed system of rules which operate independently of political considerations and regardless of who is in the dock (King, 1981: 22).

In the bureaucratic model, prosecution processes based on bureaucratic principles emphasize the need for records and a drive for economy and efficiency, hence there is little room for considering the particular circumstances of an individual (King, 1981: 23).

Status Passage Model

This perspective draws attention to 'the function of the criminal courts as institutions for denouncing the defendant, reducing his social status and so promoting solidarity within the community' (King, 1981: 23-4). Thus, unlike the role of the court in the medical model, in the status passage model the court acts 'as a condemner, degrading and denouncing the defendant, resulting in a downgrading of the defendant's status within society and reaffirming the moral values of the community and by doing so, strengthens community solidarity' (King, 1981: 24).

Power Model

The power model perceives the criminal justice system as 'promoting the interest of a ruling class and maintaining its position of dominance over other groups' (King, 1981: 26). As a result, the criminal process appears to be unjust, discriminatory and oppressive towards certain section or members of society, for example members of the working class and ethnic minority groups.

Very much unlike the bureaucratic model, which presumes the independence of the criminal justice system from the state, the power model considers the courts and the agents of the criminal justice system, i.e. the police and the magistrates, as a part of the 'state machinery'. On the other hand, this does not necessarily mean that they are all conspirators, but rather that they help to advance 'the interests of the state and thus also to the dominant power elite' (King, 1981: 27). To explain King gives the following example:

...policemen may be more concerned with their arrest and conviction records than with abstract ideals of justice and integrity. This may lead to the use of oppressive measures to ensure high conviction rates, which, in turn, may enhance the interests of the state (King, 1981: 27-8).

King concludes that in a liberal state the criminal justice system is typified by due process that obstructs the interests of the ruling class. Thus, there is a tension between 'formal rationality' and 'substantive rationality', namely a gap between the letter and practice of the law. This reality must be hidden, otherwise it could result in popular dissatisfaction and the eventual overthrow of the existing order (King, 1981:27-8).

Critical Approaches to Due Process and Crime Control

Although Packer's account of the two different models of the criminal justice process is still the most popular explanatory theory of how the criminal justice process works, it is still open to serious criticism from scholars such as McBarnet (1979, 1981a, 1983) and Ashworth (1994).

A contemporary scholar, Ashworth (1994, 1998) criticized Packer's models for not being an adequate tool in explaining other important aspects of the criminal process and raised five objections: First there is no clear explanation of the relationship between the models. Packer only goes as far as saying that 'their polarity is not absolute' but does not explain how it is not. Secondly, Packer's interpretation of the phrase 'crime control', namely that the pre-trial process can affect the crime rate, is not supported by the evidence. Packer's use of the term crime control suggests that he assumed that pre-trial process has the ability to affect the crime rate, however, evidence suggests that this is not the case. Thirdly, Packer underestimated the significance of resource management in the criminal justice process. Fourthly, Ashworth argues that one can make an 'internal critique' of Packer's models using the example of speed, which Packer saw as an intrinsic part of the crime control model, but which can also be of significance in the due process model. Finally, the victims do not even get a mention in Packer's models (Ashworth, 1998:27-8).

Although Ashworth (1998) heavily criticised Packer's models, the biggest challenge came from McBarnet in the early 80's. She argued that the distinction between due process and crime control is artificial, and that due process is in reality used for

crime control. Thus, dominant accounts of criminal justice were constructed around false dichotomies - law in the books and law in action, due process and crime control – and these dichotomies reflected ‘ideology rather than reality’ (McBarnet, 1983:156). In fact the relevant contrast is not between ‘law in books’ and ‘law in action’, it is, rather, between the rhetoric of legality on one side and the reality of legal rules and their application on the other:

A wide range of prosecution evidence can be legally produced and presented, despite the rhetoric of a system geared overwhelmingly to safeguards for the accused, precisely because legal structure, legal procedure, and legal rulings, not legal rhetoric, govern the legitimate practice of criminal justice, and there is quite simply a distinct gap between the substance and the ideology of the law (McBarnet, 1983:155).

According to McBarnet (1983), if due process is subjected to serious examination, it will be seen that the law, which provides the rhetoric of due process, actually works for crime control. This is partly due to the mystique and inaccessibility of the law that protects it from scrutiny by the vast majority of people. The law on criminal procedure is so opaque and ambivalent to the population at large, it can even be interpreted in such a way as to be exploited by the police as a tool for controlling crime. Therefore, agencies within the criminal justice process including the police and prosecutors can use the law as a tool for crime control whilst outwardly professing adherence to due process values:

... the law governing the production, preparation and presentation of evidence does not live up to its own rhetoric...Police and court officials do not abuse the law to subvert the principles of justice; they need only use it (McBarnet, 1983:154-156).

The law on criminal procedure in its current form does not so much set a standard of legality from which the police deviate as provide a licence to ignore it. If we bring due process down from the dizzy heights of abstraction and subject it to empirical scrutiny, the conclusion must be that due process is *for* crime control (McBarnet, 1983:156).

McBarnet, putting her perspective, disagrees with the analysis that the law or the police culture is the difficulty, and suggests instead that the real problem lies with the upper echelons of the system, namely senior officers, judges, and other lawmakers whose poorly-drafted and elastic laws enable an easy departure from the idealised values of due process (McBarnet, 1983:156).

McBarnet's views, however, have been criticised by McConville *et al.*, (1991:178). Even though they agreed with her that the crime control model described the English system, they criticized her for not giving sufficient emphasis to those due process rights that were invested in law (McConville, *et al.*, 1991:180). According to McConville *et al.*, the police play the dominant role in a process that constructs cases against the suspect population. In this respect, contrary to the rhetoric of the law of fairness and equality, the process of case construction is driven by the values of crime control. They put their criticism in these terms:

McBarnet argues that 'due process is *for* crime control' (1981, p.156) because she can only reconcile Due Process rhetoric with Crime Control rules by arguing that the former camouflages the latter. We would argue that one does not exist for the other; rather both form part of the fabric of law in all its manifestations – principles, rules and practice (McConville, *et al.*, 1991:180).

McConville *et al.* claimed that the policing criteria that govern detention and interrogation procedures are derived from Crime Control values. Although there are Due Process-related rules such as reasonable suspicion and pre-conditions for

cautions in the case of admissions, 'they are largely irrelevant not just because they get in the way of Crime Control, but also because they are frequently contradicted by other legal rules' (McConville, 1991:181). They maintained that 'the power of the police over all other competing institutions and persons is itself a manifestation of crime control ideology' (McConville, 1991:182) even though in reality the rhetoric of the law expresses both Due Process and Crime Control values:

The practices of the police are troubling precisely because they are underpinned by a legal rhetoric which legitimates behaviour in the basis that it is expressive of Crime Control values. Police behaviour is not, of course, unbounded and the activities of individual officers are in important ways shaped by the law, by the need for self protection and by practical and moral considerations. Nevertheless, when set against the demands of police occupational culture, these are weak constraints which, by their very nature, are contingent, of low visibility and not susceptible to any system of public accounting (McConville, 1991:189-190)

Nevertheless, the opinions of McConville *et al.* were strongly disputed by Smith (1997a:319-344) who argued that the criminal justice system could neither be understood nor justified except by reference to the goal of crime control since the values of crime control and due process are closely intertwined. He further postulated that the police have broader objectives than simply producing convictions, and argued that McConville *et al.* were wrong in exaggerating the scope for case construction and that they misinterpreted police objectives. Smith further suggested that an understanding of these objectives is the key to the supposed dichotomy between due process and crime control.

Meanwhile, the academic debate became quite heated when McConville *et al.* (1997) responded robustly to Smith's critiques by describing them as unfounded, and rejected them on the basis that he failed to present properly their arguments:

Thus, when Smith says, for example, that 'the police inevitably have their objectives' or that 'the police will use the law as a 'resource'', he is neither saying anything new nor telling us anything to which we would take exception. The point is that this is not what the law says should happen and it leaves open a number of policy implications other than, or in addition to, changing the police (McConville *et al.*, 1997: 356).

Consequently, as can be seen, the debate on the theoretical discussion of criminal process models is an ongoing one and none of the approaches can claim immunity from criticism. For instance, Ashworth's questions about the Packer models can also be disputed as some of the objections have inadequate explanations for things such as the role of the police in the rise and fall of the crime rate. Indeed, the critiques of any kind, pro or anti, have potential to attract further criticism. Indeed, there is a lot of scope for further criticism.

The Model That Should Dominate the Criminal Process

Theoretically, the due process model represents an idealised version of how the system should work since it tries to minimise restrictions and deprivations on a suspect and insists on the prevention of mistakes to the maximum extent possible to ensure that an innocent person is protected against wrongful arrest, detention and conviction, unlike in the crime control model. An important factor that also makes the due process model more acceptable is that only under this model can it be ensured that evidence is as reliable and as accurate as possible since eliciting the truth and thus convicting the guilty is not seen as the only objective of a criminal process. In its view, in order to preserve judicial integrity, or to protect the rights of individuals under suspicion, or to discipline the police and stop the abuse of official power, a criminal justice system should exclude any evidence obtained by illegal

methods of investigation that involve breaches of the legal rules from the trial process.

On the other hand, despite the due process model's well-respected values, I would argue that the criminal process is too complex to be explained by one model alone. As stated by Coleman and Norris (2000: 140), it is 'unlikely to find a pure due process or crime control model in reality'. The criminal process usually contains a mixture of crime control and due process values (McConville *et al.*, 1997:356). This was in fact one of the underlying arguments of the Packer analysis of criminal process. As he stated in the beginning of his analysis of the crime control and the due process models, the polarity of the two models is not absolute and the ideology of due process is not the converse of that underlying the crime control model. These two models are ideal types in the sense that they are two ends of a continuum, that is to say they are two extremes and in reality, most process will fall somewhere between the two extremes (Packer, 1968).

Thus, it appears that every criminal justice system contain the elements of crime control and due process values and the values of these two sides do not necessarily conflict. Moreover, the adoption of crime control values does not obviate the use of due process values, or vice versa. McConville *et al.* put it in this way:

While it is obvious that the purpose of having a criminal justice system and punishment is to control crime, the issue is about finding acceptable means of identifying and convicting those who have committed crime (McConville *et al.*, 1997: 356).

As a result, an ideal criminal justice process is probably one that balances the values of both models. However, one can ask if this is ever possible. I would argue that, considering the complexity, technicality, changeability and inconsistency of the criminal justice process, it is unlikely that this *fine* balance between the two models can ever be found as long as the reality and unavoidability of the crime control objective remains as a priority in society. However, this does not mean nothing can be done about it. Whatever the objective of the criminal process is, which is normally crime control (Smith, 1997; McConville *et al.*, 1997), a *practical* balance can/should be found, because if the balance of the crime control and the due process values were swayed in either direction, this would lead to chaos in the system and injustice and unrest in society. Nevertheless, because crime control values rather than due process values have always held more weight with the police in determining their practices, this inequality should/must be redressed by legal regulation giving priority to the values of the due process model in order to ensure a *practical* balance between the two models (Coleman and Norris, 2000).

The rationale behind this hypothesis is that if the legal rules do not put more weight on due process, the police could easily manipulate the system for their own objectives. By adopting strict due process values, therefore, the legal rules can narrow the room for manoeuvre by the police of their adoption of crime control values. However, it should be noted that this strategy will work only in part and other measures will still need to be applied to get the criminal process working fairly and efficiently. Ashworth succinctly points out that:

Consideration of Packer's models begins to demonstrate the complexity of the criminal process and the problems of devising a satisfactory theoretical

framework. The models may help us to identify elements of two important strands, but they neglect other, conflicting tendencies. Rather than pursuing the search for further possible models, however, the time has come to reflect on the purpose of discussing values in the criminal process (Ashworth, 1998:28).

In this respect, there is an ongoing need for a better understanding of the relationship between the values of each of these criminal process models and the police practices. In this thesis, Chapters 6 and 7 will look at these issues in more detail.

PACE and TCPA: Due Process or Crime Control?

I intend to evaluate the PACE and TCPA legislations with respect to models of the criminal justice process in Chapter 6. However, in this section a very brief account is made to let the reader know that the values of both the crime control and due process models play an important role in the design of some of the provisions of these Acts.

The legislative attempts to regulate the criminal justice system that have been made since the enactment of PACE in 1984 in England and Wales indicate that the legislator aimed to strike some sort of balance between the polarities of crime control and due process, though some researchers (McKenzie and Gallagher, 1989; McKenzie, 1990; Williamson, 1990) have suggested that the nature of criminal investigation has already shifted towards a supposedly American model of due process following PACE.

Indeed, the present law of detention and questioning of suspects under PACE offers some sort of due process values particularly for the protection of suspects in police custody, but also provides crime control elements by allowing detention for the purpose of questioning (Sander and Young, 1994:18; 2000: 30-32).

Similarly, the Turkish Legislator, in amending TCPA, gave priority to the values which underlie the due process model regarding the power of detention and the rights of suspects, since it attempted to establish a safeguarded environment for the suspect in which this questioning could be conducted. However, in comparing Turkey with England and Wales, it can be argued that the standards of due process protections are relatively modest and the boundaries of the crime control values are much wider in the Turkish criminal justice process.

Conclusion

Until today, Packer's models of criminal process remain the definitive statement of how the criminal justice system works. However, it is evident from the theoretical discussion in this chapter that the debate on crime control and due process is polarized, with the liberal thinkers advocating the protection of and increase in the rights of defendants (due process) and more conservative thinkers advocating policies of greater police powers and heavier sentences (crime control) in the belief that this will reduce crime levels in the interests of the community and the victim (Ugnow, 1995). In this respect, the recent debate about the demand of the police for more powers to tackle crime and criminals reveals the importance of the theoretical discussion of models of the criminal process as mentioned above. As echoed

recently by the Metropolitan Police Commissioner Sir J. Stevens at a speech at Leicester University, the police believe that they are fighting an unfair battle against criminals as the criminal justice system provides a shield for criminals and allows the guilty to walk free⁵. Sir J. Stevens argues that 'the guilty are going free, crime is rising and offenders are gaining more and more confidence that they will go unpunished'. He maintains that the practitioners of law are not to be blamed but the system in which they are obliged to operate:

It means the whole process is like some kind of horse trial where the prosecution must go round the circuit without a fault and the defence only has to leave one fence standing – the element of doubt – to secure a victory (The Independent, 7 March 2002).

On the other hand, civil rights groups believe that the voice raised by the Metropolitan Police Chief was part of a 'cynical attempt to change the law in their favour' (The Independent, 7 March 2002). The civil rights groups also express great concern over the failure of the criminal justice system, but their concern focuses on the police, particularly after the Stephen Lawrence inquiry (Macpherson, 1999). Bar Chairman D. Bean QC warns of a 'police state' if the scales of justice become 'unbalanced' (BBC, 8/3/2002).

Consequently, it appears that this topic will remain a controversial point of discussion for a long time to come, as conflicting points of view debate the fact of whether it is more important to acquit blameless parties and maintain their innocence, or to convict the criminals that threaten society. In other words, what is more important for the good of society: Due Process or Crime Control?

⁵ Similar views are often expressed by other police chiefs, i.e. Sir David Philips, the Chief Constable of Kent (www.bbc.co.uk/hi/english/static/in_depth/uk/2001/life_of_crime/miscarriages.stm) (07/02/2001).

Concerning public safety I predict that the majority of the population would argue that it is more important to convict the guilty. If in the process some innocent people are convicted, it is hoped that justice will win through in the end in the form of the Court of Appeal. It is an unfortunate situation to have to deal with but better than having dangerous people walking in the streets. However, what about the victims of these mistakes? They undergo an unnecessary and unfair ordeal that deeply affects their lives forever. I realize the importance of protecting the society and catching and convicting the people who pose a threat to it, but this must not mean that innocent people should be imprisoned at this expense.

CHAPTER 3

POLICE DETENTION: THE IMPACT OF PACE

Introduction

Prior to PACE legislation, the law on detention in a police station following arrest, as stated by the Royal Commission on Criminal Procedure (1981a), was 'uncertain and unsatisfactory'. In its report, the Commission reported that pre-charge detention should be reduced, and allowed only when it was 'necessary':

The Commission sees as one of the most important of its aims the restriction of circumstances in which the police exercise the power to deprive a person of his liberty to those in which it is genuinely necessary to enable them to execute their duty, to prevent the commission of offences, to investigate crime, and to bring suspected offenders before the courts (RCCP, 1981b:5).

Further, the Commission listed five criteria, one of which would have to be met before an arrested person could be detained: refusal by the person arrested to identify himself/herself so that a summons could be served on him; the need to prevent the continuation or repetition of the offence in question; the need to protect the arrested person himself/herself or other peoples' property; the need to secure or preserve evidence of the offence, or to obtain such evidence from the suspect by questioning him; or the likelihood of the person failing to appear in court to answer

any charge made against him (RCCP, 1981a). PACE detention provisions were derived from these recommendations and this was the first time a new legal framework for the process of pre-charge detentions was established on such a comprehensive scale (Leigh, 1985:100; Sanders, 1997:1060).

The act introduced a number of new elements in the detention of a suspect, such as the provision of a custody officer and review of detention, and whilst claiming to provide a tighter regulation of detention procedure, it increased and intensified the powers of the police to bring the suspects into police custody (Reiner, 1993:5; Bridges, 1998:69). Perhaps one of the most important changes that took place was detention for questioning. Before PACE, the Judges' Rules did not recognise the power of 'detention for questioning', even though the courts progressively constructed a power to detain suspects for questioning (Dixon, 1992b:6). Decisions in *Dallison v Caffery*¹ and *Holgate-Mohammed v Duke*² legitimised the police working practices of detention before charge and detention for the purposes of collecting evidence which had as an outcome the obtaining of a confession (Sanders and Young, 1994:99-100).

¹ In *Dallison v Caffery*, Dallison was arrested in 1959. After a period of detention, the police were unable to find any evidence to prosecute him and his innocence was confirmed. Subsequently, Dallison took action for false imprisonment and for malicious prosecution. The Court of Appeal ruled in the case that when a constable has taken into custody a person reasonably suspected of felony, he can do whatever is reasonable to investigate the matter, and to see whether or not the suspicions are supported by further evidence.

² *Holgate-Mohammed* was arrested and taken to the police station and questioned but not charged. The significance of this case was recognition of the power of the police to detain a suspect in order to get a confession. In *Dallison v Caffery*, it was confirmed that the police could investigate an arrested person before charge, but it was not clear whether such investigation had to be intended merely to obtain evidence that would justify a charge. *Holgate-Mohammed v Duke* clarified this ambiguity by declaring that the greater likelihood of the suspect confessing if taken to the police station was a factor the police were entitled to take into account.

It appears that the legislator transformed the outcome of decisions in *Dallison v Caffery* and *Holgate-Mohammed v Duke* into PACE legislation by providing powers to detain suspects for questioning and other investigation between arrest and charge. As Sanders and Young stated, by providing this power to the police, the legislator in fact agreed that the police should be encouraged to arrest whenever they could, as this would promote efficient crime control (Sanders and Young, 1994:99).

Thus, with a considerable clarity, PACE legalized the pre-charge detention procedure and detention for questioning; leaving little room for ambiguity that may have been caused by lack of regulation. The question is now, however, how these new legal arrangements affected the work of the police. This chapter intends to answer this question.

As the thesis focuses on pre-charge detention procedure, the related topics taken into consideration are authorisation and review of detention, detention length, voluntary attendance at the police station and outcome of detention. An account of police perspectives on the new rules will also be included. Moreover, as the post was first introduced by PACE, the role of custody officers in the new procedures will be studied as well. As PACE now recognises that a suspect may be detained without charge in order to obtain evidence by questioning³, the interrogation of suspects will be the final point of focus, before the chapter shifts to assessment of the overall impact of the new legal procedure.

³ PACE, section 37.

Detention under PACE

Police detention is defined in the Police and Criminal Evidence Act section 118(2) as being at a police station, having been arrested for an offence and taken to the police station or having been arrested at the police station after attending voluntarily. It does not include the position before arrival at the police station, nor the situation of a person attending at the station voluntarily. Legally, arrest and detention refers to different situations. Detention comes after arrest. As the Royal Commission reported, 'the primary purpose of arrest is to get the suspect into a police station where detention, questioning and other forms of investigation would follow' (RCCP, 1981a). However, arrest sometimes can be for preventive or protective purposes such as to prevent a breach of the peace or to protect a mentally ill person from danger (Lidstone and Palmer, 1996:238).

PACE permits that only an arrested person may be kept in detention and then only in accordance with the provision of Part IV of the Act and its associated Codes of Practice C. In an attempt to end the abuses, formerly associated with the practice of holding individuals without formal words of arrest, the Act stresses now that a person who attends voluntarily at a police station or at any other place where a constable is present, or who accompanies a constable to a police station or such other place without having been arrested, shall be entitled to leave at will unless he is arrested⁴. If a constable decides that a suspect is to be prevented from leaving at will, he/she is to inform the suspect at once that he/she is under arrest and bring him/her before the custody officer⁵. This provision aims to ensure that 'there will

⁴ PACE, section 29.

⁵ Code C, 3.9.

not be a 'halfway house' between liberty and arrest and the integrity of the system depends on the custody officer who is responsible for the supervision of the detention procedure' (Leigh, 1985:100).

Overall, the new procedure of pre-charge detention under PACE involves three stages: In the first stage a decision is made by the custody officers whether or not to detain someone who is under arrest or helping the police with their inquiries. If it is decided to detain, this proceeding is called authorisation of detention. The next stage is review of detention.

Following the initial authorisation of detention, the need to continue the detention is reviewed regularly by a review officer. In the third stage, either the detainee is charged with an offence and remanded in custody or released from the station with or without bail. After being charged, he may still be released on bail, which is the case on most occasions (Sparck, 1997:17). These three stages of detention - authorisation, review and outcome - involve two other elements: detention length and voluntary attendance at the police station, since they are carefully regulated by the new Act.

Authorisation and reviews of detention

The Law

The decision about whether a suspect under arrest should be detained is called authorisation of detention, which is made by a custody officer who assesses whether or not there are reasonable grounds for believing that the suspect's

detention is necessary 'to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him' (PACE, section 37/2). If detention is not necessary, the suspect must be released. Therefore, the decision on detention relies on the principle of necessity (Brown, 1997:51). Authorisation of detention is followed by three subsequent reviews at which a review officer of inspector rank or above who is not directly involved with the case examines the need for detention to continue. The first review is made not later than six hours after the detention was first authorised, and subsequent reviews must take place at not more than nine-hourly intervals (15 and 24 hours) after the first review. At the 24-hour point, there must be a proper review by a superintendent or higher rank for further detention. In some cases the reviews may be postponed, but cannot be cancelled. The reason for postponement must be recorded in the custody record (PACE, s. 40).

The Effects

The Act's intention behind the authorisation and review of detention was clear: to prevent and reduce the likelihood of unnecessary detention. It was thought by the RCCP (1981a) that giving power to a special post, namely custody officer, to evaluate the case before restricting a person's freedom would filter out unnecessary detentions (Brown, 1997:57). However post-PACE research (Bottomley *et al.* 1991; McConville *et al.* 1991; McKenzie *et al.* 1990: and Morgan *et al.* 1991) found that this intention of the Act was not fulfilled.

Bottomley *et al.* (1991:88-92) noted from their observations that the procedures of authorisation and review of detention have become routine formalities. They found

that when authorising detention, custody officers did not actively exercise their responsibility to appraise the probability of immediate charge or the necessity of pre-charge detention as expected by the Act. Similarly McConville *et al.* (1991:42) in their research pointed out how readily custody officers concurred with the wishes of case officers in detaining suspects. They maintained that detention was a routine response that was displaced only in exceptional situations. In only five per cent of the cases in their sample did the custody officers fail to authorise detention.

Furthermore, the studies of McKenzie *et al.* (1990: 23-24) and Morgan *et al.* (1991) also found no indication of a positive impact in reducing detention by not authorising unnecessary detention. According to Morgan *et al.*, a failure to authorise detention was almost unheard of. Similarly, an observational study by McKenzie *et al.* (1991) mentions that the requirement of reasonable grounds for believing that detention is only necessary in order to secure or preserve evidence or to obtain evidence by questioning rarely results in the custody officer refusing to authorise initial detention.

In line with authorisation of detention, the review of detention, especially the first and second reviews after 6 hours and 15 hours has become a routine practice and inspectors depended to a considerable extent on custody officers for information about the cases, as pointed out by Bottomley *et al.* (1991):

In practice, review decisions are often effectively made by the custody officer and simply confirmed or rubber-stamped by the inspector. This was particularly clear in one case in which the custody officer instructed the warder to type an entry giving standard reasons for continued detention on to the custody records, for later signature by the inspector (Bottomley, *et al.* 1991:91-92).

Bottomley *et al.* (1991:91) also drew attention to another problem with the procedure. Particularly in rural sub-divisions of the force, it was difficult to find a duty inspector to carry out the review. In some cases, this led to reviews being conducted over the telephone. Although this is permissible by the Code C, it is clearly not desirable practice since the review officer may not assess the case fully.

The reasons why the authorisation and review of detention practices have become ineffective in reducing the number of pre-charge detentions and shortening the detention time appear to be complicated and controversial. However, Morgan *et al.* (1991) reveal several reasons why authorisation of detention did not introduce more substance into the detention procedure. One of the reasons behind routine detention decisions is that the custody officers neither wish to attract public criticism of another officer when not authorising detention nor want to contradict or come into conflict with arresting officers' decisions. If they get it wrong, they face criticism of themselves. According to Morgan *et al.*, the practice was also fuelled by inadequate and unclear procedures, and fear of disciplinary consequences.

McConville *et al.* (1991:41-42) concurred broadly with Morgan *et al.* (1991) in their reasoning for the ineffectiveness of the authorisation process. However, they argued that custody officers act in this way not because of fear or worry but to support and back up arresting officers' decisions. Furthermore, they found that although theoretically the reason why the decision to detain is made by a custody officer is that he can decide freely because he is not involved with the investigation, they noted that in practice this theory simply does not work because

at the end of the day 'a custody officer is a police officer' and he is unable turn a blind eye to the needs of policing and collegial ties:

In theory, therefore, custody officers should not be caught up in the investigation and should make the detention decision only based on the necessity principle. The custody officer is to be a bulwark between the officer seeking an admission and the suspect. It is the custody officer's job to balance the interest of the police in investigating crime against the individual interests in liberty.... In practice, however, custody officers are unable to divorce themselves from the 'needs' of policing and are unable to stand back from their institutional and collegial ties with other officers. At the end of the day, a custody officer is a police officer (McConville *et al.* 1991:42).

The following interview notes of McConville *et al.* (1991) clearly explain the routine nature of a custody officer's authorisation decisions:

Res: 'when the officer brings the suspect in, do you question the officer?'
Police: 'Only if I'm unclear as to why he's been arrested. I find I don't ask questions because the officers are good' (Quoted in: McConville *et al.*, 1991:42).

Contrary to argument of McConville *et al.* that custody officers would not dispute with arresting officers because of their shared interests in policing, Bottomley *et al.* (1991) found that in some cases custody officers and investigating officers would dispute over detention before charge. Although they acknowledge that the authorisation process is generally a formality, at later stages of detention procedure a custody officer may challenge investigating officers to ensure that he abides by the prescribed rules so that the custody officer himself/herself is not left open to condemnation (Bottomley *et al.*, 1991:92).

Detention Limit

The Law

PACE stipulates that detention should not be unnecessarily lengthy without charge (Brown, 1991:38). The time limit for pre-charge detention, set by PACE, is now twenty-four hours in the case of ordinary offences, and thirty-six hours when 'serious arrestable offences' are being investigated, and an officer of at least the rank of superintendent is satisfied that the additional time is necessary to secure evidence or to complete questioning. After 36 hours, the police must apply to a Magistrates' Court for a warrant authorising continued detention, which may be extended for up to another 36 hours if the Justices are satisfied that the investigation is being conducted diligently and further detention is necessary to preserve or obtain evidence. The Magistrates may extend the warrant for yet another period, as long as the total time spent in police custody by the suspect does not exceed ninety-six hours (PACE, s. 41-44)⁶.

The Effects

Before PACE the length of detention was governed by the Magistrates' Courts Act 1980 (s.43) which required that a person arrested for a 'serious' offence must be brought to the Magistrates' Court 'as soon as practicable' and for any other offence within 24 hours if the detainee had not been released on bail or otherwise before

⁶ The 'serious arrestable offences' which may cause a suspect to spend up to 4 days in police detention include murder, rape, incest, causing explosions, using firearms, kidnapping, and terrorism, plus the offences cited in Section 116 of the Act.

then. This loose definition of the terms 'serious' and 'as soon as practicable' were criticised as giving the police flexibility to interpret them and to enjoy the liberty of not being restricted by the law (Lambert 1986:112; Gifford, 1986:98). Research by the Metropolitan Police for RCCP in 1979 showed that although most of the suspects in the sample taken were dealt with at a decent speed, there were still 212 suspects who were kept in custody for more than three days before being brought before a court (see Table 3.1) (RCCP, 1981a: para 3.96). Other studies by Softley (1980) and Barnes and Webster (1980) however found no cases of suspects being held for more than 48 hours without charge in their samples taken in the pre-PACE period. Softley's research indicated that almost half of suspects were dealt with within less than 3 hours and approximately three-quarters were disposed of within 6 hours. Only three suspects were detained for more than 24 hours. Furthermore, Irving (1980:105) found that it was very rare that a suspect was held in custody for more than 3 days.

Table 3.1: Detention Length in the Metropolitan Police in 1979.

Number Of Suspects	Time/Within	Percentage
36.257	6 hours	75
9.668	24 hours	20
2.206	72 hours	4.6
212	72 hours or more	0.4
Total: 48.343 suspects in 3 months		

(Source: RCCP, 1981a, para 3.96)

After PACE, some commentators, especially from the side of the police, argued that PACE actually increased the time that a suspect was held in custody. This

claim has not been supported by most of the post-PACE studies with the exception of a study by the Greater Manchester Police (GMP, 1986b). After PACE came into force, the Greater Manchester Police conducted research that monitored the first six months of the act. The study discovered that average times spent in custody increased compared to pre-PACE (GMP, 1986b:9). Parallel to this, in Maguire's (1988) interviews with police officers, some of them claimed that PACE lengthened the average time spent in detention due to extra paperwork, waiting for solicitors and so on. However, in general, Maguire disagreed with these opinions, contending that the GMP research findings were contradictory. The conclusion Maguire reached was that after PACE there was an overall reduction, rather than increase, in the detention times of people suspected on weak evidence of relatively serious offences such as burglary, while in the case of less serious offences like shop-lifting there was an increase. The main reason for the former was the introduction of review times which pressurised investigating officers to make a decision before the review time lapse. On the other hand, the main reason for the latter was the extra paperwork introduced by the Act (Maguire, 1988:24-26).

Other post-PACE studies have found similar results. A study by Brown (1989), conducted for the Home Office, comparing pre-PACE data with post-PACE data was to find that the average detention time in the pre-PACE period was slightly shorter: 76 per cent of those held by the police were dealt with within 6 hours compared to 72 per cent before; and 85 per cent within 9 hours compared to 80 per cent in the pre-PACE period. Finally, detention without charge over 24 hours occurred in 46 cases, less than 1 per cent of the sample (Brown, 1989:61-64).

According to one of the early studies of PACE by MacKay (1988:35-36) in Bedfordshire, which compared both pre- and post-PACE data belonging to 1982 and 1986, the majority of suspects were released within four hours of arrival, 52 and 53 per cent respectively, and by the time of the first review at six hours 81 per cent of all suspects were dealt with in 1986, while the figure stood at 75 per cent prior to the Act in 1982. Notably in non-designated stations, suspects were less likely to be kept beyond the six-hour point and 94 per cent of them were released within this time limit in 1986, compared with a release rate of 81 per cent in 1982. MacKay concluded that overall the average detention length was shorter, although not significant, in the post-PACE period (MacKay, 1990:74-75). A similar but stronger result was obtained by Irving and McKenzie (1988) who found that after PACE there was a significant drop in the average length of detention from 10 h. 45 m. in 1979 to 8h. 35 m. in 1986. They revealed that there was a 'bimodal pattern':

At the lower end of the distribution more suspects in 1986 tended to be kept in custody for slightly longer (i.e. the first peak was at 2<4 hours in 1979, and at 4<6 hours in 1986, whilst at the upper end of the distribution there is a slight tendency for more suspects to be detained for a shorter period (i.e. a shift from 12<18 hours) (Irving and McKenzie, 1988:83).

In one of the relatively recent studies, Bottomley and his colleagues conducted research (1991) in a northern police force on the impact of PACE. This was a comprehensive study designed to evaluate the act in practice. Concerning detention length, 2844 custody records were analysed from three selected sub-divisions (city centre, outer city, and rural), covering four separate years (1981, 1984, 1986, and 1987). They found that the immediate impact of PACE on detention length was minimal (with the exception of the rural subdivision). In 1986, the mean detention length was just over 5 minutes more than in 1981 and 1984. However, in 1987

there was a 'significant increase', whilst the overall mean was 1 hour longer than in 1986, ranging from 36 minutes longer in the city centre to almost 2 hours longer in the Outer City subdivision. The conclusion was that the duration of detention rose gradually during the post-PACE period, and especially in 1987. Thus, the main effects of PACE appeared to have been:

- i. to reduce the proportion of very short detention (less than 2 hours);
- ii. to increase the proportions released in the two-hour period immediately before the 6 hours review, and;
- iii. to increase the proportion released between 6-15 hours.

(Bottomley *et al.*, 1991:123-125)

In parallel to the findings of Bottomley *et al.* (1991), Morgan *et al.* (1991), also discovered that the average length of detention fell from 6 hours 20 minutes to 5 hours 20 minutes in their samples of 1800 pre-PACE and 1800 post-PACE custody records

The Relationship Between Certain Factors and Length Of Detention

The above studies have pointed out that there was a link between detention length and some variables such as (a) the seriousness of the crime; (b) waiting for a solicitor or appropriate adult; (c) age and sex of the suspect; (d) outcome of detention and (e) review of detention. Therefore, one or more of these factors may affect the length of detention:

Type of offence

A large number of PACE studies (i.e. Irving and McKenzie, 1988; Maguire, 1988; Brown, 1989; MacKay, 1990; Bottomley *et al.*, 1991; Morgan *et al.*, 1991) have suggested that the time that a suspect spends in police custody would be related to the nature of the offence under investigation. It has been discovered by comparing pre- and post-PACE data that PACE may have had the effect of reducing detention lengths in the case of people suspected of more serious offences but that at the other end of the scale it may have had the effect of increasing the time spent in custody for those suspected of less serious offences. As pointed out clearly by Bottomley *et al.* (1991), there was a decrease in the mean detention length of those detained for the most serious crimes in 1986 (compared to 1984 and 1981). However, this decrease was followed by a very significant increase in 1987. Another finding of Bottomley *et al.* was that the mean detention time for non-indictable suspects in the rural subdivision was slightly longer than in the city centre in 1986 and 1987. Nevertheless, for indictable offences like burglary, the mean detention length was considerably longer in the outer city (12 hours) compared to the city centre (nearly seven hours) and the rural subdivision (7 hours 20 minutes) (Bottomley *et al.*, 1991:127).

Irving and McKenzie (1989b) report a similar change in the pattern of detention lengths according to the seriousness of the offence. At the more serious end of the scale detention lengths were shorter, but at the lower end of the scale those detained for less serious offences were held longer under PACE. Similarly, Maguire (1988) indicated that for some types of non-serious offence, e.g. shoplifting, the average length of detention increased while there was a reduction

in detention lengths in the cases of suspects who were detained for serious offences notably on weak evidence. Such a conclusion holds true for MacKay's research force in Bedfordshire (MacKay, 1988:36). Furthermore, Brown's study supports the view that detention times have decreased in some serious cases, e.g. burglary, but have risen for less serious offences such as shoplifting, as seen in Table 3.2 (Brown, 1989:63).

Table 3.2: Comparison of pre- and post-PACE Detention Times for Some Offences.

<i>length of detention</i>	<i>burglary</i>		<i>violence</i>		<i>shoplifting</i>		<i>other theft</i>	
	pre	post	pre	post	pre	post	pre	post
	%	%	%	%	%	%	%	%
Up to 3 hrs	18	29	43	37	77	51	53	43
Over 3/up to 12 hrs	30	48	52	44	23	46	38	47
Over 12 hrs	52	23	5	18	-	3	9	10
Total	100	100	100	100	100	100	100	100

(Source: Brown, 1989:64, Table 6.6)

Various reasons have been given to explain why the detention lengths were shorter for offences that are more serious and vice versa. Irving and McKenzie (1989b) suggested that as a result of new provisions, investigating officers were reluctant to approach superintendents for authorisation for detention beyond 24 hours especially if the evidence was weak. Maguire (1988) shares this view but advises

caution analysing statistics about the relationship between crime type and detention length as a station's circumstances may affect this relationship:

Such variations provide a clear warning against comparing statistics on detention lengths without some considerations of the structure of the arrest load at the police stations concerned. Quite simply a station whose arrests include a high proportion of shoplifters or of prostitutes is likely to process its prisoners at an above average speed, and certainly faster than somewhere where a higher proportion of arrests were for more serious property crimes (Maguire, 1988:26).

Brown's study (1991:39) supports Maguire's account that detention lengths may vary in different stations. Brown found that while there was an increase in the median detention lengths in two of his research stations, there was a slight decrease in another station. On the other hand there are suggestions that longer detention lengths for less serious offences may have been a result of the new requirement to review detention (PACE, section 40) at the six-hour point after detention was first authorised. According to Morgan *et al.*, (1991) 'officers may let detention drift up to the six-hour mark because they work on the principle that they are allowed up to six hours before they need to provide justification for holding suspects longer'. Morgan argues that within this six-hour period the officers feel that they have six hours to get things sorted out and this thought pushes up the length of detention for non-serious offences.

MacKay (1988:35-36) also discovered that especially at the non-designated stations suspects are less likely to be kept beyond the six-hour point, again due to the PACE requirement of review of detention. A similar suggestion was made by Brown (1991:39) who asserted that the length of detention might have risen due to the more time-consuming requirements of the new provisions.

Waiting for solicitors

Findings from the GMP (1986) and Maguire's studies suggest that delay is inevitable while a solicitor is contacted and makes his or her way to the station, although this is only occasionally a very long time. The GMP research discovered that the mean response time is less than an hour. Maguire's samples from two stations, (London and Manchester) also show that the mean response time was 1.5 hours despite the fact that both of the stations did not have 24-hour duty solicitor schemes which would clarify the relationship between waiting for solicitors and detention length. His result was that for a suspect who sees a solicitor, detention time is only 1.3 hours longer than those who did not seek legal advice. This difference may appear quite slight and may be accounted for because the time lost while awaiting the solicitor may sometimes be repaid by the solicitor's help in resolving the situation. It was very rare for a suspect who consulted a solicitor to remain in detention without charge for more than 2 hours after the solicitor's arrival. To sum up, waiting for a solicitor increased detention lengths, but not by an unacceptable amount of time. (Maguire, 1988:27-28)

Nevertheless, the research of Bottomley *et al.* (1991:130-131) shows that the increase of detention length for those who sought legal advice was higher than that found by Maguire. This was, on average, over 4 hours compared with those who did not receive legal advice. Thus, they acknowledge that there is an apparent connection between detention length and the request to see a solicitor. This result was supported firmly in Brown's research that has revealed longer detention times for those who received legal advice.

Age and sex of suspected person

Detention lengths may depend on the suspect's age. Bottomley *et al.* found that even though juveniles were shown to be detained for shorter periods than adults, following PACE there was a slight rise: an hour longer on average in the post-PACE sample of cases, compared to the pre-PACE period. The obvious reason for this was waiting for an 'appropriate adult' (Bottomley *et al.*, 1991:129). This is also stated by Maguire (1988), that among shoplifters, for instance, 56 per cent of adults were released or bailed within 2 hours from the moment detention was authorised, whereas only 25 per cent of juveniles were released or bailed within 2 hours.

Again Bottomley *et al.* revealed that in general, female suspects spend less time than males in detention, although this generalisation may not apply to detention patterns in rural subdivisions, outer city, or city centre police stations. Sometimes, in outer city police stations, women suspects may be detained for longer periods than men because of a lack of women PCs, whilst in the city centre the comparative detention time could be longer than other women suspects in outer city areas due to the greater seriousness of the crimes for which they are detained (Bottomley *et al.*, 1991:128).

Outcome of police detention

The length of detention may also vary with outcome. According to Brown (1989:62), suspects who were charged or bailed spent a longer period in police custody compared with those summonsed, cautioned, or released without charge.

Bottomley *et al.* discovered parallel findings that those charged or bailed to return to the police station were held in custody for about 7.5 hours in 1987, whereas in 1981 the mean detention length was about 4.3 hours. Therefore there was an average increase in those cautioned and reported for summons who were kept in detention 4.1 hours in 1987, while it was 1.7 hours for the former and 2.3 hours for the latter in 1981 (see Table 3.3) (Bottomley *et al.* 1991:131).

Table 3.3: Mean Detention Length Before Charge or Release According to Outcome (hours).

		1981	1987
Charged		4.6%	7.3%
	(n)	(3407)	(2280)
Summoned		2.3%	4.1%
	(n)	(208)	(3070)
Cautioned		1.7%	4.1%
	(n)	(170)	(500)
Bailed		4.1%	7.6%
	(n)	(1231)	(1045)
Taken to court		6.8%	8.8%
	(n)	(633)	(1035)
Released		3.8%	4.2%
	(n)	(980)	(1405)

(Source: Bottomley *et al.*, 1991:131, Table 6.8).

Bottomley *et al.* (1991) added that PACE had no apparent effect on the mean detention length of those released with no further action; the mean detention length was 3.8 hours in 1981 and 4.2 hours in 1987. For those taken to court, the main length of detention increased by two hours between the years 1981-1987. Additionally the proportion of suspect in each category can be seen and compared in Table 3.3 above originally drawn up by Bottomley *et al.* (1991:131-132).

In the mean time, Irving and McKenzie (1989) suggested that if the PACE provisions were working properly to safeguard the innocent, then it was expected that detention would be brief for those cautioned, summonsed and released without charge, compared to those charged. However, this view is not accepted by Brown (1997) His interpretation of the situation is that 'it should also be the case that those against whom there is good evidence should be charged immediately if PACE is being strictly complied with' (Brown, 1997:64).

Review of detention

One of the new provisions which came with PACE is review of detention. Studies (Irving and McKenzie, 1988; MacKay, 1990) indicated that review of detention, particularly first review, has an impact on detention time, since before the first review suspects were released more quickly. The research of MacKay, for example, revealed that both pre- and post-PACE the majority of suspects were released within four hours of arrival (52 per cent and 53 per cent respectively), however, by the time of the first review at six hours 81 per cent of all suspects were dealt with since the introduction of the Act (MacKay, 1990:74). Irving and McKenzie confirm MacKay's finding that there may be a tendency to allow short-term custody drift up to the first review (Irving and McKenzie, 1988:83).

Voluntary Attendance at the Police Station: Helping Police with Their Enquires

Apart from those who have been arrested and may therefore be detained at the station, there may be also another category of persons who are 'helping police with

their enquiries'. These persons are not in police detention, only attending at a police station voluntarily to assist the police with their inquiries and free to leave whenever they wish to do so. As PACE section 29 states:

Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested: (a) he shall be entitled to leave at will unless he is placed under arrest; (b) he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will.

Although the law now provides a legal basis for voluntary attendance at a police station, the procedure had displayed controversial characteristics in the past. It is claimed by writers (Sparck, 1997:16; Lidstone and Palmer, 1996:292; McKenzie *et al.*, 1990:28; Zander, 1985:41) that before PACE police forces frequently used this method to avoid the relatively complex legal constraints of detention procedures. It appeared that when the legal ground for arrest was weak, the use of voluntary attendance procedure became a more convenient and perhaps practical way to deal with the case under investigation. As McKenzie *et al.* (1990:28) stated, Parliament provided too many statutory offences for the police to deal with and yet failed to ensure that appropriate powers of arrest were attached to them. As a consequence of this, some police officers resorted to illegal practices rather than see the law become unenforceable.

Eliminating the use of 'helping the police with their enquiries' was one of the aims of PACE, in line with the Royal Commission's proposal of 'there must be no half way house between liberty and arrest' (RCCP, 1981a: para 3.97). However, according to research into the early years of operation of the Act, this intention has

not been realised after PACE (Sanders, 1997:1061; McKenzie *et al.*, 1990:28) McKenzie *et al.* even noted that the new procedure was seen by some officers as a legitimisation of previously-existing practices:

It is a legitimisation of a rural practice. It was common and still is for people to be phoned up by PC Bloggs, 'Come down the police station, George, there is a little matter I want to clear up.' the only difference is that now we have a form to record it on...if it gets done (McKenzie, *et al.* 1990:31).

