

COMMISSION CONSULTATIVE
DES BARREAUX DE LA
COMMUNAUTÉ EUROPÉENNE

THE COMMISSION CONSULTATIVE

Meeting at Stratford-upon-Avon on 15 May 1976

Being deeply concerned by the report of the German delegation regarding the restrictions on the rights of the defence in criminal matters which are contained in the legislation of 20 December 1974, and the various draft bills whose tendency is even further to restrict those rights;

Calls upon the member states to ensure that the fundamental rights of the citizen in criminal procedure are respected, and to conform to Article 6 of the European Convention on Human Rights which guarantees the right to a fair trial, particularly through the effective and unrestricted exercise of the rights of the defence;

The Commission Consultative considers it essential to reassert the following principles;

– every accused person has the right to a free choice of defence counsel;

– for the purposes of his defence, the accused must be able to communicate, in writing or orally, and without any exception or interference, with his defence counsel, whether freely chosen by him or appointed

to that office. The right of free communication is incompatible with surveillance or censorship by any judicial or administrative authority;

– defence counsel has the right to exercise to the full, in the interests of the defence, those privileges which are accorded to him by the laws of criminal procedure, without running the risk of being censured for interfering with the proper conduct of the trial or of being excluded from acting;

– the exclusion of a defence advocate can only be called for in cases of exceptional gravity which involve his being accused of acts which carry a criminal or disciplinary sanction. Only the competent disciplinary authority can order such exclusion;

– searches at the home or office of a lawyer should only be carried out in exceptional cases with due respect for professional confidentiality and if necessary under the supervision of a duly qualified representative of the competent disciplinary authority of the member state.