However, in those police stations where the research of McKenzie *et al.* was carried out, the extent of the number of voluntary attendees varied. Although in general voluntary attenders accounted for about 32 per cent of all those dealt with for crime in the three divisions studied, there were differences in the proportion of arrested persons to voluntary attenders between divisions. This result was due to different practices adopted by the divisions. In one division normal practice was for some categories of suspect, for example shoplifters, to be habitually dealt with as 'volunteers', but in another division as 'detainees' (McKenzie, *et al.* 1990:31).

Ending Detention: The Outcome

The Law

Within the allowed time limit, detainees may be released without any charge and unconditionally once the detention is no longer justified. However, if investigating officers consider that there is enough evidence for a successful prosecution, he/she

may be charged by the custody officers in accordance with PACE section 37(7)⁷. In either of these cases the pre-charge detention period ends. After charge, the suspects may still be released with or without bail (PACE, section 38). If they were bailed, a condition of bail would be either to attend at the appropriate magistrates' court or the police station on a certain day to answer the charge that has been preferred against them (PACE, section 47). Usually the day named will be only a very short time ahead, but there is a growing practice to grant 'extended bail' as cited by Sparck (1997:14). Meanwhile it should be noted that suspects may be released without charge but this may be conditional on bail in accordance with the section 34(5) of the Act. In such case, the police may require a suspect to return to the station if there is a need for further inquiries into the offence or if matters connected with the investigation need to be undertaken.

The Effects

Bailing the suspect has the advantage of stopping the custody clock and leaving the threat of re-arrest hanging over the suspect's head (Brown, 1997:65). Research (Brown, 1989; Irving and McKenzie, 1989b; Bottomley *et al.*, 1991) has demonstrated that, in most of the cases, once suspects have been charged, they are bailed. One reason for that, as stated by Sparck (1997:17), is the lack of space to keep suspects at the station. Another reason is the lack of time as suggested by Irving and McKenzie (1989b) and Bottomley *et al.* (1991). In the research of Bottomley *et al.*, some officers claimed that lack of time for investigation meant that bail was granted more often. One of the officers expressed his opinion as follows:

⁷ This procedure is described in Code C: 16.1 to 16.3.

“It sometimes has made the investigation a little difficult in that it had to be rushed, through lack of time, which has resulted in some cases in a suspect being bailed to return to the police station at a later date, thereby losing impetus in the investigation” (Quoted in: Bottomley *et al.* 1991:133).

Brown (1989:56-9) who carried out relatively detailed research on the outcome of detention found that 56 per cent of adult detainees in his sample were charged and only 6 per cent were released without charge and without further action to be taken. However, disposals varied with the seriousness of the crimes. The proportion charged was lower in serious and mid-range crimes and those bailed to return was higher. He also found that the use of release, charge, and bail changed significantly in accordance with the individual force and this is probably due to different policies adopted. For example, forces making frequent use of summons without arrest may charge a high proportion of those they do arrest.

Custody Officer

The supervision of detention as the responsibility of a custody officer emerged with PACE. All designated police stations are required to have at least one custody officer who should hold at least the rank of sergeant, unless there is no officer of that or superior rank at the station to perform his functions (PACE, section 36). Custody officers have become an important element of police detention procedure, because it is they who decide whether detention conditions are satisfied before accepting someone into police custody (PACE, s. 37) and make sure that suspects are treated in accordance with the requirements of the Act and Codes of Practice (PACE, section 39).

The reasoning behind the institution of custody officers was to make one person feel formally responsible so that the system would work efficiently and be more reliable (Sanders and Young, 1994:108). Also as the Royal Commission (1981b) proposed there was a need to appoint an officer of at least the rank of sergeant to be in charge of looking after suspects, to answer questions about their detention, and to ensure that they are aware of their rights:

We take the view that where the number of suspects dealt with at a police station warrants it, there should be an officer whose sole responsibility should be for receiving, booking in, supervising and charging suspects (RCCP, 1981b:59).

The government when preparing the Act considered the Commission's proposal, and section 36 of PACE transferred the role of the station or duty sergeant to that of custody officer.

The initial reaction to the establishment of custody officer was negative, even though there has always been a tradition in the police service of appointing a particular officer such as duty sergeant to have immediate responsibility for the custody and treatment of prisoners at the station. Commentators, especially from the police (Buck, 1986; Judge, 1986; Oxford, 1986) argued that the status and position of the custody officers was not thought out sufficiently and had been overestimated. One of the main criticisms made regarding this matter was that the Act imposed too many bureaucratic requirements, in a sense that it is not easy to met the expectations. As stressed by Benyon (1986) these requirements and expectations could be a 'bureaucratic nightmare' for the custody officers. Their tasks were also found to be very prescriptive, 'being so closely regulated that every

move of the custody officer was dictated by the Act' (Rodie, 1988:5). Another worry about the new provisions was that the custody officer, in maintaining a proper objectivity in his judgement about a particular case, could find himself/herself in conflict with colleagues who, for example, disagreed about whether a suspect should be released (Robilliard and McEvan, 1986:163). Therefore, as Irving (1986) mentioned, the custody officer may face unprecedented pressure from fellow officers of higher rank:

It is worth pointing out that the custody officers will have to be prepared to stand their ground on many issues against their colleagues who may want to interpret the new rules to their advantage, particularly with important suspects and difficult cases. The custody officer may well be a young man with little experience, and he may have to control a detective chief inspector with perhaps twenty years' service: the possible difficulties and pressures are readily apparent (Irving, 1986:141).

On the other hand, as suggested by Rodie (1988), there was a general impression that the new rules could impose administrative burdens and that the custody officers would become overwhelmed with these tasks. Rodie therefore maintained that while police forces were trying to put more policeman on the beat, the Act implies that they should be staying in the station, processing and administering prisoners (Rodie, 1988:5). Similarly, the tasks of the custody officers were also found to be very time-consuming (Cox, 1986). For instance, the custody record sheet could necessitate 'as many as 50 separate entries'. Oxford (1986) describes this as 'unnecessary burden on the custody officers'.

Furthermore, Buck (1986) and Judge (1986) were concerned about the resource implications that in most forces the necessary numbers of sergeants required for

the post would not be sufficient. For example in the Metropolitan Police, there would be a shortfall of several hundred sergeants.

After PACE

These initial worries about the implications of the Act have been justified to a certain extent. After one year of practising the PACE requirements, the view expressed in the Police Magazine (1987) was that because the act imposed so many bureaucratic requirements upon the custody officers, the chief officers have been forced to accept that custody officers can undertake no other duties. Consequently, 'this caused a demand for more and more sergeants to perform only custody officers' duties, with the direct result that street supervision of constables has declined still further from the low level that obtained even before PACE'.

More recently, a number of studies have examined the issues related to the custody officer's role, work and position, by comparing past and present. Amongst them, the research of Rodie (1988), Morgan *et al.* (1990) and Bottomley *et al.* (1991) all have valuable findings.

Rodie's research, in this respect, was one of the first works to examine the role of the custody officer to see how they view their job. In doing so, Rodie designed a questionnaire with a number of open-ended questions on how their work is evaluated, what feedback they get, the extent to which they have to do things which they consider unethical, the extent to which the custody officer's role clashes with other roles, the extent to which it is difficult to apply the provisions of PACE, and so on.

Rodie distributed 77 questionnaires to sergeants at four London police stations, and then analysed the responses. These are the findings obtained by Rodie (1988:26-27):

- i. 77.3 per cent of respondents were not satisfied with their feedback, 2.3 per cent were satisfied, and 20.4 per cent were between the two. Thus, there was much dissatisfaction with the feedback that custody officers receive.
- ii. 54.5 per cent of respondents felt there was role conflict between the role of custody officers and other sergeant roles, 27.3 per cent were ambivalent, and 18.2 per cent did not feel there was any conflict between the roles.
- iii. 31.8 per cent thought that it was difficult to follow the directions of PACE, compared to 25 per cent who did not find it difficult. A considerable number, 43.2 per cent, were in between.
- iv. 68.20 per cent, did not have to do things which they did not like. While 18.2 per cent were in the middle, 13.6 per cent had to do things which they did not like.

To sum up, Rodie's research revealed that 'the post of custody officers is stressful, the work rate uncontrollable, the work load high and the scope for internal conflict great' (Rodie, 1988:27). Overall, these findings support the research carried out by Buck (1986), Irving (1986) and Judge (1986) in the early days of the Act. Meanwhile, it should be noted that Rodie's research also found that the post of custody officers was not the least popular one which sergeants can perform. This

was because of the power which the custody officer has over everybody in the custody area, including senior officers (Rodie, 1988).

Another major research study, by Morgan *et al.* (1990), examined several aspects of the custody officer's job. This research divides the work of the custody officer into three 'analytically distinguishable' phases: reception, regulation, and release:

The custody officer may at any time be responsible for the reception of some prisoners coming into the station, impending reviews of the continued detention of earlier prisoners, regulation of the access of CID or solicitors or family to other prisoners, and decisions on the release of others (Morgan *et al.*, 1990:10).

Morgan *et al.* observed that when several prisoners arrive together or at close intervals, the charge room became a 'hubbub of confusion, noise and often frantic action'. They believe that this situation makes the job the most disliked role in many forces, and which makes police officers especially subject to stress. Thus, a 'sudden influx of a large number of prisoners is the custody officer's nightmare' (Morgan, *et al.* 1990:10)

Due to the difficulties of dealing with a large number of prisoners at the same time, there was a tendency to push times of authorisation of detention to coincide with the time of arrival, so that the limbo of waiting time, which was not authorised, could be eliminated effectively. This is because of the 'review clock' which starts at the time of detention being authorised, while periods of detention run from the time of arrival⁸. Moreover, the time recorded at which detention is authorised varied between forces and individual custody officers 'partly because of

⁸ PACE, sections 40 and 41.

differences in the procedures they are trained in, and partly because of different custody records being used' (Morgan, *et al.* 1990:14-15).

Meanwhile, one of the important aspects of the custody officer's role is the assessment of whether detention of the prisoner is necessary. During the preparation of the Act, it was hoped that custody officers would act as a filter reducing the extent to which people were detained between arrest and charge. The observations and analysis of custody records by Morgan *et al.* (1990) revealed that this intention to minimise unnecessary detention amounts fell short, in practice. Out of the 500+ cases they observed, there was only one which did not result in the authorisation of detention. In the sample of 1800 custody records since PACE there was not one instance of a custody officer refusing to authorise detention. So routinised has the authorisation process become that some custody officers have even dare to request a rubber-stamp bearing the formula '*detention authorised in order to secure or preserve evidence or to obtain evidence by way of questioning*' (Morgan *et al.* 1990:17-18).

According to Morgan *et al.* (1990), the police culture is one of the main reasons for the automatic authorisation of detention. In this respect, the combination of closing ranks and of self-protection as reasons for authorising detention was well expressed by one custody officer:

If an officer has seen fit to exercise a power of arrest and brings the person here it's our job to ensure that we go through the booking process. It's a form of protection for him and me. If I don't book him, all kinds of allegations could be made and I've got no support for my position (Quoted in: Morgan *et al.* 1990:19).

As seen, the independence of the custody officers from police culture is very limited. In general, they seemed to see their role 'more as part of the group of police officers investigating offences than as protectors of suspects' rights' (Morgan *et al.*, 1990:24).

Finally, in order to understand more broadly the position and role of the custody officer in the light of PACE, the research of Bottomley *et al.* (1991) has major importance with a study of 2844 custody records, direct observations of the detention process and charge room staff at work, and an additional 155 interviews of officers. The following findings of this research (Bottomley *et al.*, 1991:84-119), as far as admission and recording of suspects, detention before charge, remand to police custody, framework for practice and effects on police work are concerned, attempt to explain the impact of PACE:

- i. In the outer city subdivision, other charge room staff completed almost half of the records. Decisions were made on behalf of the custody officers, namely whether or not to accept a prisoner and although it was the custody officer's responsibility to carry out the recording of persons brought into the station, in practice the custody officer tended only to check all custody records after, or during, completion and often initialled them. This shows that they may have partially or completely not written some of the recording.
- ii. Pressures placed upon custody officers can lead to investigating officers acting as custody officers by, for instance, completing the custody record for prisoners that they had brought in. This was especially so in smaller stations.

- iii. Custody officers do not normally require arresting officers to provide substantial details of the offence for which the suspect has been arrested. Pressure of work resulted in the inability of COs to actively exercise their responsibility to assess the possibility of immediate charge or the necessity of pre-charge detention in the way that the legislators envisaged.
- iv. The review process tends to become routinised. In practice, the review decision is often effectively made by custody officers and simply confirmed or rubber-stamped by the inspector.
- v. Few instances of conflict were seen during the observations relating to the detention after charge, particularly where prisoners had been remanded to police cells so that further enquires could be conducted. In one instance, the custody officer was not being kept informed of the progress of the case so that he could make the relevant entry in the custody record. Without those entries, he as custody officer could not justify the person's continued detention in the police cells. The CID did not respect and did not place a high enough priority on this factor.
- vi. 95 per cent felt rules for the detention of suspects as prescribed by PACE did provide them with a framework within which they could do their job properly. 62 per cent said that the rules either made things clearer and/or did provide a clear framework; 18 per cent said that they provided a safeguard for the police against complaints.
- vii. Two thirds of officers thought that the introduction of the post of custody officer had been positive, and just over a quarter of this thought the effects were negative (Bottomley *et al.*, 1991:84-119).

In conclusion, according to the studies that have been analysed in this chapter, two important results may be obtained about the role of custody officer as the guardian of police detention procedure:

First of all, it has been revealed that the role of the custody officer as introduced and prescribed by PACE saw a lessening of discretion and the increase of responsibilities in some areas. The increased responsibilities are due to a shortage of staff and multiple roles and of having the sole responsibility for suspects as prescribed by PACE. This places custody officers under a lot of pressure and makes them vulnerable to complaints. Hence the requirements of PACE are found too burdensome to be overcome by custody officers and as a consequence of this they feel undervalued and overworked (Cox, 1986; GMP, 1986; Police (Magazine), 1987; Rodie, 1988; Morgan *et al.* 1990; Bottomley *et al.* 1991).

The second and more important finding is that the idea of the custody officer as an independent guardian of the whole detention procedure and of suspects' rights has proved theoretical, not practical (Morgan *et al.* 1990; McKenzie *et al.* 1990; McConville 1991). Indeed, the independence of the custody officer from police culture is very limited since they see their role as part of a group of fellow police officers doing their job and they tend not to interfere the work of arresting officers, even their work is not approved by other senior officers (Rodie, 1988; Bottomley *et al.*, 1991). Thus, it has been proved by much of the research mentioned here that Robilliard and McEvan's account in 1986 appears to be still valid:

The custody officer, in maintaining a proper objectivity in his judgement about a particular case, could find himself in conflict with colleagues who,

for example, disagree about whether a suspect should be released. Although the Act specifically provides that, if there is a struggle between the custody officer and a superior, the former must refer the matter to an officer of at least superintendent level at his station (s. 39(6)), it may be unrealistic to expect a custody officer to confront and report a senior opposed to his views (Robilliard and McEvan, 1986:163).

Interrogation Of Suspects

Interrogation of suspects by the police may be regarded as a fundamental part of the police investigation. In fact, one of the main reasons why suspects are kept in police detention is to facilitate the interviewing process and consequently obtain a confession (Zuckerman, 1990; Moston and Stephenson, 1993). In practice, the police rely heavily on confessions to help secure a conviction, so underhanded tactics will sometimes be used in order to get one – these include interrogation for long periods of time, improper treatment, deprivation of rights such as legal advice or a responsible adult. A pre-PACE research study by Steer (1980:125) for the Royal Commission indicated how heavily the police depend on interrogation, not only to obtain admission with regard to the offence for which the suspect was arrested, but also to obtain confessions to other offences and allegations. He therefore maintained that the interrogation process had to be fair and legitimate because a conviction may easily depend on it:

Not only is a significant minority of offences first brought to light or detected during interview, but also an admission of guilt may often be the only evidence to clinch the case against a person upon whom reasonable suspicion has fallen in other circumstances. ... The police interview plays, therefore, a central part in many an offender's experience of how the criminal justice process operates. For offenders to accept the sentence that is subsequently passed upon them. It is important that they should recognise the legitimacy and fairness of the procedures that have led up to conviction (Steer, 1980:125).

Surveys (Smith, 1983a) showed that when questioning suspects the police sometimes used unnecessary violence, fabricated evidence and took bribes. Before PACE, as Fisher found in the Confait Case, the police sometimes abused their authority in the interrogation process. Indeed, the Fisher report (1977) pointed out that during the interviews of the three youths in connection with the murder of Maxwell Confait, the Judges' Rules were severely breached by conducting interviews without the youths' parents being present, failing to inform them of their rights, and asking unnecessary questions. As a result, the Confait case drew attention to the fact that the rules governing questioning were ineffectual and that the interview techniques exercised by the police were inadequate and unfair.

Following the Fisher report, one of the main concerns of the Royal commission (RCCP, 1981a) was the conduct and recording of police interviews with suspects. In order to regulate police interrogation, The Royal Commission made the following main recommendations:

- i. All aspects of treatment of a suspect in custody, including the conduct of interviews, should be regulated by statute, to update and extend the scope of current provisions.
- ii. The right of silence should remain, but it should be simplified.
- iii. Tape recording of interviews should be introduced gradually.
- iv. Juveniles and mentally handicapped and retarded suspects should be interviewed only in the presence of another adult.

- v. A code of practice for regulation of interviews, which would protect the suspects from oppressive questioning and ensure the reliability of any statements made, should be included in the statute regulating the treatment of suspects in custody.

The Royal Commission's proposals were indeed implemented in PACE and its associated Codes of Practice to prevent another Confait case. For instance, to minimise the risk of unreliable statements, exclusion of evidence was recognised for confessions which are obtained by oppression or unfairly or illegally. The regulation of custodial interrogations became subject to statute, there was no alteration to the use of right of silence, gradual introduction of tape recording was accepted, and finally, a special protection was provided for vulnerable groups such as special treatment of juveniles and mentally ill persons.

Furthermore, Code of Detention and Questioning (Code C) itself is a considerable improvement on the Judges' Rules. It is concerned with the conduct and control of interviews, and particularly with the duties of interviewing officers in relation to the cautioning and treatment of suspects and making records of interviews. In this respect, the Code C may deal with two aspects of interviews. The first is concerned with the conditions in which interviews are to take place, the physical treatment of the suspects, and so on. The second aspect is concerned with what practices may not be engaged in by the police and is directed towards ensuring against oppressive practices at the interrogation itself. Nonetheless, some matters are common to both aspects. The Code C also makes stipulations about the physical settings of interviews, the recording of verbatim notes, the length of interviews and the provision of refreshment and rest breaks (Code C, 12.4 - 12.7).

The aim of questioning suspects as cited in the Code C is to acquire from the person concerned his account of the facts, and not necessarily to obtain an confession (Notes for Guidance 12 A). Therefore, as soon as the interviewing officer believes that there is sufficient evidence for a prosecution, questioning will cease and the suspect will be brought to the Custody Officer to be charged, and once a person has been charged, there will be no further questioning. Further questioning is only permitted under the circumstances of the Code C (16.5) and the person should be cautioned before any such questions are put. It is also required that questioning of a detained person must not be 'oppressive' or of such a nature that might produce unreliable evidence. Finally, all persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply (Code C, 1.1).

Effects of PACE

A sizeable body of research (Willis *et al.*, 1988; Irving and McKenzie, 1989; Brown, 1989; Williamson, 1990; Moston *et al.*, 1990; Morgan *et al.*, 1991; McConville *et al.*, 1991; Bottomley *et al.*, 1991; Brown *et al.*, 1992; Maguire and Norris, 1992; Moston and Stephenson, 1993) to date has shown that the Act has had various important effects on the interrogation of suspects although some studies' findings may have not been met with total agreement by others. Notably the studies of Irving and McKenzie (1989) and Williamson (1990) attracted criticism when they claimed that interviewing standards have risen significantly in line with the aim of the Act. For instance, Dixon (1992a) argued that their interpretations could attract suspicion because responses obtained in Williamson's study were affected by his position as a police superintendent, and that the

behaviour of detectives in Irving and McKenzie's study was influenced by the presence during interviews of outside observers. Nevertheless, regardless of such disagreements over the reliability of those results obtained by Williamson (1990) and Irving and McKenzie (1989), particularly, the latter research appears to be the only one which provided a direct comparison of interviewing before and after PACE⁹.

The following subheadings will review the findings of various PACE studies, regarding the interrogation of suspects:

Length of Interviews

Code C limits the length of interviews. In any period of twenty-four hours a detainee must be allowed a continuous period of at least 8 hours for rest. In addition, there should be short breaks for refreshments approximately every two hours. (Code C, 12.2 and 12.7)

The pre-PACE research revealed that the period of time for which suspects are generally questioned was relatively short. According to a study carried out by Mitchell (1983), the overwhelming majority of suspects were questioned for less than two hours in total, although, the more serious the suspected crime, the longer the length of interview. He found that 86 per cent of his samples of 400 defendants tried at Worcester Crown Court were questioned for less than two hours (Mitchell, 1983:596). In other studies (Softley, 1980; Barnes and Webster, 1980), only five

⁹ Irving and McKenzie (1989) conducted their fieldwork in 1986 and in 1987 respectively at Brighton police station. The aim of the research was to find out what are the short or long term effects of PACE on police interrogation.

per cent of initial interviews at a police station lasted for longer than 45 minutes and most suspects were interviewed only once.

Post-PACE, Irving and McKenzie (1989) carried out a research based on two fieldwork exercises in 1986 and in 1987, in Brighton. They analysed data from three sources: Observation of 68 suspects, archival material such as custody records and interviews of 100 suspects who were in custody. As far as the length of interviews are concerned, their main discovery was that the mean interview time increased between samples taken in 1979 and again in 1986, although the average length of interviews had not changed significantly. The respective pre- and post-PACE figures were 32 and 35 minutes. Nevertheless, the mean length of interviews had risen from 24 to 36 minutes. The net effect of less frequent interrogation without significant change in the average length of interviews was for a decrease in total interview time per suspect. Their pre-PACE average figure was 60 minutes per suspect compared with 40 minutes post-PACE. They attributed these developments to less frequent use of tactics designed to elicit confessions and to the effect of contemporaneous note-taking.

While MacKay's (1988, 1990) research in Bedfordshire found variations between stations, in Brown's study (1989), the total interview time was on average 52 minutes for each suspect, higher than the figure of 40 minutes for Irving and McKenzie's (1988) 1987 sample, but lower than their pre-PACE figure of 60 minutes. It was also found that more time was spent on questioning in serious cases. As for Bottomley *et al.*, (1991), they found an increase from less than half an hour before PACE to almost three-quarters of an hour in 1987, but the average length of each interview doubled between 1981 (18 minutes) and 1987 (37

minutes). The data compiled by Bottomley *et al.* (1991) produced a median figure showing that the total average time for which suspects were interviewed was 44 minutes in 1987, and their pre-PACE figure was relatively lower (26 minutes) compared to Irving and McKenzie's figure (60 minutes). Nevertheless, it was similar to those figures found by Softley (1980) who found that 80 per cent of initial interviews occurred in less than 30 minutes and Barnes and Webster (1980) who found that the average total time spent interviewing each suspect was 47 minutes with considerable variations between stations.

Meanwhile, Bottomley *et al.* (1991) claimed that Irving and McKenzie's (1988) findings were 'contradictory'. They reported that 'mean interviewing time decreased significantly between 1979 and 1986 for both the sample of observed interviews and the random sample' (Irving and McKenzie 1988:75). This was opposite to what they had hypothesised.¹⁰ In fact, what had happened was that there had been no significant change in the length of individual interviews, but there had been a very sharp drop in the number of suspects interviewed more than once¹¹.

Furthermore, observations by Bottomley *et al.* (1991) revealed that police officers often talked informally to prisoners before starting the formal interviews in order to build up some sort of relationship, which is considered part of good interview technique. Although some officers thought that this practice was usually preferred by CID officers, just as many uniformed officers they interviewed said that they

¹⁰ In 1986 the interviews of the 87 per cent of a random sample of prisoners were completed within one hour, compared to 71 per cent within that time in 1979 (Irving and McKenzie 1988:75).

¹¹ See Irving and McKenzie, 1988, p.77, Table 5.7.

would use this informal technique to clarify the situation before starting the interview:

More officers from City Centre subdivision said they never did this (19 per cent City Centre; 11 per cent Outer City; 13 per cent Rural), and fewer that they always did. More than half (55 per cent) of the female officers said they would always clarify points before the interviews began, compared to less than a third (31 per cent) of males (Bottomley *et al.*, 1991:159).

When the officers were asked where the clarification of the situation would happen, 'three-fifths of the respondents said it would happen on the way to the station (e.g. in the patrol car or transit van), others while bringing the prisoner from the cell to be interviewed, and only one sixth said in the interview room itself' (Bottomley, *et al.*, 1991:159).

Frequency of Interviews

Irving and McKenzie (1988) found that it had become rare for those arrested to be interviewed more than once because of the requirement in the code of practice to take contemporaneous notes of interviews. In samples of cases obtained from 1986 and 1987 they discovered that second interviews took place in only 10 per cent and 12 per cent of cases respectively, as against 42 per cent of cases from 1979.

Brown's study (1989) complemented Irving and McKenzie's data (1988) in that suspects were usually interviewed only once. Only 20 per cent of those arrested were interviewed again and second interviews were least likely for minor crimes, but, it was more common for other crimes: two-thirds of those detained for robbery and burglary, and three-quarters of those held for theft of and from cars and fraud

and forgery were interviewed only once. The reasons for less repetition of interviews were similar to those suggested above by Irving and McKenzie (1988). Meanwhile, Brown argued that 'stricter regulation of access to prisoners by custody officers and the conditions governing interrogation in the code may have had the same effect' (Brown, 1989:44).

Additionally, according to the data drawn by Bottomley *et al.* (1991) in 1984, 32 per cent of suspects were interviewed more than once, compared to 16 per cent in 1987. Consequently, it is revealed that fewer persons were interviewed more than once after the introduction of contemporaneous notes.

Tape Recording of Interviews

The Code of Practice governing the tape recording of interviews by police came into operation on 29 July 1988. The Code provides for tape recording of interviews in the following situations: 1) with a person who has been cautioned in accordance with para 10 of Code C in respect of an indictable offence; or 2) after a charge, or after a suspect has been informed of possible prosecution, where the police wish to put further questions about an indictable or either-way offence; or 3) where the police seek to bring to the notice of such a person any written statement by another person or the content of an interview with another person.

The custody officer has power in other cases to authorise no recording if it is not feasible for the interview to be recorded. Failure to record an interview for any reason may be the subject of comment in court (Code E para 3 and Note for Guidance 3K). The suspect has the right to object to the recording of the interview.

It may be either at the outset or during the interview or during a break in the interview. In spite of the objection, the officer may continue recording against the wishes of the suspect. In this case, this decision of the officer may be the subject of comment in court (Code E, para 4 and Note for Guidance 4b).

Background and the impact of introduction of tape-recorded interviews

In 1972, the majority of the CLRC suggested that experiments should be conducted and a minority recommended that statutory provision be made for the compulsory use of tape-recorders at police stations in the larger centres of population¹². The reaction to this by the Home Office was the establishment of the Hyde Committee which studied the feasibility of an experiment in the tape-recording of police interrogations and concluded that such an experiment was indeed feasible (Command, 6630). After that, in 1977 the Home Office handed the whole matter over to the Royal Commission. Barnes and Webster (1980) carried out a study for the Royal Commission in order to examine and assess the technical and operational problems of taping interrogations such as the cost and organisational implications involved. Their research revealed some practical and technical difficulties, but concluded that tape-recording should be introduced gradually. Eventually, in 1982, the Home Secretary announced a plan to assess the implications of tape recording police interviews with suspects.

Field trials of tape recorders were first introduced in Leicester, Wirral, Winchester, South Shields/Jarrow, Croydon and Holborn¹³ in 1984. An interim report by Willis

¹² For a comprehensive detail of the debate, see Command, 4991, paras. 52 and 50 (1972))

¹³ Including the Metropolitan Police Fraud Squad.

(1984) gave preliminary findings on the effects of taping on the length of interviews, the time taken by police officers to prepare their notes and statements and the value of the evidence obtained. In 1988 Willis *et al.* published a second interim report. This report also looked at the same issues as well as additional points. In the following, the main findings of research of Willis *et al.*, (1988:73–76) were summarised:

- i. The average length of taped statements was shorter than those untaped.
- ii. Solicitors attended in only 2 per cent of all cases, and there was no evidence that the use of tape recorders increased the possibility of a solicitor being present.
- iii. In two of the trial areas, the number of confessions obtained during taped interviews was significantly greater than during untaped. There was also an increase in the information supplied about other offences.
- iv. There were few interruptions to taping, and very few objections.
- v. There were more prosecutions of suspects who had been taped, and a quicker release of suspects not charged after taping.
- vi. Courts favoured taped interviews. In the great majority of cases at both Magistrates and Crown courts, the average time spent listening to and assessing a tape was under 10 minutes.
- vii. The main disadvantage of taping was the occasional need to transcribe the tapes. One police force, which took part in the trials, was asked by the

Crown Prosecution Service to provide transcripts of every tape-recorded interview.

- viii. The picture that emerged from the field trials, even in the early stages, was very encouraging. There were no indications that the police tried to avoid the use of tape recording. On the contrary, police reactions to the taping of interrogations were very positive.
- ix. Overall, tape-recorded interviews were welcomed by the police forces.

According to Willis *et al.* (1988), police officers who were opposed to tape-recorded interviews with suspects became 'enthusiastic advocates' of the scheme after a two-year trial, in test forces. Although the authors expected that police would try to avoid conducting interviews at police stations so that they did not have to be taped, it was revealed that first interviews were more likely to be conducted at stations with tape recording facilities.

Other research from Bottomley *et al.* (1991) also indicated that the majority of police officers (91 per cent) interviewed in the research expressed favourable or very favourable views about tape recording. The most frequent reason stated as to why they were in favour of tape recording of interviews was that 'it would overcome a major limitation of contemporaneous notes', and so interviews could be smoother. Eventually this would allow them to use their traditional interviewing skills. One of the typical views was:

One of the best things that has happened to the police force in recent years. Evidence is much less likely to be challenged. ... Tape recording will show without a shadow of a doubt who said what and in what circumstances (Quoted in Bottomley *et al.*, 1991:161).

Moreover, the anticipated benefits of taping interviews have been proved positively in the force researched by Bottomley *et al.* It was discovered that tape-recorded interviews were shorter than those recorded by contemporaneous notes (on average of 39 and 53 minutes respectively), although post-interview tasks of case file preparation took more time when tape recording was used (an average of 143 minutes, in contrast to 65 minutes when contemporaneous notes were taken) (Bottomley *et al.*, 1991: 165).

Brown (1989) also found that interviews were shorter at taping stations: The figures were 31 minutes at Croydon, 36 minutes at Leicester and 40 minutes at Winchester (Brown 1989: 46). Again, research by Willis *et al.*, (1989) supported this finding that the average length of taped statements was shorter than those untaped and there were more prosecutions of suspects who had been taped and a quicker release of suspects not charged after taping (Willis *et al.*, 1988: 25-35).

In conclusion, tape recording of police interviews is a significant reform of criminal investigation and is a very important element of the interrogation process. Beyond any doubt, taped interviews give a safeguard for the person interviewed as well as for the police (Baldwin and Bedward, 1991:671; Maguire and Norris, 1992:1). If an interview has been conducted by contemporaneous note-taking and results in an admission, a suspect thereafter could claim that he or she confessed under physical force and such claim would make the police case weak in courts

because of the unavailability of independent checking as to whether the police had conducted the interview by oppressive and irregular means (Brown, 1997:146). However, with a recorded interview, a suspect could not easily claim that he was forced to speak or that he was drunk and did not know what he was saying. This is because hearing a taped confession in court would have a very powerful effect on the jury. Meanwhile, the police themselves also acknowledge the value of tape-recorded interviews as revealed by research (Maguire and Norris, 1992; Williamson, 1990; Brown, 1991). Accordingly, the police maintain that taping has produced more naturally flowing and quicker interviews than contemporaneous notes, and, more importantly, that this method has led to the growth of professionalism in interviewing suspects. Given these advantages of taped recorded interviews, the need for a further initiative, which is the introduction of video recording of interviews, is obvious. Morton has stated that:

... It will be more than a pity if both the judge and jury are denied the opportunity of seeing exactly what went on during an interview, so that a fully informed decision can be made. The technology is available to help them: use should be made of it (Morton, 1988: 262).

Baldwin (1992), in his research, acknowledges that video-taping of interviews would give a third party the opportunity to make firm and confident assessment as to whether an interview has been conducted fairly, but at the same time he notes that video-taping has had relatively little impact on the courts to the contrary of Morton's expectations. He has revealed that it was extremely rare for videotapes to be played at court because of the fact that over 90 per cent of defendants pleaded guilty, so that the way interviews were conducted was not an important issue. In

my opinion, however, this situation should not necessarily undermine the value of videotaped interviews.

Currently, neither PACE nor the Codes of Practice make provisions for the videotaping of interviews. However, the RCCJ (1993), after studying Baldwin's research (1992), expressed some reservations and recommended further research for the issue.

Revised Codes of Practice

In 1991 and 1995, the Home Office made some amendments to the Codes of Practice that provide essential guidance to the police on the treatment of those in custody. As far as police interviews are concerned, the new Code redefines an interview: It is the questioning of a person about their involvement or suspected involvement in an offence. Asking someone for his or her 'explanation of the facts' (the former definition) does not constitute an interview.

The study of Brown *et al.* (1992) has evaluated the implementation and effect of the 1991 changes in the Code relating to police detention. It has been revealed by this research that there was a fall in the average length of police interviews and in total interviewing time:

In the case of custody record sample containing nearly 7000 interviews, the decrease was not great – interviews took an average of 26 minutes in phase two compared with 31 minutes in phase one - but it was statistically significant. The pattern was replicated at eight out of twelve stations. (at two there was no change and at the other two there was a marginal increase.) The observational data produced a smaller decrease, from 30

minutes to 27 minutes; this was based on a smaller sample of interviews and was not significant (Brown, *et al.*, 1992:89-90).

According to Brown, *et al.*, (1992:90) the reason why interview lengths should have decreased could be to do with changes in police procedures for recording the time at which interviews begin and end. As the observational study revealed, actual interviewing time occupies a varying proportion of 'booked out' time. Various factors such as setting up the tape recorder and arranging the furniture may have an impact in delaying the start of interviews. Eventually, Brown *et al.* came to the conclusion that 'it was possible that tighter procedures in the revised Codes over the recording of comments made informally by suspects outside the context of an interview may have speeded up the start of interviews and the booking back in of prisoners, without having affected actual interviewing time' (Brown, *et al.* 1992:90).

Detention and Right to See a Solicitor

Prior to PACE, access to legal advice during custody was regulated by the Judges' Rules. Accordingly, every person, even in custody, was entitled to consult with a solicitor at any stage of an investigation. However, a range of empirical research (Zander, 1972; Baldwin and McConville, 1979; Softley, 1980) revealed that relatively few suspects requested to see a solicitor at the police station and only a small proportion of those actually saw one. It was therefore concluded that there was a great 'dichotomy' between the legal theory and the reality of access to a solicitor (Koffman, 1985:11). When considering the question of access to legal advice, the Royal Commission (1981) considered it a 'vital safeguard' for a suspect

who is in a position of disadvantage at being in custody (RCCP, 1981a: para 4.89). PACE gave effect to the Royal Commission's recommendation and access to legal advice at the police station was considered as 'a necessary counterbalance to the increased police powers' (Hodgson, 1994:87). Section 58 of the Act now provides that persons who make a request to see a solicitor must be permitted as soon as practicable and, in any case, within 36 hours.

According to post-PACE studies (Brown, 1989; Sanders *et al.*, 1989; Morgan *et al.*, 1991; Bottomley *et al.*, 1991; Brown *et al.*, 1992; Phillips and Brown, 1998) there has been an increase in requests for legal advice among suspects since PACE came into force. The level of take-up, however, varies according to the seriousness of the crime. Those detained for the most serious offences are most likely to ask for a legal adviser. In Brown study (1989), for instance, 42 per cent of those detained for crimes such as robbery and serious sexual offences asked for legal advice, compared to just 11 per cent of those held for minor offences. Those studies, which have been able to make direct comparison between pre-PACE and post-PACE data, collected at the same sites, found an even sharper increase in the take-up rate. Particularly, in the study of Morgan *et al.* (1991), the increase was double, from 11 per cent to 24 per cent. Bottomley *et al.* (1991) also found an increase to 23 per cent in their research force.

Furthermore, a study by Brown *et al.* (1992) of the impact of the revised PACE codes of practice discovered that there had been a further increase in requests to see a solicitor. Comparing the situation at a sample of twelve stations in 1990 and in 1991, when the revised Codes came into effect, they found that a third more suspects requested solicitors.. They attribute it mainly to 'the extra emphasis on

explaining that legal advice is free, and growing awareness of the suspect's rights among the suspect population' (Brown *et al*, 1992:94).

More recent studies, i.e. Buck and Brown (1997) and Phillips and Brown (1998), also observed increasing trends of requesting and receiving legal advice, in line with the previous studies. The study of Buck and Brown, (1997:19-24) about the impact of the revised Codes of Practice found that 40 per cent of suspects in their custody record sample requested legal advice and 34 per cent of them actually received it. The most common reasons for legal advice not being received were 'because suspect changed their minds about needing advice; were released before an advisor arrived; or agreed to see a solicitor in court later rather than at the police station' (Buck and Brown, 1997:19-24). Phillips and Brown (1998) also confirm the rise in demand for legal advice. Based on the observation of the processing of over 4000 prisoners in 1993 and 1994, the study found that 38 per cent of suspects requested to see a solicitor. These figures are in line with Buck and Brown's earlier study.

It is evident from the studies above that there has been a considerable increase in requesting and receiving legal advice at the police station after PACE. However, the majority of suspects still do not request legal advice. This is surprising when one considers that the suspect is in an isolated and vulnerable position at the police station and legal advice may be obtained free of charge. Revisions in the Code of Practice have aimed to make suspects more aware of this opportunity, but the figures of take-up rates still represent the minority, not the majority. Sanders and Young (1994) find this situation difficult to understand as the nature of being a suspect is taken into consideration:

Despite the general increase, only a minority of suspects exercise their right to advice, and fewer still actually secure it. This seems difficult to understand at first sight. Nearly all are in the police station involuntarily. Most will be frightened or apprehensive, unsure of their rights and worried about how long they will be detained. Many perceive the police to be 'against' them, as of course, they are in an adversarial system. Against this intimidating backcloth they are being offered something for nothing: a lawyer, whose sole job whilst in the station will be to help that suspect, at precisely nil cost. Yet the response of the majority is to say 'No thanks' (Sanders and Young, 1994, 130-1).

In one of the earliest studies of PACE, Maguire (1988) observed that some suspects have a tendency to seek advice while others do not, and some can be more easily influenced than others. For instance, suspects arrested for petty crimes such as drunkenness see no point in seeking legal advice, as it would be of little use to them. Some suspects have an 'inflexible elasticity' of demand because they always want a solicitor. Many of these are likely to be charged with serious offences. Between these two groups, Maguire argued, there is a large group of suspects with a very high elasticity of demand. Often accused of moderately serious crimes, for instance shoplifting and car theft, their decision whether or not to seek legal advice is influenced by various factors, including the attitudes and practices of the police and availability and likely quality of the advice.

The study of Brown *et al* draws attention to one of these factors: the intention of getting out of the station as soon as possible. Thus, many suspects refuse to take legal advice only because of their intention to get out of the station without delay. They found that one-half of all suspects refusing legal advice would have requested it had a solicitor been in the station (Brown *et al.*, 1992:53).

Summary

Before concluding this chapter, the overall impact of PACE on detention procedures is summarised in the following:

- The average length of detention has not been shortened. In general, there is a slight increase in the average time suspects spend in custody. However, this may not be true in all forces or cases. The time for which a suspect may be held in custody may vary depending on the seriousness of the crime, the age and sex of the suspect, the outcome of detention, and the developing pattern of the investigation. For example average detention time decreased in some more serious cases such as burglary, but rose for some less serious offences like shoplifting (Maguire (1988), Brown (1989), and Bottomley *et al.* (1991)). Moreover, review of detention has an obvious impact on detention length in that the police tended to release the suspect by the first review. Also, one positive point is that the police are now more conscious of time limits and within the 24 hour limit the police are gradually being forced to consider options of release, charge or bail within the statutory period (Irving and McKenzie, 1988; MacKay, 1990; Brown, 1989; Bottomley *et al.*, 1991.)
- Authorisation of detention is hardly ever refused: Studies, without exception, agreed that authorisation and review of detention have become a rubber-stamped routinised practice (Brown, 1989; McKenzie *et al.*, 1990; Morgan, *et al.*, 1991; Bottomley *et al.*, 1991; McConville *et al.*, 1991).

However, the reasons that have caused this consequence have been evaluated differently by these studies and the arguments have given important views about the consequences of such law reform. For instance, it has been argued by Morgan *et al.* (1991) that although in general the legal rules in this area do have the potential for achieving their objectives, the procedure set by Code C is not clear for not authorising detention. It was suggested that with an alternative procedure, which recognises non-authorisation of detention, the result would have been different. Another view is expressed by McConville *et al.* (1991) that the formal rules in this area would have almost no effect as long as these rules provide internal supervision of police behaviour, emphasising the ineffective role of custody officers as the independent supervisor of the detention procedure. This finding was actually echoed a long time ago by Scarman (1981) in his report about the Brixton Disorders. He recommended that an efficient control of police treatment of suspects under police interrogation and detention would be best achieved by external supervision of persons rather than police officers (Scarman, 1981:7.7 -10).

- In connection with the findings above, there are also criticisms levelled at the post of Custody Officer. It is suggested by the studies that the role of custody officer as the independent supervisor of the whole detention procedure and suspect's rights has proved theoretical and not practical, as custody officers are still police officers at the end of the day (Morgan *et al.*, 1990; McKenzie *et al.* 1990; McConville *et al.*, 1991), Reiner (1992:230) concurred with the conclusion of McConville *et al.* (1991) that, 'the idea of

the custody officer as an independent check ... has proved chimerical.' The custody officers often ignored contravention of codes of practice or even engaged in it themselves. Sometimes the custody officers duty of completing the custody sheet was conveniently left open while 'off- the-record' 'chat took place. Nevertheless, the requirements of PACE were found too burdensome to be overcome by custody officers and as a consequence of this the custody officers themselves felt 'undervalued and overworked' (Cox, 1986; GMP, 1986; Police Magazine, 1987; Rodie, 1988; Morgan *et al.*, 1990; Bottomley *et al.*, 1991).

- The practice of helping the police with their enquiries has not been eliminated. Early studies ((Zander, 1990; McKenzie *et al.*, 1990) indicated that voluntary attendance was used regularly to avoid complex and tighter rules of detention. Astonishingly, relatively recent studies contained no data about this circumstance. It is therefore clear that there is a need to conduct wider research to understand the current practice of voluntary attendance at a police station (Sanders, 1997).
- It is evident from the various studies that under PACE suspects are now interviewed less frequently and there has been some reduction in the average length of interviews (Willis, *et al.*, 1988; Brown *et al.*, 1992). Moreover, far fewer interviews are conducted with those who are unfit to be interviewed. However, informal interviews in police cars or other settings continues despite the discouragement from PACE (Maguire and Norris, 1992:104).

- Securing a confession remains the central aim of questioning, however, there is some support for the view that the main reason for obtaining a confession is now more often to supplement other evidence (Brown, 1997).
- PACE made it practice that interviews be tape-recorded (Code E). It was hoped that taped interviews/ confessions would significantly reduce the prospect of police abuse of power. It should have been a strong shield of a persons rights, but as Sanders and Young's work (1994:173) found, the police quickly learnt how within the procedures and rules of PACE whilst at the same time using the old practices and principles of pressuring.
- Tape recording of interviews were also thought to be quite useful for the police as it might have led to fewer disputes in court about what was said, however, studies of tape recordings at interviews and interrogations are critical of the supposed success. Moston and Stephenson (1993) described how taped evidence is a problematic area when used in a case. The evidence may be fine and acceptable but if it is the purpose of taping, that everything that goes on between the two parties is on tape, then why was it so noticeable that general conversation is almost never on tape. This they feel effectively negates taped interview and confessions success. It '...confirms the inadequacy of tape recording inside the police station as a wholly adequate record of all relevant verbal exchanges between suspect and interviewer.' (Moston and Stephenson, 1993:36).

- In line with audio-taping interviews, the experiments of video-taping of interviews has suggested that its value to some very serious cases would be significant in providing assurance that interviewing is fair. However, in order to extend the use of video-taping of interviews some technical problems have to be overcome (Willis, *et al.*, 1988; Brown *et al.*, 1992).
- Research suggests that the abuse of some rights post -PACE continues. Moreover, suspects are very often not told of their rights clearly, for instance, they are not told that legal advice would be provided free of charge and the consultation would be private (McConville *et al.*, 1991; Ashworth, 1994).

Conclusion

When the complete picture of changes brought by PACE was taken into consideration, all researchers have agreed that PACE had a definite impact on police practices, although the consequences of this impact were evaluated differently (Maguire and Norris, 1994:82). In general, the regulation of pre-charge detention procedure by PACE was intended to safeguard the suspect more with the introduction of new provisions such as the establishment of the 'custody officer's' post, the review of detention, and the tape recording of interviews (Sanders, 1997:1067). After PACE came into force a considerable amount of research investigated whether or not the new rules had any impact when compared with the previous practices. The review of these studies suggests that PACE seems to have had a certain effect on the nature and outcomes of police handling of suspects, but

integration of the rules into police culture and working practices was uneven and incomplete. Moreover, in some circumstances, the intentions of the Royal Commission, the predecessor of PACE, clearly failed. For example, it was hoped by the Act that the process for authorisation of detention by custody officers would filter unnecessary detentions. However, in quite the opposite to this, there was no decline in the number of pre-charge detentions and almost all arrest cases brought to custody officers resulted in the authorisation of detention (Sanders, 1997). Consequently, the role of the custody officer as an independent supervisor of detention procedure was seriously undermined.

Prior to the PACE period, it was widely disputed that there was a great 'dichotomy' between the legal theory and police practice (Koffman, 1985:11). There were many examples of this 'dichotomy': for instance, it was stated in the Judges' Rules that every person, even in custody, is entitled to consult privately with a solicitor at any stage of an investigation, however very few suspects received legal advice whilst in custody.

Following PACE, examples of the dichotomy between the rhetoric of the law and police practices can still be found easily. For example, PACE Code C para 10.1 requires that a person suspected of a crime must be cautioned before any questions are put to him/her regarding the possible involvement in that offence; but in trying to discover whether, or by whom, an offence has been committed, the police may put, without cautioning, a question to any person they think might provide information about the case (Code A, Note, 1B). This is the law in the book. However, beyond this, there is really nothing to prevent the police from questioning a person they suspect, without suggesting to the suspect that he or she

is under suspicion of having committed a crime. Having not been told that he or she is under suspicion, the person may make a statement in response to questions, which statement would seem to justify his or her arrest, for which the suspect may then be taken to the police station and there be persuaded to repeat in a tape-recorded interrogation the damaging statements made before or at the time of arrest (Moston and Stephenson, 1993). Wolchover and Heaton-Armstrong (1991:242) found that there was a noticeable increase in these sorts of practices in the post-PACE period compared to the pre-PACE period. Hence, as Sanders (1993) pointed out, an officer's use of discretion had not altered, but the code of practice has changed the way in which they present their accounts.

In conclusion, perhaps the main consequences of the empirical research examined in this chapter was that legal structures are very often inadequate of transforming police working practices and culture and this was the case for PACE and the associated Codes of Practice. The detention procedure under PACE still remains open to errors, although this is less likely than in the pre-PACE period. Thus, I would argue that the success has only been half of what it could and should be. I believe the PACE legislation was a brave and genuine attempt at tackling problems long entrenched within the police force; however, even with the guidelines and frameworks in place there are still 'ways' and 'means' to get around them (Maguire and Norris, 1992). As Maguire and Norris (1994:82) concluded, 'there is no simple way to ensure that police investigations are carried out fairly by the rules':

... The development of complex recording systems (taped interviews, custody records, policy files, numbered pocket books and observation logs,

and so on) has, there is little doubt, made it more difficult for officers to commit gross violations of suspects' rights, but the 'invisible' nature of much detective work means that there will always be opportunities to break the rules for ant determined to exploit them (Maguire and Norris, 1994:82).

Consequently, even with all the procedures and conduct guidelines, in police stations, there are still those using bullying tactics, threats, repressive and exploitive questioning to take advantage of the nervousness, ignorance, and panic of the suspect in order to obtain a confession (Evans, 1992:2). It is evident that as long as these practices continue, the likelihood of the Philips Commission (RCCP, 1981a) recommendation for a 'fair, open, workable and efficient' system', with the right balance between police powers and the rights of suspects will not get any closer.

CHAPTER 4

RESEARCH METHODOLOGY

Introduction

A considerable amount of research on the operation of PACE has been published since it came into force. The review of these studies provides a useful source of reference in carrying out further research into the understanding of the relationship between the police and legislation. However, in contrast with this country, in Turkey there are not many studies that examine the subject of police powers and the rights of suspects in detail. Given the fact that Turkey has been seriously criticised by various international human rights organisations and particularly the European Union for human rights violations concerning police powers and rights of individuals, it is astonishing that no researcher has tried to study these issues in detail. What is more, I have not found any empirical study that examines the impact of TCPA amendments on the police and policing practices. I believe that the mere examination of law of police powers in great depth without conducting any research as to how they are applied in practice would not be complete. For this reason, I have decided to undertake empirical research myself. This chapter sets out the methodology adopted in this research.

Aims and Objectives of the Research

The general aim of this empirical study was to have a thorough look inside Turkish police stations in order to find out how the procedures for detention and interrogation of suspects were applied after the TCPA amendments. Within this general aim, there are several specific objectives which are to:

- i. evaluate analytically the impact of TCPA and its Code of Conduct to find out whether they have become a remedy for the problems related to the whole procedure of police detention,
- ii. identify any gap between the rhetoric of law and police practices in order to differentiate between what the law says the police may do and what is actually done (how “legal rhetoric” is separated from actual practice),
- iii. monitor the developments and progresses in police detention procedure since the enactment of amendments to TCPA between 1992 and 1999.

I believe that understanding the relationship between legal rules and the police (the ultimate aim of the thesis) will help in the design of more effective and viable strategies for police reform in the future. The importance of this study emerges especially as the debate on human rights issues in Turkey still continues. As of 2001, much of the legal and regulatory framework necessary to combat torture and ill treatment of suspects is in place in Turkey. However, in considering international reports, there are serious doubts that in practice those measures are being implemented (Karaosmanoglu, 2000). A statement in 1998 by the then Turkish State Minister Mr. Turk, who was responsible for human rights affairs, for the Government pointed out the necessity of researching the practicality of legal norms

on detention of suspects, particularly because international human rights reports still cite serious and widespread violations of human rights in different parts of the country and a considerable number of these violations concern police custody matters.¹ The need is therefore clear to study these issues with close scrutiny and depth.

Researching the Police: The Problem of Access

Researching the police and the other criminal justice agencies is not a straightforward task and, apart from problems in conducting the research, getting permission for research inside the police organisation is also potentially difficult. Various factors, such as the subject, the objectives and methods of research, and the identity and credibility of the researchers, play an important role in gaining access to the police and conducting the police research (Reiner, 2000). Although today police forces are more open to researchers than in the past, there are still serious obstacles en route that researchers have to overcome before or during their work². This is partly because of the fact that police forces are very reluctant to be subject to any outside scrutiny, perhaps because of the nature of the profession. As stressed by Jupp (1992) the police tend to hide their occupational world from outsiders:

Police officers are inevitably very sensitive about opening up their world to social researchers. On the one hand their decision making is expected to be open and beyond reproach and yet what they see as the success of their activities is often dependent upon what has been variously defined as 'police theory' and 'cop culture'. It is the informal actions which are the outcome of everyday police theories and which are the part of the 'cop culture' that

¹ Turkey's human rights standards also became subject to investigation by the European Human Rights Commission (EHRC), since Turkey accepted the right of individuals to apply to the Commission in 1987.

² The origin of police research in Britain goes back to the '60's (Reiner, 2000:209).

police officers often seek to hide from view. They can do this by erecting barriers to insulate themselves from social researchers and others, by seeking to present a favourable image of their actions, and by mystifying and even falsifying the nature of police work (Jupp, 1989:150).

Indeed, the police have a tendency to hide some of their activities regardless of their legitimacy, but this desire to 'hide from view' may be affected by the identity of the researcher. Overall, the relationship between the researcher and the police plays a significant role in the conduct of the research (Reiner, 2000:220). In this respect, Brown (1996) has categorised researchers who do research with the police and in the police organisation into four groups: *Inside insiders*, *outside insiders*, *inside outsiders* and *outside outsiders*. Each group has its own advantages and disadvantages when it comes to collecting data from the police, and the level of access to the research material may vary (Brown, 1996).

'Inside insiders' are the police officers who conduct research for a degree or for the police or any other official body. The main advantage for this sort of researcher is that he does not have difficulty in getting permission to do the research, and access to police resources is officially commissioned. Nevertheless the inside insiders may still have problems in the later stages of the research, because gaining permission for research does not automatically mean that the researcher will easily establish a suitable atmosphere for himself/herself to get the best material from the police. As pointed out by Reiner (2000:220), the more important access problem is securing the trust and co-operation of the officers after formal access has been given:

The inside insider is usually at an advantage in overcoming the first hurdle of formal access to police sites, but this does not overcome problems of access altogether and in some instances may exacerbate them.

It is important to recognize that access to research sites is not achieved once and for all. There are two clearly different stages which can be distinguished, but the latter in particular is really a matter of continuous negotiation ... This involves continuous negotiation with a set of individuals who may have different interests and perspectives and hence distrust each other, leading to the problem that the achievement of good relationships with some people may itself pose a barrier to achieving this with others (Reiner, 2000:220).

Reiner (2000) also asserts that the characteristics and status of inside insider researchers affect their interaction with the research subjects and influence the results. For instance, a black policewoman doing research on issues of discrimination may generate a different pattern of results from a white male researcher. This assumption is also valid for outside researchers.

'Outside insider' researchers are those who conduct police research after deciding to leave or actually leaving the force. As pointed out by Reiner, the advantage of these researchers is that they can use their experiences and knowledge of the police and police work to make the research fruitful and efficient compared to complete outsiders. However, they may still not enjoy the complete trust of their previous colleagues (Reiner, 2000:221).

'Inside outsider' researchers are non-police officers employed by the police or similar governmental organisation. Like inside insiders, inside outsiders may overcome easily the difficulty of getting formal access to research. Nonetheless, these researchers may have 'problems of gaining genuine co-operation and trust from police officers precisely because they represent authority and their findings may have more immediate impact on police than those of outsiders' (Reiner, 2000:222).

'Outside outsider' researchers are those who are independent from the police and governmental bodies with responsibility for policing, and are mainly academics and others. Reiner asserts that his group of researchers faces 'the biggest challenge' in gaining formal access to the force for research (Reiner, 2000:223). It is obvious that a researcher who is from outside of the police organisation needs to convince the authorities that the research will be for the benefit of the police and not be used against the 'interests' of the police. Like insiders they also need to gain the trust of people researched, but depending on the circumstances and the research subject they may have to spend extra effort to get the direct co-operation of the police. Nonetheless, 'in the final phase of the research process, during the evaluation of the findings, outsiders will be more impartial than most of those who are categorized as insider researchers' (Reiner, 2000:223-4).

In accordance with Brown's classification (1996), I am considered an 'inside outsider' researcher as I am a research employee for the police itself, the General Directorate of Security of Turkey³ and a research assistant in the Turkish Police Academy. Thus, obtaining permission for the research did not become a hurdle⁴. On the other hand, as a 'inside outsider' researcher, the main disadvantage I experienced was that the station police suspected that I was there to spy on their activities on behalf of the General Directorate of Security. To gain the trust of the officers was an important element of my research, as their awareness of being studied or spied on could lead to their being unwilling to share some important information or could lead to atypical or unnatural behaviour or responses on their part. For this reason, in the early days of the research some time had to be spent to eliminate the officers'

³ This is the official name given to the Turkish National Police Organisation as a whole and the Police Academy is the education institute of this organisation.

⁴ The research was even welcomed and encouraged greatly.

suspicion that I was there as a spy or inspector. In the end, it appeared that the more the officers believed that I was not there to inspect or spy on their work, the more they became co-operative and answered the questions openly. Nevertheless, it cannot be claimed that the officers got rid of all their suspicion that the researcher was there as a 'General Directorate's spy' and that precluded overcoming all the barriers.

According to the official permission granted, I could examine the station records comprising crime files and detention records, observe the police work, conduct a survey questionnaire and finally have interviews with the officers in the stations. The main restriction attached to the permission was that the research and its findings would solely be used for academic purposes.

Research Period and Locations

The research has been conducted in three stages, giving the opportunity to monitor the developments over a lengthy period of time and to collect data belonging to different years. The first phase was completed in 1994, the second one in 1996 and the final phase ended in 1999. Each year approximately 6 months were spent in executing the research schedule. Even though the methodological structures of these three separate fieldworks were not exactly the same, the research objectives did not change.

In the first stage of the fieldwork in the summer of 1994, the Turkish Police were still coming to terms with the new amendments of the Act. The data which were collected at this time belonged to the period from 1. 1. 1992 to 1. 1. 1994. As one of

the pioneering researches on the impact of TCPA, this early research did not only provided valuable findings to measure initial responses to the Act, but also afforded the opportunity to make a comparison between the early years and the subsequent years. The second stage of the research took place in the autumn of 1996 and covered a data period, from 1. 1. 1994 to 31. 12. 1995. Naturally, this fieldwork also provided valuable data because it covered a longer period of time.

The final research stage, conducted throughout the spring and summer of 1999, turned out to be the most successful, productive and fruitful. After years of experience, I had become very familiar with police work and I knew what to look for and what to pick up. I therefore easily collected the necessary data and focused my observations on specific practices rather than all aspects of police work. This strategy saved not only a lot of time but also provided sufficient and extremely valuable data.

All fieldwork for the research was conducted in three police stations which have been called A, B and C for the purposes of this study. These stations were chosen after discussion with authorities, and the geographical locations, workload, and availability of personnel who could assist in the research were determining factors in the selection. Each of the stations reflects different geographical and social characteristics. Station A is situated in a central, rather busy area of Ankara, the capital city, with places of entertainment, foreign Embassies and residential apartments. It was one of the busiest stations in the Capital with a large responsibility zone. Station B is also located in Ankara, but is relatively away from the city centre. This district has its own social characteristics, which may differ in some ways when compared with the district covered by station A. In this district, the

population is made up of middle-class working families plus a large number of immigrants from other cities and urban areas. In contrast, Station A is located in an area where the social class and living standards of the families are relatively higher than those in the district of Station B.

Finally, Station C is located in a tourist resort town with a changing population of well over 100,000 in summer and around 50,000 in winter⁵. There were two police stations in this town. The research was conducted in the central station which was much busier than the other station.

Data Collection Methods Adopted for the Research

Put simply, there are three common methods for collecting data in social science research: one can ask people questions; one can observe the behaviour of people, groups or organisations and their products or outcomes; or one can utilise existing records or data already gathered for purposes other than one's own research (May, 2001). Interview and observation are primary sources of collecting data, that is, the data collected by these methods will be first hand. However, research can be based on readily-available data collected by others for various reasons. This method is called documentary research or secondary data analysis. In this method the sources of data may vary from census to official statistics to archival documents or other non-official documents (Nachmias and Nachmias, 1992:291-317).

To choose the most appropriate methods for collecting data, researchers should consider the research environment, finance, availability of assistance, time limits,

⁵ According to the 1997 census.

research objectives, practicability, and resources available (Fowler, 2002:58). Researchers should also bear in mind that not all methods of collecting data are suitable or appropriate for all types of research. Every method has its own weaknesses and no single method permits a researcher to develop a proposition free of plausible rival interpretations. To minimise the degree of insufficiency and to increase the validity of interpretations, however, the researcher can use two or more data collection methods to test hypotheses and measure variables (Fowler, 2002:59). Data collected from multiple sources means that one 'gets a better view of things by looking at them from more than one collection' (McNeil, 1990:123). In other words, by combining several methods in the same study, the researcher may overcome the deficiencies that arise from one method (Nachmias and Nachmias, 1992:199). The term 'triangulation' is used to describe this type of research design:

Cross-method (triangulation) refers to the procedure of using dissimilar methods of research to examine the same phenomenon. It could include, for example, the use of official statistics, observational methods and life histories to examine deviant sub-cultures....The value of such cross-method triangulation is that it balances the strengths and weaknesses of differing methods....The use of differing methods, therefore, maximises the theoretical value of any research by revealing aspects of phenomena which the use of one method alone would miss (Jupp, 1989:72-74).

In my research, I have adopted 'methodological triangulation' to use multiple data collection methods with the aim of combining quantitative and qualitative research. It was thought that this strategy would provide a spread of information and data, and balance the strengths and weaknesses of different research methods. Accordingly, the following data collection methods were chosen: a survey comprising interviews and self-administered questionnaires with police officers, observation of police work, and utilisation of existing records and statistics.

In designing this methodological strategy, I was greatly inspired by two PACE studies: '*Detention at the Police Station Under the Police And Criminal Evidence Act 1984*' by Brown (1989) and '*The Impact of PACE: Policing in a Northern Force*' by Bottomley *et al* (1991). The latter study was particularly important as it covered PACE issues in more detail and was valuable in its methodology, while the former focused specifically on police detention under PACE.

As far as practicable, I have also tried to use similar techniques and patterns which were generally used by PACE studies in England and Wales so that a comparison could be made between the findings of those PACE studies⁶ and my own findings. It should be stressed that the existing research and literature provides a basis for empirical research. As described by Hakim, research review provides a synthesis of existing knowledge on a specific question, based on an assessment of all relevant empirical research that can be found. (Hakim 1987:17).

Similarly Bulmer and Atkinson (1979:61) also note that 'no competent researcher, in whatever style of inquiry, would embark on a project, collect or analyse the data without consulting published material relevant to his or her chosen problem and field of study.' In this respect evaluation of research on PACE was an essential part of my study and has become the foundation of my empirical work in Turkey.

⁶ Particularly in 90's, there was a boost in the PACE studies. Notably, the studies of McConville *et al* (1991) and Sanders (1994) were popular. However, none of these PACE studies truly concentrated on the legal regulation and policing as Dixon did in its work published in 1997. Like McBarnet's study before PACE (1983), Dixon's study (1997) provided noteworthy detailed theoretical discussions of the effects of legal regulation on policing.

In the Field: The Process of Data Collection

The order of data collection is significant when different data sources are available (King, 2000:306). I began my data collection with the examining and utilisation of station records and statistics, then proceeded to observation. Later, I moved to interviews to learn the reason for discrepancies in the behaviour of the police to answer some other questions which were essential for the purpose of the research but whose answers were not obtainable by means of observation and examination of police records. Questionnaires were completed towards the end of the fieldwork when strong research rapport had been built up.

Utilising station police records

The data collection process began with documentary research involving the utilisation of station police records and statistics. This was essential because examination of police documents and statistical records maintained by the police would help to prepare a base for the future research, namely observation and interviews. Secondary analysis of existing data, as a part of the documentary research may involve the secondary analysis of data that have already been analysed (Hakim, 1982). Using documentary research and/or secondary data analysis does not affect the originality of the research; in fact, documentary investigation was the main research tool of classical sociologists such as Weber and Durkheim (Scott, 1990:1).

However, collecting data from available documents may not be as easy as it may appear. In my study, documentary research proved to be one of the most complex parts of the research process because a great deal of time and effort had to be spent

selecting the useful data from the wide-ranging documentation and records kept in the stations. Due to legal or administrative requirements the police maintain records of almost every event and activity as well as relevant documents relating to a criminal investigation. Sometimes records are made without any legal or administrative requirement in order to avoid any probability of accusations or allegations that may be made during a trial by the defence or the prosecution. Through these records, I have discovered that crime investigation files, crime logs, custody record books and interrogation records are a great source of information required for the purpose of the research. I therefore decided to use crime logs, crime investigation files and the detention (custody) books as statistical 'hard' data sources and consideration was particularly given to the following information:

- i. number of suspects who are arrested and detained;
- ii. number of suspects who are released from the station or sent to the office of the public prosecutor;
- iii. number of suspects who are released either by the office of the public prosecutor or the judge of justice of the peace;
- iv. number of suspects who have requested and exercised any of the suspects' rights;
- v. number of suspects kept at the police stations for more than 24-hour limit;
- vi. other information relating to overall detention procedure.

A crime log contains the type of offence, name, sex and age of suspects, the number of arrestees, the outcome (whether they are released at the station or whether they are sent to the office of the public prosecutor with an investigation file) and whether they have requested the exercise of their right to legal advice. A crime investigation

file, however, contains any records, forms or other documents, etc. related to the offence, the victim, and the suspect, and also interrogation documents. The crime investigation file is a good source of statistical information as it contains all the documents relating to a crime. I have listed below the records or documents which may/should be enclosed in a crime investigation file:

- i. A letter to the city/town police directorate with a brief description of the incident and the name, age and sex of the suspect(s) and victim(s).
- ii. Completed interrogation (interview) record form(s).
- iii. A copy of the arrest warrant.
- iv. Any witness or victim statements.
- v. A copy of the ID, if relevant.
- vi. Search and/or seizure warrants.
- vii. Experts' reports.
- viii. A copy of the driving licence, if relevant.
- ix. A doctor's statement.
- x. A diagram of the incident location.
- xi. Firearms permission grants.
- xii. Ballistics experts' reports.
- xiii. Solicitor and suspect meeting record.
- xiv. Release record.
- xv. Any other relevant documents.

Amongst these records and documents the interrogation form, which contains the recorded contemporaneous notes of the interview with suspects, is always enclosed

in the crime file although some of the other records may not be found in every file. For example, a copy of a driving licence is not normally included in a file other than a traffic accident investigation file.

The interrogation record provided important information in conducting the research. The specially-designed interrogation record form incorporates the name, the date of birth and address of suspects, the place, date and duration of the interview (beginning and finishing times), suspects' accounts of the events, whether they have requested the exercise of their right to legal advice, to have informed or to inform a relative of the fact of their arrest and detention, and the right to silence, and whether the exercise of any of these rights have been exercised or denied in any way. If a suspect's request was not met for any reason this is also stated in this form. Moreover further information such as the suspect's place of birth, name of father and mother, work and home addresses, and profession and marital status are also added (a copy of this form is included in the Appendices).

Apart from the crime logs and crime investigation files, each police station maintains a book to record the time when someone is taken into custody by the police and the length and outcome of this detention. This book is called the detention book and, alongside the interrogation forms, appeared to be a good source of statistical information, as it contained data about a suspect's name, sex, age, place and date of birth, father's name, entry and leaving date and time to/from the station, the reason for being kept in custody and finally the outcome of the detention. This information was used in the study to find out the duration of detention and reason for the outcome of detention, and gave an opportunity to make some cross- tabulation.

The non-probability sampling method is used to frame the sample in collection of data from the police records. As seen from Table 4.1, the sample of cases comprised a total of 18,222 cases. Between 1992 and 1999 inclusive, all cases recorded in the detention book were taken into the sample and these cases were matched with the crime log, investigation file and interrogation documents. The biggest sample was obtained from Station A, as it was the busiest police station amongst the three research stations. Although Station C appeared to be the least busy station during the observations, it provided the second largest number of record samples of 7,399, just below Station A's figure of 7,691. Observations in Station B suggested that this station was in fact just as busy as Station A, however the sample of records collected did not demonstrate this. As is explained in the following chapter, Station B had poor record-keeping practices, which, astonishingly, remained the same over the years.

Table 4.1: Samples of Cases

<i>Police Station</i>	<i>Station A</i>	<i>Station B</i>	<i>Station C</i>
Year			
1992	732	725	1458
1993	481	411	1146
1994	1250	260	1904
1995	2378	400	896
1996	1185	544	895
1997	869	431	487
1998	796	361	613
Total	7691	3132	7399

Observation of Police Work

It is not always possible to find an answer to some of the questions through a study of written police records. Thus, the second part of the research was devoted to becoming a *participant as observer* of the police work and the police behaviour on the ground. Like the interviews and questionnaire, observation is also a first-hand data collection method in social and police research (May, 1993:117). Observation, also known as 'ethnography' is practised through personal participant observation in order to obtain an insider's account of some characteristic and features of a social group. It involves the researcher observing the way of life of a large or small group of people, with the intent of describing the culture and lifestyle of the group (McNeill, 1990:64). Nachmias and Nachmias claim that all social science research begins and ends with observations (Nachmias and Nachmias, 1992:199).

Participant observation is one method that is used by ethnographers to collect data in criminology and criminal justice studies. Because of the confidentiality and privacy among cultural groups against outsiders, participant observation challenge to explore deviant and criminal subcultures as well as to penetrate the inside workings of the criminal justice systems⁷.

The main advantage of observation is that it permits a researcher to examine people's behaviour and the circumstances directly and these direct observations can reduce the possible errors in measurement of the variables. By observation, it is possible to have a realistic and authentic picture of the inside of a place where

⁷ Punch's study of police corruption, *Conduct Unbecoming* (Punch, 1985) and Holdaway's *Inside the British Police* (1983) are two important examples.

highly-debatable issues often arise. However, it should be noted that observing police work and/or the police culture requires special skills and understanding. Someone who is not familiar with police work and the police culture will probably find it extremely difficult to make considered judgements from observations (Jupp, 1989:59-62).

Burgess (1982:45) identifies two main methods of participant observation: complete (or covert) participant observation and participant-as-observer (or overt participant observation). In a complete participant role, the observer is completely concealed and the research objectives are unknown to the observed. A well-known example of this way of participation is Holdaway's (1983) work of *Inside the British Police*.

In my research, my preference had to be a participant-as-observer, because of technical reasons. As complete (covert) observation requires duality that the researcher should also be an insider, in my research, it was impossible to act as serving officer because law and regulation simply did not allow this, not to mention other reasons such as the essential work experiences.

Observation of police work in this study was crucial to see how TCPA provisions and other regulations are actually implemented by the police. It was also needed in order to compare what had been said in the interviews and questionnaires and the outcome of the analysis of the police records. As mentioned before, the main advantage of an observational study is that it permits an observer to examine people's behaviour directly, rather than relying upon their self-reports such as in questionnaires or interviews. Thus, by observations, I intended to obtain a more

realistic and genuine picture of the situations that were going on behind the scenes and to examine the conditions in which the police act and how they behave.

Observations consisted of a simple process of observing the procedural progress of detention and interrogation of suspects. This included the daily routines of police work in the stations. I was not involved with any other procedures occurring outside of the station or on police patrol. During the observation of police work and police behaviour the following information was sought out:

- i. What is the everyday procedure of detaining someone in the station?
- ii. What is the standard procedure of interrogating suspects who are in custody?
- iii. How far do the police comply with requirements imposed by the legal regulation?
- iv. To what extent do the police justify the legal requirement of 'strong suspicion' criteria before deciding to detain a suspect?
- v. What kind of verbal communication and jargon are used by the police to deal with suspects?
- vi. How do the police treat the suspects in custody? Are there any indications the police use torture or inhuman or degrading treatment during the detention especially for the purpose of questioning or at any stages of detention?
- vii. Do the police inform suspects of their rights before each interview, and to what extent do suspects exercise their rights?
- viii. Does the information available in the written records reflects the actual practice?

- ix. Do the police keep the records accurately and attentively?

During the observations, I tried to make notes of important events as soon as possible, usually after each observation section ended. However, it was not practical or convenient to carry a notebook and keep taking notes in front of the officers and suspects as this could have raised alarm amongst the people subject to observation. Thus, contemporaneous note-taking had to be ruled out, but records were made afterwards.

A minimum total of 264 hours of observations were made during the first research and 184 hours in the second research. This drop in observation hours was due to a tight time schedule during the second research. However, in the latest research, over 300 hours of observations were carried out within the six-month period as I had a flexible timetable. The period of each observation session varied from 2 hours to 8 hours. Meanwhile, in considering the stations' workload, the longest hours were spent in Station A, while the shortest was in Station C (see Table 4.2).

Table 4.2: Time of Observations Spent in Each Station

<i>Station</i>	<i>Hours of Observation (1994)</i>	<i>Hours of Observation (1996)</i>	<i>Hours of Observation (1999)</i>	<i>Hours of Observation (Total)</i>
A	136	96	160	392
B	72	56	104	232
C	56	32	56	144
Total	264	184	320	768

Conducting Survey: Interviews and Questionnaires

Asking people's opinions in a survey may be performed by two methods: interview and questionnaire. A conventional interview is a face-to-face situation in which the researcher asks questions of one or more interviewees, but it can be conducted over the phone as well. Whereas a questionnaire is a set of questions or items in written form that is self-administered (Mark, 1996:241).

The quality of data from a survey depends firstly on the techniques used for collecting data and secondly on the size and representativeness of a sample (Fowler, 1995:150). The design of questions and the quality of interviewing alongside well-organized schedules also play major roles in the effectiveness of data-gathering and improve the validity and reliability of the data.

Interviews

Interview as a survey technique may comprise a useful data source for researchers and it is very often preferred for its flexibility and high response rate. Provided that all the questions are not closed-ended, the interview allows great flexibility in the questioning process to determine the wording, to clarify terms that are not understood and to change the order of questions. By this method the researcher also obtains a relatively higher response rate to the questions asked than by the questionnaire method. One of the other advantages of the interview is that 'it allows greater control over the interviewing situation by ensuring that the respondents answer the questions in an appropriate sequence or that they answer particular

questions, provided that the interviewer is trained and well-skilled' (Nachmias and Nachmias, 1992:228).

Even though different terms are used by the researchers to denote the various types of interviews, the basic forms of interviews can be broken down into structured (standardised), unstructured (unstandardised), and semi-structured (semi-standardised) (Fielding, 1993:136). The main difference between them is that the structured or the semi-structured interview is conducted in accordance with a prepared schedule of questions whilst unstructured interviews have no prepared schedule, although there might be an agenda or list of topics for discussion. In unstructured interviews, specific questions are asked and open-ended responses to questions are asked for. Unlike the structured interviews, no predetermined response categories are given. To use an analogy, the structured interview is comparable to an objective educational test consisting of multiple-choice and true-false items whereas the unstructured interview is similar to essay tests or tests in which a person is asked to define or explain the topics being tested. On the other hand, semi-structured interviews also differ from structured interviews in the sense that the former allows a more free style of interview whereas the latter in-depth interview involves a more intensive and detailed interview (McNeil, 1992:47).

An interview as a method of collecting data is not an easy task and may require some essential skills in qualitative research techniques. The ability of the interviewer may affect the quality of interviews and there is always a risk that the interviews may turn out to be less productive in terms of final output than expected when conducting them. (Maguire, 2000:137-8). Thus, despite the valuable advantages, the interview method has its own disadvantages, which may have important implications

for the research. The main disadvantages are characterised by cost, lack of anonymity, interviewer bias and time spent (Nachmias and Nachmias, 1992:228). Firstly, face-to-face interviews are costly to conduct when compared with mailing or delivering questionnaires, and they lack anonymity as the interviewer usually knows the respondents, if only through face-to-face contact and more usually by name and contact details, and the respondents may feel uneasy about this. If this is the case, telephone interviews are preferred to face-to-face interviews, but this has its own disadvantages as well. Secondly, an important disadvantage is the interviewer's personal influence and bias. Although interviewers are supposed to remain objective and to avoid communicating personal views, they may easily give cues that might influence a respondent's answers (Nachmias and Nachmias, 1992:228). Finally, conducting an interview is also a hugely time-consuming task which should be considered carefully by the researchers as most research has fixed time limits. Depending on the nature of the research, the interviews may take a great deal of the researcher's time and may produce little for the research in the end. For example, sometimes it may take days to conduct only one interview. In most research, the interviewer cannot just go and find a person to interview and get on with it. Before a formal interview takes place, a set of preparation tasks have to be completed: First, suitable interviewee candidates need to be selected in accordance with the research aim. Second, these people should be contacted to determine whether or not they accept to be interviewed, and if they agree then an appointment needs to be made for the interview to take place.

Once an interview has been successfully completed, this is not the end of the task. More time is still needed to code the responses and flexibility of responses in an open-ended questioned interview may cause some difficulties in coding these

responses. Although the responses could be categorised as, for instance, “favourable”, “neutral” and “unfavourable”, the researcher will still have the difficult task of judging into which category to place the responses. (Mark, 1996: 248).

Taking into account all of the above factors in my research during my 1996 fieldwork, I decided to conduct semi-structured informal interviews that could be considered as archetypal survey interviews. Three main reasons can be noted for choosing this method: firstly, as the research was trying to explore the extent and nature of the relationship between police practices and legal regulation, it was necessary to ask the same basic questions at each level. The interview schedule, therefore, needed to ensure that these important questions were asked each time. Secondly, the flexibility allowed within the semi-structured format permitted for answers of some depth. This was intended to provide the researcher with a better understanding of the police perspectives on the research topic. Finally, as the respondents were police officers of various ranks with heavy work commitments, interviews needed to be of a limited duration. It was considered that the use of an unstructured format could have resulted in a time overrun before all of the essential questions had been asked.

Consequently, I conducted 45 informal interviews during the first phase of the research. The interview schedule consisted of ‘tick box’ answers to be completed by the interviewer, but there was also space to write down the interviewee’s particular comments.

The personnel structure of the research stations provided a ready-made sampling frame that allowed the convenience sampling method⁸ to be used for the interviews. Hence, the target survey population sample included all officers who were directly or indirectly involved with the detention and interrogation procedure. From the target population the following individuals were sampled to take part in the study:

- i. district commander (rank of *emniyet muduru* - equivalent to chief constable)
- ii. station commander (rank of *baskomiser* –equivalent to superintendent)
- iii. assistant commanders (rank of *komiser yardimcisi* and *komiser* - equivalent to sergeant and detective)
- iv. squad leaders (rank of *komiser yardimcisi* - equivalent to sergeant)
- v. officers (rank of *polis memuru* - equivalent to constable)

The district commanders and station commanders were all interviewed without exception. Out of five, only one assistant commander was unable to attend the interview. The targeted survey population for officers (all rank) to be interviewed was a total of 57, and just over 75 per cent of the target population was actually interviewed (Table 4.3). It should be noted that participation in the interviews was entirely voluntary and the interviews were conducted informally in strict confidence.

The interview schedule contained 19 questions in 3 sections. The interviewer had to tick one of the multiple answers that best suited. At the end of the interview, the interviewee was given an opportunity to add to and/or clarify the discussions. The

⁸ This method is used when there is a group of individuals or units that is ready and available for the research.

main objectives of the interviews were to find out the police perceptions of and responses to the following questions:

- i. What is the police opinion about the legal rules imposed on them by legislation?
- ii. What is the police opinion of the new detention procedure and rights of suspects introduced by the 1992 amendments?
- iii. How do the police interpret the law when it comes to practice? Also to what extent does the law in their daily work influence them?
- iv. To what extent do the legal rules help them in doing their job and in what sort of cases do the police see the need to deviate from the law?
- v. What complaints, expectations, and suggestions do the police have about TCPA and the criminal justice system?

Table 4.3: Number of interviews⁹

<i>Station</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>Total</i>
Station commander	1	1	1	3
Assistant commander	2	2	1	5
Squad leader	3	2	2	7
Officer	13	9	5	27
Total	19	14	9	42

⁹ 3 District commanders of the municipalities where the research carried out are not included in the table.

In the mean time, it should be noted that throughout the entire research between 1993 and 1999, alongside informal interviews, I always took the opportunity to have informal conversations with the officers as much as possible and these 'off the record' conversations played an unprecedented role in understanding some of the issues discussed in the thesis.

Self-administered Questionnaire

Although the data obtained through interviews were very useful in understanding the police opinion on certain issues, they did not represent the population to which the research intended to generalise. In my latest fieldwork in 1999, I therefore decided to extend the scale of the survey of police officers through the use of a self-completed questionnaire.

In addition to the interview, the self-completed questionnaire is an alternative data collection method that is widely used in social science. In a way, it can be considered as a formalised and stylised interview. The form could be the same as it would be in a face-to-face interview, but in order to remove the interviewer the subject is presented with a structured transcript with the responses missing.

Even though the questionnaire is a less reliable and favourable method of survey when compared with the interview, it still offers considerable advantages in administration and provides the researcher with an easy accumulation of data (Walker, 1985:91). First of all, the police officers feel more relaxed and ready in anticipating a questionnaire than in sitting for an interview. As stated by Sapsford and Jupp (1996:5), people tend to be more comfortable answering survey questions

that relate to issues they are likely to be familiar with. Secondly, when answering questions in a questionnaire, most of the respondents may be more open and honest in their answers, particularly when their identities are hidden. Many surveyors believe that people are more likely to give complete and truthful information on sensitive topics if there is a self-administrated questionnaire rather than an interview (Bourque and Fielder, 1995). Thirdly, a questionnaire is usually designed to take much less time than an interview and this is definitely an advantage when the busy work schedules of the officers are taken into account. Finally, a questionnaire gives the opportunity to ask the same questions of many more respondents, and that naturally provides a greater sample for the research. In my research all of the advantages listed above were proved to be the case and the self-administered questionnaire produced some important findings that would have been impossible to obtain otherwise.

By conducting survey questionnaires with a survey population of almost 900 people, I hoped to uncover the force-wide perception of the research-related issues. Eventually, 1,363 questionnaires were distributed within 30 different police departments, including some stations, which were categorized into 9 different divisions for the purpose of the research (Tables 4.4). Then within each department, the questionnaire forms were distributed to the respondents with the help of the station or department head. During the distribution of the questionnaire schedule, it was strongly emphasised that taking part in the research was entirely voluntary and that the research was solely for academic purpose. Despite being a voluntary scheme, the turn-out rate was a satisfactory level of 66 per cent. 899 officers

participated in the questionnaires and 288 of them were from 19 different parts of the country¹⁰ while the rest were from Ankara, the capital city (Table 4.4).

Table 4.4: Number of Questionnaires Responded to in each Division and Station.

<i>Stations/Departments</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>Total</i>	<i>%</i>
Research Division											
1	32									32	3.6
2	31	39	1	33	25	13				142	15.8
3	28									28	3.1
4	24	19	10	29	31	18	10	13	23	177	19.7
5		45	28							73	8.1
6	102	30	22	33						187	20.8
7	11	31	42	9						93	10.3
8	63	74								137	15.2
9	30									30	3.3
Total	321	238	103	104	56	31	10	13	23	899	100

The questionnaire schedule consisted of seven separate sections and 53 questions, which were set out under some general headings that included the police and legal regulations; arrest and detention power; rights of suspects; interrogation and TCPA. The questions in the questionnaire schedule were similar or identical, as far as possible, with those in the interview schedule. Accordingly, the first section was the introductory one, which covered the issues of confidentiality, the purpose of the survey and the instructions about how to answer the questions in the questionnaire. The second section was devoted to questions exploring personal information about

¹⁰ These respondents took part in the survey while they were in Ankara for a training course. They were from the following regions: Malatya, Istanbul, Izmir, Turgutlu, Manisa, Erzurum, Erzincan, Trabzon, Rize, Fethiye, Mus, Aydin, Siirt, Bitlis, Diyarbakir, Adana, Samsun, Eskisehir, and Van.

the participants such as sex, rank and age. In the subsequent section, the questions sought the views of officers about the legal norms. This was followed by the fourth section, which concerned arrest and the power of detention. The police opinions of suspects' rights were asked in the fifth section, which was then followed by the section about the interrogation procedure. The final section of the questionnaire contained the questions about implementations of TCPA amendments (a copy of the questionnaire is included in the Appendices).

Table 4.5: Questionnaires Distributed and Responded To.

<i>Research Divisions</i>	<i>Questionnaires Distributed (no.)</i>	<i>Questionnaires Responded (no.)</i>
1	58	32
2	225	142
3	42	28
4	311	177
5	90	73
6	275	187
7	158	93
8	165	137
9	39	30
Total	1363	899

In the survey design, extra attention was paid to the validity and reliability problems, because both validity and reliability are important in the analysis of data. In the context of survey research, 'whilst validity describes an indicator of a concept which is said to be valid if it really measures what it is intended to measure, reliability refers to the question of whether the answers that the respondents provide should be

trustable, even when their mis-statements are honest ones' (Dowdall, *et al.*, 1999:27-29).

Conceptually, 'the test of reliability is whether respondents would give the same answers repeatedly if the measurement could be made in such a way that their situations had not changed and they could not remember the answer they gave before' (Fowler, 2002:95). In my research, to overcome the possible problems of validity and reliability of data, the fieldwork conducted in 1993 played a piloting role. It was important, before beginning the survey process, to make sure that the survey instruments would work 'in the field' by testing or piloting them so that adjustments could be made.

Data Analysis

As the data sources of the research were dependent on primary data (interviews and surveys) and secondary data (police records and statistics), both primary and secondary data analysis are used in the research. However, before analysis, this data had to be entered onto a computer. The data entry was an enormous task that had to be carried out over a long period of time because of lack of outside help. Having done that, a Windows program called *Statistical Package for the Social Sciences* (SPSS) (v.7.5) was chosen for the computer analysis of the quantitative data gathered from the police records and interview and survey questionnaires. As it is capable of applying many different statistical procedures to different kinds of data, SPSS is today one of the most popular professional programs available for criminal justice data analysis and widely used in criminal justice research (Cramer, 1998:36; Dowdall, *et al.*, 1999:3).

Qualitative data analysis was based on the ‘grounded theory’, which is a theoretical approach to qualitative research developed by sociologists for the study of complex social phenomena (Mark, 1996:395). As grounded theory researchers use interviews and observations to generate an explanatory theory from the data, I have applied this strategy to my research.

Conclusion

In this chapter I have described the data collection methods used in the research. The main objective of the research was to explore how the law according to the book is implemented in practice. I firmly believe that the mere examination of police powers would not be complete without conducting any empirical research as to how they are applied in practice. Thus, this research, in respect of its methodology and theory, is a pioneering attempt to understand the effects of a particular piece of legislation on police practices in Turkey.

The research design was specifically tailored to address the research problem through methodological triangulation, using the data collection methods of documentary research, observation and survey. The data were analysed with the help of both qualitative and quantitative research techniques. This multiple approach in the data collection and analysis process has allowed informative and balanced conclusions to be drawn on the research findings, which will be elaborated in the following chapters.

CHAPTER 5

POLICE DETENTION UNDER TCPA: FINDINGS OF THE RESEARCH

Introduction

The origin of the Turkish Criminal Procedure Act (TCPA) goes back to 1929 when the German Code of Criminal Procedure (StPo) of 1877 was translated and adapted to Turkish law with some changes. Since then, a number of amendments have been made to the Act to update it for current requirements. The latest amendment was made in 1992 and this development has been considered as a landmark in the history of the Turkish Criminal Justice System (Yenisey and Icel, 1993:55). Prior to these amendments, the procedure of detention of suspects was inadequately designed and some fundamental safeguards for suspects in custody such as the right to see a legal adviser and the right to remain silent did not exist in Turkish Law (Erem, 1993:35). This inadequate legal framework of the detention procedure often caused serious and widespread allegations of human rights abuses. Although the situation was not as dreadful as illustrated in some reports¹, one could not deny that there were definite irregularities and some sort of radical reform was indeed essential. In searching for a solution to the problem, in 1992 the government

¹ Or in some 'prejudiced' movies and documentaries.

decided to introduce a number of legislative changes in the custody procedure, considering that inadequate legislative control of police powers was at the root of the police misconduct (Adalet Bakanligi, 1992:1-2). Thus, in 1992, an amendment act (No. 3842) passed through the Turkish Parliament which altered altogether 26 T CPA provisions concerning the detention and interrogation of suspects².

The new provisions tightened the whole procedure of the detention of a suspect with new bureaucratic and practical requirements and also increased the number of legal safeguards. The first change was to reduce the maximum detention limit which was said to contravene the European Convention on Human Rights (EHRC). Before this amendment suspects could be kept in custody for up to 15 days with the permission of the public prosecutor. Following the new regulation, the maximum detention period for those charged with individual common crimes became 24 hours and for those detained for individual crimes that fall under the Anti-Terror Law, they must be brought before a judge within 48 Hours. After these initial periods, for those charged with crimes of a collective or conspiratorial nature, detention may be extended by up to 4 days at a prosecutor's discretion and, with a judge's permission, for up to 7 days in most of the country and up to 10 days in the south-eastern provinces which are under a State of Emergency.

Any decision by the police to detain someone and keep him/her in custody can be appealed against to a court by the suspect himself, or his legal representatives, or first next of kin (parents, partner, grandfather/mother, daughter, son and first and second degree relatives), at any stage of the detention. This means that *habeas*

² T CPA provisions amended by the Act number 3842 are 23, 26, 74, 104, 106, 108, 110, 122, 128, 132, 135, 135a, 136, 138, 139, 140, 142, 143, 144, 145, 146, 154, 254, 291, 299 and 305.

*corpus*³ has been recognised in Turkish Law for the first time for people in police custody, to determine the legality of the detention. This has been the chief safeguard against unlawful detention in England since Magna Carta in 1215 (Yenisey, 1993:128; Pike, 1985:47). Before the amendments to the TCPA, it was not possible to appeal to a judge against a detention decision by the police because it was seen as an administrative decision, but now it is possible at any stage of the detention procedure⁴ (Koyluoglu, 1996:20-21).

Under the TCPA, those detained for individual common crimes are entitled to immediate access to a lawyer and may meet and consult with a lawyer at any time. No immediate access to an attorney is provided under the law for persons whose cases fall under the jurisdiction of the State Security Courts: these cases include persons charged with smuggling and with crimes under the Anti-Terror Law. The decision concerning early access to counsel in such cases is left to the public prosecutor.

Another major change in the detention procedure concerns the interrogation of suspects. In the amendments, a great emphasis was placed upon the issue that the police perform interrogation fairly and that the suspect should not be subject to any maltreatment. A new provision was added to TCPA to ensure that any statement taken involving any form of mistreatment, torture, drugs, exhaustion, tricks, physical force or any device affecting the suspect's physical and mental state could not be used as evidence (TCPA, article 135/a). Further, another new procedural

³(Latin) Have (bring) the body (before the court).

⁴ It should be noted that to detain suspects unlawfully over the time limit set by the Act is a criminal offence under the Turkish Penal Code Article 181 which sees the situation as the unlawful restriction of freedom.

element was also introduced (TCPA, article 135), that before commencing an interrogation the police should inform suspects that they are by law entitled to the following four legal rights:

- i. The right to have free legal advice.
- ii. The right to have a relative informed of his/her detention.
- iii. The right to remain silent.
- iv. The right to ask for certain evidence to be collected.

The legislator intended to use these rights as a tool to provide a protective interrogation environment for suspects. Some writers (Kazan, 1992:851; Sahin, 1995:79) claimed that by these amendments the concept of suspects' rights was recognised for the first time in the history of the Turkish Criminal Procedure Law.

It has been now over nine years since these amendments came into force but it is still not very clear as to whether or not this legal reform has achieved its objectives.

Questions still waiting to be answered are:

- i. Do the police now employ less power of detention?
- ii. Do suspects spend less time in custody?
- iii. Are interrogations performed fairly and sensitively?
- iv. Are the suspects now better safeguarded and finally,
- v. Do we have now an improved detention procedure on the whole?

These questions are associated with the following research questions:

- i. What are the new procedures?
- ii. How have these procedures been implemented by the police over the years?
- iii. Has anything changed over the years?
- iv. Have the legislators' expectations and objectives been realised or have they failed?
- v. What is the impact of the new system as a whole?

In this chapter, I will attempt to answer these questions by analysing the findings of my research that was carried out in Turkey between 1993 and 1999.

Detention Law

The law relating to the powers of the police to arrest and detain can be found in TCPA, the Police Powers and Duties Act (PPDA) and the Anti-Terror Act (ATA)⁵.

The powers of the police derive from one of these instruments and it does not make any legal or practical difference whether the arrest or detention is made under TCPA, PPDA or ATA.

⁵ In the terminology of Turkish law, detention refers to a restriction of personal liberty by putting someone into temporary police custody, whereas the word arrest refers to a judicial procedure which remands a crime suspect in custody in a prison not in a police station after the initial period of detention. Hence one's arrest means that he is taken into custody by the order of a judge or court and he is no longer in the hands of the police. Therefore, theoretically in terms of Turkish law terminology the police have the power of detention only, not of arrest. When 'arresting' someone on the scene of a crime or thereafter, what the police actually do is to take the suspect into custody. An order for arrest can only be made by a judge or court either after the initial period of detention or before (TCPA 104-106). The public prosecutors do not have powers to give such arrest orders. They can only issue a *seize (capture) order (yakalama muzekkeresi)*. Similarly, what the police do is also seizure. This is because the Turkish word *yakalama* can simply be translated to English as 'to capture' in terms of dictionary usage, but, in terms of practical usage, it would be more appropriate to translate it as *arrest* instead of *capture* because the actual meaning of the word should be preferred to the dictionary meaning. Thus in this thesis, I use the word *arrest* when the police capture a person in order to take him or her into custody. The subsequent procedure is the detention that follows arrest.

In Turkish legal theory, the police may use the power of detention either to prevent a criminal or dangerous incident before it occurs (preventive detention) or to investigate an offence already committed (investigative detention) (Yenisey, 1991:196). PPDA article 13 (g) and the TCPA articles 127-130 permit the police to arrest and subsequently detain people in accordance with a criminal investigation. On the other hand, preventive detention, which is regulated by the Police Powers and Duties Act (PPDA), intends to protect someone who may harm himself/herself or prove a danger to the community. Accordingly, the police can detain someone to protect him/her or the public from an imminent danger. PPDA article 13 lists a number of people who may be detained under this category:

- i. Persons who are excessively drunk.
- ii. Persons who intend to cause a breach of the peace.
- iii. Drug addicts.
- iv. Alcoholics.
- v. Vagrants.
- vi. Mentally-handicapped (if it appears that they may constitute a danger to the public).
- vii. Persons who have a serious communicable disease.
- viii. Persons who are subject to a deportation order.
- ix. Persons who are sought by an arrest warrant.
- x. Persons who disobey certain obligations required by law.
- xi. Persons who has entered or who want to enter the country illegally.

The consequence of this practice is that a person who is detained under this category is not considered as a suspect, so that the ordinary detention procedure is

not applied which may have been applied to a crime suspect. However, a detainee falling into this category still has to be released or sent to an authorised institution such as a mental hospital within the legal detention time limit (Eryilmaz, 1998b).

Furthermore, the police may arrest and detain people in certain circumstances described by TCPA. Under the provisions of TCPA, there are three main types of situations in which someone can be arrested as an interim measure without a warrant: The first kind of arrest occurs 'where it is believed that a person interrupted during the commission of a flagrant offence⁶, or being pursued for a flagrant offence, will attempt to escape and it is impossible otherwise to identify such a person later' (TCPA, article 127). This kind of power of arrest is called 'the citizen's arrest' and is available to everybody as well as to the police.

Secondly, the police have the power to arrest for any offence if all the arrest conditions specified in TCPA article 127(1) are met. Accordingly, the police may arrest the suspect:

- i. in cases where the standards to be applied by a court in issuing an arrest warrant exist,
- ii. if the delay in applying for such a warrant is going to be detrimental, and
- iii. where there is no possibility for them to make an immediate plea to their superiors or to the public prosecutor.

In addition to these specific instances, a third situation arises when someone interferes with the police officer's investigational powers and activities. TCPA

⁶ As defined in TCPA, art. 127/3.

article 156 stipulates that ‘police officials shall investigate punishable acts and shall take all measures without delay in order to prevent the matter from being obscured.’ Accordingly, persons who intentionally interfere with investigating officers’ activities or resist orders given them may be detained until the official activities are completed, but not beyond the next day (until the legal detention limit expires) (TCPA a. 157). The police are allowed to question these detainees.

Apart from TCPA, another source of police detention power is the *Police Powers and Duties Act of 1937 (PPDA)*. This legislation was enacted to set up the powers and duties of the police in respect of the investigation of criminal offences and the rights and responsibilities of suspects. Although PPDA is considered as outdated, this does not mean it has lost its authority as a law⁷ (Eryilmaz, 1999). PPDA still grants the police the power of asking individuals to prove their identity in order to prevent crime and to identify individuals who might have committed the crime in question. These individuals are obliged to prove their identity through an identity card, passport or official document. If they cannot prove their identity or if the police suspect the accuracy of these documents, these persons can be arrested and kept in custody until they prove their identity. However, their detention cannot last more than the 24-hour limit (PPDA, article 17).

Detention power is also subject to the *Anti-Terror Act of 1991*⁸ which is one of the tools in the fight against terrorism and presented to the public and the international community as a measure that would allow the security forces to combat the

⁷ Almost all aspects of the present law of arrest and detention powers are now covered and regulated by TCPA, which, thus, constitute the focus of this study.

⁸ The Act number is 3713, which became effective on the 12th of April 1991.

activities of terrorists (AI, 1991:1-5). Terrorism has been a recurrent problem for about 35 years in Turkish politics and it continues to be a major concern for Turkish governments. The terrorist threat mainly comes from the activities of Kurdish separatists along Turkey's south-eastern border.⁹ This is indeed a touchy problem since as many as 20 per cent of Turkish citizens are of Kurdish descent (Bal, 2002).

As far as power of detention is concerned, the Anti-terror Act differs from the TCPA and PPDA in some details. First of all, article 11 of the Act accepts an extended detention time limits in respect of terrorist suspects. Secondly, terrorist suspects are denied the right to see a solicitor neither before the questioning starts nor during the entire detention period. Nonetheless, the Anti-terror Act does not contain any other restriction on any other aspect of the detention powers of the police, and the rights of suspects.

Findings of Research

Detention Figures

Since the use of arrest and detention powers restricts personal liberty, one of the main objectives of the Turkish Legislator when amending TCPA concerning detention procedure was to prevent unnecessary and arbitrary arrest and detention of individuals (Adalet Bakanligi, 1992:3-5). It was aspired that strict regulation of the detention procedure would lead the police to exercise their arrest and detention powers less frequently and only when it was really necessary and under justifiable

⁹ In Turkey, it is estimated that 20,000 people were killed in the past decade as a result of terrorism.

circumstances. It is therefore one of the main aims of the research when studying the detention statistics was to try to answer the question of whether or not this overall strategy has worked and the police were in any way discouraged from using the power of detention unnecessarily and arbitrarily after the new procedure and rules had been introduced. To answer this question, I would first like to examine the trend of the nationwide official figures of detention and recorded crime.

According to the official statistics published annually by the National Police Directorate of Turkey (NPD), in 1990 the investigated crime¹⁰ figure was 96,163. In the same year the police detained 145,046 suspects in connection with these crimes. The difference between investigated crime figures and the number of suspects detained was 48,883. In 1992, the year just before the revised procedure was introduced, the number of detentions decreased to 137,618, while the number of investigated crimes rose to 107,218. This showed a drop in the disparity of the figures from 48,883 to 37,243. In 1993, the first year of operation of the new procedure, the investigated crime figure and the detention rate increased significantly: the numbers were 185,662 and 202,822 respectively. On the other hand, despite the increase in the numbers, the difference between them got smaller and this trend continued until the year 1998 when the disparity between the detention numbers and the investigated crime rose to 22,115, while it was 4,876 the previous year (see Table 5.1).

¹⁰ In Turkey, there is no reliable statistical source for recorded crime numbers. Although the NPD claims that the figures that they publish represent the recorded crime, this is simply not correct. In a country with a population of over 65 million a recorded crime figure of around 300,000 is too good to be true compared to figures of over six million for England and Wales. The figures shown in NPD publications and in the research stations' statistics represent the crimes in which an investigation file is open and registered in the crime log.

Table 5.1: Nationwide Investigated Crime and Detention Figures in Turkey

<i>Year</i>	<i>Recorded Crime</i>	<i>Change %</i>	<i>Suspects Detained¹¹</i>	<i>Change %</i>
1990	96163	-	145046	-
1991	100375	4.3	137618	5.1
1992	107218	6.8	141052	2.4
1993	185662	73.1	202822	43.7
1994	220448	7.8	238903	17.7
1995	249207	14.6	265508	11.1
1996	314027	27.1	270298	1.8
1997	331732	5.6	326888	20.9
1998	330401	-0.4	352516	7.8

(Source: APK, 1993; 1995; 1996; 1997; 1998a; 1999)

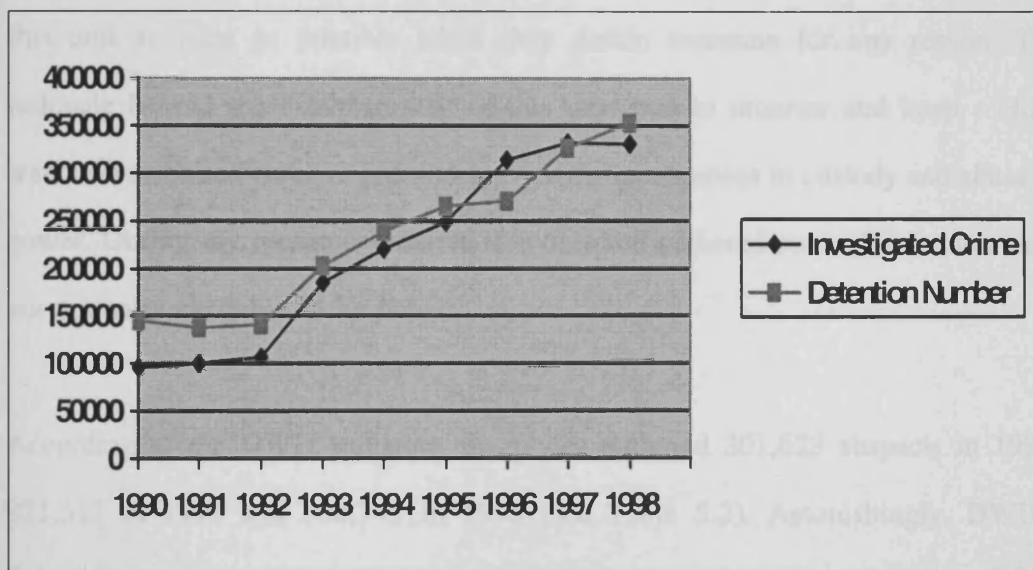
As clearly seen in Figure 5.1, over the years the detention figures have risen as well as the investigated crime rates. The ratio between the investigated crime number and the number of detentions is getting smaller. However, there are serious doubts about the reliability of these officially-published statistics. In my opinion, the official statistics on detention are only the tip of the iceberg; the real figure may well be much higher. I would estimate that the real number of detention cases in Turkey is well over one million annually, three times the official figure, owing to the following reasons: Firstly, the official figures represent only the number of suspects who are detained and subsequently charged with an offence. They do not include the number of suspects who are detained on suspicion or for questioning but are released without charge. Secondly, these figures do not display the statistics taken from the area where the Gendarmerie¹² is responsible for policing duties. This

¹¹ These are the suspects who were detained and charged with the offences recorded by the police.

¹² Gendarmerie, a division of the military force, is responsible for policing duties in areas where the national police have not set up a work force.

area covers nearly 30 per cent of the country. Thirdly, the number of detentions for traffic-related offences are also not included in these statistics. Finally, as the research suggests, some detention cases go unrecorded as a result poor practices in record keeping.

Figure 5.1: Detention and Investigated Crime: Official Statistics.



(Source: APK, 1993; 1995; 1996; 1997; 1998a; 1999)

Furthermore, some contradictions and variations are also noticed within the officially-published statistics. The first noticeable contradiction of figures emerges when the statistics that are kept by another department within the National Police Directorate are compared with officially-published figures. The statistics that are used to construct Table 5.1, which shows the numbers of investigated crimes and detentions, were gathered from the National Police Directorate's annual statistics

publication: the Police Journal¹³, which contained the official data collected from all the police forces over the country.

In August 1995, a special unit called the Detention Watch Unit (DWU) was set up within the National Police Directorate and assigned to collect and keep the statistical information on a daily basis about the people who are detained by the police (APK, 1998b:63). Every police department and station is required to inform this unit as soon as possible when they detain someone for any reason. The rationale behind the establishment of this unit was to monitor and keep a close watch on detention cases in order to prevent disappearances in custody and abuse of power. During my research I visited this unit and gathered some data which were not normally available to the public.

According to the DWU statistics, the police detained 301,623 suspects in 1996, 321,317 in 1997 and 300,745 in 1998 (see Table 5.2). Astonishingly, DWU's detention figures are contradicted by NPD's figures. Apart from 1996, the DWU statistics showed less detention cases than shown in NPD statistics. What is more, when figures for the reasons for detention were examined, the comparison of statistics between DWU and NDP became more complicated. As seen in Table 2, general suspicion appeared to be the second biggest reason for detention in the DWU's figures, making up around one in three. However, NPD's figures did not contain any cases of detention on general suspicion because all figures were related to the detention as a result of specific crime charges. In the DWU figures, all detention cases reported to DWU were counted regardless of outcome.

¹³ (APK, 1993; 1995; 1996; 1997; 1998a; 1999).

According to the National Police Directorate's published figures, the police investigated 330,401¹⁴ crimes (excluding traffic-related offences) in 1998 and 352,516 suspects were arrested and detained in connection with these offences. However, the Detention Watch Unit statistics do not accord with these figures: In the same period 300,745 suspects were detained by the police in connection with various offences plus general suspicion. In fact DWU figures are supposed to be higher than NPD figures because they comprise not only specific offences under investigation, but also arrests made under general suspicion. Ultimately, one can easily be confused by these figures.

Table 5.2: Detention Figures Recorded by the Detention Watch Unit.

	<i>Years</i>		
	1996	1997	1998
<i>Reason for Detention</i>			
Political	12363	9856	11846
General Category	154193	156332	150114
Smuggling	11057	12031	12091
Traffic Related	16089	18190	19732
General Suspicion	98727	115753	99160
Other Offences	9194	9155	7802
Total	301623	321317	300745

The confusion these figures cause is compounded when the statistics in the research stations are revealed. As I have discovered during my research, the root causes of the contradictory figures are the poor practices of record-keeping methods and lack of guidance and regulation about what to and when to record. To understand the

¹⁴ In 230,497 of these cases the offenders are known while in 99,904 cases the offenders are not known to the police.

causes and scale of these problems, I have examined the detention records kept in the three research stations.

In police stations, a specially-designed book called the *Detention Book* is kept to record the details of the detention when the police take someone into custody. This book contains the name of the suspect, reason for detention, time of entry and exit and outcome of detention as well as other details. By law, regardless of the circumstances, every detention case must be recorded and available for inspection by the authorities. The new code of conduct for arrest, detention and interrogation, which became law in 1998, introduced a newly-designed Detention Book replacing the old-style Detention Book (page facsimiles of some detention records are attached in the Appendices). The new code particularly emphasised the importance of record-keeping practices and required that every detention case regardless of the reason or circumstances must be recorded.

During the research the detention record book was the main source for the collection of statistics relating to detention and suspects. According to the detention books of the three research stations, a total number of 15,968 persons were detained between the years 1992 and 1998. The busiest station was A with 7,691 detainees, followed by Station C with 5,145 detainees. The figure in Station B was 3,132.

Between the years, the figures for the number of detentions demonstrated a changing pattern as shown in Table 5.4. They were rather divergent and complicated since the figures rise and fall according to the years and the stations. For instance, there was a boom in the detention figures in Station A in 1995, doubling the previous year's figure. In this station, between the years 1993 and

1995 the number of detentions increased by 394.3 per cent while the investigated crime rose only by 16.3 per cent. However, this increasing trend stopped in 1996 as the numbers decreased significantly in the subsequent years to just 796 in 1998, while this number was 2,378 in 1995.

In the other two research stations the figures also showed a changeable trend. In Station C, the police detained 729 suspects in 1992 and this number was cut to 573 in 1993. However, in the subsequent year, the number nearly doubled to 952. This was the peak within the period 1992 through 1998. After 1994, the number of detentions steadily declined, falling to 487 in 1997. However, there was a just over 25 per cent increase in the following year bringing the number to 613. In this station, the number of investigated crimes also progressively declined between the years 1992 and 1997, but it increased significantly in 1998 by 71 per cent (see Tables 5.3 and 5.5).

Table 5.3: Number of Investigated Crimes in Research Stations.

<i>Year</i>	<i>Station A</i>	<i>Station B</i>	<i>Station C</i>	<i>Total</i>
1992	3274	1682	528	5484
1993	2113	1225	513	3851
1994	1794	994	463	3251
1995	2459	1820	450	4729
1996	2222	1344	368	3934
1997	1971	1277	364	3612
1998	2006	1453	625	4084
Total	15839	9795	3311	28945

Table 5.4: Number of Detentions in Research Stations.

<i>Year</i>	<i>Station A</i>	<i>Station B</i>	<i>Station C</i>	<i>Total</i>
1992	732	725	729	2186
1993	481	411	573	1465
1994	1250	260	952	2462
1995	2378	400	896	3674
1996	1185	544	895	2624
1997	869	431	487	1787
1998	796	361	613	1770
Total	7691	3132	5145	15968

In Station B between the years 1992 and 1994 the number of detentions fell from 725 to 260. This indicates a substantial 178.8 per cent drop. However following 1994, the figure went up nearly 54 per cent in 1995 and continued to rise in 1996 and then fall again to 431 and 361 in the subsequent years 1997 and 1998 respectively.

Within the same period in Station B, the investigated crime rate followed a similar falling and rising trend except for an increase in 1998 as shown in Figure 5.2. Although the ratio of the trend might differ it did not affect the result that the numbers of detentions and investigated crimes each declined to some degree between 1992 and 1998. However, it should be noted that the rate of decline in the number of detentions was greater than the number of investigated crimes.

Figure 5.2: The Tendency in Detention Figures between 1992 -1998¹⁵.

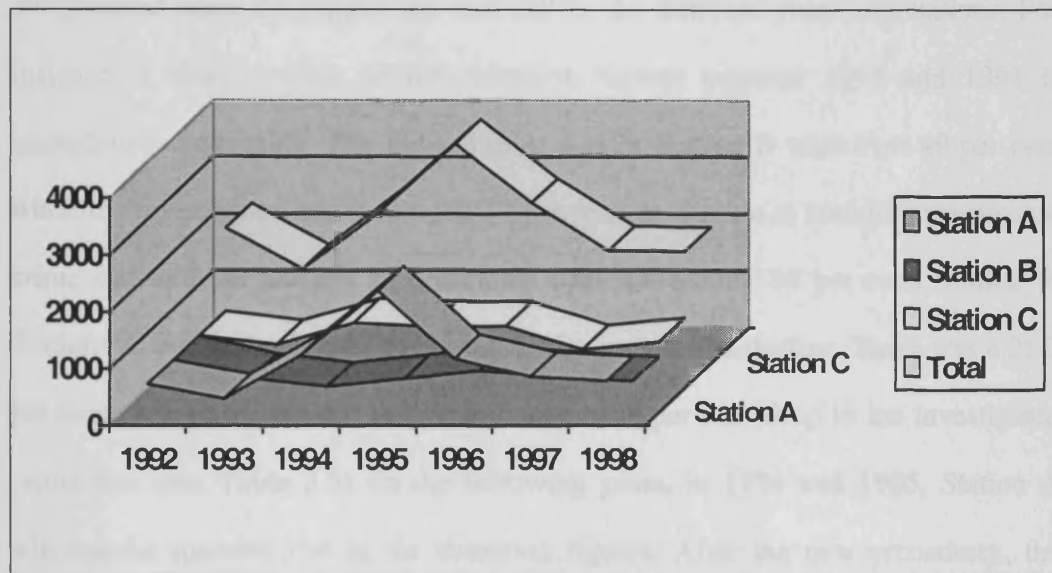
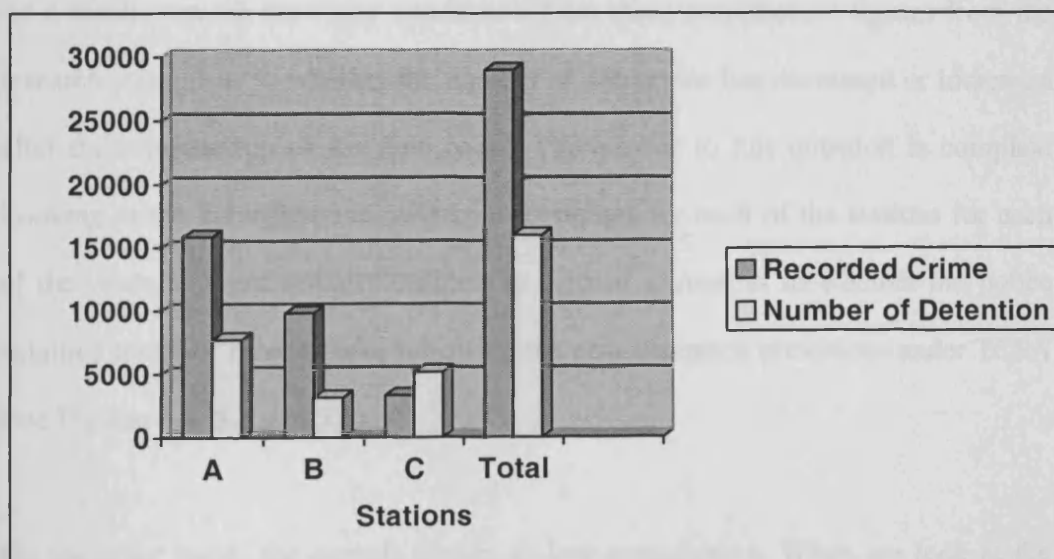


Figure 5.3: The Ratio Between the Number of Detentions and Recorded Crimes in the Period Covering 1992-1998.



¹⁵ In accordance with the detention books in Station A, B and C.

To summarise, it appears that the comparison of the figures between the years and the individual research stations is not straightforward. It is, rather, divergent and complicated since the figures rise and fall in the different years and stations. For instance, a sharp decline in the detention figures between 1993 and 1994 is immediately noticeable. The biggest drop was in Station B with over 40 per cent while the investigated crime rate fell 27 per cent. In Station A both the investigated crime rate and the number of detentions declined around 35 per cent. Similar to Stations A and B, the figures in Station C also indicated a decline. There was a 21.3 per cent drop in the detention rate and only a 2.8 per cent drop in the investigated crime rate (see Table 5.5). In the following years, in 1994 and 1995, Station A witnessed a massive rise in the detention figures. After the new procedures, the peak of the figures in Station B occurred in 1996. For Station C, the peak period was 1994. In subsequent years the detention figures decreased in all stations with the exception of Station C's figure in 1998, where there was an increase.

As a result, can we draw any conclusion from these complicated figures from the research stations as to whether the number of detentions has decreased or increased after the introduction of the new rules? The answer to this question is complex. Looking at the divergent and rollercoaster figures for each of the stations for each of the years, it seems initially difficult to discern a trend as to whether the police detained fewer or more people following the new detention provisions under TCPA (see Figures 5.4, 5.5 and 5.6).

On the other hand, the overall picture is less complicated. When we look at the overall figures in the three stations it emerges that except in 1995 and 1998 the trend of the number of investigated crimes by the police follows the same trend as

the number of detentions with a relatively lower ratio (see Figure 5.7). Furthermore, the comparison of figures between 1992 and 1998 reveals that in that seven-year period the number of detentions decreased by 19 per cent and the number of investigated crimes was down by 25.5 per cent. This apparently indicates that the police detained fewer suspects in 1998 than in 1992, the year before the new provisions. Consequently, the overall picture suggests that even though there had been ups and downs over the years in the figures, the general tendency was towards a decline, which was effectively in line with the intention of the legislator. However, one could still argue that a comparison of individual years and stations produces divergent results which would make the general conclusion on the total figures highly controversial.

Table 5.5: Number of Detention and Investigated Crime Frequency Changes in Years and Stations.

<i>Station</i>		<i>1992</i>	<i>1993</i>	<i>Change</i>	<i>1994</i>	<i>Change</i>	<i>1995</i>	<i>Change</i>
				<i>%</i>		<i>%</i>		<i>%</i>
A	Detention no:	732	481	-34.2	1116	+132	2378	+113
	Rec. crime:	3247	2113	-34.9	1794	-15	2459	+37
B	Detention no:	725	411	-43.3	260	-36.4	400	+53.8
	Rec. crime:	1682	1225	-27.1	994	-18.8	1820	+83
C	Detention no:	729	573	-21.3	952	+66.1	896	-5.8
	Rec. crime:	528	513	-2.8	463	-9.7	450	-2.8
Total	Detention no:	2186	1465	-32.9	2462	+68	3674	+49.2
	Rec. crime:	5484	3851	-29.7	3251	-15.5	4729	+45.4
<i>Station</i>		<i>1995</i>	<i>1996</i>	<i>Change</i>	<i>1997</i>	<i>Change</i>	<i>1998</i>	<i>Change</i>
				<i>%</i>		<i>%</i>		<i>%</i>
A	Detention no:	2378	1185	-50.1	869	-26.6	796	-8.4
	Rec. crime:	2459	2222	-9.6	1971	-11.2	2006	+1.7
B	Detention no:	400	544	+36	431	-20.7	361	-16.2
	Rec. crime:	1820	1344	-26.1	1277	-4.9	1453	+13.7
C	Detention no:	896	895	-0.1	487	-45.5	613	+25.8
	Rec. crime:	450	368	-18.2	364	-1	625	+71.7
Total	Detention no:	3674	2624	-28.5	1787	-31.8	1770	-0.9
	Rec. crime:	4729	3934	-16.8	3612	-8.1	4084	+13

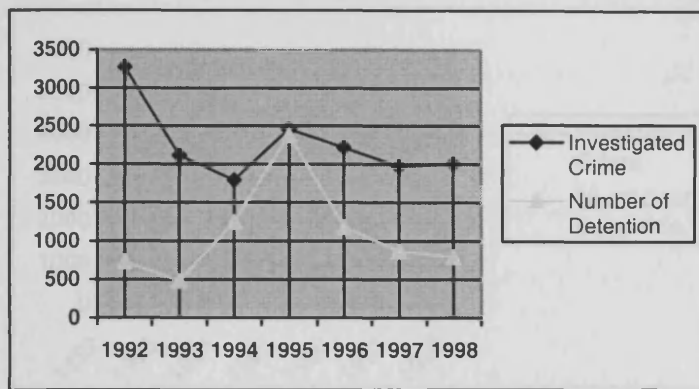
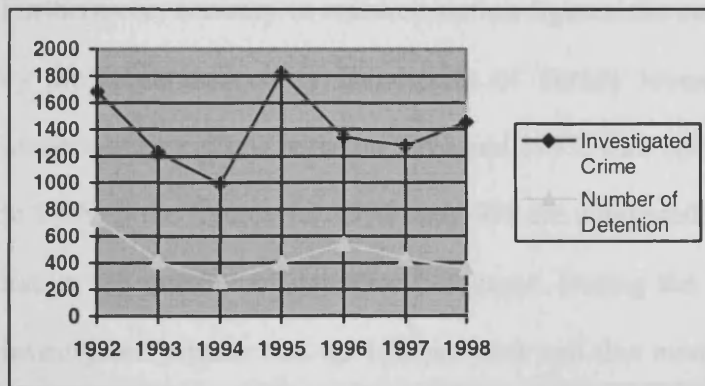
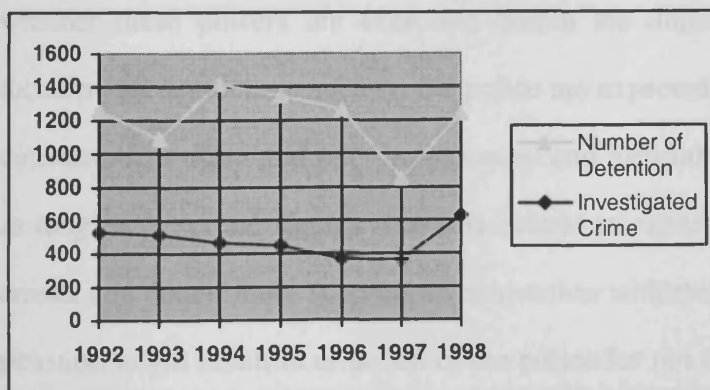
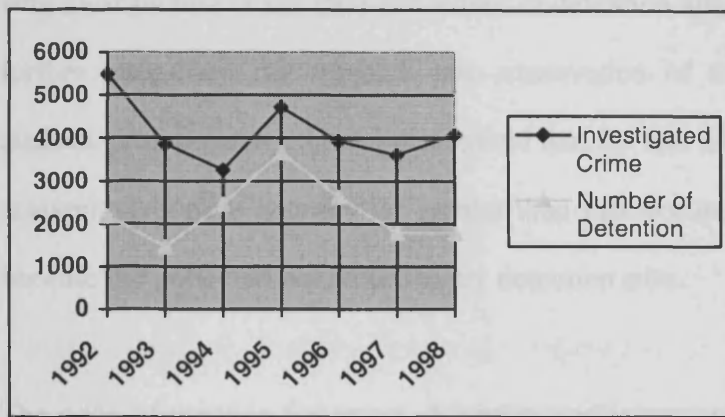
Figure 5.4: Station A Crime and Detention Figures.**Figure 5.5: Station B Crime and Detention Figures.****Figure 5.6: Station C Crime and Detention Figures.**

Figure 5.7: All Stations Crime and Detention Figures.

Furthermore, contrary to research station figures, the countrywide figures published by the General Security Directorate of Turkey reveal an actual increase in the number of detentions between 1992 and 1997, with only a slight (0.4 per cent) drop in 1998. If the figures for 1992 and 1998 are compared, an astonishing 208 per cent rise in the number of detentions emerges. During the same period the number of investigated crimes was up 150 per cent and this means that detention cases rose faster than criminal cases. This result eventually might be interpreted as 'less crime, more detention'. If such is the case, as it appears to be, then serious questions arise over the use of arrest and detention powers by the security forces in Turkey as to whether these powers are exercised within the limits of the law. Indeed, in a modern and democratic society, the police are expected to use powers of arrest and detention less often and only in necessary and justifiable circumstances. However, as long as the crime figures rise, it is natural to expect that the police make more arrests and detain more suspects in connection with these crimes, since the reverse situation might result in criticism of the police for not doing their job properly, but the increasing rate of arrest and detention cases will not automatically credit the police with success in fighting crime (Eryilmaz, 1999).

As the official statistical publications and detention record books did not provide a very clear picture of the state and extent of detention after the TCPA amendments, I further intensified my research into observation of the police activities in the stations. Consequently, I have discovered that the real number of detention cases in research stations is actually far greater than that documented by the record books because the police do not record every detention case.

The code of practice for arrest, detention and interrogation¹⁶ strictly requires that when someone is taken into custody this should immediately be recorded in a specially-designed book called 'the detention book'. There is no exception to this obligation and all the relevant information such as reason of arrest and detention and outcome should be included in the record. Despite this strict and obvious legal requirement, the research observations have revealed that on some occasions suspects spent some time in custody, but no record whatsoever shows this, the suspects simply having been detained and released without any records having been made. The police knowingly evade the obligation of record-keeping and this has become an established police practice. Thus, the records do not show all detention cases. The proportion of how often a record is not made alters depending on the stations and the time.

During the entire research, I paid particular attention to observing the record-keeping practices of the police. Every time I visited a station the first thing I would do was check the detention book to see what, if any, records were made for suspects being kept in custody. Then I would visit the detention cell to confirm the

¹⁶ Although the new provisions of TCPA came into force at the beginning of 1993, there was no code of practice to show how in principle the rules should be implemented. The need for such a code of practice was clearly great. In October 1998, the Government took a further step in reforming police powers by accepting a code of practice for arrest, detention and interrogation.

information found in the detention book. In these checks I often found that not all suspects were recorded in the detention book and there were no other records to show that these suspects were being kept in custody. Although it is possible that some records may be made at later stages, it is likely that no record would be made if detainees were released without any charge. This practice was common to all three stations, but the situation was worst in Station B. Although it was the second-busiest research station, the records showed the lowest number of suspects and this was mainly because of poor record-keeping practices.

To estimate the scale of the practice of not recording detention, during the latest research, I scheduled random checks to match the population in the detention cells with the information in the detention record books. All these checks were conducted when there were some suspects in the cells. In Station A, I carried out ten checks. In five of these checks the suspect population did not match the records, meaning that the records did not show all the detainees kept in the detention cells. For instance, in one of these checks, whilst there were nine juvenile detainees in the cell, no records showed this, and they were later released without charge. According to the station records their detention did not occur at all - as if they had never been in the station! In another check in Station A, I spotted six or seven people being kept in a cell although the detention book showed none of them. When I asked the station chief about the situation he said that there was not enough time to do the full records. Probably because of my interest in the case, I noticed that records were made soon after.

In Station C, in three out of five checks, the detention records showed either no detainees being kept in the cell or just some of them. During a check, there was one

detainee in a detention cell and the officer in charge told me that he was already recorded in the book. However, the inspection of the book did not confirm the officer's claim. Contrary to Stations A and B where the police did not deny their non-recording practice, in Station C the officers constantly denied the practice and they were very keen to convince me that everything was done by the book. This is perhaps because they had not correctly assessed my position as a researcher, and were acting rather cautiously in case I was a spy for the General Directorate.

The situation was worst in Station B, as I discovered that in seven out of nine checks the detention records did not match with the number of suspects in the cell. On one occasion, just before midnight, I had the opportunity to speak with the detainees. I spotted a young suspect in the detention cell alongside several adult detainees and, as I was curious, I approached him and had a chat with him through the cell's window. Asking his age, I found that he was only 16 years old. When I asked him why he was in custody he told me that while he was wandering around a park late in the evening the police came and brought him to the station. By then he had been in the station for three hours but did not know exactly why he was there. I later asked the police officers in charge about this particular detainee and I was told that he was there because he could not show the police his ID. They also told me that his mother had been contacted and he would be released soon. During this conversation, it turned out that the juvenile detainee's mother was already in the station. Meanwhile, not to my surprise, the detention record book did not have any record of this detention case.

Needless to say, there were several breaches of law in this incident from the outset and I would argue that the detention of this young person appeared to be

unnecessary if not arbitrary. First of all, his arrest was not really justified. Although the police have the power to detain people who cannot produce an ID to verify their identity (PPDA), it does not mean that they can just bring in a person of 16 years of age because he did not show his ID to the police. The rhetoric of the law requires further justification of the action of the police in each circumstance. Secondly, by the time I saw this detainee he had already been in custody for several hours. He was supposed to be released when his mother arrived, however, he was still in the cell despite the fact that his mother was already there and she seemed very worried. Thirdly, this detention was not recorded in the book and no charge was made whatsoever. Following his release without charge, I checked the detention book again the next morning to see if any record had been made but there was nothing.

This case was only one of the many examples I witnessed during my entire long research, and there have been similar unrecorded detention cases in all the research stations. What is more, there had been no improvement or change in this practice over the period in which the research was conducted. A recent report by the Turkish Parliamentary Commission for the investigation of human rights problems in Turkey has confirmed my findings that poor record-keeping practices are widespread (TBMM, 2000b:13-14). During their visits to a number of police stations in different parts of the country¹⁷, the Commission discovered many irregularities in the detention records. In one particular police station they were astounded by the ignorance of the police concerning the current regulations concerning detention and the record-keeping requirements (TBMM, 2000a:74).

¹⁷ The Commission visited 5 police stations in Istanbul in 2000, 4 police departments including 2 police stations in SanliUrfa in 1998 and 2000, and 2 police departments in Erzincan in 1998 and 2000. The Commission also visited several more police departments and police stations in other parts of the country between the same periods.

It appears that the public prosecutors, who have the legal duty and responsibility of supervising the detention procedure that the police are supposed to operate within the boundaries of the law, ignore the current practice. Particularly with the new code of practice of 1998, the prosecutors are expected to pay random visits to police stations to inspect how the suspects are treated and whether the legal procedures are implemented correctly. In research stations I was able to see the inspection reports of the prosecutors, as they were written down in the detention books, however none of the reports mentioned any irregularities whatsoever. Being aware of the real situation in the stations I was astounded by these inspection reports. My findings suggest that either the prosecutors are completely ignorant of actual police work or they just turn a blind eye to the situation. I would argue that the second option is the more likely. Although the prosecutors, to a certain extent, may lack a detailed knowledge of the inner workings of the police, it can hardly be assumed that they are totally unaware of police work, as they are actually masters of criminal investigation and the police have a legal obligation to report them everything in regard to the criminal investigations. Thus, it appears that, by doing nothing the prosecutors passively allow the police to continue with their current practices, and poor record-keeping is just one of them.

Apart from the lack of legal and administrative supervision, the practice of poor record-keeping is also nourished by a policing practice known as '*uygulama*'. This is a practice that involves random road checks and identification checks in leisure places such as nightclubs, and is used as a policing technique to deter criminals and combat crime. The checks may often cover a large part of the town or city. During these police checks usually a substantial number of people are taken into custody for simply two reasons: either they appear to be suspicious or they do not carry a

valid ID on them to show to the police. Eventually these people are brought to the station and kept there until their names are record-checked on the central police computer whether the police seek them or not. After the record check if nothing is found then they are released.

In the '*uygulama*' practice, the detainees are usually not recorded in the detention book partly because of the consideration of the likelihood of their release after the record check, so that unnecessary paperwork can be avoided. However if a record is made in the detention book the reason for arrest/detention is stated as only (general) suspicion. In stations A and B, the habit of non-record-keeping practices are, therefore, closely related to the practice of '*uygulama*'.

Reason for detention

In Turkish legal terms, the reason for arrest constitutes the reason for detention, as the sole purpose of the arrest is to get the suspect into a police station where detention, questioning and other forms of investigation can follow. Therefore, for the police, the main function of arrest is to make the detention and interrogation possible (Yenisey 1994:38). TCPA articles 104 and 127, and PPDA article 13 clearly state that the police can only exercise arrest and subsequent detention powers if there are *strong indicators and/or evidence* that a crime has just been committed or is about to be committed. Particularly, article 104 of TCPA sets up a criterion that a person can only be arrested if there is a 'strong suspicion' that he or she has been alleged to have committed a crime.

In legal theory, therefore, by the requirement of ‘strong suspicion’, Turkish law sets up a higher criterion than the requirement of ‘reasonable suspicion’. It means that reasonable suspicion, not to mention simple or general suspicion, will not be enough for the police to arrest someone (Eryilmaz, 1998b:145). The police can only exercise the power of arrest when a strong suspicion is formed that an offence has been committed and the offence has been committed by the person in question (Yenisey, 1995c: 95-96). In other words, in order to invoke the power of arrest, a Turkish police officer needs to collect more evidence and information than an English police officer (Eryilmaz, 1998a: 962-963).

Nevertheless, the research has discovered that, in the interpretation of the required level of suspicion for arrest, there is a dichotomy between the standards established by the law and the standards followed by the police in practice. Though the requirement of ‘strong suspicion’ requires that an arrest should not be made until the police gather sufficient evidence and information, the police do not usually act in accordance with this. It appears that the police have established a working practice of arresting and detaining suspects without sufficient evidence and suspicion. This practice is defined as ‘arrest on general suspicion’¹⁸.

As a result of this practice, a person would be arrested by the police in the hope of finding the required information or evidence during his detention and questioning. In such cases, inevitably, the requirement of ‘strong suspicion’ may be fabricated afterwards to justify the following detention decision. Beyond doubt, such a

¹⁸ The ‘uygulama practice’ accords with this practice.

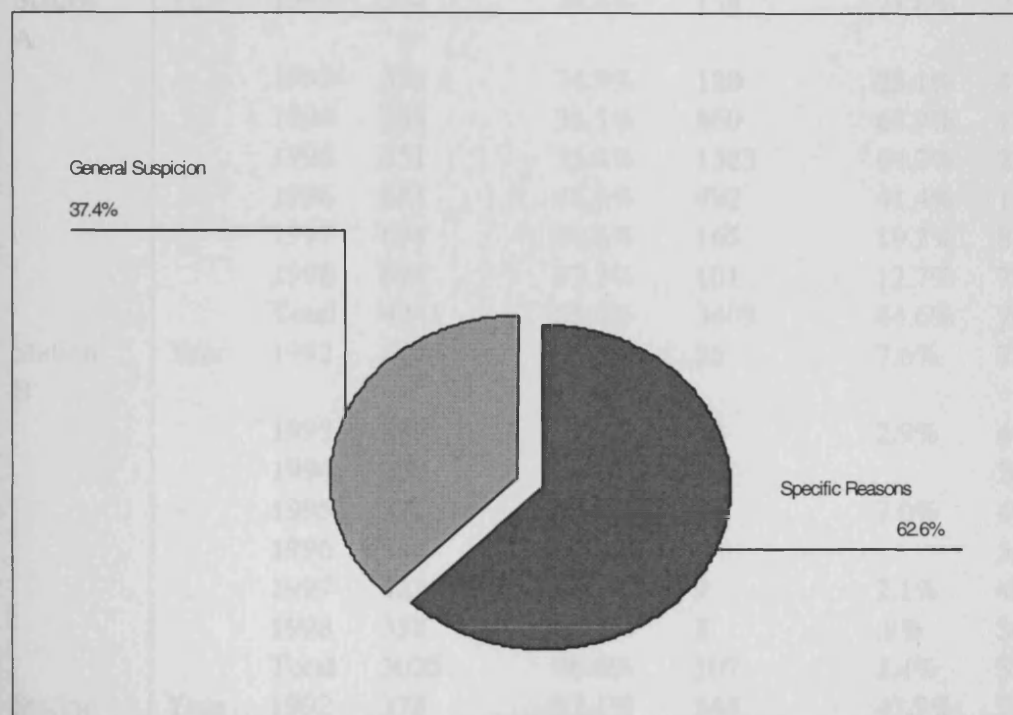
practice is not in line with the rhetoric of the law set up in TCPA article 104¹⁹. The following statistical analysis reveal the scale of this practice:

As Figure 5.8 illustrates, general suspicion was the reason for detention in 37.4 per cent of all cases in the three research stations between 1992 and 1998. That means nearly four out of ten arrests are not based on the specific suspicion of a crime, instead it was general suspicion that led the police to make the arrests.

At an individual station level, the rise and fall of detention figures is also closely associated with the reason for arrest and the record-keeping practices. The figures illustrated in Table 5.6 suggest that the more the police arrest people on general suspicion, the more the detention figures go up. The figures in Station A particularly support this hypothesis. Between the years 1994 and 1996, a substantial number of people were arrested on general suspicion and this boosted the number of detentions in this station.

Similarly, in Station C general suspicion happened to be a reason in nearly half of all the detention cases between 1992 and 1998. In contrast to the situation in Stations A and C, the records in Station B illustrated a very different pattern. There were, astonishingly, very few cases of detention because of general suspicion. Only 28 cases were recorded in 1995 while there were no such cases in 1994 and 1996. In the following years, there were only a couple of detention cases on general suspicion grounds, just over 2 per cent in 1997 and less than 1 per cent in 1998.

¹⁹ This practice is also not in line with the requirement of reasonable suspicion in article 5(1)(c) of the European Convention on Human Rights.

Figure 5.8: Reason for Detention, All Stations (1992-1998).

In considering the busy detention traffic in Station B, one must wonder why there were so very few cases of detention on general suspicion in this station (see Figure 5.9). As the research suggests, the basic reason why this number was significantly small was that in this station the police adopted a practice of not recording cases of detention as long as suspects were not charged with an offence. Thus, the cases of detention on general suspicion were dealt with unrecorded and this practice continued over many years. I presume that this practice is also in effect in other stations in the region where Station B is located.

Table 5.6: Reason for Arrest and Detention

<i>Police Station</i>			<i>Specific Reasons</i>		<i>General Suspicion</i>		<i>Total</i>
			<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>	<i>n.</i>
Station A	Year	1992	574	78.4%	158	21.6%	732
		1993	358	74.9%	120	25.1%	478
		1994	388	31.1%	860	68.9%	1248
		1995	851	35.8%	1523	64.2%	2374
		1996	681	58.6%	482	41.4%	1163
		1997	694	80.8%	165	19.2%	859
		1998	695	87.3%	101	12.7%	796
		Total	4241	55.4%	3409	44.6%	7650
Station B	Year	1992	670	92.4%	55	7.6%	725
		1993	399	97.1%	12	2.9%	411
		1994	260	100.0%			260
		1995	372	93.0%	28	7.0%	400
		1996	544	100.0%			544
		1997	422	97.9%	9	2.1%	431
		1998	358	99.2%	3	.8%	361
		Total	3025	96.6%	107	3.4%	3132
Station C	Year	1992	378	52.1%	348	47.9%	726
		1993	348	61.3%	220	38.7%	568
		1994	495	52.0%	457	48.0%	952
		1995	503	56.5%	388	43.5%	891
		1996	492	55.2%	400	44.8%	892
		1997	305	62.6%	182	37.4%	487
		1998	362	59.1%	251	40.9%	613
		Total	2883	56.2%	2246	43.8%	5129

On the other hand, as can be seen from the illustration in Figures 5.9, 5.10 and 5.11, the situation appears to be quite different in Stations A and C where the police adopted a habit of recording such cases more often, although it does not mean that they recorded every case of detention on general suspicion. In these stations, I witnessed some cases where no record was made whatsoever.

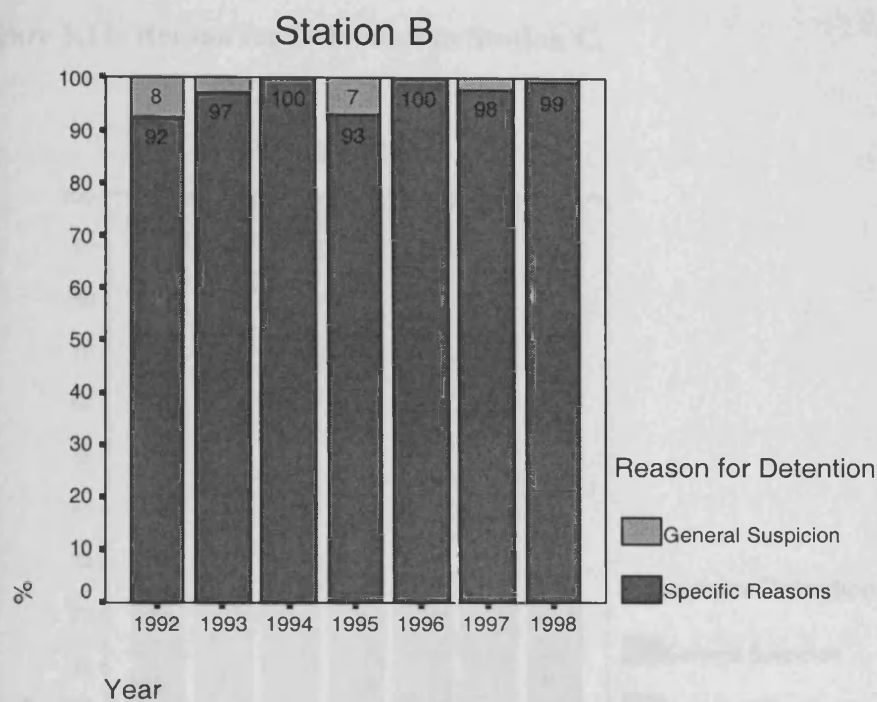
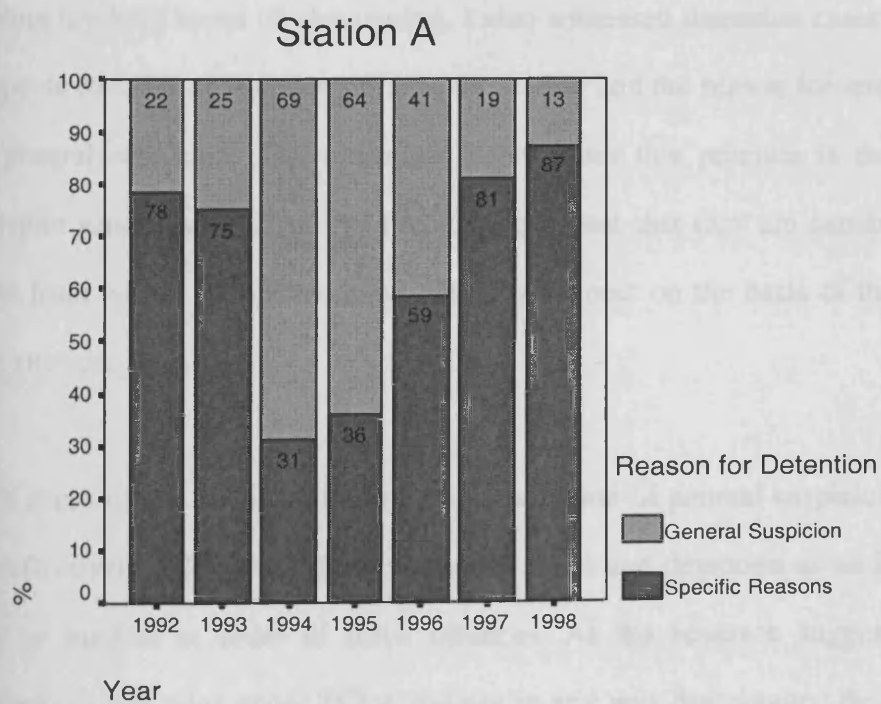
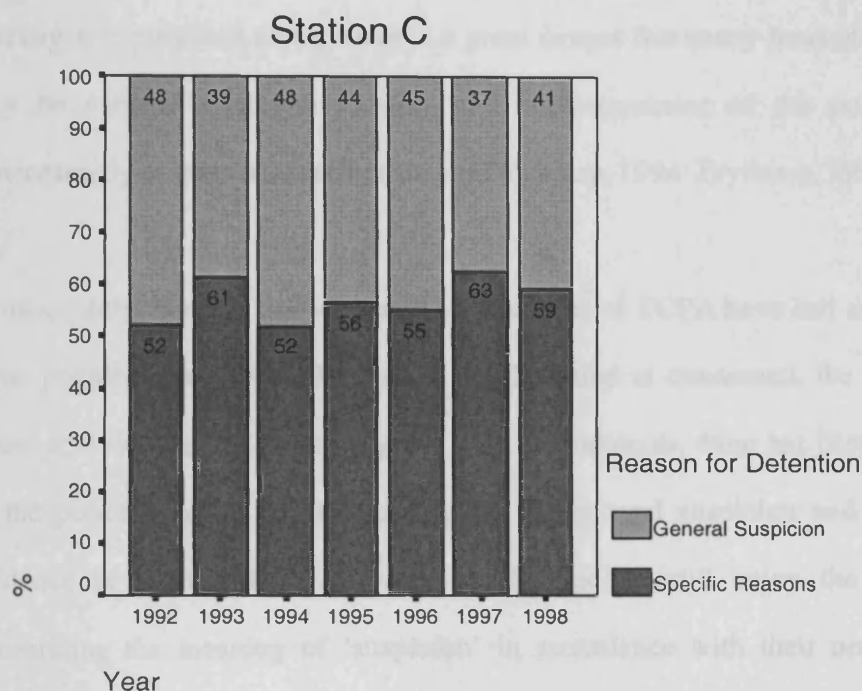
Figure 5.9: Reason for Detention in Station B.**Figure 5.10: Reason for Detention in Station A.**

Figure 5.11: Reason for Detention in Station C.

During my long hours of observation, I also witnessed detention cases in which the suspects were brought under arrest to the station and the reason for arrest was given as general suspicion. The important point about this practice is that the police interpret general suspicion very broadly, confident that they are capable of sensing right from wrong and determining who is a suspect on the basis of the appearance and attitude.

As a result of this flexible and broad interpretation of general suspicion, the police are effectively able to use their powers of arrest and detention as an investigative tool or method in order to solve offences. As the research suggests, the new procedures and rules under TCPA did not in any way discouraged the police from

this practice. This situation contrasts clearly with the legal theory that detention should not be used as a policing strategy to fight crime or an investigative tool. It is obvious that if the powers of arrest and detention are used for crime prevention or investigative purposes alone, there is a great danger that many innocent individuals may be subject to the discomfort and embarrassment of the police custody unnecessarily or even arbitrarily (Icel and Yenisey, 1994; Eryilmaz, 1999).

Consequently, one can ask whether the new rules of TCPA have had any impact on these practices. As far as the reason for detention is concerned, the research has found no evidence that, following the 1992 amendments, there has been any change in the police practice of arresting people on general suspicion and without any evidence or with little hard evidence. The police still enjoy the freedom of interpreting the meaning of 'suspicion' in accordance with their needs. What is more, I have serious doubts that this practice will change in the near future as long as the individuals are seen as the best and the most reliable source of evidence. As Eryilmaz (1999) suggests, because of the difficulties in collecting evidence in the absence of scientific and modern investigation methods, the police believe that the greater the number of individuals arrested and questioned for a particular crime, the more evidence will be collected and the more quickly will the guilty person be able to be identified. What the police do not realise is that the method of 'arrest first ask question later' will cost to many individuals' civil liberty.

Outcome of Detention

The research has found that the outcome of detention is closely linked to the reason for detention. If the reason for detention was a specific criminal charge, the suspect

was either transferred to the special police branch for further inquiry or to the Public Prosecution Office for judicial proceedings. However, if the reason for detention was general suspicion, in the vast majority of cases suspects were released from the station without charge and no further action was taken. Thus, the practice of detaining people as a result of arrest on general suspicion has an impact on the outcome of detention.

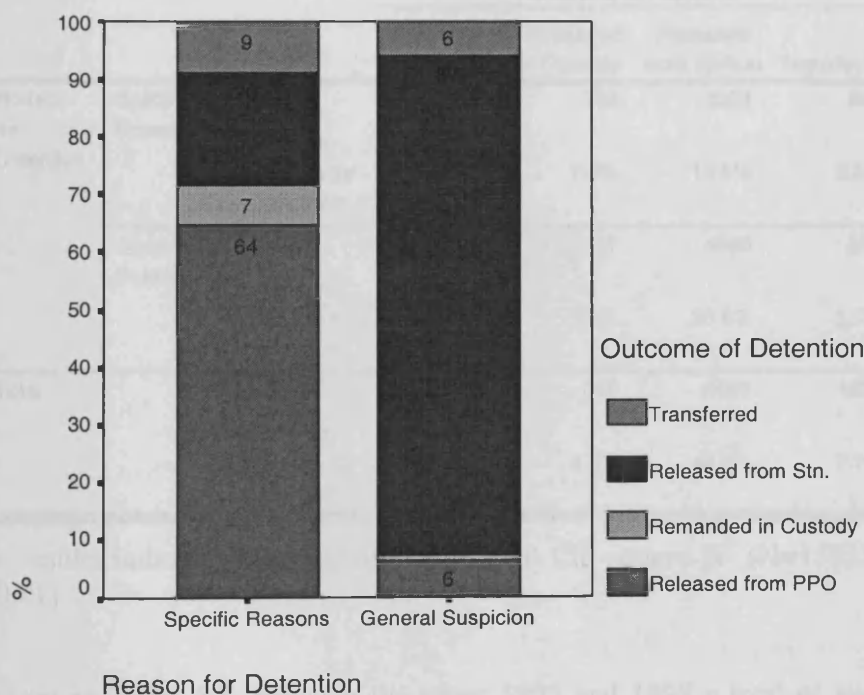
As seen in Table 5.7 and Figure 5.12, in the research stations between the years 1992-1998 nearly 87 per cent of suspects who were detained on suspicion were released from the station without charge. This means that in almost 9 out of 10 cases the police found no legal grounds for opening an investigation file so that the suspects had to be released from the station without charge. There was not even any need to refer the cases to the Public Prosecution Office and apparently, these 'suspicious' people had to experience the inconvenience and discomfort of police custody for nothing.

Furthermore, 6.3 per cent of 5746 detainees were bailed from the Public Prosecution Office and 6 per cent were transferred to another police department for further questioning. Only 1 per cent was remanded in custody. In short, the overall finding is that most of the suspects who were picked up for specific reasons were release from the Public Prosecution Office (PPO); whereas the ones who were picked up for general suspicion were released from station, 64.4 per cent and 86.8 per cent respectively. Overall figures for the outcome of detention also indicate that in fact very few suspects are remanded in custody by the courts (Table, 5.7; Figure, 5.13).

Meanwhile, a Chi-Square test²⁰ was conducted to explore the statistical significance of the relationship between the outcome of detention and the reason for detention. The result indicated a statistically significant Chi-square [χ^2 (N=15831) =6889.99, $p<0.01$]. When the same test was conducted on 2X2 tables, using the variables on Table 5.7, the results again showed statistically significant figures. For instance, in a 2X2 table of outcome of detention (variables: release from the Public Prosecution Office and other sorts of outcomes) and reason for detention (variables: specific reasons and general suspicion) crosstabulation, the test result revealed a statistically significant Chi-square [χ^2 (N=15831) =5037.67, $p<0.01$].

Table 5.7: Reason for Detention and Outcome of Detention (1992-1998; All Stations)

Figure 5.12: Reason for Detention and Outcome (1992-1998; All Stations)



²⁰ The Chi-square test is the test that is used to test if there is an association between two categorical variables i.e. release from the station and detention on general suspicion (Cramer, 1998).

At individual stations level, the picture was similar to what is found in the overall picture, but with some variations. In Stations A and C, between the years 1992 and 1998, the percentage of releases from the station following detention for general suspicion was proportionately higher than for Station B, as can be seen from Table 5.7a, since in Station A 73 per cent, and in Station C 71 per cent of suspects who were detained under general suspicion were released from the stations without charge. This proportion was a relatively low 40 per cent in Station B, because of the adopted practice of not recording detention under general suspicion.

Table 5.7: Reason for Detention and Outcome of Detention (1992-1998; All Stations).

Reason for Detention * Outcome of Detention Crosstabulation

			Outcome of Detention				Total
			Released from PPO	Remanded in Custody	Released from Station	Transferred	
Reason for Detention	Specific Reasons	Count	6496	703	2001	885	10085
		% within Reason for Detention	64.4%	7.0%	19.8%	8.8%	100.0%
	General Suspicion	Count	361	57	4990	338	5746
		% within Reason for Detention	6.3%	1.0%	86.8%	5.9%	100.0%
Total		Count	6857	760	6991	1223	15831
		% within Reason for Detention	43.3%	4.8%	44.2%	7.7%	100.0%

The results indicate a statistically significant Chi-square [χ^2 (N=15831) =6889.99, $p<0.01$].

As seen in Table 5.8, between the years 1992 and 1998 a total of less than 1 per cent of the suspects were remanded in custody in Station A, and only 5.7 per cent in Station B. The figure was relatively higher in Station C as over 10 per cent of the suspects were remanded in custody in the same period.

Table 5.7a: Number for Detention and Outcome (1992-1998: All Stations)

Meanwhile it should be noted that these figures do not include the number of suspects who were transferred to other police departments for questioning and further investigation. It is possible that some of those transferred suspects could have also been remanded in custody at the end of their police detention time. Nonetheless, this should not affect the overall conclusion that despite the large number of detention cases, relatively very few suspects are remanded in custody.

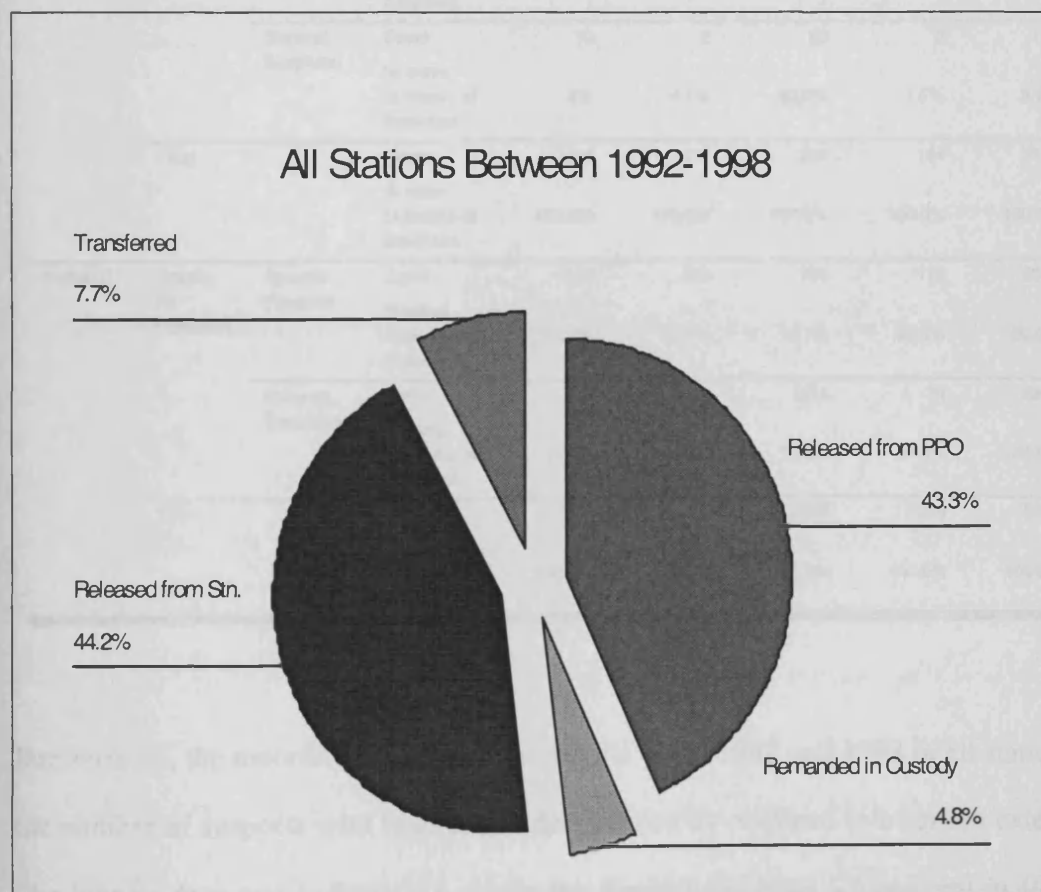
Figure 5.13: Outcome of Detention in Research Stations A, B and C.

Table 5.7a: Reason for Detention and Outcome (1992-1998; All Stations)**Reason for Detention * Outcome of Detention * Police Station Crosstabulation**

				Outcome of Detention				
Police Station				Released from PPO	Remanded in Custody	Released from Station	Transferred	Total
Station A	Reason for Detention	Specific Reasons	Count	2556	58	1091	524	4229
			% within Outcome of Detention	94.2%	92.1%	26.8%	67.1%	55.4%
		General Suspicion	Count	158	5	2984	257	3404
			% within Outcome of Detention	5.8%	7.9%	73.2%	32.9%	44.6%
	Total		Count	2714	63	4075	781	7633
			% within Outcome of Detention	100.0%	100.0%	100.0%	100.0%	100.0%
			Count	2506	175	138	191	3010
			% within Outcome of Detention	99.6%	98.9%	60.0%	98.5%	96.6%
Station B	Reason for Detention	Specific Reasons	Count	2506	175	138	191	3010
			% within Outcome of Detention	99.6%	98.9%	60.0%	98.5%	96.6%
		General Suspicion	Count	10	2	92	3	107
			% within Outcome of Detention	.4%	1.1%	40.0%	1.5%	3.4%
	Total		Count	2516	177	230	194	3117
			% within Outcome of Detention	100.0%	100.0%	100.0%	100.0%	100.0%
			Count	1434	470	772	170	2846
			% within Outcome of Detention	88.1%	90.4%	28.7%	68.5%	56.0%
Station C	Reason for Detention	Specific Reasons	Count	1434	470	772	170	2846
			% within Outcome of Detention	88.1%	90.4%	28.7%	68.5%	56.0%
		General Suspicion	Count	193	50	1914	78	2235
			% within Outcome of Detention	11.9%	9.6%	71.3%	31.5%	44.0%
	Total		Count	1627	520	2686	248	5081
			% within Outcome of Detention	100.0%	100.0%	100.0%	100.0%	100.0%
			Count	1627	520	2686	248	5081
			% within Outcome of Detention	100.0%	100.0%	100.0%	100.0%	100.0%

Furthermore, the records reveal that between the years 1992 and 1998 in all stations the number of suspects who were remanded in custody declined to a certain extent. The biggest drop was in Station A where the figure went from 5.6 per cent in 1992 to 0.1 per cent in 1998. In Station B it was 7.2 per cent in 1992 and fell to 6.6 per cent in 1998. Similarly, there was a decline in the figures in Station C from 9.5 per

cent to 7.1 per cent in the same period (see Table 5.9). The significance of the decline in these figures is the apparent impact of the new rules in tightening the court's discretion to allow further detention of suspects. The implication of this situation for the police is that they need to be more careful when making an arrest decision because the likelihood of a suspect being remanded in custody is negligible, thus making it hard to justify the initial detention decision.

Table 5.8: Outcome of Detention and Police Station Crosstabulation (1992-1998; Stations A, B and C).

	Police Station					
	Station A		Station B		Station C	
	Outcome of Detention		Outcome of Detention		Outcome of Detention	
	Count	%	Count	%	Count	%
Released from PPO	2724	35.5%	2516	80.7%	1632	32.0%
Remanded in Custody	63	.8%	177	5.7%	521	10.2%
Released from Station	4102	53.5%	230	7.4%	2693	52.8%
Transferred	783	10.2%	194	6.2%	251	4.9%
Total	7672	100.0%	3117	100.0%	5097	100.0%

The figures indicate a statistically significant Chi-square [χ^2 (N= 15886) =3150.37, $p<0.01$].

A Chi-Square test was also conducted to explore if there was any statistical association between the outcome of detention and the individual police stations (Table, 5.8). The results showed a statistically significant Chi-square [χ^2 (N=15886) =3150.37, $p<0.01$]. Furthermore, the variables on Table 5.8 were computed as a 2x3 table and the Chi-square tests again confirmed the statistical significance of the figures. For instance, in a 2X3 table (cross-tabulated variables: remanded in custody, other outcomes and police stations A, B and C), the test result demonstrated a statistically significant Chi-square [χ^2 (N=15886) =600.07, $p<0.01$].

Table 5.9: Years and Outcome of Detention Crosstabulation (1992 – 1998).

Year * Outcome of Detention * Police Station Crosstabulation							
% within Year							
		Outcome of Detention					
Police Station			Released from PPO	Remanded in Custody	Released from Station	Transferred	Total
Station A	Year	1992	53.2%	5.6%	30.6%	10.5%	100.0%
		1993	48.8%	3.3%	31.7%	16.3%	100.0%
		1994	16.6%	.2%	78.7%	4.6%	100.0%
		1995	21.1%	.1%	75.2%	3.5%	100.0%
		1996	36.8%		50.0%	13.2%	100.0%
		1997	52.2%	.1%	24.5%	23.2%	100.0%
		1998	63.6%	.1%	20.0%	16.3%	100.0%
	Total		35.5%	.8%	53.5%	10.2%	100.0%
Station B	Year	1992	68.3%	7.2%	14.9%	9.6%	100.0%
		1993	79.8%	8.0%	6.1%	6.1%	100.0%
		1994	83.0%	7.7%	3.1%	6.2%	100.0%
		1995	81.7%	2.0%	11.7%	4.6%	100.0%
		1996	100.0%				100.0%
		1997	76.5%	9.3%	5.3%	8.8%	100.0%
		1998	79.8%	6.6%	5.8%	7.8%	100.0%
	Total		80.7%	5.7%	7.4%	6.2%	100.0%
Station C	Year	1992	34.7%	9.5%	51.4%	4.4%	100.0%
		1993	35.0%	11.0%	48.4%	5.7%	100.0%
		1994	29.6%	8.1%	58.9%	3.4%	100.0%
		1995	29.5%	10.7%	56.0%	3.8%	100.0%
		1996	26.2%	12.1%	56.1%	5.5%	100.0%
		1997	35.2%	14.1%	46.0%	4.8%	100.0%
		1998	39.5%	7.1%	45.3%	8.1%	100.0%
	Total		32.0%	10.2%	52.8%	4.9%	100.0%

In conclusion, the figures for the reason for detention and outcome of detention suggest that in practice the police do not take into account the likelihood of a suspect's release on bail or without charge when it comes to the detention decision. This is because the police are not concerned or bothered much about the outcome of

detention, owing to the inadequacy or outright failure of post-detention remedies such as the complaints system or the possibility of a successful civil action for false imprisonment.

Detention Limit

Before the amendments in 1992, TCPA article 128 required that a suspect in police custody should be brought before a justice of the peace²¹ no later than 24 hours, exclusive of the time necessary for transportation of the suspect to the court. In the case of offences committed by three or more people, if the above rule could not be implemented because of the large number of suspects involved or if there is a difficulty in collecting the required evidence, or similar circumstances, detention would be extended up to 15 days with the written permission of the public prosecutor in charge. The 1992 amendments in TCPA section 128 did preserve the 24-hour time limit²², but for offences committed by three or more people collectively, the 15-day limit was reduced to eight days. In 1997, a further change²³ in TCPA reduced the 8-day maximum detention limit to seven days. Accordingly, after the initial periods, for those charged with crimes of a collective and conspiratorial nature, detention may be extended by up to 4 days at a prosecutor's discretion. After 4 days the detention can still be extended by up to 7 days with the prosecutor's demand and a judge's decision²⁴. At the end of seven days, suspects

²¹The justice of the peace is the judge of the court of peace, which is the preliminary court in the criminal court system of Turkey, equivalent to the magistrate, and the magistrates' court.

²² For those detained for individual crimes that fall under the Anti-Terror Law, they must be brought before a judge within 48 Hours.

²³ Act number 4229 – 06.03.1997.

²⁴ In the provinces which are under a state of emergency, this maximum limit can be extended by up to 10 days, in accordance with article 14 of the Code of Conduct of Arrest, Detention and Interrogation.

must either be released or brought before a judge (justice of peace). If the judge finds no reason to continue with detention or the initial reasons for detention have already disappeared, the release of the suspect must be ordered (TCPA, a. 128).

The suspect, his advocate, wife, or a relative is entitled to apply to the judge of justice of the peace both against the police officers' decision to detain and the public prosecutor's decision to extend the detention time beyond 24-hour limit. The justice of the peace consider the application on paper and give his decision as soon as possible, at the latest, within 24 hours (TCPA, a. 128/4).

Nonetheless, it should be noted that for crimes prosecuted under the State Security Courts Act (SSCA) a different detention limit procedure is applied²⁵. According to this procedure, the basic detention limit is 48 hours instead of 24 hours and for crimes committed by three or more people jointly the 48 hours could be extended to up to four days, with the written permission of the public prosecutor. After four days if still more time is needed a further extension can be given for up to seven days with the permission of the court. This 7-day limit can also be extended, on the court's decision, up to 10 days in the provinces where the State of Emergency law is in effect.

The main aim of the amendments in 1992 and 1997 regarding the reduction of the detention time limits was to bring the domestic law into line with the European Convention on Human Rights (Eryilmaz, 1998b:165-166). The previous detention time limits were criticized for allowing the police to keep suspects in custody unnecessarily long and beyond the limits that were set by the European Human

²⁵ The Code of Conduct of Arrest, Detention and Interrogation, article 14.

Rights Convention (Inceoglu, 1992:280; Kunter, 1989:707). The EHRC article 5 stipulates to keep detention time as short as possible, because detention is seen as a temporary measure to restrict personal liberty. Hence, suspects should not be kept in police custody for an unnecessarily long time even if this is within the legal time limit. Although in interpreting the judgement in the case of *Brogan and Others v. UK*, up to 4 days' detention would be accepted as within the limit allowed by the Convention, it does not automatically grant the police a power to use all of this 4-day period (Eryilmaz, 1998b:165; Inceoglu, 1992:279).

In a 1997 ECHR case (*Sakik and others vs. Turkey*²⁶), the court found the Turkish Government guilty of the unjustifiably long detention of Sakik and his five friends. In the verdict, twelve and fourteen days of detention for suspects were considered unreasonable and unnecessary. The court argued that the Turkish Police used the detention time solely for collection of evidence against the suspects, which should have been done without the need to detain the suspects. The Court eventually concluded that there could be no reasonable excuse for keeping suspects in custody up to twelve or fourteen days just for interrogation purposes.

The Effects

The main tasks of the research concerning the detention time limit were to reveal firstly, on average, how long the suspects were kept in custody, secondly, whether the present time limits are sufficient to do the job, and finally, what were the effects of the new rules.

²⁶ Verdict date is 2.11.1997.

After some lengthy arithmetic²⁷, I was able to calculate the mean detention times (before release or charge and transfer to Public Prosecution Office) in the stations between the years 1992 and 1998. As shown in Table 5.10, in Station A the mean detention time was 12.55 hours in 1992 but after the new procedure in 1993 it decreased slightly and in 1994 there was a significant drop to 6.45 hours. However over the following three years a gradual increase was recorded in the mean detention time bringing it to 11.23 hours in 1997. Then it decreased again slightly by 27 minutes in 1998.

In Station C, the trend of figures was similar to the trend of Station A's figures, although the proportion of increases and decreases did not match. The situation was not so complicated in Station B's figures. The mean detention time in this station did not change much between the years except for a noticeable increase in 1996. However, unlike Stations A and C, the mean detention length was extended by 52 minutes in Station B between the years 1992 and 1998. In the same period, it was shortened by 1.59 hours in Station A and 8.19 hours in Station C. According to these figures the longest mean detention time was in Station C, while Station A had the shortest mean detention length.

Meanwhile, the study has also found that between the years 1992 and 1998, in all three research stations, nearly 10 per cent of detention cases lasted beyond the 24-hour limit (see Figure 5.14). Noticeably, Station C's figures prove the finding that detention lasts longer in this station. As seen in Table 5.11, between 1992 and 1998, in 17.3 per cent of cases the detention lasted over 24 hours in Station C, whereas

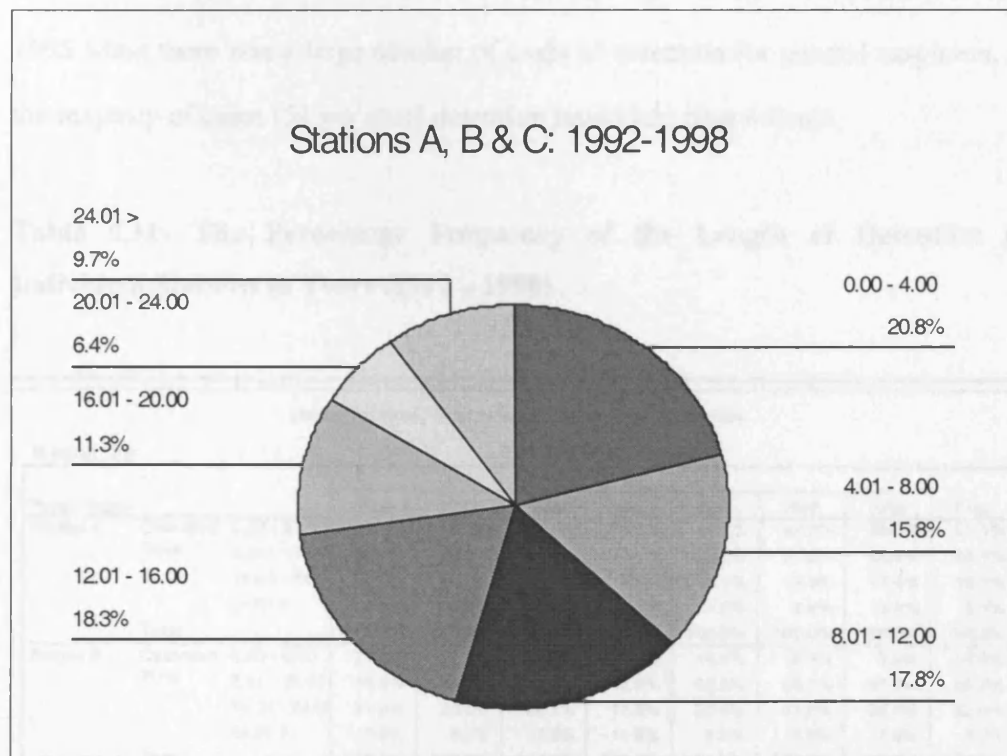
²⁷ Although the police have to record the entrance and exit times when someone is detained, the total time is not written down, so this needs to be calculated manually by the researcher using the entrance and exit times.

over the same period this figure was 8.7 per cent in Station B and 5.1 per cent in Station A. However, it should be noted that after 1995 there was a decreasing trend in the number of cases over 24 hours in all three research stations (see Table 5.12).

Table 5.10: Mean Detention Time (Before Release/Charge).

Mean Detention Time in Years		
	Hour	
Station A	1992	12:55
	1993	11:22
	1994	6:45
	1995	7:22
	1996	9:44
	1997	11:23
	1998	10:56
	Total	9:18
Station B	1992	14:44
	1993	14:45
	1994	15:11
	1995	14:26
	1996	16:14
	1997	13:29
	1998	15:36
	Total	14:55
Station C	1992	22:08
	1993	18:25
	1994	18:47
	1995	16:55
	1996	22:19
	1997	16:54
	1998	14:27
	Total	18:46
Total	1992	16:29
	1993	14:57
	1994	12:18
	1995	10:36
	1996	15:08
	1997	13:20
	1998	13:03
	Total	13:24

Figure 5.14: The Length of Detention²⁸ in All Stations (1992-1998).



As illustrated in Figures 5.15, 5.16 and 5.17, in Station B over half of the suspects (52.6 per cent) were detained for between 8 and 16 hours, while in Station A, 57.2 per cent of the suspects only spent up to 8 hours in custody. In Station C the practice was similar to Station B since 41.5 per cent of suspects were kept in detention for between 8 and 16 hours (see also Table 5.11).

The reason for the relatively short detention times in Station A is probably because of the large number of suspects detained on general suspicion. An investigation of detention on general suspicion cases shows that they demanded less time as enquiries were usually limited to a record check of the Central Police Computer to

²⁸ Length of detention refers to the actual time spent in police custody by the suspect.

see if the person was a fugitive or sought by the police for any reason, otherwise the suspect was released from the station. As seen in Figure 5.15, in the years 1994 and 1995 when there was a large number of cases of detention for general suspicion, in the majority of cases (51 per cent) detention lasted less than 4 hours.

Table 5.11: The Percentage Frequency of the Length of Detention in Individual Stations in Years (1992 – 1998) .

Detention Time * Year * Police Station Crosstabulation										
% within Year			Year							
Police Station			1992	1993	1994	1995	1996	1997	1998	Total
Station A	Detention	0.00 - 8.00	37.6%	46.1%	77.4%	70.6%	49.1%	43.0%	40.9%	57.1%
	Time	8.01 - 16.00	37.6%	33.6%	12.9%	17.1%	32.8%	31.3%	36.6%	25.7%
		16.01 - 24.00	15.9%	14.2%	5.7%	7.8%	14.1%	19.8%	17.6%	12.1%
		24.01 >	8.8%	6.0%	3.9%	4.5%	4.0%	5.9%	4.8%	5.1%
	Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Station B	Detention	0.00 - 8.00	21.9%	13.7%	10.4%	23.7%	14.2%	18.5%	7.9%	16.6%
	Time	8.01 - 16.00	46.0%	54.7%	56.0%	46.9%	55.9%	56.1%	57.8%	52.6%
		16.01 - 24.00	21.2%	23.6%	26.1%	17.5%	20.4%	21.6%	26.3%	22.0%
		24.01 >	10.8%	8.0%	7.5%	11.9%	9.5%	3.8%	7.9%	8.7%
	Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Station C	Detention	0.00 - 8.00	12.5%	16.6%	17.0%	23.5%	16.5%	15.3%	20.3%	17.7%
	Time	8.01 - 16.00	29.5%	42.7%	44.8%	39.5%	40.0%	48.5%	49.1%	41.5%
		16.01 - 24.00	30.5%	24.9%	20.6%	20.7%	25.6%	22.9%	21.0%	23.6%
		24.01 >	27.5%	15.8%	17.7%	16.2%	18.0%	13.3%	9.6%	17.3%
	Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

The study suggests that the workload of the stations had an indirect impact on detention length and that this impact could be either negative or positive. On the one hand, the police deal with some cases slowly because of a heavy workload in the station. On the other hand, this heavy workload also forces the police to speed up the investigation of cases because there is not always adequate time to spend on each case. Thus this time pressure forces the police to deal with the detention cases as quickly as possible, so that some spare time could be used for other business in the stations. This negative situation eventually produces a positive effect on the reduction of detention length as was observed in Station A.

Table 5.12: Frequency of the Detention Length in All Stations (%) (1992-1998).

Year * Detention Time All Stations								
% within Detention Time								
		Detention Time						Total
		0.00 - 4.00	4.01 - 8.00	8.01 - 12.00	12.01 - 16.00	16.01 - 20.00	20.01 - 24.00	
Year								
1992		7.1%	12.1%	12.9%	16.5%	15.8%	20.9%	14.0%
1993		4.9%	8.5%	10.9%	11.2%	10.8%	11.1%	9.2%
1994		21.5%	17.9%	12.3%	13.4%	12.5%	10.9%	15.5%
1995		38.2%	26.1%	15.7%	17.0%	15.5%	15.7%	22.6%
1996		13.7%	13.6%	18.9%	16.5%	16.2%	19.0%	15.9%
1997		7.4%	11.9%	13.5%	13.1%	14.7%	11.8%	11.5%
1998		7.3%	10.0%	16.0%	12.3%	14.5%	10.7%	11.3%
Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Figure 5.15: Detention Length in Station A.

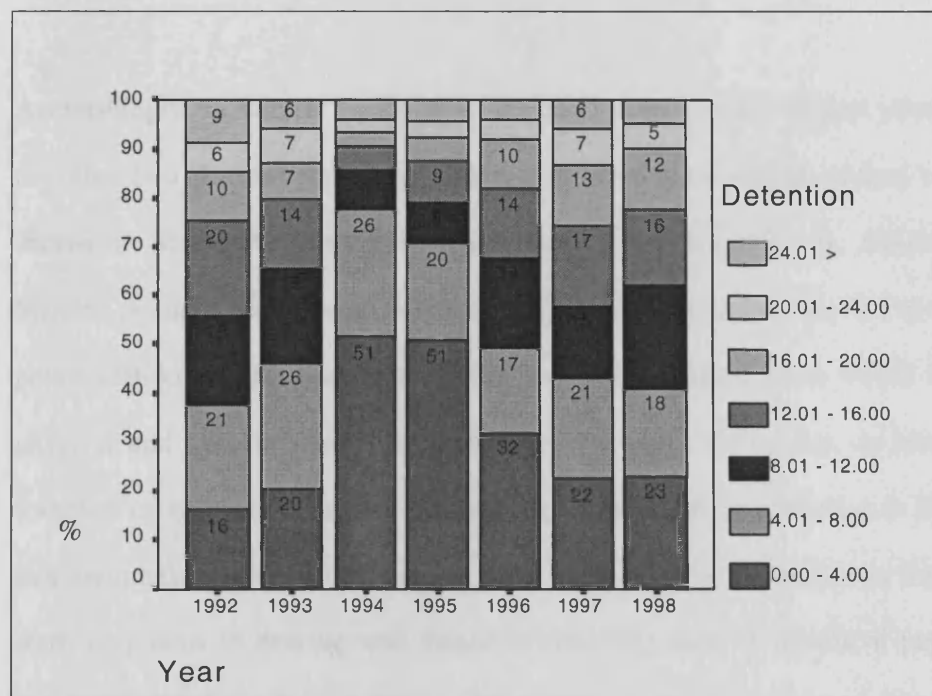
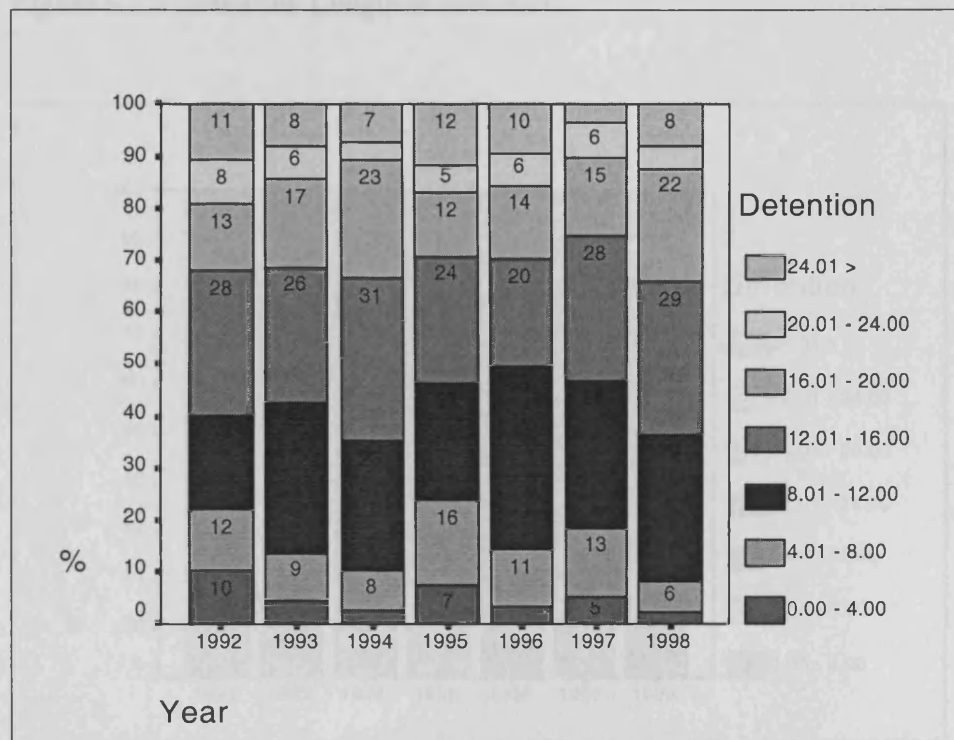
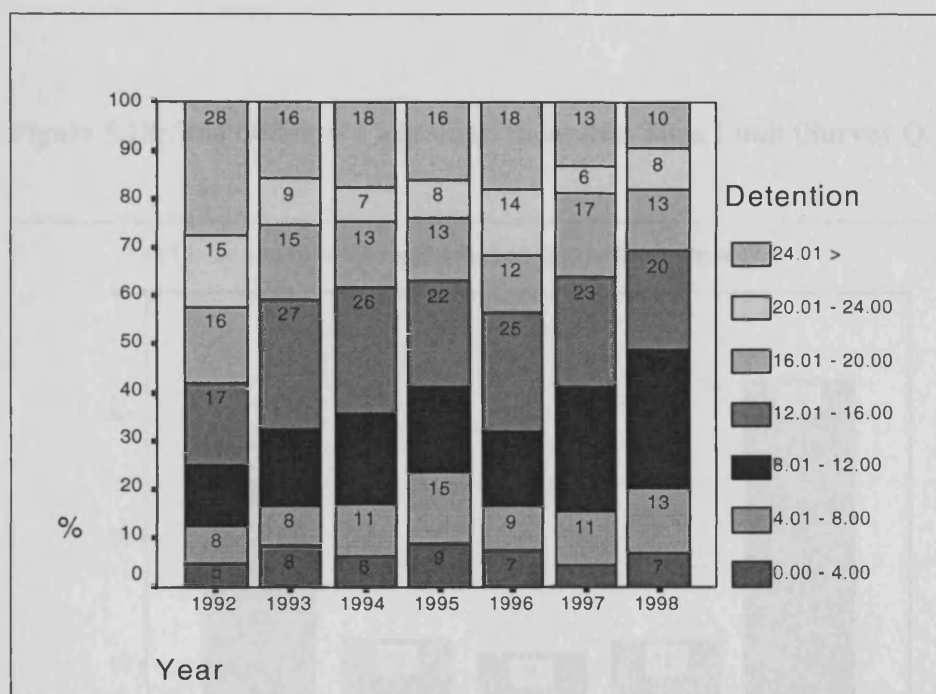


Figure 5.16: Detention Length in Station B.

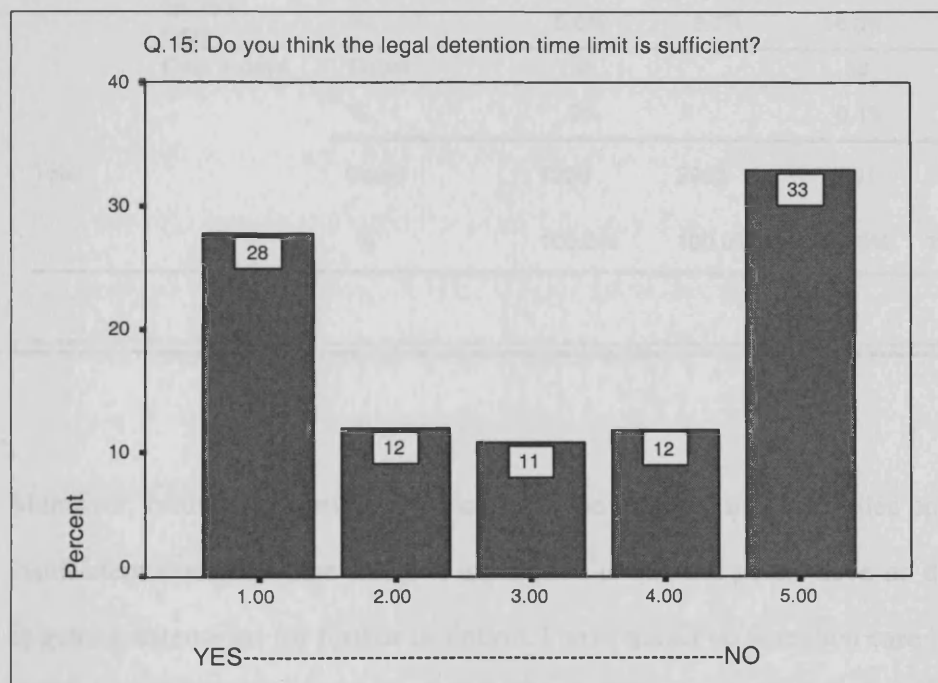
Astonishingly, in Station C, the mean detention time was the longest compared to the other two Stations. One would have supposed that the detention time would be shorter in Station C because it is not located in a big city like Ankara where Stations A and B are located. Hypothetically, one might expect that in a small-town police station the job would be done more swiftly because there would be fewer physical and bureaucratic obstacles than in a larger town or city, as long as the transport of suspects to another station was not required. Nevertheless in Station C, this assumption worked in reverse. I have observed that the police in this station were very slow in dealing with detainees and very keen on details of paperwork, which usually slows the progress.

Figure 5.17: Detention Length in Station C.

When the low number of detention cases which exceed the normal 24-hour detention limit is taken into consideration, it would suggest that the legal detention time limits do not cause big problems for the police in doing their job. Hence the basic statutory limit provided for in TCPA would not be regarded as too short by any means, and there is no need for extending it. Nevertheless the research survey has revealed that some police officers do not concur with this view. 45 per cent of the respondents in the research questionnaire disagreed to some extent that the legal time limits are sufficient, while 40 per cent thought the opposite. 11 per cent of the respondents neither agreed nor disagreed with the question (see Figure 18). The officers, who thought that 24 hour detention limit was not sufficient, claimed that

the police need more time if a 'proper investigation' was to be conducted, because the basis of the charges only becomes available in the latter stages of the detention period.

Figure 5.18: The Officers' Opinion of Detention Time Limit (Survey Q. 15).



Meanwhile, the research figures put forward regarding the need for longer detention limits, as claimed in the survey by some officers, is highly disputable. According to the research stations' statistics, as seen in Table 5.13, lengthy detention beyond the 4-day limit is very rare. For instance, in Station B, it never occurred. In Station A, there were only two cases in 1992. In Station C, 59 cases were recorded between 1992 and 1996, representing a figure of just over 1 per cent.

Table 5.13: Detention Lasted beyond the 24-Hour Limit in Stations A, B and C (1992-1998).

		Police				
		Station A	Station B	Station C	Total	
Detention Limits	0-24	Count	6863	2704	3880	13447
		%	94.9%	91.3%	82.7%	90.3%
	Over 24 up to 4 days	Count	365	259	752	1376
		%	5.0%	8.7%	16.0%	9.2%
	Over 4 days	Count	2		59	61
		%	.0%		0.1%	.4%
Total		Count	7230	2963	4691	14884
		%	100.0%	100.0%	100.0%	100.0%

Moreover, further supporting evidence from the research that the police opinion of insufficient detention time limits is unjustified is that the police have no difficulty in getting extensions for further detention. I have traced no detention case in which an application for a time extension was refused by prosecutors or courts. As public prosecutors are the masters of the police investigation, they usually give the police an opportunity to complete the investigation. It appears that the decision for an extension of detention is a routine procedure and the possibility of refusal is very small²⁹.

Although, by amending TCPA the Turkish Government took an important step to reduce maximum detention length, in an effort to bring Turkish law into line with

²⁹ According to TCPA, the police are only permitted to apply for an extension of detention for four days only if there are three or more suspects in custody, who committed the offence collectively..

the European Convention, the present 7 and 10 days detention time limits are still criticised for not being in line with the European Human Rights Convention. According to EHRC article 5/3, an arrested person should be brought before the court *promptly*. While the Convention did not indicate an exact time limit, the meaning of 'promptly' is interpreted broadly in a ECHR Decision (Brogdan and others vs. UK), and up to 4 days is assumed to be within the limit (Inceoglu, 1992:278-279). In this respect, Eryilmaz (1998b:165-166) argues that present time limits are in line with the Courts' decisions. He maintains that, in Turkish law, a judge's decision is required to extend detention after four days so that no-one would be kept in police custody beyond four-day limit without a court decision. Contrary to this view, Tezcan (1998:33) argues that despite the latest amendments, the present time limits are still incompatible with ECHR judgments since getting an extension of detention from a court does not change the conditions of a suspect as long as the suspect remain in police custody and at the hands of the police. Tezcan also claims that a ten-day detention is not justifiable even under abnormal circumstances such as combatting terrorism. Given the example of relatively shorter detention limits in some European countries such as Spain, UK, Ireland, and France, which also have terrorism problems, the author believes that Turkey still has too long detention limit and this situation makes it very difficult to defend the cases against Turkey at the European Court of Human Rights (Tezcan, 1998:33-34).

Similarly, another point for consideration is the division of crimes in regard to initial and maximum legal detention periods. For crimes which are prosecuted under the State Security Courts Act the initial detention period is 48 hours, instead of 24 hours as for other crimes, and for crimes committed by a group of three or

more people this initial limit can be extended up to seven days, or 10 days if the crime is committed in a region where an extraordinary administrative law is applied. This complex division is, I believe, not needed and is at the root of most of the complaints about unnecessarily long detention. It should not be forgotten that, in the three EHRC cases against Turkey, which have ended so far, the detention of suspects was dealt with by the security forces in accordance with SSCA, not T CPA.

Although using different time limits for different crimes is not against the European Convention as long as they are within the acceptable limits set by the convention, the dual system of Turkish law with regard to the detention period causes some practical problems such as determining which procedure applies. There are some cases where the suspect is first detained under the SSCA but later it is decided to continue the prosecution as a normal procedure. Evidently, in such circumstances, the question arises that the suspect may have been kept in custody unlawfully because of the application of the wrong detention procedure.

Looking beyond the practical problems mentioned above, the dual system of the detention period also gives an impression that Turkey has a twin justice system: One for some people and one for everybody else. Having different detention periods for different crimes may not be the only reason for this, but its contribution is considerable (Tezcan, 1998). Consequently, I believe that to regulate a common detention length for all types of crimes and criminals would be to the benefit of all sides, both the public and the police. First, the public would benefit by knowing more clearly what the legal rules are as there would be no complex time limits and second the police would benefit from it by applying common rules to everybody.

The latter is especially important in correcting the perception of Turkey in international platforms as having a dual justice system in force in the country.

Physical Conditions in the Detention Cells

Although TCPA does not contain any direct provision regulating the conditions of detention cells, a guideline, issued by the National Police Directorate, sets the physical standards of a detention cell. Accordingly, a designated detention cell should not be less than 7 square metres in size and its height should not be less than 2.5 metres. All cells must be sufficiently and naturally lit and ventilated. Use of bedding equipments such as a blanket and mattress are permitted along side with a bench.

This piece of regulation is an obvious example of how the rules would be very ineffective unless it were endorsed by some other means such as finance and physical improvements. I first visited my research stations in the summer of 1993 and the last visit was in the autumn of 1999. Over this period in Stations A and B the physical conditions of the detention cells remained the same and most of the requirements of the regulation were not applied. However, there were some improvements in Station C, because of relocation of the station in a new building. Stations A and B were built a long time ago according to the standards of the time, thus, it does not currently seem to be possible to redesign the buildings to accommodate the new requirements. In these stations, the smallest rooms in the buildings are designated for the detention of suspects and it is not possible to light and ventilate these cells naturally. Similarly, the washing facilities are not adequate.

Because of lack of space and rooms, there was only one detention cell in each station and all male suspects were kept in the same place regardless of their age and status. Female suspects were kept separately in an ordinary room which was not actually designed as a detention cell. Thus, from time to time a large number of detainees (5-10) was forced to share a small cell of no more than 3-5 metres square. This situation was more or less the same for other police stations in the country that I visited on an *ad hoc* basis during my research period. Not surprisingly, the poor conditions of the detention cells of Turkish police stations are criticized by many international human rights agencies such as Amnesty International (AI) and the European Committee for the Prevention of Torture (ECPT). In line with my findings, their reports published over the years also draw attention to little and insufficient physical improvements in the physical cell conditions.

Interviews

Interviewing the suspect in connection with an offence is probably the most important stage of the whole detention procedure, since interviews are one of the sources of evidence (Maguire and Norris, 1992:1). Hence, while the detention includes questioning, the confession remains the main objective of the questioning as confessions made during questioning may have a profound effect on the outcome of the criminal investigation (McConville, 1993:31). Perhaps this is because Turkish legislators paid special attention to the re-design of the regulation about police questioning when amending TCPA article 135 which consists of detailed rules about how to conduct an interrogation and what an interview record should contain (Icel and Yenisey, 1993:30). Amongst the twenty-six amended articles, article 135 is probably the most important one as it introduced fundamental changes

in the rights of suspects who are subject to detention and police questioning.

Since one of the main aims of the amendments in TCPA article 135 was to prevent the maltreatment of suspects before or during the interview in order to get a confession, suspects are protected from improper methods of interrogation such as mishandling, exhaustion, bodily harm, the administration of drugs, torture, deceit, or hypnosis and, admissions obtained by improper methods of interrogation cannot be considered during the trial even with the consent of the suspect.

According to the new article 135, each formal police interview should begin with the identification of the suspect, who is then informed of the nature of the accusation(s) against him/her and of his/her rights. The interview statements are printed on a specially-designed form called 'the statement record' using a typewriter or a computer word-processor. At the end of the interview session, the interview record, containing the transcript of what has been said during the interview, is signed by all parties who have been present in the interview room. The location where the interview took place, the time and date are also included. If one of the requirements above cannot be met, the reason is stated in the form. If there has been any refusal to sign the record, this is also stated in the record. However, the interview record in which suspects' accounts of the incidents appear does not include all the questions asked by the police. What actually appears in the record is a description of the incident as told by the suspect (Safak, 1991:89-90).

In every police station, some officers are appointed as interviewing officers, with the rank of the interviewing officer varying from constable to detective. Usually the rank rises when the crime is serious but no special ability is required to be an

interviewer. It is just a matter of appointment by the station commander. Therefore, any officer of any rank who works in the station can be an interviewing officer. This issue was something I intended to explore when I was interviewing the research station chiefs. Two of the chiefs refused to accept my comment that the interviewing officers were appointed to that post by chance. They claimed that only an officer who was believed to be capable of doing the job would be appointed.

During my research, I paid extra attention particularly on the impact of the new rules on how the police proceed with an interrogation and devoted my time accordingly to the observation of the interrogation process. Although I had limited knowledge of how questioning was conducted before the new rules, it did not matter as my early research in 1993 and my interviews with the police produced sufficient information to evaluate the situation before and after the 1992 amendments.

Despite the intention of the legislator to design a just and efficient procedure of police interrogation, the research has not found any compelling evidence that this intention has been realised; instead, even after the 1992 amendments the procedures of interrogation as conducted by the police remained unjust and insufficient, owing to the following reasons:

First of all, the law is far from providing a clear definition of what a police interrogation is and what it means to a court case. According to the terminology used by TCPA, the terms interrogation or questioning are used for the interrogation of a suspect in a court and only a judge has the discretion to interrogate a suspect. What the police or public prosecutors do is to interview the suspect to obtain a

'statement' (Yurtcan, 1991:140). For this reason, the interview records are technically called 'statement records'. While setting out the guidelines for the conduct of interviews, the new section 135 of the Act draws attention to this difference but this has caused confusion to the police and others. In the research survey 70 per cent of the respondents stated that they were confused by the legal terminology used by the Act.³⁰

In fact, the reason for using different terminology is to distinguish the evidence value of the suspect's statements. For instance, the court may automatically exclude a confession taken by the police during an interview when the suspect simply claims in the court that the confession was made under duress. In this case, additional evidence must be presented by the prosecution to secure a conviction, but a confession made to a judge during the preliminary hearing may easily be sufficient for a conviction (Safak, 1991:89-90).

Because of this confusing meaning of the word interrogation in Turkish law, it might be concluded that the conversations taking place between the police and the individuals or suspects cannot be described as 'interrogation' in the sense that it is understood in English law. In Turkey, the police interrogation is like 'taking statement' rather than an interrogation. The former differs from the latter mainly in intensity, aggressiveness, and unrestriced questioning periods within the comparatively long detention period³¹.

³⁰ Survey Question Number 47.

³¹ In this thesis, regardless of terminology used by the Turkish legislator the words "interview", "questioning" or "interrogation" refer to the act when the police interview a suspect in connection with a criminal investigation and no distinction has been made between the concepts of interrogation or questioning or interview.

In line with the confusing definition of police interrogation by the law, the second blow for the system appears to be the evidence value of a confession obtained during police interrogation. Although a confession may be considered extremely valuable in English Evidence Law, this may not necessarily be the case in Turkey where the confession is of no particular importance. It is considered only one of the factors which help the judge to make his judgement. Thus, according to legal theory, a confession alone cannot constitute a base for prosecution unless it is corroborated with some other evidence. In other words, in the presentation of the evidence, even when the suspect has pleaded guilty, other evidence against the suspect must still be presented to the court, since a formal acknowledgment of guilt is not automatically result conviction (Yenisey, 1987:217). Therefore, even after having the confession, the police have to concentrate on finding other incriminating materials and discovering other evidences in the light of the information provided by the suspect. Even if suspects confesses and says that 'I admit it' this is not regarded as the end of the investigation; they still need to provide more information and evidence to construct the case against the suspect (Eryilmaz, 1999).

Further to the ambiguous definition of interrogation, there are some grey areas in the law which give the police opportunities to distort the system for the benefit of their cause. The legislature has left the answer of many important questions to the discretion of the police such as when and how the interrogation should take place and how long it should last. For example, while TCPA emphasizes that the arrested person should be brought before a judge on expiry of the statutory time limits, it does not elaborate on the procedure which should take place between the arrest and questioning processes (Sahin, 1994:139). Furthermore, there is no provision that limits how long a suspect can be interviewed and when the questioning process

should commence. As a result, an interrogation can practically last hours since there is no legal restriction on the length of interview.

Although there is no legal time limit within which the police may question a suspect, the durations of the interviews should be recorded in the interview records by law (TCPA, article 161). The research found that only in Station A, it became an *ad hoc* practice, following the introduction of the Act, but the records were still extremely inaccurate and unreliable. For instance, I have seen numerous interview records in which the interview time was shown as being only 5 minutes. This is practically impossible. From my observations, I would suggest that 30 to 45 minutes is the average time for which suspects were interviewed in ordinary cases. Obviously as the suspected crime becomes more serious, the interview takes more time and there is no pattern for the interview time.

In line with this study's finding, another study on the efficiency of the Turkish Criminal Justice system that covered 1117 criminal court cases by Donmezer and Yenisey found that only in 143 out of 1117 cases was the duration of interview recorded. In 36 of these cases the interviews lasted 15 minutes and there was one case in which the interview lasted seven hours. The study did not mention an average duration time but did draw attention to the very low number of cases in which the duration of interview was recorded. The study concluded that the law was not implemented accurately and properly by the police (Donmezer and Yenisey, 1998:12).

The TCPA amendments do not specify where the interviews should be conducted, even though it is required to write down in the interview record the place of

interview. Thus under the present system, there is no legal restriction against questioning suspects at their home, or their work place, or at the scene of the crime (Sahin, 1994:13). Nevertheless, in practice, police stations are the preferred venues for questioning and I have found no records in the research stations showing that an interview was conducted in a place other than a police station or department. In cases of serious offences such as organised crime, murder or fraud, usually special police departments deal with the matter and they interview the suspect in their department, although the file of the investigation may still be available in the district police station.

In Station A, a room was specially designed to be used for interviews, but astonishingly, it was never used during my observation period. The room called 'the group command room' was used instead. In Station C, a room was used especially for interviews but it was also used for other purposes related to keeping records. In Station B there was no special interview room, so the group command room was used for the interviews.

Recording of Interviews

TCPA article 135 requires that a suspect's statements made during the interview must be written down in a specially-designed form called the interview record which contains the identity of the suspect, his mother's and father's name, the date and place of his birth, his address, occupation, marital status, and the date and place of interview. The names and addresses of the individuals whom the suspect wants to contact, and whether the suspect has exercised the right to silence and the right to legal advice are included as well. The interviewing record must also state the names

of those present at the interview. At the end of the interview, before signing the document, the suspect must be given an opportunity to read his written statement, and then he may wish to ask for amendments and corrections to be made in the statement. If the suspect's legal adviser is available, he is also invited to read and sign it. The person interrogated must answer correctly the questions asked about his identity and address (TCPA, article 135).

The research discovered that, in practice, in the majority of the cases, the script of interviews is limited to the suspect's version of the facts and full verbatim notes are not made.³² The interviewing officers also do not make an effort to type the exact words used by the suspect. In many cases, before signing the interviewing record, suspects do not read the interview record carefully and check it whether the statements written in the record are in line with what they have said. Indeed, if the suspect's legal awareness is not high, it is hard to expect from him to understand the significance of a written statement in a court case.

Tape-recording of Interviews

Turkish law at present does not require that police interviews should be tape-recorded. The practice under PACE suggests that utilization of a tape recorder serves to protect a suspect from any abuse of police powers and, equally importantly, it protects the police investigator from unjustified allegations by a suspect. It also reduces the scope of disputes as to the accuracy and admissibility of evidence by enabling the court to assess the activities of the police more accurately

³² In the interview records that I examined during the research, I did not find any interview script that enclosed full version of what has been said during the interrogation.

in the investigation process (Coleman *et al.*, 1993:114). Despite these benefits, in Turkey, it is evident from the research that the introduction of tape recording of interviews as a precondition of the interrogation procedure is out of the question at least for the near future, because neither the legislature nor the police appeared to be ready for a such move.

To find out the view of the police about the introduction of tape recording of interviews in Turkey, I asked the officers in my survey whether they would be in favour of it. The responses were considerably positive as 68 per cent would be in favour of the idea (Figure 5.19). However, the majority of the respondents who were in favour of it (54 per cent) also thought that the chance of realising such an idea was not significant (less than 40 per cent by percentage) (Figure 5.20). During the informal interviews, very pessimistic responses were also noted. As one officer expressed in his opinion, instead of taped records he would prefer a proper working typewriter:

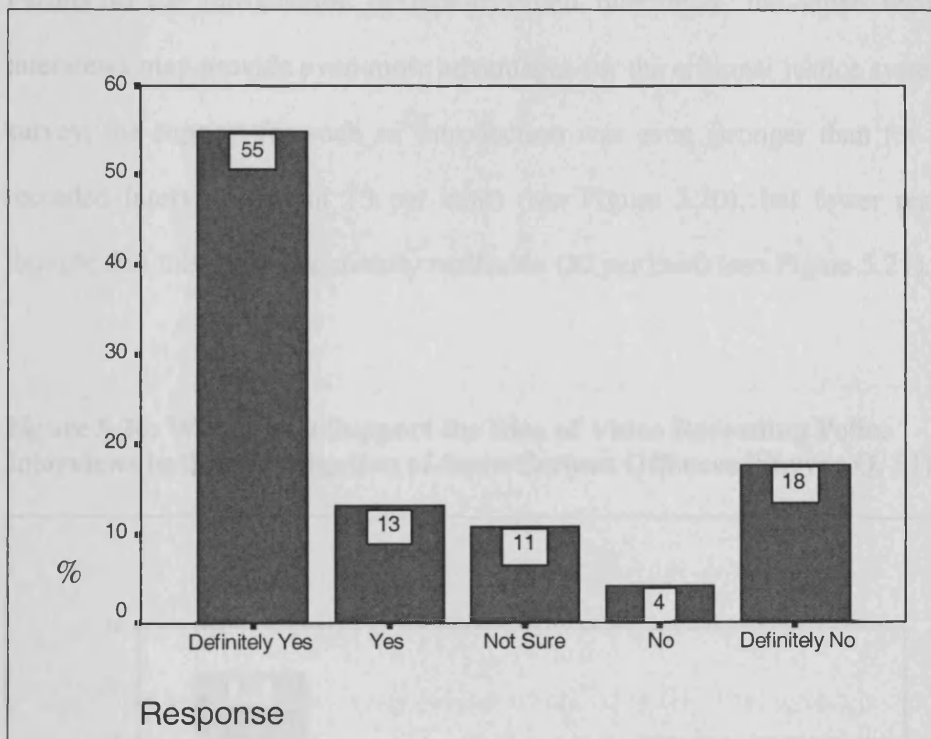
‘I do not think tape recording of interviews can be introduced in the foreseeable future. Forget the recording equipment, we lack even the necessary number of typewriters. We have only two typewriters in this station and one is not working properly. So we have to face reality’ (C-3).

Some of the officers even doubted that tape recording would bring any benefit to the Police, but only more trouble.

‘I would support the idea of the introduction of tape recording of interviews. However I am not sure if it really works and would bring benefit to us. The suspects can still deny what they said in the station with fictitious reasons and judges may accept their claim. In the end our efforts will be wasted again’ (B-7).

'I am positive, favourable. But first of all the law should be changed and the police interviews regardless of whether tape-recorded or not should be given stronger evidence value. I also believe some will still claim in court that they confessed under, if not a physical then a psychological, threat or force' (A-9).

Figure 5.19: Would You Support the Idea of Tape Recording Police Interviews with Suspects (Survey Q. 49)?



At present the shortage of finance, lack of skilled personnel and some technical difficulties appear to be the main problems to overcome in order to move to tape recorded interviews. Similar worries are expressed throughout the research, but there are officers who believe that the technical difficulties would not be a big problem as long as a decision was made to change the system. Having monitored

the technical developments within the Turkish Police Organisation over the years, I also believe that the tape recording of interviews can be achieved step by step. With a carefully prepared plan, it can be introduced gradually. The major problems may be financing the technical equipment and training the staff, so to overcome these problems the change should start with selected trial areas of the country instead of a countrywide immediate change.

Further to the introduction of tape-recorded interviews, the video recording of interviews may provide even more advantages for the criminal justice system. In the survey, the support for such an introduction was even stronger than for the tape-recorded interviews (total 73 per cent) (see Figure 5.20), but fewer respondents thought that this was not currently realisable (32 per cent) (see Figure 5.21).

Figure 5.20: Would You Support the Idea of Video Recording Police Interviews in the Investigation of Some Serious Offences (Survey Q. 51)?

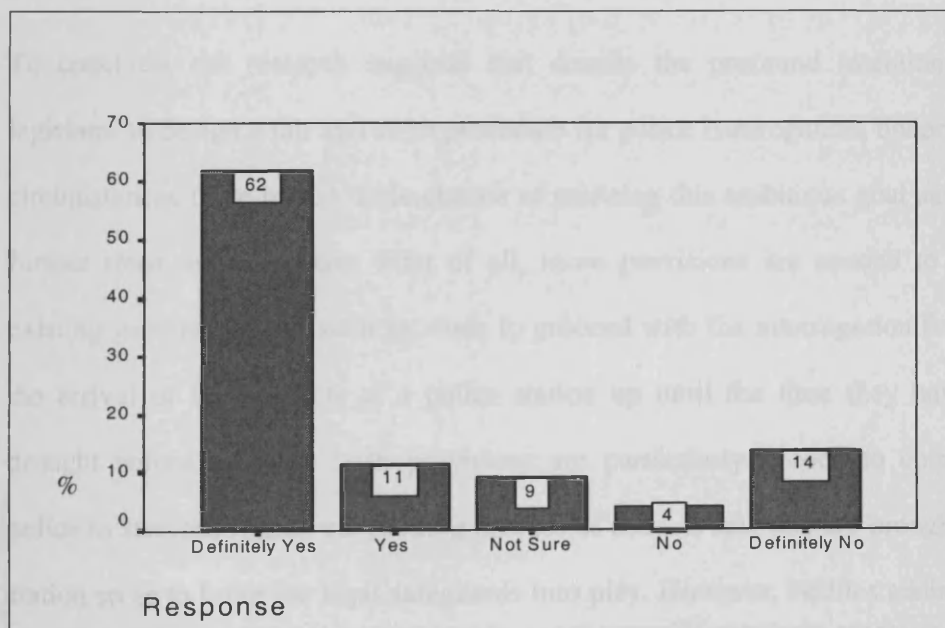
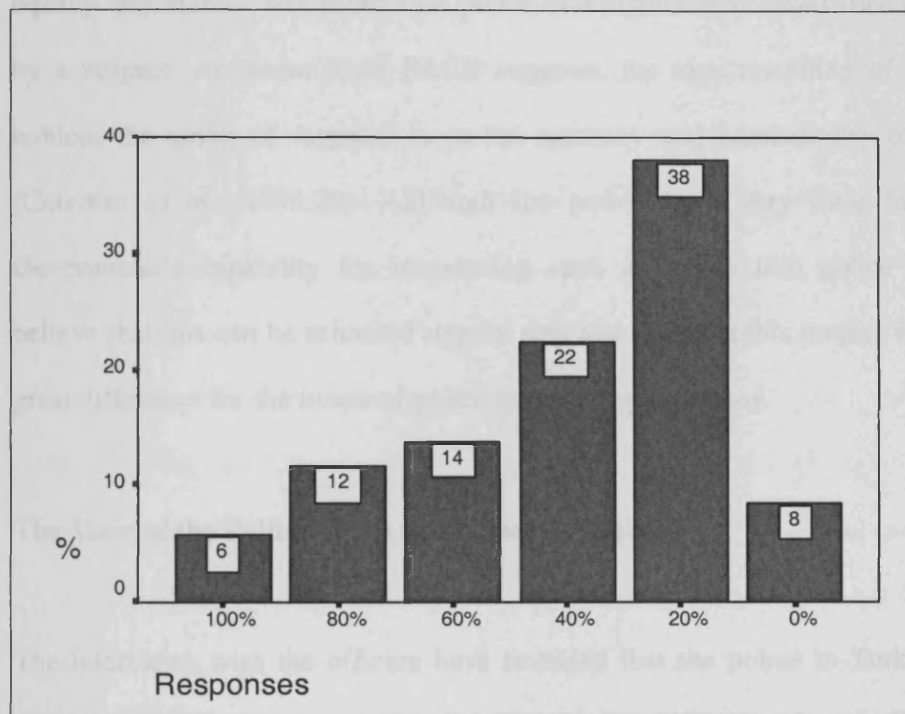


Figure 5.21: Officers' Opinion of the Probability of Realising Video Recorded Interviews in Turkey (Survey Q. 52)?



To conclude, the research suggests that despite the profound intention of the legislator to design a fair and strict procedure for police interrogation, under present circumstances there is very little chance of realising this ambitious goal as long as further steps are not taken. First of all, more provisions are needed to fill the existing gaps in the law such as when to proceed with the interrogation following the arrival of the suspects at a police station up until the time they have been brought before a judge. Such provisions are particularly needed to compel the police to start the formal questioning process as soon as suspects are brought to the station so as to bring the legal safeguards into play. However, besides adding more provisions to the law, the authorities should also consider seriously introduction of

the use of tape recorders in police questioning as soon as possible. Without doubt, this move will serve to protect a suspect from any abuse of police powers and, equally importantly, will protect the police investigator from unjustified allegations by a suspect. As research on PACE suggests, the tape recording of interviews reduces the ambit of disputes as to the accuracy and admissibility of evidence (Coleman *et al.*, 1993:29). Although the police have very little faith in the Government's capability for introducing such a change into police stations, I believe that this can be achieved step by step and realising this project will make a great difference for the future of police questioning in Turkey.

The View of the Police About the Suspects' Rights

The interviews with the officers have revealed that the police in Turkey did not welcome the idea of more suspects' rights after the 1992 amendments. They firmly believe that suspects were given too many rights and the balance between police powers and the rights of suspects was swayed in favour of the suspects. Their simple interpretation of the situation is that more suspects' rights means more restriction to their work. This finding is similar to what some researchers found in England and Wales. For instance, amongst the many senior officers they interviewed, Maguire and Norris discovered a considerable degree of 'dissatisfaction and frustration' with PACE:

The general view expressed was that 'the pendulum has swung too far in the wrong direction', or that 'we are now acting with both hands tied behind our backs.' (Maguire and Norris, 1992:62).

Likewise, in my research, reflecting the general opinion of most police officers, the chief police officers in each of the three regions where the research was carried out said that the new provisions have been impeding the pursuit of criminals. They claimed that 'particularly the right to silence undermines their efficiency and should be withdrawn'. Along side with the chiefs, some other officers have also articulated that determined 'professional' criminals were now be more able to deceive the police by taking the right to silence.

Nevertheless, research findings do not suggest that these views have a solid foundation. According to the research by Eryilmaz (1999), the take-up rate of rights was very low that it was not possible to assert that the police cannot work efficiently; the take-up rate for legal advice was around ten per cent and for the right to silence three per cent, and in only very few cases suspects decided not to talk to the police after consulting with their solicitor. This figures from Eryimaz (19990 study suggest that the great majority of suspects still answer the questions put to them and there is no clear evidence that the introduction of new safeguards for suspects has made the job more difficult for the police, contrary to their claims.

One of the main causes of police complaints is probably the difficulties in adapting and adjusting to the new procedures of the amendments. However, in considering the freedom and flexibility that the police enjoyed in their work prior to the introduction of some safeguards for suspects, it is quite natural to expect a negative reaction from the side of police. What the police should understand is that the issue of suspects' rights is now an unavoidable part of a proper police investigation and also the reality of their job.

Summary of Findings

- Over the years, the detention figures have risen as well as the investigated crime rates. However, the figures for the number of detentions are rather divergent and complicated since the figures rise and fall according to the years and the stations. The overall picture suggests that even though there had been ups and downs over the years in the figures, the general tendency was towards a decline, which was effectively in line with the intention of the legislator. However, one could still argue that a comparison of individual years and stations produces divergent results which would make the general conclusion on the total figures highly controversial.
- There are serious doubts about the reliability of the officially-published statistics. In my opinion, the official statistics are only the tip of the iceberg, since some detention cases go unrecorded as a result poor practices in record keeping. I would estimate that the real number of detention cases in Turkey may be three times bigger than the official figure.
- The research has discovered that in the interpretation of the required level of suspicion for arrest, there is a huge gap between the standards established by the law and doctrine and the standards followed by the police in practice. The police still have considerable freedom to follow crime control norms in relation to the implementation of the 'reasonable' or 'strong suspicion' requirement. Though the requirement of 'strong suspicion' requires that an arrest should not be made until the police gather sufficient evidence and information, the police rarely comply with this. It appears that the

requirement of 'strong suspicion' is being interpreted loosely and has not been adopted by the police as part of their working practices.

- Meanwhile, the figures for the reason for detention and outcome of detention suggest that in practice the police do not take into account the likelihood of a suspect's release on bail or without charge when it comes to the detention decision.
- It appears that the public prosecutors, who have the legal duty and responsibility of supervising the detention procedure that the police are supposed to operate within the boundaries of the law, passively allow the police to continue their current practices, and poor record-keeping is just one of them. The research suggests that either the prosecutors are uninformed of actual police work or they just turn a blind eye. I would argue that the second option is more likely.
- When the low number of detention cases which exceed the normal 24-hour detention limit is taken into consideration, I would suggest that the legal detention time limits do not cause big problems for the police in doing their job. Hence, the basic statutory limit provided for in TCPA would not be regarded as too short by any means, and there is no need for extending it. However, the research survey has revealed that some police officers do not concur with this view.
- TCPA currently does not require that interviews are tape-recorded. The practice under PACE suggests that utilization of a tape recorder serves to

protect a suspect from abuse during the interrogation. It also protects the police from unjustified allegations. Further, the scope of disputes as to the accuracy and admissibility of evidence is greatly reduced. However, despite these benefits, it appears from the research that in Turkey the introduction of tape recording of interviews as a precondition of the interrogation procedure is out of the question at least for the near future, because neither the legislature nor the police appear to be ready for a such move.

- The police believe that more suspects' rights means more restriction to their work. They claim that determined 'professional' criminals deceive the police by taking the right to silence. This finding is similar to what some researchers (i.e. Maguire and Norris, 1992) found in England and Wales.
- To conclude, the research suggests that despite the firm intention of the legislator to design a just and effective procedures for police detention and interrogation, under present circumstances, there is very little chance of realising this ambitious objective as long as further steps are not taken.

Conclusion

In spite the improvements in the provisions of TCPA regarding police detention procedure and the rights of suspects by the 1992 amendments, it is emerging from the research that there has not been a profound impact on the fundamentals of existing police practices after the new provisions. Perhaps the situation can be best explained by a Turkish saying: 'The mountain gave birth to a mouse'.

On the whole, most of the effects were limited to the paperwork level, whereas they were really needed in the nature of police procedure. The result, therefore, was that the influences of the new rules were mostly felt on the formalities and, because of this, the characteristics of daily police work and practices in stations remained almost unchanged.

There has been some sort of drop in the mean detention time but still a lot of people are detained and released without charge as a result of arrest on general suspicion³³. This practice was clearly contrary to the rhetoric of the law. In many cases the suspects were kept in custody on the basis of general suspicion, even though the 'great suspicion' requirement stipulated by TCPA means that the police should complete the main part of the investigation and make all possible inquiries before the detention of a suspect. Thus, this area of the law is well exploited by the police despite relatively high standards and criteria established by TCPA³⁴.

The research has also discovered that the police use arrest and detention powers as a strategy in preventing crime and also for giving a message to society that the police are working. There is evidence that people are arrested and detained only for questioning and large numbers of those who are taken to the police station are released without charge. This suggests that the police use an old fashion investigation tactic which is 'arrest first, ask questions later'. This situation eventually inflates the number of unnecessary detention cases and people who have actually not committed an offence but who have some information may have been

³³ Particularly, the criterion of 'strong suspicion'.

³⁴ The requirement of 'strong suspicion', is a more stringent requirement than the PACE requirement of 'reasonable suspicion'. However, the current practice suggests that the Turkish police are far from complying with the requirement of strong suspicion.

subject to the same treatment in the police station as if they were the real suspects (Eryilmaz, 1999).

Furthermore, given the fact that a high proportion of suspects are released from stations without charge, it would seem that the police are usually wrong in making arrest and detention decisions and, as a result of this, too many individuals are subject to the discomfort of arrest and detention. Without question, such practices are not in line with the legal theory stating that the police have to be very careful before restricting personal liberties (Yenisey, 1995:89).

As far as the law of interrogation of suspects is concerned, the research suggests that the regulations are weak in structure and insufficient in practice. The police still use the same old method of contemporaneous note-taking and the law is wide open to abuse despite the introduction of a number of safeguards that are evidently not used much. Therefore, there is a need for clear and strict guidelines regarding the conduct of interrogation, such as when and how the interrogation should be conducted, how many officers should be present to interview a detainee at one time and how long a session of the interview should last.

Meanwhile, insufficiency and inefficiency in the TCPA provisions have also emerged in some areas of the detention procedures. For instance, TCPA still fails to regulate the procedures between arrest and detention decision, and the procedures which should be followed during detention up until the beginning of questioning. In this respect, the present law does not oblige the police to bring the suspect to the police station without delay, and does not indicate when the actual detention time start, and does not necessitate a review of detention at regular intervals. Hence,

these legal shortfalls give the police the opportunity to utilize the detention and interrogation procedures to their maximum benefit and according to their own objectives.

The research observations have suggested that the take-up rates of suspects' rights are generally low. The right to have someone informed has a relatively high take-up rate but the reliability of the figures is very doubtful. According to the records, almost all suspects were informed of their rights before interviews but research observations raised serious questions about the accuracy of these records.

Observations have also revealed that in reality the requirement of informing suspects of their rights just before the beginning of each interview session had become a very routine procedure and most of the time the police told nothing to the suspects, although the interview records indicated that the police fulfilled this requirement. Since the prepared form already has a section that shows that suspects are told their rights, once a suspects signs the records, it means that the police have informed him of his rights; even if in fact they have not.

To sum up, it is evident that the new provisions introduced in TCPA to regulate the questioning process have made little difference to the working rules already adopted by the police and they do not seem to be preventing the irregularities. In this respect, the road that might lead to miscarriages of justices is open all the way in the Turkish Criminal Justice System. Not only can a person who is actually innocent be convicted as a result of wrongful police practices, but also the police can release a guilty person by using their discretion for the sake of achieving their short-term objectives. It is crystal clear that something should be done to prevent

such outcomes. In the following chapters, the discussion will focus on the factors affecting why the police fail to implement the legal requirements effectively and what can be done about this problem.

CHAPTER 6

LEGAL REGULATION AND THE POLICE:

THE PROBLEM OF REFORM

Introduction

The effects of legal reforms on policing practices are linked to the debate surrounding the issue of the relationship between the legal rules and the police. Without recognition of the possible impact and influence of the law on the police, it is likely that any attempt to regulate and change police practices will fall short. However, an explanation of how legal regulation affects policing and the police is fairly complex and there is no straightforward answer to the question 'can the police be controlled by means of legal regulation'?

Very often the occupational police culture has been pointed out as the main reason for the failure and ineffectiveness of the legal rules which seek to bring police activities and practices under legal scrutiny. Although, the importance of the police culture is considerable in explaining the relationship between legal regulation and policing, there are other perspectives. As one reads through the mountain of work on this subject it is clear that there is no absolute answer to the level of correlation between the attitudes which dominate police culture and the actions of the police.

To date, the 'universality and tenacity' of the police culture has provided a convenient scapegoat for those most critical of the police but evidence suggests that the attitudes and actions of the police do not exhibit a purely standard model and the police culture does not exist in a vacuum (Waddington, 1999). The culture is determined by numerous parameters within which the police service operates. As those parameters shift, the culture can be expected to change. Thus, in order to explain the effect of the legal regulation on policing, in addition to the police culture a number of other factors - structural, socio-political, legal and situational - have also to be taken into account. Many factors shape police culture but one should find in the law a clear statement of society's expectations of the police and of the extent of the powers they can exercise.

As this chapter intends to examine the factors that affect the relationship between the legal rules and the policing practices, in an attempt to find an answer to the research question, it will look at the existence and effect of culturally-based negative attitudes on legal and formal rules and will identify how, within the 'police sub-culture',¹ rules are utilised for presentational purposes rather than being internalised to guide conduct. Further, it will show how officers, seeing laws as constraints in terms of 'getting the job done', may 'improve' or manufacture evidence, or violate suspects' rights in order to achieve the desired 'result'. The chapter will finally examine the impact of PACE and TCPA legislation from a comparative perspective and demonstrate the similarities and disparities between the rhetoric of the law and the police practices, as revealed through the lenses of crime control and due process values.

¹ This includes canteen culture and detective culture.

Factors Affecting the Relationship between the Legal Rules and the Police

Much research² has been carried out answer the question of whether the police are bound by the rules they are supposed to operate within or whether other factors, which may contribute to their own occupational culture, are more important. Conclusions on this research are divided. They suggest that there does indeed exist a specific 'police culture'. However, is this determined by those who work within the force, or by the nature of the job, or maybe a combination of both? This may be a central question regarding compliance or non-compliance with the law and its regulations.

Indeed, in order to understand the way any organisation operates, and the implications of its working practices, it is necessary to look beyond its formal framework and to examine the informal and structural influences affecting the actions of its members. In the following therefore, I intend to explore the factors which are identified as the guiding principles of police conduct.

Police Culture

A subculture can be defined as a system of beliefs and values which is shared and participated in within a particular organization or group, alongside formal norms. As Waddington (1999) points out, the existence of a such subculture is commonplace within all organizations. In the case of the police service, however, this phenomenon leads to a number of activities which are not immediately visible and therefore are

² Such as Reiner (1978), Smith and Gray (1983), Brown, (1989), McConville *et al.*, (1991) Maguire and Norris, (1992) and Dixon, (1997).

subject to an individual's discretion and maybe even abuse at times, certainly given the power that is vested in the organization.

The existence of a separate and identifiable culture within the police service is a well-documented phenomenon. This is an area that researchers, such as Manning (1977), Reiner (1978; 1992a), Chatterton (1979), Alderson (1979), Ericson, (1982), Smith and Gray (1983), Goldsmith (1990) and Chan (1997), have considered in some depth and aspects³. However, it originally emerged from ethnographic studies of routine police work (i.e. Skolnick, 1966; Holdaway, 1983 Young, 1991) and from civil libertarian concerns over the extent and abuse of police powers.

These studies were important insofar as they revealed the far-reaching and systemic nature of police culture. They also drew attention to the manner in which officers became socialized into the prevailing ethos or cultural outlook of the environment in which they worked. Furthermore, they highlighted the impact of those prevailing attitudes upon the manner in which the officer's duty was performed. Finally, they demonstrated how the informal influences of the 'police culture' were not only transmitted from officer to officer and generation to generation, but also penetrated other sub-cultures, such as the 'detective culture' and 'canteen culture', even when they ceased to be part of the officers' everyday experiences:

'... In the canteen, in the slack hours of the early morning, as well as under pressure on the street, the junior officer learns about the job, the accepted ways of dealing with practical situations ... Learning how police work is done then involves the probationer in acquiring not only a formal knowledge

³ Some of these studies combined high-quality observational and interview data with an understanding of political and administrative factors such as the significance of training and supervisory officers' ability to enforce rules.

of the law ... but also an understanding of the informal norms and values of the police subculture' (Brogden *et al.*, 1988:33).

As pointed out by Reiner (1992a:109), the 'locus classicus' of any analysis of police culture is arguably Skolnick's 'working personality'. Synthesizing earlier research with his own findings Skolnick (1966:44) identified a culturally-generated 'personality' which, he advanced, was an adaptive response to the environment in which the officer operated. He attributed this personality to three principle variables: danger, authority and pressure to appear efficient.

Skolnick's 'working personality' has been commented upon by a number of writers, in particular by Reiner (1978; 1992a). Whilst Skolnick emphasized environmental features and external pressures, Reiner (1992a:111) criticized the degree of significance placed by him on external compulsion in relation to the pressure to obtain results. His criticism led him to postulate that the public's expectations are inflated by the police service's own propaganda as to its ability to maintain order and its crime-fighting prowess. Reiner has not only provided a critique of this 'personality' but has gone on to develop it, identifying cultural features such as mission-action-cynicism-pessimism; solidarity and isolation; suspicion; racial prejudice; conservatism; machismo; and pragmatism (1992a:111-129). The writer thinks that it is important to critically consider some of these variations in order to appreciate the background and context within which the three identified areas will be examined.

A sense of mission is identified by Reiner as a central feature of the 'police culture' and, combined with a myth of indispensability, it is essential to the officers' view of

the world. Within this manifestation the police see themselves as a 'thin blue line' with purposes conceived as the 'preservation of a valued way of life and the protection of the weak' in the face of lawlessness and disorder (Reiner, 1992a:111), and the getting of results by the arrest and conviction of the guilty. Although this moral mandate is an important consideration, it should not be assumed that no personal benefit is derived for either the officer or the force itself. The point is that the officer may be motivated by personal satisfaction rather than public servitude. When this purported sense of 'mission' is examined, the self-serving motives of the individual officer should not be underestimated. (Reiner, 1992a:112).

Within Reiner's (1992a:113) variations, a further manifestation of the 'police culture' can be seen in the existence of 'cynicism or 'police pessimism', which affects the manner in which the officer perceives the public and his or her role in relation to the 'world out there'. The important point about this cynicism is that it not only impacts upon the officers' perceptions of likely offenders but also influences the officers' preconceptions of a person's guilt or innocence. This culturally-informed supposition of culpability, especially when accompanied by the moral mandate or the hedonistic attitude, may result in the suspects' rights being violated or evidence against them being 'improved' in order to secure the desired result .

Isolation and solidarity are also major features of the 'police culture'. These characteristics have been attributed to a number of factors, in particular the unsociable working hours, occupational tensions, hostility or the fear of it from some sections of society, and the need to remain impartial beyond reproach (Brogden *et al.*, 1988). As a result, there is a tendency for officers to mix socially

with other officers and their families, and for them to rely upon the assistance and understanding of their fellow 'brothers'.

Reiner (1992a:116) states that internal solidarity is not the only result of this social isolation because officers also need to be able to rely upon each other in a 'tight spot'. This is also used as a protective armour, shielding both the violations of individual officers from the eyes of supervisory officers, and the force as a whole from any public knowledge of infractions.

Meanwhile, one particular aspect of the 'police culture'⁴ which concerns most critics is the apparent 'code of silence' among police officers when faced with allegations of misconduct. Studies (i.e. Chan, 1996) suggests that the majority of the officers would be prepared to perjure themselves in court in order to protect their partner, when faced with their partner's misconduct. This demonstrates the extent to which the cultural manifestations of solidarity and loyalty serve to obstruct enquiry and to deny such rule violations.

Getting the Job Done

Within the 'police culture', the overriding purpose and value of the existence of the police is often seen as obtaining results in terms of the arrest and conviction of the guilty or those perceived to be guilty (Reiner, 1992a; Maguire and Norris, 1994). When the police cultural view is that the law is less than adequate in securing acknowledgments of guilt, legal and formal rules are viewed negatively and with apathy by them. This produces a twofold effect on the police service:

⁴ Also detective culture.

First of all, ethical considerations, regulations, and requirements are seen as constraints upon police work (Reiner, 1992a). Thus, the police may easily decide to avoid compliance with the rules if they see that responding to legal norms would harm their efforts to fight crime. Rules are utilized as presentational rules in order to give an acceptable appearance to the way in which police work is carried out. The consequence is that they do not condition or determine behaviour but merely constrain how that behaviour is accounted for (McConville et al., 1991:174-175). Officers therefore operate within a framework the boundaries of which are set by their own cultural values rather than those intended by the regulators and their superior officers.

Secondly, where the law is seen as lacking in terms of securing the 'right' result, when in the officer's mind the suspect is guilty, the cultural response is to avoid or to counterbalance the rules. Accordingly, evidence may be manufactured or 'improved', verbal intimidation may take place, and suspects' rights may be violated so that what the officer perceives as 'justice' can be done. In any event, the rhetoric of due process is seriously undermined as a result. Holdaway quotes an officer thus:

...If we are given laws which can't be put into practice, then we have to try and make them work, and this means verballing. ... When you have a legal system that allows people to get off and makes you [emphasis added] break the law to get convictions, then you have to be slightly bent (Holdaway: 1983:112-113)

Rule-bending is thus defended, and legally-unjustified practices 'permitted', in proportion to the officer's moral judgments and necessity (Baldwin and Kinsey, 1982; Holdaway, 1983). Further, in relying on the moral mandate and a perceived

sense of public approbation the officer may justify his or her action to obtain the result that 'the public wants'.

Special Departments and Detective Culture

Special departments within the police force appear to be at the core of police misconduct. This is particularly marked when one looks at the identifiable culture of the detective branch. The detective branch of the police service has its own peculiar cultural characteristics that are specific to them, and additional to the practices of the normal police culture (Maguire and Norris, 1992).

Detective culture generally is the product of a 'bend the rules' environment. In the investigative branch, there is great pressure on the detectives to 'bend the rules', as a result of the type of work they do. As pointed out by Maguire and Norris (1992), the detective work, often in secret, not only allows them to associate with criminals to follow up their intelligence leads, but also to bend the rules because they are unobserved. This gives them great scope for abuse of the law as written.

Maguire and Norris's research (1992) into the detective branch of the police demonstrates that the detectives have a lifestyle epitomized by hard working and hard drinking with their colleagues, while still maintaining a personal culture of secrecy and individuality, even among other police colleagues. They keep a certain distance from the regular police uniform branch, and are willing to 'do their own thing' and take chances with the formal rule of law if it enhances their possibility of success in a case. These characteristics are therefore deep-rooted in the investigative division of the police.

service, and lie at the centre of the miscarriages of justice which have recently been uncovered⁵.

Police Stereotyping and Racially-motivated Practices

People are classified within the police canteen culture according to both socially and culturally generated stereotypes and this impacts upon the manner in which the officer subsequently relates to these groups. Because of these stereotypical attitudes, individuals may be perceived as suspicious or even guilty, by virtue only of their physical or social characteristics. A number of studies (i.e. Young, 1971; Reiner, 1978; Holdaway, 1983; Banton, 1983; Norris, 1989; Norris *et al.*, 1992) have identified the negative effects of suspicion, hostility and prejudice, illustrating how they can lead to stereotyping.

Few commentators would dissent from the idea that relations between the police and the black community, especially black youths, are problematic (Brogden *et al.*, 1988). Research dating back as far as the 1960's has established a cultural tendency within the police service for black people to be categorized differently both in terms of suspicion and offence capability. These stereotypical attitudes were exemplified in a study by Cain (1973:117-119) illustrating how ethnic minority groups were categorized as disorderly, violent and permanently under suspicion. These attitudes can still be identified to the present day and all the major studies concur that

⁵ An investigation into the activities of the West Midlands Serious Crime Squad carried out under the supervision of the Police Complaints Authority (PCA) found a number of matters of concern about working practices, for example a laxity about maintaining notebooks and other records. It was concluded that some officers were allowed to remain in the squad for inordinately long periods. The squad had a high reputation as an elitist unit but it lacked firm management, resulting in inadequate supervision and control of overtime and a lack of supervision of claims for and payments made to informants.

negative, stereotypical, prejudiced and hostile attitudes to blacks are rife amongst police officers (Holdaway, 1996). Keith (1993) and Holdaway (1996) both noted an association amongst officers between black people and violent crime despite the lack of actual evidence. This viewpoint is usefully illustrated by Holdaway quoting an officer:

“...These coloured people certainly ask for trouble from us. They seem to hang about and look suspicious”(1983:68).

Studies (Smith and Gray, 1983; Norris *et al.*, 1992; Sanders and Young, 1994) have concluded that the police disproportionately exercise their powers against black people particularly with respect to stop and search and arrest. Often the stop and search policy is based on stereotyping and labelling and they are more diligent in arresting a poor black person than a rich white person. A study by Morgan *et al.* (1990) found that the overwhelming majority of people arrested and detained at a police station were economically and socially marginal⁶. Of the prisoners in custody, over half were unemployed and most of the rest were in predominantly-unskilled, manual working-class jobs. Only 6% of the sample had non-manual occupations, and of these only one-third were in professional or managerial occupations. Most detainees were young (59% under 25), 87% were men, and 12% were black.

Similarly, Norris *et al.* (1992) observed 272 stops in one London borough, of which 28 percent were of black people despite only 10 percent of the local population being black. The effect is continued at the arrest stage: black people constituted 16% of all Metropolitan Police arrests in 1987, but comprised only 5% of the capital's population (Home Office, 1988). Hence, somewhere along the line 'reasonable

⁶ In this context, the situation, in Turkey, is similar.

suspicion' as the power to stop is been misused. Smith and Gray found that the police:

...strongly tend to choose young males, especially young black males... In a fair few cases there appeared to be no criteria at all and the stop is completely random; this happens especially in the early hours of the morning when police officers tend to be bored (Smith and Gray, 1985: 496).

The policy of 'stop and search' has continued unabated even after the Police and Criminal Evidence Act 1984, which provided safeguards against unfettered searches, a point which is substantiated by Sanders and Young (1994:43) who argue that; 'race remains as significant now as it was before PACE'⁷.

It is difficult to repudiate the above studies, as they demonstrate the policies and practices of police institutional racism, but at this point it is fair to address the controversial question discussed in the literature: is over-policing of black people a product of discrimination or over-offending? Whichever is the view, it remains incontrovertible that the labelling of blacks, in particular the black youth, as a major component in the threat to undermine law and order has instigated over-policing as a result of official police policies, which in itself defines institutional racism (Macpherson, 1999).

It was commonly argued that police behaviour was the ultimate factor which triggered the riots of 1981, as stressed by the Scarman Report; 'The riots were essentially an outburst of anger and resentment by young black people against the police', (para; 3.10). According to Solomos (1988:88), 'the process of the

⁷ Latest statistics revealed by the Home Office in November 2002 confirmed that the blacks were 8 times and the Asians three times more likely to be stopped and searched, than whites.

criminalisation of black youth in particular had already started to become popular during the 1960's, but it was during the 1970's that these images reached full maturity'.

In addition, the riots of 1981 and 1985 witnessed the same police confrontations. Again as Solomos suggests (1993:130), at the time of the riots, the police viewed the street upheavals as a form of criminal behaviour only, and became a way of understanding the black community as 'not protesting against the vulnerable social conditions of inner city areas or the actions of the police, but simply as a criminal act, as a cry for loot'. This is attested and illustrated by the research of McConville and Shepherd (1992), where according to a community police officer:

Police constables are of the general belief that there is something intrinsic about black people that causes them to commit crime. They don't sit around discussing maybe it's the social setting they grew up in or whatever, its because they are black (Quoted in McConville and Shepherd, 1992:168).

Smith (1997b) further expands the argument and suggests that overall one has to be aware that the over-representation of black people at later stages in the criminal justice process could in principle arise partly because the police use their discretion to stop a larger proportion of black people than other ethnic groups. The evidence suggests that there is a generalised tendency whereby black people receive less favourable treatment than the majority. Most evidence is consistent with this picture and it can be detected in attitude or behaviour, which highlights the fact that black people are disproportionately subject to stops and searches in the street by the police (Norris, *et al.*, 1992).

Clearly, this demonstrates the stereotypical and racist attitudes towards black people especially towards black people which the Macpherson Report (1999) lucidly articulated and these attitudes encourage confrontational policing as shown by 'Operation Eagle Eye' and consolidate what Jefferson (1988:536) terms 'racially coded figures'. The fallibility and racist undertone of this conception is underlined by Rowe (1995:132) who states, 'it is hard to imagine a white person being held up as a representative of the entire white population, the indigenous community are not treated in this manner'.

In Turkey, too, there are examples of stereotypical police attitudes towards some section of society or some people. As seen in Chapter Five, in Turkish practice, there is evidence that some people are arrested and detained for the simple reason of questioning and collecting information. This is true especially for the areas where suspected Kurdish terrorists are active. In these regions, the police's current strategy in dealing with crime (and also terrorism) relies on arresting and detaining some numbers of people on suspicion, holding them in the police custody for a while to interrogate them and if it proves futile, then releasing them without charge. In this strategy, the police get the opportunity of questioning them with a view of improving their chances of preventing the terrorism incidents happening, and of obtaining relevant evidence about it (Eryilmaz, 1999; Bal, 2002).

In conclusion, the unjustified and racially motivated use of police powers of stop and search, arrest, and more importantly detention, particularly against certain sections of society clearly violate the law that was specified in PACE and TCPA. Furthermore, this situation both in Turkey and in England and Wales endorses Packer's assertion that broadening the powers of the police, in particular powers of

arrest and detention, will result in the police using their discretions in a discriminatory and arbitrary way:

The practical consequence of enlarging police authority to detain individuals for questioning is not likely to be that all classes of the population will thereupon be subjected to interference. The danger is rather that they will be applied in a discriminatory fashion to precisely those elements in the population – the poor, the ignorant, the illiterate, the unpopular – who are the least able to draw attention to their plight and to whose suffering the vast majority of the population are the least responsive (Packer, 1968: 180).

Assessing the impact of PACE and TCPA

It is evident that the PACE legislation provided an implicit challenge to the police by seeking to balance the police powers and civil liberties. By incorporating various Codes of Practice into statute and unifying and regulating police powers it sought to reduce the opportunities for an officer to manufacture or improve evidence, or circumvent legal rules. Thus, the issue is here whether this indirect challenge has been successful.

When the complete picture of changes brought by PACE was taken into consideration, all researchers have agreed that PACE had a definite impact on police practices, but the consequences of this impact were evaluated differently, depending on one's perspectives of the police and the law (Dixon, 1992a:536). Some researchers argue that PACE has significantly obstructed the police and enhanced protection for suspects. For instance, in considering the effectiveness of PACE, Irving and McKenzie (1988; 1989) focused upon the effects of PACE on interrogation procedures, as compared with the procedures described at the time of

the Royal Commission on Criminal Procedure. Their results were positive as they showed that many of the interviewing tactics used ten years ago, such as those based on influencing suspects' assessments of the consequences of confession or denial, had largely disappeared.

On the other hand, many writers (i.e. Sanders and Bridges, 1990; McConville *et al.*, 1991; Hodgson, 1994; Asworth, 1998; Belloni and Hodgson, 2000)⁸ suggest that PACE does not operate as an effective constraint upon the exercise of police powers. These researchers argue that PACE has only changed the outside image of the police practices, but inside, the main working habits of the police, their tactics and conceptions remain the same. Thus, there is not much change the main patterns of policing. Confirmatory evidence is provided by Sanders (1997) who remarks that the Codes of Practice have changed the way that officers account for the exercise of their discretion without having actually changed the way that they exercise it. Sanders opines that PACE has changed practices, nevertheless he claims that they are largely 'cosmetic' changes. Research has also suggested that outlawed behaviour may be 'shifted to zones that are not subject to close control, for example, the real interrogation may not take place in the police station' (Jones *et al.*, 1994:24). As Sanders and Bridges (1990:507) conclude, 'police malpractice has probably not been reduced but it has been made less overt, and hence more difficult to detect and control'.

Between these two groups of researchers, in the centre there are people who evaluate the effects of PACE on the police practices in accordance with a more realistic and

⁸ Some of the researchers in this group is called as 'new left pessimists', and/or 'left realist' (Sanders, 1998).

moderate perspective. Dixon (1997; 1999) positioned himself in this middle category by arguing that whether legal rules change police practices depends on 'what kind of rules and what kind of culture, what kind of reform and when'. In this respect, I agree with Dixon but I would also add that there might be some views that may not necessarily fall into any of the three categories. As far as my view of the overall impact of PACE is concerned, I could easily find a place for myself among the researchers in the centre, but when specific issues such as powers of arrest and detention are taken into consideration, I have quite pessimistic views about them.

Indeed, the research (i.e. Bottomley, *et al.*, 1991; Brown, 1989; McConville, *et al.*, 1991; Maguire and Norris, 1992), which was carried out in England and Wales and my own empirical research reveal that many factors such as the police culture, structure of the system and the content of the law all play a role in determining whether the legal rules are implemented or not by the police. One clear common message from these studies is that to some extent the police resist any legislative changes and do not accept easily the new provisions (Dixon, 1997). As was shown in Chapters three and five, the current police practices in both jurisdictions confirm such an assertion. However, it should be noted that there might be dissimilarities between the countries about which factor is more influential than another in shaping the relationship between policing and the legal rules. In this respect, it can be argued that, in comparison with England and Wales, in Turkey, the ability of legal rules to control potentially deviant police behaviour is relatively weaker. As indicated in Chapter five, there is a stronger feeling on the part of the Turkish police than there is for the English and Welsh police that the Turkish police do not want to fall under the control of the legal norms.

Due Process and Crime Control: The Dichotomy between the Law and Practice

The evaluation of PACE and TCPA provisions and the implementation of these provisions also reveals a dichotomy between actual police practices and the rhetoric of the law as far as the crime control and due process values of the criminal justice process are concerned. Thus, one of the main findings of this research is that the police prioritise crime control values regardless of what the legal rhetoric requires. Due process is a somewhat abstract issue for the police as they allege that they never abuse their powers, but only stretch them to the limit if necessary.

The present law of detention and questioning of suspects in both jurisdictions (Turkey, and England and Wales) offers certain due process values particularly for the protection of suspects in police custody, but also provides crime control elements for the police to operate according to their own working rules (Ashworth, 1998). Nevertheless, the research evidence suggest that the police in both countries deploy (and perhaps enjoy) crime control values as much as they can in doing their job, despite the strict legal due process criteria (Sanders and Young, 2000:30-32). As a result, the contrast between the due process objectives of the legislation and crime-control-oriented police practices suggests that while legislation goes for 'due process' the police go for 'crime control' values (Uglow, 1995). Coleman and Norris neatly sum up this:

While criminal justice processes are usually presented in terms of 'due process' values, certain police practices have been shown to violate such values, and to be more consistent with a 'crime control model'. Rather than being understood in terms of 'rotten apples', examples of police malpractice in violation of due process values seem to be related to the organizational context in which they occur, and to the wider legal framework and the

adversarial system within which they are located. (Coleman and Norris, 2000:145).

As has been manifested in the relevant chapters in detail, with regard to some police procedures there is a world of difference between PACE and TCPA provisions and how they have been exercised in practice. In particular, there is a great dichotomy between legal rhetoric and police practice vis-à-vis the police decision for arrest, the interpretation of reasonable suspicion, the purpose and authorisation of detention, the role of custody officers, the aim of interrogation and the informing of suspects of their rights. In my research in Turkish police stations I have found numerous examples of this dichotomy. For instance it is stated by TCPA that before interrogation suspects should be told of their rights. This is to remind the suspects that they are entitled by law to exercise certain rights. However the research found that this requirement of the law was not performed in the majority of cases, even though the pre-formatted interrogation records indicated that this was done in almost all cases.

In England and Wales, from the legalistic perspective 'the central purpose of the police power to detain for questioning is the collection of evidence for potential use in court' (Dixon, 1997:80). However, in practice, this power is often used 'simply' to get the suspect into a police station in order to question him about the offence of which he is suspected (Bevan and Lidstone, 1991:215).

It appears that the Police and Criminal Evidence Act's permission to use detention for questioning has been interpreted by the police as an opportunity to carry out much of the investigation at the police station though some of this investigation might also have been conducted before the suspect was brought to the police station.

This is a consequence of the police belief that isolation of suspects from the outside world in a police station generates an atmosphere where they can have a 'psychological advantage' over the suspect (Baxter *et al.*, 1986:69-70).

Similarly, studies of tape recordings of interviews provide another example how the police adapt and adjust the rules in accordance with their objectives. PACE Code E made it the practice that interviews be tape-recorded because it was hoped that taped interviews/confessions would significantly reduce the prospect of police abuse of power, but as Sanders and Young's work (1994) found, the police quickly learnt how to survive within the procedures and rules of PACE whilst at the same time using the old practices and principles of applying pressure:

Quickfire question and answer has returned, allowing the re-emergence of most of the old tactics. It is more difficult for the police to record proceedings selectively, and impossible for them to fabricate recordings, but the third problem - interrogation outside the interview room - remains (Sanders and Young, 1994:173).

Comparing Turkey with England and Wales, it appears that the standards of due process protection are relatively modest and the boundaries of the crime control values are much wider both in Turkish law and in its implementation. In parallel with this assertion, in Turkey, the influence of legal regulation is also relatively weaker in determining the actual police practice. Consequently, it is almost certain that crime control values and objectives have greater dominancy and priority in the world of Turkish police and also in determining their everyday work.

Conclusion

This chapter has demonstrated some of the forms in which the 'police culture' is manifested, highlighting its effects in relation to the areas that have been identified as being of particular importance. It has also demonstrated the strength of the culture, showing in particular how not only can it amount to a barrier to the understanding of the workings of the police, but it can also serve as an obstacle to legal reform and to the rhetoric of due process.

The issue of police culture has important implications both for the question of supervision and for that of rules and regulations as checks and controls on the actions of individual officers. For instance, the separate and isolated nature of much of police work means that a particular culture evolves around police officers, one particular aspect of which is the culture of solidarity (Reiner, 1994:733-4). This solidarity means that officers will always support one another in adversity; they will cover up for one another where rule-breaking has taken place, and back one another up when in trouble, as well as collaborating over reports. Hence any attempt to increase the accountability of officers at the individual level by increasing legal supervision and strengthening the formal rules will have to take into account this characteristic of police culture.

To conclude, I would agree with Holdaway (1983) that the law (and rules and regulations that the law dictates to police work) is only one of the influences on police culture that is shaped by the work environment and the structures within the organisation. Thus, changing the regulation alone will usually be inadequate to challenge the negative effects of cultural manifestations upon the police service

(Reiner, 1992). However, it would be very pessimistic and unrealistic to suggest that police culture could undermine any attempts at reform. As seen, to a certain extent, both PACE and TCPA reforms have had positive effects on police work. Thus, the question here is: what could be done to make legal reform and regulation more effective and influential? The answer to this question will be given in the next chapter. However, at this point it should be noted that the main issue regarding the legal reform of policing that reformers should understand is that reforms within the police are difficult and require a great deal of patience and effort.

CHAPTER 7

CONCLUSION

This thesis began with the introduction of background events that led to the preparation of PACE in England and Wales and the TCPA amendments in Turkey. PACE is described as ‘the single most significant landmark in the modern development of police powers’ (Reiner, 1992:223). It is evident from the level of detailed rules and guidance in the Police and Criminal Evidence Act 1984 and accompanying Codes of Practice that the legislator placed a great ‘faith in the capacity of legal rules to influence police conduct’ (Brown, 1997:250). The declared aim was to provide the police with adequate powers, while balancing these with safeguards for the suspects (Reiner, 1992:223; Dixon, 1992:2). Over the years, there has been considerable debate as to whether or not the Act has really achieved its highly-publicized objectives, which include controlling and influencing the police and police conduct in practical terms.

As in this country, the primary aim of the Turkish Legislator, when amending TCPA in 1992, was to influence and control the arrest, detention and questioning procedures of suspects through codification and clarification of the law as part of the process towards the democratisation of the country (Sahin, 1995:24). Human rights

matters in Turkey have been always under scrutiny by domestic and international NGOs and the reputation of the Turkish police in custody matters is not very good, although it is not as bad as it was portrayed unfairly in some reports and movies. The main purpose of the legislation was therefore to raise the standard of treatment of suspects detained in a police station.

In the nine years since the new provisions were first introduced, allegations are still being made that arbitrary and unlawful arrests occur and that suspects are detained without justifiable reason, and are even subject to torture and ill-treatment¹. In parallel, domestic and international human rights reports continue to refer to serious allegations of abuse of police powers during police custody. For instance, The European Commission on Human Rights has given a number of important decisions confirming human rights violations involving detention cases and a considerable number of cases are still at the trial stage. Similarly, a recent Amnesty International report has stated that ‘despite all declarations of intent issued by the Turkish government, we have not seen any signs of serious and effective measures to combat torture and to remove the immunity from prosecution of the perpetrators of this torture’ (AI, 2001). The same report has continued to allege that systematic torture and mis-treatment of detainees is still widespread:

Detainees in Turkey are routinely blindfolded during interrogation, and some throughout police detention, to prevent the identification of their torturers. Serious beatings, being stripped naked, sexual abuse, death and rape threats, other psychological torture and electric shocks, hanging by the arms, and deprivation of sleep, food and drink, and use of the toilet are common methods of torture and ill-treatment in Turkey (AI, 2001).

¹ Sabah, 19/09/2000.

After giving the background information about the PACE and TCPA reforms, the first chapter also explained the theoretical framework and plan of the study. The next chapter, which is the second, moved on to explore some theoretical discussions about the effect of legal regulation and criminal process models in an attempt to establish a base for the research problem and hypotheses in order to explain the variance between the rhetoric of the law and the law in operation, and why reforms in the law do not lead to changes in practice as usually anticipated by legislators. In this respect, Packer's two models of criminal process - crime control and due process - have been viewed as particularly important.

Packer (1968) described the crime control model as being based on a value system where prevention of crime is the most important role of the criminal process and therefore the efficiency of the system in determining guilt and dealing with offenders is paramount. He likened the procedure to an assembly line where large numbers of cases are dealt with on a routine, uniform basis. With the emphasis on efficiency, 'facts can be established more quickly through interrogation at a police station than through the formal process of examination and cross-examination in court' (Packer, 1968:159).

Whilst the crime control process is 'an assembly line', Packer described due process as 'an obstacle course', like the quality control process in a factory which inevitably reduces productivity in order to protect quality. 'The aim of the process is, at least, as much to protect the factually innocent as it is to convict the factually guilty' and to protect the individual against the use of excessive power by the state. Whilst not the complete antithesis of crime control, the ideology of due process rejects its view of fact-finding and substitutes for it a view of informal, non-adjudicative fact-

finding that stresses the possibility of error as ‘confessions and admissions by persons in police custody may be induced by physical or psychological coercions so that the police end up hearing what the suspects thinks they want to hear rather than the truth’ (Packer, 1968:163).

Ten years after Packer introduced his models of crime control and due process, McBarnet (1978; 1983) developed a different argument. Rather than looking at how the actors in the criminal justice process subvert the law, she claimed that ‘due process is in fact for crime control’. McBarnet even felt that Packer’s two polar notions of due process and crime control were a false distinction, according to her analysis, because dichotomies such as ‘law in the books and law in action’, ‘due process and crime control’, and ‘law and order’ were false dichotomies based on ideology rather than the real world, and their use in academic accounts only served to show the narrowness, politically and methodologically, of ‘culturalist’ studies (McBarnet, 1978:31).

Although McBarnet’s contribution in opening a debate on the nature of criminal process with regard to the operation of the rules is extremely valuable (Coleman and Norris, 2000:144), it in no way obviates the need for an in-depth analysis of the police sub-culture (Dixon, 1997). Furthermore, McConville *et al.* (1991:152) disagree with McBarnet, suggesting that ‘much police practice is driven by Crime Control values when this is simply not required by, or is even in breach of, the applicable rules.’ Although they agree with McBarnet that a great deal of police practice is lawful and only offends due process values, they claimed that important principles derive not just from due process values as she suggested but from the crime control ideology too and this sometimes leads to conflict between the

principles. For example, the right to silence is based on due process rhetoric but the right to question and detain without charge derives from the crime control principle of 'reasonable suspicion'.

Following consideration of the theoretical models in Chapter Two, in the next chapter attention focused on PACE research and discussions on the practices of the police whilst treating and handling suspects at police stations. The review of the research on the impact of PACE suggests that the new rules seem to have had an impact on 'the nature and outcomes of police handling of suspects', however, assimilation of the rules 'into police culture and working practices has been uneven and incomplete' (Reiner, 1992:229). Moreover, there are still serious doubts about 'the overall efficiency of such legislative reforms on policing' (Morgan and Newburn, 1998:51-52; Reiner, 2000:182). Ten years on after PACE came into effect, Brown (1997:253-254) evaluated the PACE research and questioned whether or not the balance sought had been achieved. He explained the difficulties in measuring 'balance', which is not objectively verifiable because subjective judgments of 'satisfaction' would vary. Neither was it possible to draw up a 'profit and loss account' assessing whether new or clearer police powers outweighed more adequate safeguards for suspects.

Overall, on the positive side, the research suggested that suspects were usually informed of their rights and there was a significant increase in those now receiving legal advice. Moreover, the tape recording of interviews reduced arguments in court about what occurred in those interviews (Willis, *et al.*, 1988; Brown, 1997).

On the other hand, the average period of detention in police stations remained about the same, and the review of detention became a routine procedure. It was also found that detention was authorized almost automatically by custody officers, 'not least because of the lack of an established procedure for *not* authorizing detention' but also in order to avoid conflicts in front of suspects (Brown, 1997:252-3). Thus, the concept of the custody officer as an independent check on detention procedures did not work as originally intended by the legislator (McConville *et al.*, 1991; Phillips and Brown, 1998).

Consequently, in Chapter Three, I have come to the conclusion that the PACE rules on detention and questioning had an impact on police practices and their contribution to preventing miscarriages of justice cannot be denied. On the other hand, PACE may not be the panacea for all ills in the system and indeed was described (Smith, 1986:86) as '... just a tidying-up of loose ends that leaves unaltered the basic conditions within which the police operate and which shape their behaviour'.

At this point, I would agree with Maguire and Norris (1994:82) that 'the fact that opportunities for malpractice will always exist does not necessarily mean that the institution of mechanism to reduce them (or to make it more risky to take advantage of them) will have no effect at all'. Although, the detention procedure under PACE still remains conducive to errors, this is less likely than in the pre-PACE period and the mistakes or miscarriages of justice of 1970s and 1980s are now not so common (Zuckerman, 1991; 1992).

Chapter Four describes the plan and features of the research methodology. In my research, I have adopted 'methodological triangulation' using multiple data collection methods with the aim of combining quantitative and qualitative research. It was thought that this strategy would provide a spread of information and data, and balance the strengths and weaknesses of the different research methods. Accordingly, the following data collection methods were chosen: a survey comprising self-administered questionnaires and interviews with police officers, observation of police work, and the utilisation of existing records and statistics.

The data gathered in the fieldwork between 1993 and 1999 was analysed in Chapter Five. The research found that in Turkey police compliance with the new legislation is at a much lower level, and the impact of the legal reform is less significant compared with the situation in England and Wales. There is a stronger feeling on the part of the Turkish police than is the case with the English and Welsh police that they do not want to be under the influence of the legal norms especially if, in their view, the legal regulations threaten the progress of their investigation (Eryilmaz, 1999). Hence, in spite of the constraints of the legal regulations, they tend to find ways to get around the rules if the rules appear to be in conflict with their occupational sub-culture.

Furthermore, the gap between the law as set out in TCPA and the law in actual practice is considerably greater in Turkey than in England and Wales. Having studied and examined the implementations of the law in the book and in the practice I have come to the conclusion that there is a world of difference between legal theory and police practice vis-à-vis the aim of detention, interpretation of suspicion, interrogation and the treatment of suspects. In practice, the police very often exceed

their theoretical powers and there is a sharp contrast between the rhetoric of law of detention and the police practice. I have found innumerable examples of this dichotomy between the law and the practice regarding detention procedure and these have been thoroughly documented in Chapter Five. Consequently, in spite of the Turkish Legislator's ambitious efforts to generate a fair and accountable police detention and interrogation procedure, success remained rather elusive and there is no convincing evidence that the major patterns of police practices have changed since the start of the reformation of police power in 1992. My analysis of research findings has concluded that it is 'business is as usual' in Turkish police stations.

Following the analysis of the impact of PACE and TCPA on detention procedures in Chapters Three and Five, the subsequent chapter then examined the factors affecting the relationship between legal rules and the police practices in order to understand why there are differences between the way in which the law is set out in the codes and textbooks and the way it has been exercised in practice. Chapter Six has suggested that police culture, the structure of the organisation, racial prejudice and the law itself were all effective factors in determining police behaviour and practices. This chapter has revealed some of the forms in which the 'police subculture' is manifested, highlighting the effects in relation to the areas that have been identified as being of particular importance. It has also demonstrated that the strengths of the culture show in particular how not only can it amount to a barrier to the understanding of the workings of the police, but it can serve as an obstacle to legal reform and to the rhetoric of due process (Holdaway, 1983). In this respect, I argue that the occupational police culture effectively determines how officers perform their duties, however, I would also argue that the adverse influence of the police culture should not be perceived as being greater than it is.

Strategies for Reform

It is unrealistic and unfair to suggest that police undermine any attempts at reform. It is clear that structural factors (both internal and societal in nature) contribute to a difficult position for police in society, and that all of these factors determine whether or not police will subvert reforms. Reforms should therefore be informed by not only government and the community, but also by all levels of the police, in order to address the multitude of factors which impact on the police. This view is reflective of the spirit of the noted Scarman Report which still provides the benchmark for the policing of a tolerant liberal society. As Hopkins-Burke neatly points out:

A police service that wishes to introduce a pro-active, assertive, confident policing strategy that has both widespread legitimacy and popularity with the general public needs to heed the lessons of Scarman and have the consent, trust and participation of the community (Hopkins-Burke, 1998:108).

Nevertheless, reforms within the police are difficult and require a great deal of patience and co-operation. It is therefore not a straightforward task for any government to ensure that the police comply absolutely with the legal regulation because, just as in all organizations, change takes time (Smith, 1986:94).

At the same time, the police resistance and unwillingness to comply with the law does not mean that the legal rules in policing are doomed to failure (Brown, 1997:252). Provided that several preconditions are met and strategies to change the police are used in thoughtful and original ways, addressing those factors which shape the police practices, reform objectives can be achieved to a maximum extent (Eryilmaz, 1999). In the following, the elements of reform strategies will be discussed:

Unambiguous Regulation

As the law in some circumstances fails to provide a clear framework for the police to work within appropriate constraints, Unambiguous Regulation the first precondition for successful legislation is that the rules must be clearly expressed and carefully designed, because any vagueness in the wording of a provision could be problematic, ineffective, and an advantage to the police.

In particular, in terms of arrest or detention powers, the legal grounds of the discretion which an officer may invoke and the structure of the procedures must be worded precisely and narrowly in order to restrict the officer's room for manoeuvre and different interpretations of the same powers by different police officers. The more narrowly and precisely worded the legislation the more the police will feel cautious about arresting and detaining someone (Chatterton, 1978:48).

Brogden *et al.* (1988:167) argued that deviant cultural practices are allowed to thrive in police organisations because formal rules and structures are too 'permissive'; therefore the tightening of formal rules should be seen as of primary concern in the change process. Indeed, rules may be tightened by a range of measures, including changes in legislation, administrative rules, codes of practice, accountability procedures or policy guidelines. One of the proponents of this approach, Lord Scarman, has envisaged rule-tightening in his recommendations following the Brixton riots, so that prejudiced and discriminatory behaviour be included 'as a

specific offence in the Police Disciplinary Code' and that the normal penalty for breaching this code be dismissal (Scarman, 1981:201)².

Similarly, Brogden and Shearing (1993) view rule-tightening as the making or changing of internal or external rules. Internal rule-making includes the setting of professional standards and codes of practice, as well as various paper or electronic record-keeping requirements to increase the transparency of police practice. External rule-tightening includes legislative reform, the independent appraisal of police effectiveness through victim surveys, the reform of complainant systems, and the establishment of monitoring schemes such as lay visitors or other more interventionist auditing functions (Brogden and Shearing, 1993: 120-122). However, it should be noted that as 'a popular option among police reformers' (Chan, 1997:55), rule-tightening has been criticised by a number of writers such as Ianni and Ianni (1983) and Goldsmith (1990) who draw attention to the demonstrated inability of external and internal rules to influence and control certain aspects of police work. For instance, Goldsmith sees internal rules as 'rules within the police culture' (Goldsmith, 1990:95), and according to Ianni and Ianni 'it is the immediate work group or peer group and not the larger organisation that motivates and controls the individual's behaviour' (1983:251).

As demonstrated in Chapter 5, in Turkish law, the terminology of the rules that regulate arrest, detention and interrogation of suspects is rather ambiguous and incomplete. This situation allows the police to utilize the rules to their maximum benefit and enables them to control the process of event reconstruction according to

² Scarman also recommended that lay visitors to police stations should make random checks on the interrogation and detention of suspects; and that independent investigation of complaints against police be introduced (Scarman, 1981:208).

their own perspective. Thus, it might be suggested in the context of Turkish law that all police powers, including the powers of arrest, detention, and interrogation, and restrictions on them, and the rights of suspects during these processes, and various procedures surrounding them should be clearly stated and set out and if possible under a single act. In this respect, some provisions of PACE and the Codes of Practice can be taken as a ready formula for such an improvement. Later in this chapter, I will discuss which PACE provisions could be adopted into Turkish police law.

Meanwhile, a different point of view has been popular amongst some Turkish academics. It is suggested that instead of changing or tightening the legal regulation the Government should give priority to ensuring that the existing rules work since this may be a more fundamental and feasible approach to the problems within the system. This view is strongly defended, in the case of TCPA amendments, by Ozturk (1993:25-28) who saw no real need to amend TCPA provisions to reform the detention procedure, because the law already contained sufficient safeguards for suspects and powers for the police to do their job. He therefore questioned the Government's attempt to reform the law by asking, had it been legal to use mistreatment or torture of suspects or any other abuse of powers before TCPA, a new act would have stopped them, but it did not, even though there was permission to use mistreatment before, so a further new law would have no more effect than the TCPA amendments, which were not having any effect anyway:

Till December 1992, whenever the Prime Minister or the Justice Minister or the other authorities were asked when the allegations of human rights violations would end in the country, they used to answer back "Wait for the coming legal reform". Well, did the previous legal regulations permit abuse of

power by the police? I do not think so. On the contrary. The previous provisions of the law also strictly and clearly prohibited such treatments. Thus, the question is now, if the old law did not work what makes the legislator think that the new law will solve the problems as long as every other thing in the system remain the same (Ozturk, 1993:26-27).

This view was also shared by Sitti and Ozkan (1993:37-38) who suggested that the problem was not with the provisions of the law, but with their applicability to the police practices. For instance, the right to see a solicitor has existed in Turkish law since 1929. It was stated in the parliamentary clause of the old article 136 of T CPA that suspects should be able contact a solicitor(s) at any time during the police investigation. However, in practice, the police interpreted the wording of the provision to be that this right is not exercisable in the initial investigation stage, which was done by them (and the courts did not object to this interpretation).

To a certain extent, I would agree with the point of view that the previous law should have been sufficient in safeguarding suspects in custody if the provisions were properly interpreted, however, this does not rule out the necessity of legal reform in the areas of policing to fill in the legal gaps and prevent ambiguity and to take advantage of the effect of new initiatives affecting the criminal justice process.

Changing the Police from Inside: Changing the Police Culture

The weakness of rule-tightening as a method of reforming the police has directed the criminology and criminal justice researchers to a more fundamental approach which is 'changing the police culture from inside'. As Brogden and Shearing (1993:97) argued, legislative reforms must be complemented by strategies 'to change the

culture from inside'. Observing the uneven impact of law reform on police practices, Reiner also suggested changes within police culture:

Given the low visibility and hence inevitable discretion of much routine police work, the key changes must be in the informal culture of the police, their practical working rules. These may be penetrated and altered, but are not determined by official policy, through symbolism, training organisation and discipline. But they are not determined by the formal rules. Police culture is fundamentally a function of the structurally determined social role of the police, which has not altered in any fundamental way (Reiner, 1992: 232).

Similarly, Chan (1997:55) also questioned the use of law reform as a method of changing the police and policing, considering the occupational culture's resistance to change. She argued strongly that externally-imposed rules are not very successful in controlling police discretion, hence, if legal rules are not that effective, it makes little sense to talk about law reform as a key factor of change. She meantime asserted that the debate about how police reform should be achieved has been based on a faulty conception of police culture that it is uniform, unchanging, powerful, and somehow separate from formal structures (Chan, 1997: 63).

Brogden and Shearing (1993) make more concrete points regarding the changing of police culture by 'taking the police to the community', and 'bringing the community to the police' (1990:98). This approach includes various recruitment and training strategies, as well as community policing strategies. The necessity of close police-community relations was in fact an important recommendation of Lord Scarman's report (1981). He proposed the recruitment of more black people into the police, and the improvement of police training to give more attention to 'training in the prevention, as well as the handling, of disorder, and in an understanding of the

cultural backgrounds and the attitudes to be found in our ethnically-diverse society' (Scarman, 1981: 200).

Better Education and Training of Recruits

Another step on the way to successful police reform is better education and training of police recruits. As suggested by Scarman (1981), the quality of police work is closely linked to the quality of officers, which should be gained by a strategy of a more comprehensive and better education and training of the recruits. This strategy aims to increase the quality standard for police officers to ensure that the police will act within the boundaries of the law (Eryilmaz, 1999; Cevik, 2002).

The elevation of the quality of police officers and recruits through education and training has mainly three steps: First, the standards for admission to the police force should be enhanced and the personal integrity of the individual recruit should be made one of the conditions for admission to the police occupation. Secondly, it is imperative that police candidates in police recruitments schools receive a high level of comprehensive theoretical and practical education, which conveys the reasons why the rules are worth adhering to. Finally, as a part of the strategy for enhancing the quality of the police officer through education and training, every officer of any level or rank in the force should be given proper seminar courses periodically about the implementation of the legal regulations and the importance of legality and legitimacy in police conduct. This is essential to ensure adherence to the detailed guidelines when dealing with criminal cases and taking decisions.

In comparing the current police recruitment and education procedures in Turkey and in England and Wales, it would seem that the low standard of admission criteria and the lack of comprehensive training are among the factors that indirectly affect police conduct and practice in Turkey³. For example, in some cases the political background of the candidates may play an important role in gaining their admission to the police schools (Eryilmaz, 1999). However, it could be said that the police forces in England and Wales have adapted better recruitment standards and more comprehensive training methods than the Turkish police, though there is still some scepticism regarding the issue of recruitment of officers from the ethnic minority communities (McKenzie, 1989; Macpherson, 1999).

Effective Judicial Control and Supervision of Police Work

The feasible and efficient supervision of police work is also one of the preconditions for successful reform. In Turkey, as the research suggests, the police do not worry much about supervision and disciplinary scrutiny because they know that the risk of discipline is very low (Eryilmaz, 1999). In particular, Research studies in England and Wales (Zuckerman, 1986; Baldwin, 1992; Maguire and Norris, 1992) found that supervision was viewed as a minor and routine activity without any real operational significance and the police do not believe the necessity of supervision. It is therefore clear that there is a great need to improve the efficiency and effectiveness of supervision. However, the effectiveness of the supervision depends on how 'good' or 'bad' the supervisor is, as pointed out by Maguire and Norris:

³ However, recently a major step towards better education and training of police recruits has been taken by the Government in Turkey. Accordingly, the length of training has been increased from 9 months to two years.

... A 'good supervisor', while still inspiring his or her officers to produce result, will set a tone in which malpractice is regarded as deviant, and will look out for warning signs of such behaviour. On the other hand, a 'bad supervisor' may contribute to a slide in standards, either because he or she shows insufficient leadership or vigilance, or, worse, because he or she tacitly or openly condones rule-breaking (Maguire and Norris, 1992:101).

Maguire and Norris (1992) suggest that the immense problem in trying to control the activities of the police results from the high degree of discretion they maintain in enforcing the law and the low visibility of much of their work, especially within the CID. Evidently, it is vital that the police do maintain discretion in law enforcement, but this does leave the police open to allegations of discrimination and malpractice. Consequently, Maguire and Norris (1992:23-25) in their research pressed for a change from a charismatic style of leadership based on trust, particularly relevant within the CID, to a bureaucratic system of management where detective sergeants take on a greater supervisory role of their officers instead of personally handling a large caseload of their own.

In addition to the efficient supervision of police work, the rules must be backed up by effective legal sanctions such as the exclusion of evidence. Theoretically, in Turkish law every breach of the rules might have the effect of the automatic exclusion of evidence (TCPA, article 135/a). Whereas in English law, even the breach of the most important provision might not lead to the automatic exclusion of evidence (PACE, section 78). The observation and studies of the police work under PACE (Bottomley, *et al.* 1991; McConville, 1991; Brown, 1992; Sanders and Young, 1994) have indicated that as long as the illegitimacy of informal police practices is not challenged in court, and/or they are used with great scope for interpretation and flexibility, the effects of the legal reform in changing the practices

and behaviour will be limited to a large extent. As McConville *et al.*, (1991) pointed out, 'behaviour is governed by the extent to which the officer can 'get away with it' and the extent to which it is 'worth' taking the risk'. (McConville, *et al.*, 1991:185).

Substantial evidence from the U.S. shows that the exclusionary rule has had a profound and continuing effect on improving the quality of police work (Walker, 1995:49). In my opinion, the exclusion by the courts of illegally-obtained evidence has the potential to be an effective remedy to control police misconduct and to ensure that the police do not ignore the requirements of the law, since this remedy guarantees that suspects will not be wrongly convicted in the first place, through an abuse of police power. Accordingly, the evidence laid out at the trial can be challenged by the exclusionary rule, which says that a confession made under oppression, compulsion, torture or threat, or after prolonged arrest or detention or through physical coercion, hypnosis, medical agents, or other involuntary means will not be admitted as evidence and the courts will automatically exclude this confession.

Consequently, given the fact that illegally-obtained evidence might jeopardize their efforts and objectives, the police will be compelled to obey the law and to work within the boundaries of the rules. The availability particularly of such a sanction may be an important tool to fight against the unwanted effects of the occupational police culture. Otherwise, mere changes in the rules are going to have a limited effect as a means of reform and, as was seen, for instance, in the case of the Tottenham Three, even after PACE introduced supervision by more senior police officers, the rules could still be by-passed.

Increasing the Police Accountability: Remedies Against the Abuse of Power

As mentioned, the 1980's in England and Wales saw a mass of legislation concerning the powers of the police force. However, while statutory safeguards were introduced in an attempt to ensure fairness in the investigation and prosecution of criminal offences, the tradition of policing by consent was gradually being eroded. This has led to an increasing focus on the question of police accountability. Not only must the police be seen to be acting within the law and crooked officers effectively be dealt with but on a wider level the police must be accountable to the public they serve for policy and operational decisions.

In English and Welsh and also Turkish law, in accordance with the ideals of the due process model, principally, three main remedies are provided to control police misconduct: police complaints procedure, civil action against the illegal behaviours and habeas corpus procedure⁴.

First of all, where an individual is being detained by the police without having been lawfully arrested or without the proper procedures having been complied with, he has the right to apply for the remedy of habeas corpus to have the legality of his arrest and detention checked and to secure his release. Secondly, if the abuse constitutes a civil wrong, such as an assault or false imprisonment an individual can launch a civil action for damages. Finally, an individual has the right to appeal to the complaints system when he thinks that a police officer has committed a disciplinary or criminal offence, or has abused his power or authority.

⁴ Exclusion of evidence is also considered as one of the remedies, as discussed earlier.

However, it is highly controversial as to whether these remedies are really effective at preventing the police breaking or bending the rules. Far from deterring rule-breaking, the present system could be seen to actually condone and encourage it if the chance of being caught is so slim. It is argued that in England and Wales, the Police Complaints Authority (PCA) has done little to control the actions of 'rotten apples' within the police forces⁵ (Reiner, 1992). The PCA is further criticized in that people will not trust the integrity of the procedure so long as the police appear to be judges in their own case. It is believed that their judgments will be affected by feelings of loyalty and protection (Lambert, 1986:82). The 'independent element' of the PCA is not adequate, since the ability of the PCA effectively to supervise an investigation is dependent on the supply of information by the police officers working under it (Goldsmith, 1991:24).

Very much like the case in England and Wales, there is little in the Turkish police complaints procedure to satisfy the expectations of a complainant. As in England and Wales, the main causes of dissatisfaction were the length of time taken to deal with the case, the absence of any procedure which requires an explanation about the outcome of the case, the exclusion of the complainant from the process and the secrecy and bureaucracy surrounding the investigation (Eryilmaz, 1999).

As seen, remedies such as the introduction of the Police Complaints Authority (PCA) and the Crown Prosecution Service (CPS) have come a little way in controlling the actions of the police and making them more accountable. Therefore, efforts should be concentrated on making these remedies more effective, in addition

⁵ At present cases are only referred to the PCA where there is an allegation that the police conduct resulted in death or injury or if the complaint should be referred in the public interest.

to other strategies. Without such measures being implemented the notion of policing by consent will be lost forever and if public confidence in the police is destroyed it does not bode well for the enforcement of law and order within society.

Increased Police Professionalism

Increased police professionalism and the types of general policies have been emphasised as reform strategies and it is one of the important principles of police ethics that police officers should be required to behave with a professional attitude towards their work (Bal and Eryilmaz, 2002; Beren, 2002:302). Indeed, as Uildriks and Mastrigt (1991:181) put forward, the police themselves constitute the agency most capable of policing themselves. The authors maintain that the issue in reform strategies is not about undermining police culture or an operational code of policing (since both are a necessary and inevitable part of the police organisation and police work) but rather about ensuring a fully-professionalized police service that should be able to exert internal control, imbuing officers with knowledge, and ethical standards guiding their behaviour.

Social and Political Factors

It is apparent that even an excellent education and good training will not necessarily ensure that the police operate within the boundaries of the law. The design of the system in which the police operate is important as well and the impact of the legal rules depends upon the broad political environment of the country in which the policing job is done (Grimshaw and Jefferson, 1987:9-11).

Skolnick (1994:239) claims that the police will be corrupt when the political community is itself corrupt and thus 'the police can hardly be expected to be much better or worse than the political context in which they operate'. In such a system, as a result of a chain effect, even the most decent and responsible police officers may be forced to get involved in corruption, especially if they see many civil servants and officials around them violating the rules and abusing their powers⁶. Thus, not only the police but other institutions also of the political and administrative system should be compelled to act within the boundaries of the law, attendant upon a review of their operation and an implementation of the necessary changes (Sahin, 1995:24).

Public Awareness

Finally, public awareness of suspects' rights and police powers may also be an important constraint upon police action. Studies indicate that members of the public are usually ignorant of their rights and the limits of the powers of the police, and a considerable majority of suspects are poorly educated. Only a small number of suspects are cognizant of the constraints of the criminal justice system (Brown, 1997).

In Turkey in particular, suspects are largely unaware of the limits of the police power to arrest and detain and this situation is used to advantage by the police, who do not hesitate to test the limits of their powers since they are well aware of the fact that the public does not know very well what rights they are entitled to by law and even if they do know them, they are often reluctant to put them into practice. Turkey

⁶ Besides, police officers in such an environment will not be permitted by their already-corrupted fellow officers to adapt accurate and rightful procedures to replace illegal practices exercised by their colleagues as a normal way of conducting a criminal investigation.

is not alone in this phenomenon, it undoubtedly occurs in England and Wales as well.

The PACE Experience: Lessons to be Learned

One of the main discoveries of my research is that in Turkey the impact of the legal reforms and regulations on policing procedures is much weaker than in England and Wales where the effectiveness of the law is more comprehensive and the police compliance with the law is much better adhered to.

In Turkish practice, there are many examples of circumstances in which the crime control values of the police encounter the due process values of the law. For instance, the custody records are not attentively kept and very often misrepresent what occurred. Records are not always completed when they should have been, and those that are submitted by no means always record the grounds for suspicion adequately. Suspects are often discouraged from seeking legal advice and tactics and ploys used during interviews are wide open to the criticism that they are coercive and/or suggestive of 'fishing expeditions' (McConville *et al.*, 1991; Brown, 1997; Eryilmaz, 2001).

Despite the legal rhetoric, in Turkey the police rely heavily on arrest and detention powers and this has become a tool of investigation and a tactic of crime prevention strategy which involves arresting large numbers of people, holding them in police custody, interrogating them, and if that proves fruitless, then releasing them without

charge. More importantly, most of these detention cases go unnoticed as the police do not record cases despite the strict legal requirement.⁷

I have found that, in my study of three Turkish police stations, there are astonishing similarities between policing in 1983 in London and policing in 1999 in Turkey. The situation in Turkey, as far as the arrest, detention and interrogation procedures are concerned, is similar to what the PSI studies of Smith and Gray (*The Police in Action*, 1983) found in London in the pre-PACE period when the Judges' Rules were in effect. It is as if the following long paragraph, taken from the PSI report, was written to describe the current situation in Turkey at the turn of the 21st century:

... Our findings strongly suggest that ... at the time of arrest suspects are frequently neither cautioned nor told they are being arrested. ... The process of arrest is frequently seen as a way of bringing pressure to bear on a suspect to provide evidence against himself or others; while a degree of pressure is implicit in the fact of being arrested (at a point where the evidence that a court would require to convict does not exist) it is not uncommon for officers to use bullying tactics in interrogation and to use threats, especially the threat of being kept in custody for a time. These kinds of pressure go well beyond what is necessary or inevitable within the current framework of procedure. In many cases, there is no record of the 'informal' interviews during which tough questions are asked, or merely a record to show that the interview took place. Statements are produced by a process of interaction between an officer and a suspect (or other person); they are generally not a record of what the suspect said in his own words. They may amount to a highly selective summary of what was said (Smith and Gray, 1983:229).

Even though there might be a controversy about what has really changed since PSI reports and PACE, it is almost certain that there have been important and positive

⁷ This is because, after widespread allegations of persons missing in custody, the general directorate of security forces in Turkey set up a unit called the 'Detention Watch Unit' (DTU) to monitor the detention procedures and to keep a record of details of detained people all over the country on a daily basis. Accordingly, each provincial police directorate has a duty to fax the number and details of people who are arrested and detained in their district to this unit every day. I have visited this department several times during the course of the study and they have provided me with some statistical information about the detention cases, which has been used in Chapter 5.

developments in this country that have affected the police and the policing. It is therefore fair to say that the police of England and Wales do not enjoy as much freedom and flexibility in their work as they used to, since they are now more tightly controlled and perhaps more accountable to the law and the public. If one examines the situation in England and Wales, undoubtedly the provisions governing strict time limits on detention, independent reviews of detention, the introduction of the custody officer, and the requirement of needing permission from the specified senior ranks before certain procedures are carried out, together with routine supervision of junior officers by their seniors, are important safeguards. However, the same would not be said for Turkey, even after the 1992 amendments.

At the risk of simplification, I would therefore hypothesise that actual police detention and interrogation procedures in Turkey are ten to twenty years behind those of England and Wales.⁸ This hypothesis might be considered by some as humiliating and unacceptable, but this is in line with the findings of a special committee of the Turkish Parliament in their investigation of detention procedures, and they have made even more scathing criticisms of the police regarding the treatment of suspects in custody (TBMM, 2000a; 2000b).

It is therefore apparent that there are important lessons to be learnt from the PACE experience in England and Wales. It is even possible that, in some areas of the police detention and interrogation procedure, the provisions of PACE can be adopted with or without change. In Turkey, despite reformation attempts such as the TCPA amendments, in Turkish law there are still areas where the law allows the police to

⁸ Although the crime clearance rate and the overall police efficiency and rate of success in fighting crime may not necessarily be lower than in this country.

utilize the legal system and other resources unfairly. In other words, the absence of any regulation in some areas gives the police an opportunity to exercise their discretion without restraint. For instance, at present, especially in the questioning process, the police are not obliged to commence the questioning without delay. In this respect, unlike English law, Turkish law idealistically assumes that the questioning of suspect starts immediately after the detention decision. However, in practice, the police simply do not start the formal questioning process until they collect some evidence an/or information to be used during the interrogation. In some cases, this practice eventually prolongs the detention length unnecessarily and arbitrarily (Eryilmaz, 1999).

Again, unlike the case in PACE, TCPA does not state in whose care the suspect should be at a particular time. Although the effectiveness of custody officers is still highly controversial, because of their routine approach to the detention of procedures⁹ (Runciman Report, 1993:30), there is evidence that the presence and oversight of the custody officer has had a deterrent effect, albeit limited, in preventing abusive arrests and has forced the police to collect at least some evidence before arresting a suspect (Coleman, *et al.* 1993:24). I therefore believe that both the Turkish criminal justice system and the police may benefit from the experiences of the PACE implementation of the role of custody officer and the review of detention. Thus, in addition to the Public Prosecutor's role, the equivalent of the PACE custody officer as an additional safeguard may be introduced into the Turkish Criminal Justice System. This is especially important considering the inadequacy of the supervision carried out by the Public Prosecutor and the lack of a procedure to monitor and review the actions of senior police officers.

⁹ Such as not reviewing or questioning adequately the officer's decision to arrest.

Furthermore, current Turkish law does not require a review of detention to check at regular intervals whether it is still necessary to keep the suspect in custody. Hence, it is obvious that a review procedure is needed. In this respect, section 40 of PACE can be used as a ready formula with some improvements. It is possible that such a move in Turkish law might help to reduce the overall detention times. Although in the majority of the cases, as PACE research suggests (McConville *et al.*, 1991; Coleman, *et al.* 1993:25-6), the review might be symbolic and routine, the introduction of such a change in Turkish law would facilitate understanding of the legal theory that detention of a suspect until the expiry of the detention time limit should be considered as an exception rather than a rule (Eryilmaz, 1999).

Unlike the procedure under PACE, TCPA requires the police to inform suspects of the reasons for their arrest at the beginning of the questioning process rather than at the time of arrest or immediately afterwards. Hence, the police are not required to inform suspects of the reasons for their arrest at the time of arrest. As a result, in practice suspects are not necessarily informed about the cause of their arrest at the time of arrest or within a reasonable time¹⁰. In this respect, Turkish law needs to be amended to the effect that suspects should be informed the reason(s) for their arrest at the time of arrest. This is also, I believe, an important legal procedure that could be adapted from PACE and its Codes of Conduct.

In addition to the recommendations made above, the Turkish police should also be well-equipped with modern criminological and ballistic technologies, as is the case in many developed countries. The use of technology could prevent the police from

¹⁰ The current practice, in Turkey, is therefore in line with the ideals of the crime control model, which does not necessitate informing the suspect about the reasons for the arrest at the time of arrest or immediately afterwards.

seeing suspects as the best source of evidence and help to eliminate certain suspects from the inquiry at an early stage.

Consequently, as far as the practice in Turkey is concerned, no effort should be spared to make the legal regulation more effective so as to help eliminate the occurrence of torture and inhuman and degrading treatment, and to ensure that nobody is wrongly arrested, detained or convicted. It appears that the greater the number of checks, safeguards and reviewing procedures, the better it is from the suspect's point of view in terms of the system's recognition of the shortcomings of human institutions and of the chance of his early release as an innocent person falsely detained on suspicion.

Concluding Remarks

This thesis has argued that the short answer to the question '*how far can policing be controlled by law?*' is that rules may provide a foundation, but do not shape the actual police practices in every respect and that there are differences between the law in the book and in the practice. This hypothesis is confirmed by a wide range of independent studies (i.e. Brown 1989; Bottomley *et al.*, 1991; McConville *et al.*, 1991; Maguire and Norris, 1992; Dixon, 1997) about the impact of PACE in this country and by my particular research into the impact of TCPA legislation in Turkey.

The main issue about the regulation of policing that legislators should understand is that the mere existence of a rule is no guarantee that it will be put into practice and/or followed by the police, since the police have their own 'ways and means' to

adapt the rules in line with their needs and objectives, which may not always be compatible with the legal rhetoric. Thus, even if every aspect of the law is regulated in great detail and depth, and though such regulation would maximise the protection of individuals against the abuse of police powers, this will not be sufficient in itself to influence or to change the police practices to make the police more liable for their actions.

As manifested throughout the thesis, various factors such as the police culture, unclear rules and procedures, lack of supervision, lack of training, and a country's political and social situation all combine to play a role in determining whether or not the police comply with the law.

In a comparative context, I would argue that legislative reforms would achieve little, particularly in a country like Turkey where even rudimentary democratic principles are in their infancy. Since some legal reforms in policing have failed in developed democratic countries like England and Wales, the chance of success is even smaller in a developing country such as Turkey, considering the political, social, and economic obstacles in the way of successful reform. It is therefore clear that the Turkish government should do more than simply passing an Act of Parliament if it is really determined to reform the police procedures in Turkey.

The irony is that the Government in Turkey relies heavily on legal reforms as a major governmental tool to shape and control policing in the country. According to this strategy, the reform should start from the law and change in the legislation should have priority before everything else when reform is needed. The Government idealistically, if not naively, assumes that the police will apply the law that is

imposed on them without any prejudice or reservation, as they are legally bound to do (Sitti and Ozkan 1993:34-35). Nevertheless, the other side of the coin is not what the Government assumes, as the research has indicated: enactment of the legislation is one thing and implementation of it is another.

In Turkey the influence of the occupational police culture, which is itself affected by the country's social and political conditions, is stronger than in England and Wales, and as a consequence of this, the ability of legal rules to control deviant police behaviour is relatively weaker. Thus, in doing their job, the police implicitly prioritise the crime control values and are inclined to resist any rules that impose due process values on them. The firm opinion of the police is that the effective and exact use of legal rules and suspects' rights may hinder their fight against crime and prevent them from finding sufficient evidence to construct a case against the criminals. The police also firmly believe that under the country's current social and political circumstances, such as the threats of separatism and terrorism¹¹, police work cannot be done effectively if the legal procedures are strictly adhered to (Eryilmaz, 1999). Such notions clearly allow the police the required freedom to break the laws if they desire, and this great freedom on the part of the police in practice results in a large number of detention cases for even unrelated matters in the name of crime prevention and the maintenance of law and order.

The solution to the problem of legal reform requires a combination of commitments from both the Government and the police. Firstly, the Government should realise

¹¹ The threat of terrorism has been constantly pointed out by the police as an excuse to bend the rules whenever necessary. In this respect, the Turkish police proffer an extreme patriotic profile. This finding may add an extra element to the characteristics of Turkish police culture which may not be seen elsewhere.

that passing an Act of Parliament will not lessen its responsibilities towards the community and the police service. Next, the Government should commit itself to do more to ensure that the legal rules are implemented whilst allowing the police do their job effectively. The Government should not forget that police organisations are ‘as manoeuvrable as oil tankers’ (Dixon, 1997:317).

At the same time, the police should also commit more resources into improving their human rights standards and take on board the fact that they have no power to exclude rules that may hinder their investigations. The police responsibility for the prevention and detection of crime and the maintenance of law and order cannot not disregard the fact that in a democratic state no person or institution is above the law and everybody and every institution, including the police, should act within the boundaries of the law. It is obvious that if the police are allowed to break the law or bend the rules in order to prevent or detect crime, this will not in fact reduce criminality but increase it, because at the end of the day the act of individual police officers will be a crime in itself (Crawshaw, 2002:166).

As commonly articulated in explaining the result of the abuse of power by the police, ‘the poisoned tree’s fruit will also be poisoned’ (Yenisey, 1987). If the rules are not obeyed simply because they do not fit the police’s perception of how they should do their job, there is obviously a danger that the innocent might be convicted as a result of wrongful police practices, and the guilty could be released by the police using their discretion for the sake of achieving their short-term objectives. Justice may therefore miscarry in either direction. It is evident that neither the police nor society benefit from occurrences of miscarriages of justice, as these may cause

adverse and knock-on effects to the entire criminal justice process (Bal and Eryilmaz, 2002).

In conclusion, there is an enduring need to balance police powers and individuals' rights. Although the extent of police misconduct may not be as great as some fear, there is no room for complacency, and both the law and the culture of the workplace must be kept under constant review, particularly in attempting to shift police attitudes towards an acknowledgement of the law.

APPENDICES

(Pages 290 – 306)

Appendix A: Documents related to procedures of detention under TCPA.

GÖZALTI TAKİP FORMU-1

1) **GÖZALTINA ALAN:**

İL-İLÇE-ŞUBE BİRİM KODU: ()

2) **GÖZALTINA ALAN KİŞİNİN :**

ADI SOYADI:

RÜTBESİ :

3) **GÖZALTINA ALINAN ŞAHSIN :**

ADI :

DOĞUM YERİ : ()

SOYADI :

NUF.KAY.OL.YER. : ()

BABA ADI :

DOĞUM TARİHİ : ()

ANA ADI :

İKAMET ADR-TLF :

MESLEK-İŞ-ADR-TLF:

4) **GÖZALTINA ALMA :** NEDENİ : () TARİHİ : SAATİ:

5) **AYUKAT TALEP DURUMU :** ()

6) **AYUKAT GELİŞ ZAMANI :** ()

7) **HABER VERİLEN YAKINI:**

ADI SOYADI :

TELEFONU:

GÖZALTI TAKİP FORMU - 2

1) **GÖZALTINA ALAN:**

İL-İLÇE-ŞUBE BİRİM KODU: ()

2) **GÖZALTINA ALINAN ŞAHSIN :**

ADI :

DOĞUM YERİ : ()

SOYADI :

NUF.KAY.OLD.YER. : ()

BABA ADI :

DOĞUM TARİHİ : ()

ANA ADI :

3) **GÖZALTINA ALMA :** NEDENİ : () TARİHİ :

4) **GÖZALTINDA KALMA SÜRESİ :** ()

5) **SERBEST BIRAKILMA NEDENİ:**

() POLİSCE () C.SAVCISINCA () MAHKEMECE

TARİHİ :

SAATİ :

6) **TUTUKLANDI :** () TARİHİ : SAATİ:

7) **A - JANDARMAYA TESLİM ()**

TARİHİ :

SAATİ:

B - İLGİLİ BİRİME TESLİM ()

TARİHİ :

SAATİ:

GÖZALTI TAKİP FORMU

İli veya İlçesi	Gözaltına Alınan Adı Soyadı Baba-Anne Adı, Doğum yeri ve Doğum Tarihi	Hukuka Uygun Gözaltına Alınma Sebebi	Gözaltına Alan Birim	Gözaltına Alma Gün- Saat	Gözaltına Alan ve Yakınına Haber Veren Görevli Adı, Soyadı ve Rütbesi	Gözaltına Alınanın Haber Verilen Yakını-Adı-Soyadı Tel:	Üst Makamlara Bildirme Gün-Saat

Uygulamadan Bilgisi Olan
Birim Amiri
Adı Soyadı-Rütbesi

GÖZALTINA ALMA TUTANAĞI

.....şüpheli olması nedeni ile göz altına alınan

ADI VE SOYADI : Baba-Ana Adı : Nüf.Kav.Old.Yer. : Doğ.Tarihi:

İkamet Adresi ve Tel.N0:.....

İş Adresi ve Tel. N0. :.....

Yukarıda adı ve adresi yazılı bulunan şahsın yapılan üst aramasında :

- 1)
- 2)
- 3)
- 4)
- 5)
- 6)

çıkması ve kendisine tam ve sağlam olarak teslim edilmiş olup, iş bu tutanak tanzimle altı birlikte imza altına alındı. / / 199... Saat:

Göz Altına Alma Tarihi : / / 199...

Göz Altına Alma Saati :

Doktora Gitmek İstemiyorum :()

Doktora Gitmek İstiyorum :()

İ m z a :

Gözaltı İşlemini Yapan

Hazurun

Gözaltına Alınan

G.B.Toplama İşlemi :

G.B.Toplamaya Sorma Saati :

G.B.Toplama Sonuç Saati :

Aranıp-Aranmadığı :

Sabıkalı -Sabıkasız :

G.B.T. Memurunun Adı :

SALIVERME TUTANAĞI

.... / / 199.. günü saat : 'de durumu nedeniyle gözaltına alınan

.... / / 199.. günü saat: 'de saliverilmiştir.

Gözaltı sonu itibarı ile Doktora gitmek istemiyorum.

Gözaltına alınan :

Gözaltına alınanın imzası :

SALIVERİLEN

HAZURUN

GÖZALTINA ALINAN

Appendix B: Documents regarding to interrogation of suspects.

İFADE TUTANAĞI
(CMUK. MD. 135)

İFADE VERENİN

ADI-SOYADI VE CİNSİYETİ :
BABA-ANA ADI :
D. YERİ VE TARİHİ :
NÜF.KAY. OLD. YER :
EV ADRESİ VE TELEFONU :
İŞ ADRESİ VE TELEFONU :
MEDENİ HALİ VE ÖĞR. DURUMU :
SABİKA DURUMU :
YAK. DUYURULMASINI İST. KİŞİLER :
İFADENİN ALINDIĞI YER VE TARİH :
MÜDAFİİ :

İfade verene isnad edilen suç anlatıldı. Müdafî tayin hakkının bulunduğu, müdafî tayin edebilecek durumda değilse, baro tarafından tayin edilecek bir müdafî talep edebileceği ve onun hukuki yardımından yararlanabileceği, isterse müdafîin soruşturmayı geciktirmemek kaydı ile vekaletname aranmaksızın ifadede hazır bulunacağı, yakınlarından istediğine yakalandığını duyurabileceği, isnad edilen suç hakkında bulunmamasının kanuni hakkı olduğu, şüpheden kurtulması için somut delillerinin toplanmasını talep edebileceği, kendisine teker teker hatırlatılıp açıklandı.

SORULDU :

İLÇE EMNİYET MÜDÜRLÜĞÜ
Sanık Hakları Formu

NORMAL SUÇLULAR İÇİN

ŞAHSIN KİMLİK BİLGİLERİ _____ :

ADI VE SOYADI _____ :

CİNSİYETİ _____ :

BABA VE ANA ADI _____ :

DOĞUM YERİ VE TARİHİ _____ :

NÜF. KAY. OL. YER İl- İlçe- Köy. _____ :

İŞ ADRESİ- Tel: _____ :

ŞAHSIN GÖZALTINA ALINDIĞI _____ :

TARİH VE SAAT _____ :

YER – CADDE- SOKAK V.s. _____ :

..... suçundan gözaltına alındınız, başka suçlara karışma ihtimalinizde aynı zamanda soruşturma kapsamındadır. Yürürlükteki mevzuata göre, aşağıda belirtilen haklarınız bulunmaktadır.

1) Kimliğinizde ilgili sorulara doğru cevap vermek zorundasınız.

11)Münferit suçlarda 24 saat , toplu suçlarda ise savcının yazılı emri ile 4 güne kadar gözaltında tutulabilirsiniz. Bu süre savcının talebi üzerine hakim kararıyla 7 güne kadar uzatılabilir.

111)Müdafii tayin hakkınız vardır. Müdafii tayin edebilecek durumunuz yoksa, Baro tarafından tayin edilecek bir müdafinin hukuki yardımından yararlanabilirsiniz. Müdafiniz, ifade veya sorguda hazır bulunabilir.

IV)İsnat edilen suç hakkında açıklamada bulunmama, yani susma hakkına sahipsiniz. Aleyhinize Varolan şüpheleri ortadan kaldırmak için lehinize olan hususları önerebilirsiniz.

V) Yakalanarak gözaltına alındığınızı, yakınlarınızdan birine haber verebilirsiniz

Tarafıma okunun haklarımın neler olduğunu anladım. / / 19

.....
İmzası.

Yukarıda adı ve açık kimliği yazılı şüpheliye haklarını açıkladımve kendisi tam anlamıyla anlayarak imzaladı/İmzadan İmtina etti.

Evrakın bir kopyası şahsa verildi.

GÖREVLİNİN _____ :
ADI VE SOYADI _____ :
RÜTBE VE SİCİLİ _____ :
İMZASI _____ :

Not :Sanık hakları formu gözaltına alınan her şahıs için üç nüsha doldurulacak olup, bir nüshası şahsın kendisine bir nüshası mahkemeye verilecek, diğer nüshası ise dosyasına konulacaktır.

Appendix C: A Leaflet Explaining Suspects' Rights.

soruşturmanın her safhasında avukatınızın sizinle görüşmesi, ifade alma ve sorgu müddetince yanınızda bulunup, hukuki yardımda bulunması engellenemez veya kısıtlanamaz. Avukat seçebilecek durumda olmamanız halinde ise baro tarafından görevlendirilecek bir avukatın hukuki yardımından ücretsiz faydalanabilirsiniz.

(CMUK Md. 135-136)

DELİL TOPLATMA HAKKI

Ifadenizin alınması veya sorgunuz sırasında şüpheden kurtulmak gayesiyle somut delillerin toplanmasını talep edebileceğinizin ve aleyhinize olan şüpheleri ortadan kaldıracak delilleri ileri sürme hakkınızın olduğunun da hatırlatılması zorunludur.

(CMUK Md. 123)

GEÇERSİZ İFADE

Yapılan sorgu sonucu alınan beyanınızın özgür iradenize dayanması zorunludur. Bu iradenizi baskı altına alarak, kötü davranma, işkence, zorla ilaç verme, yorma,

aldatma, bedensel cebir ve şiddette bulunma, bazı araçlar uygulama gibi iradeyi bozan bedeni veya ruhi müdahale yapılamaz. Kanuna aykırı menfaat vaad edilemez. Bu tür yasak yöntemlerle elde edilen ifadeleriniz rızanız olsa dahi delil olarak değerlendirilemez.

(CMUK Md. 135)

SUSMA HAKKI

Zabıta amir ve memurları ile Cumhuriyet Savcısı tarafından ifade alma ve hakim tarafından sorguya çekilmede; ne ile suçlandığınızın açıkça belirtilmesi, isnat edilen suçlamayla ilgili olarak açıklamada bulunmamanızın (yani susmanızın) kanuni haklarınızdan olduğunun hatırlatılması da zorunludur.

(CMUK Md. 135)

ÖDEVLERİMİZ

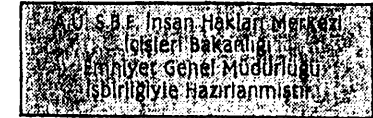
"Temel hak ve hürriyetler, kişinin topluma, ailesine ve diğer kişilere karşı ödev ve sorumluluklarını da ihtiva eder."

(Anayasa : Md. 12/2)

A.Ü. S.B.F. İnsan Hakları Merkezi



İçişleri Bakanlığı
Emniyet Genel Müdürlüğü



HAKLARINIZI
BİLİYOR MUSUNUZ ?
"İNSAN HAKLARI"

A.Ü. S.B.F. İnsan Hakları Merkezi
Ankara, 1995



Bu broşür Avrupa Birliği Komisyonu'nun
malî katkısıyla gerçekleştirilmiştir.

İNSANCA YAŞAMA HAKKI

İnsanca yaşama, maddi ve manevi varlığını koruma ve geliştirme hakkına sahiptir.
Size hiç kimse işkence ve eziyet yapamaz; insan haysiyetiyle bağdaşmayan bir cezaya veya muameleye tabi tutulamazsınız.
(Anayasa : Md. 17)

HÜRRİYET

Kişi hürriyeti ve güvenliğine sahiptir. Bu hürriyet ve güvenliğiniz, kanunlarla belirlenen tutuklama, göz altına alma, ıslah evine gönderme ve resmi müessesede gözlem altına alınma hallerinin dışında hiç bir kişi veya kurum tarafından ihlal edilemez, kesintiye uğrattılamaz.
Yasa tarafından belirtilmeyen gerekçelere ve usullere dayanılarak özgürlüğünüz kısıtlanamaz. Bu en tabii hakkınız, bunu sağlamak da en önemli görevimizdir.
(Anayasa : Md. 19)

TUTUKLANMA

Kanunlarla belirlenen usul ve esaslar doğrultusunda tutuklanmanız durumunda; tutuklanma sebebinin en kısa zamanda tarafınıza bildirilmesi, haklarınızın neler olduğunun anlatılması ve tutuklandığının yakınlarınıza bildirilmesi zorunludur. Yakalanmanız veya tutuklanmanız durumunda en kısa sürede hakim önüne çıkarılmanız, tutuklanmanız veya yakalanmanızda kanuna uygun olmayan bir unsurun varlığında hemen serbest bırakılmanızı sağlamak amacıyla yetkili bir yargı merciine başvurma hakkına sahiptir.

(Anayasa : Md. 19)

ÖZEL HAYATIN GİZLİLİĞİ

Özel hayatınıza ve aile hayatınıza saygı gösterilmesini isteme hakkına sahiptir. Özel hayatınızın ve aile hayatınızın gizliliğine dokunulamaz. Kanunlarla belirlenen esaslar doğrultusunda verilen arama kararları bu konuda bir istisnadır.
(Anayasa : Md. 20)

KONUT DOKUNULMAZLIĞI

Konut dokunulmazlığı en tabii hakkınızdır. Kanunun açıkça gösterdiği hallerde usulüne göre verilen hakim kararı olmadıkça, gecikmesinde sakınca bulunan hallerde ise Cumhuriyet Savcıları ve onların yardımcıları sıfatıyla emirlerini yerine getirmeye memur olan Güvenlik Güçleri dışında hiç kimse konutunuza giremez, arama yapamaz ve buralardaki eşyanıza el koyamaz.
(Anayasa : Md. 21)

AVUKAT İSTEME HAKKI

Herhangi bir suçlamayla yakalanmanız veya göz altına alınmanız durumunda; soruşturmanın her hal ve derecesinde bir veya birden fazla avukatın hukuki yardımından faydalanma hakkına sahiptir. Zabıta amir veya memurlarınca yapılan sorgu işleminde ancak bir avukat bulundurulabilir, sonraki savunmalarda ise ancak üç avukat bulundurulabilirsiniz. Hangi makam veya kişi tarafından yapılırsa yapılsın,

Appendix D: The Questionnaire.

AÇIKLAMALAR

A. Bu anket polisin yakalama ve gözaltına alma yetkisini ve yakalananın haklarını inceleyen bir akademik çalışma ile ilgilidir. Lütfen cevaplarınızı herhangi bir etki altında kalmadan samimiyetle veriniz. Kimliğiniz belli olmadığından kaygılanacak bir durum yoktur.

B. Cevaplamak istemediğiniz veya bir fikrinizin olmadığı durumlarda *lütfe işaretleme yapmayınız*. Bu tür bir soruya cevap vermek zorunda değilsiniz. Ancak fikirleriniz önemlidir.

C. İşaretlemek istediğiniz rakamı herhangi bir şekilde işaretleyebilirsiniz (daire içine alma veya çarpı işareti gibi).

Katınıza teşekkür ederim...

SORULAR - Genel Bilgiler

Cinsiyetiniz 1. Erkek 2. Kadın

Kaç yaşındasınız

1. 20-25 2. 26-30 3. 31-35 4. 36-40 5. 41-45 6. 46 ve yukarı

Bu yıl meslekte kaçınıcı yılınız

1. 0-1 2. 2-5 3. 6-9 4. 10-13 5. 14-17 6. 18 ve yukarı

Rütbeniz

1. Polis Memuru 2. Komiser Yard.-Komiser-Başkomiser 3. Emn. Amiri - Emn. Müdürü

Görev yaptığınız birim

1 asayiş 2 terör 3 istihbarat 4 kaçakçılık ve organize suçlar
5 trafik 6 karakol hizmetleri 7 diğer

Bu güne kadar karakollarda toplam olarak ne kadar süreyle çalıştınız? (Çalışmadıysanız boş bırakınız)

1. 0-1 2. 2-5 3. 6-9 4. 10-13 5. 14. 17 6. 18 ve yukarı

Aşağıdaki Sorular 1 - 5 arası bir seçeneğin işaretlenmesi şeklinde cevaplandırılacaktır. İşaretlediğiniz rakam sizin görüşünüzün yoğunluğunu gösterecektir. Örneğin sorulan hususa tamamen katılmıyorsanız hayıra en yakın olan 5 numarayı; tamamen katılıyorsanız evet yönüne en yakın rakam olan 1 numarayı işaretleiniz. Görüşünüzün yoğunluğu tam değilse duruma göre 2 veya 4 numarayı, ortada ise 3 numarayı işaretleyebilirsiniz. Eğer konu ile ilgili hiç bir fikriniz yok veya görüş belirtmek istemiyorsanız hiç bir rakamı işaretlemeyen boş bırakınız.

I-YASALAR VE POLİS

1- Yürürlükteki Kanunlarla polise verilen yetkilerin polisin adli görevlerini yerine getirmek, sucla mücadele ve suçluları ortaya çıkarmak ve kendisinden beklenen diğer işlevleri yerine getirmek bakımından yeterli olduğunu düşünüyor musunuz?

evet 1 2 3 4 5 hayır

3- Polisin yetki ve görevlerini düzenleyen yasa ve yönetmelik gibi hukuk normlarının polisin rahat görev yapmasını temin edecek şekilde yeterince açık olduğunu düşünüyor musunuz?

evet 1 2 3 4 5 hayır

4-Polisin yetki ve görevlerini düzenleyen hukuk kurallarının yeterince esnek olduğunu düşünüyor musunuz?

evet 1 2 3 4 5 hayır

5- Polis kendisinden beklenen işlevleri yerine getirmek için bazen hukuk kurallarını görmezden gelmek zorunda olduğunu düşünüyor musunuz?

evet 1 2 3 4 5 hayır

6- Daha iyi polis ve daha etkili polis faaliyetleri için yasa ve yönetmelik gibi mevcut hukuk normlarında değişiklik yapmaya ihtiyaç var mıdır?

evet 1 2 3 4 5 hayır

7- Sizce yasa ve yönetmelik gibi hukuk normlarının polisi ve polis faaliyetlerini yönlendirme ve kontrol etmedeki etkisi ne derecedir (yüzde ile ifade edecek olursak)?

% 100 75 50 25 0 %

9- Aşağıdaki ifadelere ne derece katılıyorsunuz? Lütfen belirtiniz.

a- Polis faaliyetleri temel olarak yerleşmiş teamüllere göre yapılır. Hukuk kuralları sadece çerçeve çizer.

evet 1 2 3 4 5 hayır

b- Etkili bir polislik için gerektiğinde bazı hukuk kuralları elden geldiğince uygulanmayabilir.

evet 1 2 3 4 5 hayır

c- Hukuk kuralları genelde polisin işini zorlaştırır. Halbuki polis işini mesleki tecrübe ve dürtülerine göre yapmak zorundadır.

evet 1 2 3 4 5 hayır

d- Hukuk kurallarının sıkça ve sürekli değişikliğe uğraması polisi ve polis faaliyetlerini olumsuz etkilemektedir.

evet 1 2 3 4 5 hayır

e- Mevcut yasa ve yönetmeliklerde yapılan değişikliklere polisin adaptasyonu uzun zaman alır.

evet 1 2 3 4 5 hayır

II- POLİSİN YAKALAMA VE GÖZALTINA ALMA YETKİSİ

10- Yakalama ve gözaltına alma yetkisini düzenleyen bazı hukuk normlarının polisin görevini gereği gibi yerine getirmesini engellediğini düşünüyor musunuz ?

evet 1 2 3 4 5 hayır

11- Polisin yakalama ve gözaltına alma yetkisini sınırsız kullandığı yolundaki iddiaları yerinde buluyor musunuz?

evet 1 2 3 4 5 hayır

12-Polisin yakalama ve gözaltına alma yetkisinin çerçevesinin daha da genişletilmesini istemişsiniz?

evet 1 2 3 4 5 hayır

13-Gözaltına alma yetkisi insan hak ve özgürlüğünü yakından ilgilendirdiğinden bu yetkinin olduğundan daha fazla sınırlayıcı koşul ve kriterlere tabi tutulmasına destek verir misiniz?

evet 1 2 3 4 5 hayır

14- Kendinizi sivil bir vatandaş yerine koysanız, yukarıdaki soruya vereceğiniz cevap yine aynı olur muydu?

evet 1 2 3 4 5 hayır

15- Kolluk güçlerinin şüpheli ve sanıkları gözaltında tutabileceği yasal süreler sizce yeterli olmakta mıdır?

evet 1 2 3 4 5 hayır

16- Samimiyetle cevaplandırmak gerekirse mevcut yasalarımızda yakalanan ve gözaltına alınan şahısların hangi süreler içerisinde hakim önüne çıkarılması gerektiğini tam olarak biliyor musunuz

evet 1 2 3 4 5 hayır

III- Yakalananın ve gözaltına alınanın hakları

17- Samimiyetle cevaplandırmak gerekirse mevcut yasalarımızda yakalanan ve gözaltına alınan şahıslara tanınan yasal hakların neler olduğunu tam olarak biliyor musunuz?

evet 1 2 3 4 5 hayır

18- Gözaltına alınan kişilerin yasal hakları polisin suçla mücadele etmek ve suçluları ortaya çıkarmak ve diğer adli görevlerini gereği gibi yerine getirmesine engel oluyor mu?

evet 1 2 3 4 5 hayır

19- Sizce Aşağıdakilerden en çok hangi hak polisin görevlerini olumsuz yönde etkiliyor?

1 susma hakkı

2 avukat isteme hakkı

3 yakınlarına haber verme hakkı

4 hakların öğretilmesi

5 hiçbir/birbaşka hak/fikrim yok

20- Sizce mevcut yasalarımızda yakalanan ve gözaltına alınan şahıslara tanınan haklar sanık haklarının güvence altına alınması bakımından yeterli düzeyde midir?

evet 1 2 3 4 5 hayır

***Yakınlara haber verilmesi**

21- Yakalananın gözaltına alındığının yakınlarına haber verilmesi ile ilgili hak polisin yaptığı soruşturmayı herhangi bir şekilde etkiliyor mu?

evet 1 2 3 4 5 hayır

22- Eğer bir etkileme söz konusu ise bu olumlu mu olumsuz mu?

olumlu 1 2 3 4 5 olumsuz

23- Sizce yakınlarına haber verme hakkı gerçekten gerekli bir sanık hakkı mı?

evet 1 2 3 4 5 hayır

***Müdafi (avukat) ile görüşebilme hakkı**

24- Yakalananın bir müdafi (avukat) ile görüşebilme hakkı polisin yaptığı soruşturmayı herhangi bir şekilde etkiliyor mu?

evet 1 2 3 4 5 hayır

25- Eğer bir etkileme söz konusu ise bu olumlu mu olumsuz mu?

olumlu 1 2 3 4 5 olumsuz

26- Sizce avukatla görüşebilme hakkı gerçekten gerekli bir sanık hakkı mı?

evet 1 2 3 4 5 hayır

***Susma hakkı**

27- Yakalananın susma hakkını kullanması polisin yaptığı soruşturmayı herhangi bir şekilde etkiliyor mu?

evet 1 2 3 4 5 hayır

28- Eğer bir etkileme söz konusu ise bu olumlu mu olumsuz mu?

olumlu 1 2 3 4 5 olumsuz

29- Sizce susma hakkı yerinde ve olması gereken bir sanık hakkı mı?

evet 1 2 3 4 5 hayır

***Yakalanana haklarının bildirilmesi**

30- Yakalanana haklarının bildirilmesi ve bu hakkın kullanılması polisin yaptığı soruşturmayı herhangi bir şekilde etkiliyor mu?

evet 1 2 3 4 5 hayır

31- Eğer bir etkileme söz konusu ise bu olumlu mu olumsuz mu?

olumlu 1 2 3 4 5 olumsuz

32- Sizce hakların öğretilmesi gerçekten gerekli bir sanık hakkı mı?

evet 1 2 3 4 5 hayır

*

33- Tecrübelerinize göre gözaltına alınan şahısların ortalama yüzde kaç haklarını kısmen veya tamamen biliyor?

100% 1 2 3 4 5 %0

34- Daha çok profesyonel suçluların sanık haklarını kullanmaya eğilimli olduğu doğru mu?

evet 1 2 3 4 5 hayır

35- Özellikle susma hakkının profesyonel suçlularca kullanıldığı iddiası doğru mu?

evet 1 2 3 4 5 hayır

36- Yine özellikle avukatla görüşme hakkının profesyonel suçlularca kullanıldığı iddiası sizce doğru mu?

evet 1 2 3 4 5 hayır

IV- CMUK

Bildiğiniz gibi 1992 yılında 3842 sayılı yasa ile Ceza Muhakemeleri Usulü Kanununun kolluk güçlerini ilgilendiren bazı maddelerinde değişiklik yapıldı. Bu değişiklikler içinde özellikle yakalama ve gözaltına alma prosedürü ile gözaltına alınanların hakları konusu önemli bir yer tutmaktadır.

37- Sahip olduğunuz bilgiler ve mesleki tecrübeleriniz ışığında bu değişiklikleri nasıl buluyorsunuz?

olumlu 1 2 3 4 5 olumsuz

* Meseleye polisin yetkileri ve gözaltına alınanların hakları açısından baktığımızda değişikliklerin bu ikisi arasındaki (polis yetkileri ve sanık hakları) mevcut dengeleri nasıl etkilediğini düşünüyorsunuz?

38- Dengeler polis aleyhine bozulmuştur.

evet 1 2 3 4 5 hayır

39- Dengeler sanık aleyhine bozulmuştur

evet 1 2 3 4 5 hayır

40- Genel olarak değerlendirildiğinde, CMUK'ta 1992 yılında yapılan değişiklikler ile ilgili uygulamalar sizce başarıya ulaşmış mıdır?

evet 1 2 3 4 5 hayır

41- Herşeye rağmen 1992 CMUK değişikliklerinin polise sanık hakları konusunda yeni bir bakış açısı getirdiğini düşünüyor musunuz?

evet 1 2 3 4 5 hayır

42- Değişikliklerin yapılması gereken ve ihtiyaç duyulan değişiklikler olduğu fikrine katılır mısınız?

evet 1 2 3 4 5 hayır

43- Şu anda yakalama ve gözaltına almayı düzenleyen CMUK prosedürü polisin görevini gereği gibi yerine getirmesi bakımından yeterli görüyor musunuz?

evet 1 2 3 4 5 hayır

44- Şu anda CMUK da veya PSVK da yeni değişikliklere ihtiyaç var mı?

evet 1 2 3 4 5 hayır

44/a- 1998 tarihli Gözaltı ve İfade Alma Yönetmeliğini okudunuz mu?

evet 1 2 3 4 5 hayır

45- Bu Yönetmeliğin yakalama ve gözaltı prosedürünün doğru yerine getirilmesi açısından uygulamaya ne tür bir etkisi olduğunu düşünüyorsunuz?

olumlu 1 2 3 4 5 olumsuz

46- Sizce böyle bir Yönetmeliğe ihtiyaç var mıydı?

evet 1 2 3 4 5 hayır

V - İfade alma ve Diğer hususlar

47- Mevcut yasalarımıza göre kural olarak polisin sorgulama yetkisi yoktur. Polisin yaptığı işlem hukuksal olarak ifade almaktır. Polise de sorgulama yetkisi verilmesini istermisiniz?

evet 1 2 3 4 5 hayır

48- Şüpheli veya sanığın ifadesi alınırken bir avukatının hazır bulunması, ifadenin seyrini olumlu veya olumsuz etkiliyor mu?

olumlu 1 2 3 4 5 olumsuz

49- Polisce alınan ifadelerin teyp kasetine alınması zorunluluğunun getirilmesi fikrini destekler misiniz?

evet 1 2 3 4 5 hayır

50- Şu anda Türkiye'de bunun gerçekleştirilebilme şansı veya imkanı yüzde olarak nedir?

% 100 75 50 25 0 %

51- Bazı önemli suçlar bakımından polisce alınan ifadelerin videoya alınması zorunluluğunun getirilmesi fikrini destekler misiniz?

evet 1 2 3 4 5 hayır

52- Şu anda Türkiye'de bunun gerçekleştirilebilme şansı veya imkanı yüzde olarak nedir?

100% 100 80 60 40 20 %0

53- Karakollarda gözaltına alınanlar ile doğrudan sorumlu olacak ve bu prosedürün işleminde resmen yetkili ve mesul olacak bir memurun görevlendirilmesi fikrine katılmışsınız? (Bu memur en az komiser yardımcısı rütbesinde olacak ve başka bir görevi olmayacak ve gözaltı memuru olarak adlandırılacaktır. Yine yakalananın gözaltına alınmasına gerek olup olmadığına bu kişi karar verecektir)

evet 1 2 3 4 5 hayır

54- Polis karakolları yerine polis merkezleri kurulması fikrini destekler misiniz?

evet 1 2 3 4 5 hayır

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