

**XIth INTERNATIONAL CONGRESS OF PENAL LAW
(Budapest, 9 – 14 September 1974)¹¹**

Topics:

1. Evolution of methods and means employed in penal law.
2. Drug abuse and its prevention.
3. Compensation of the victims of criminal acts.
4. The suppression of unlawful seizure of aircrafts.

Section I: Evolution of methods and means employed in penal law

I

The traditional system of repression and retribution is increasingly criticized and gradually replaced by one which grants priority to re-socialization and re-education among the social objectives of penal law. This new criminal policy should be developed and rationalized by precisely defining its methods and means.

This criminal policy has to satisfy three essential requirements first and foremost:

- 1) to achieve its aims by a minimum of repression and the maximum of efficiency and re-educational activity;
- 2) to be humanistic and maintain human dignity, and to ensure the fundamental rights of the individual;
- 3) to strengthen legality with all its consequences in procedures and jurisdiction.

At the same time it is essential that, in order to organize anticriminal reaction, research into the appropriate means and methods should go beyond the mere formal legal approach to the problems; we must solicit the cooperation of the experts of all the humanistic disciplines and not to neglect the consequences of the technical revolution, in the field of anti-criminalistic policy, either. We have to cherish or even intensify the relationships necessarily existing between penal policy and social policy.

II

When studying and defining the best suited means of anti-criminal reaction, due consideration should be taken of the fact that crime is a complex social phenomenon and cannot, therefore, be subject to a single solution; it requires, on the contrary, so differentiated legal means - differentiated sanctions or measures of a different nature, or in the given case, means or

¹¹ RIDP, vol. 45 3-4, 1974, pp.670-690 (French); p. 671-691 (English).

measures not coming under the sphere of penal law - which may be modified according to the nature of crime and that of the criminal and from among which the criminal judge may have a free choice.

III

The first problem to be studied is that of imprisonment; it was almost unanimously criticized, a considerable reduction of its scope was suggested. Although not indispensable, for the time being, it should be used against certain criminals until a coherent penal system is elaborated for its substitution.

To the degree as imprisonment is maintained as a penalty, the following questions must systematically be raised:

- what is the importance and what are the purposes of imprisonment at present / to what an extent can repression and re-education be accumulated or coordinated?
- what are the practical means to ensure that imprisonment should respect the principles of humanity and legality / the problems of the convicts' rights and of the minimum rules;
- what should be the exact position of imprisonment in the modern humanistic system of anti-criminal reaction / whether it should be the "*ultima ratio*" of the administration of justice in penal law when no other sanction is applicable ?

IV

Greatest efforts should be concentrated on the search for measures to replace imprisonment, which can be found if:

- certain existing sanctions are used / deprivation or restriction of rights, financial or para-disciplinary sanctions, etc. ;
- new methods of anti-criminal reactions are introduced in the case of petty offences or against certain offender categories;
- supervision and/or patronage provisions are extensively applied:

* individually as probation,

* collective or social measures through certain protective organizations.

In this field the measures accepted by certain modern systems and, in particular, by those of the socialist countries, deserve special attention.

V

The reform of criminal policy, as an organized anti-criminal reaction, calls for the strict and detailed examination of:

- 1) the cases when penalty / penal sanctions / should be foreseen: the problem of criminalization;
- 2) the cases when

* either the penal sanction must be excluded / the problem of decriminalization /, with the criminal character abolished;

* or the existing sanction must be modified and/or mitigated / the problem of depenalization.

In due consideration of the complex character and the difficulties of the problem, the Congress deems it necessary to continue or even intensify, the exchange of information on the development of the various systems of legislation, on the experiences collected, and on the results achieved.

Section II: Drug abuse and its prevention

Preamble

1. Experience with the research behind this general report, and work with the national reporters at the colloquium and the work of the Congress have convinced the General Assembly that insofar as the profession of criminal justice policy-makers and professors is concerned, the area of drug abuse prevention has gone largely by default and has been dealt with in many nations on an ad hoc basis, mostly with inadequate scientific preparation.

Be it resolved, that the criminal justice policy-makers from all parts of the world assembled in the A.I.D.P., vigorously assert their duty and obligation to play a leading role in the solution of the national and international drug abuse problem, so as to assure an efficient, humane and professional solution of these problems. To this effect, all members of the A.I.D.P. Congress pledge their best efforts vis-à-vis their own governments as well as vis-à-vis national and international organizations concerned with the issues.

The following recommendations and options form a first and necessarily incomplete contribution toward this task.

I. Nature and Trends of drug abuse

1. Legislative or extra-legislative social problem solving requires broad based factual knowledge. As regards problems of world-wide and even epidemic dimensions, a world-wide knowledge base is necessary. Thus, be it resolved, that all nations take immediate steps to assure maximum compliance with the United Nations Commission on Narcotic Drugs reporting requirements.

2. While duplication of costly research should be avoided, in view of the fact that relatively little is known about the causes of substance / including alcohol and drug / abuse, be it resolved that studies in causation should be undertaken and the results widely disseminated.

3. Much harm having been created by imperfect classification systems and terminology in the area of drug abuse prevention, a new conceptualization and classification system seems

necessary. For the preparation of and the discussions during the Congress the following terminology proved, itself useful.

- a) The term “substance use” indicates the area under consideration.
- b) Substance use may be of two distinct types:
 - 1) Use of / legal and illegal / substances which leads or significantly contributes to a major social dysfunctioning.
 - 2) Use which does not satisfy those conditions.
- c) The term abuse should be restricted to use which satisfies the conditions mentioned under b) 1.

II. Legislation aimed at controlling drug abuse

1. The national reports having revealed a wide disparity among punishments imposable for different drug offences, and it being doubtful whether cultural differences are accountable for these wide national differences, it appears necessary to review the statutory sanction schemes in all countries. A distinction should be made in legislation between legal intervention against illicit producers, manufacturers and traffickers on the one side, and possessors-consumers on the other side, allowing for flexible application of such legislation. By stigmatizing substance abusers as criminal or deviant, it is possible that more social problems are created than solved.

Therefore be it resolved that

- A) all national drug laws be reviewed and modified accordingly.
 - B) there be the possibility of decriminalizing or depenalising certain forms of conduct with regard to drugs. The experience of dealing with alcohol should be taken into consideration.
2. Whatever drug legislation may exist or be developed in any given country, the social policy issues of such legislation are extremely sensitive and the range of benefit and detriment deriving from such legislation is very significant. Be it resolved, that every nation create a governmental office charged with the task of constantly monitoring the effectiveness of such legislation and of the institutions created under such legislation, and of recommending amendments whenever needed.

III. Law Enforcement

1. As the example of a variety of nations indicates / e.g., France, U.S.A, Bulgaria /, efficient law enforcement is closely linked to the task. Consequently, it is resolved, that there be national and international training of law enforcement officers assigned to the task. Consequently, it is resolved, that national and international training programs for drug law enforcement officers, and other personnel working in the field of drug abuse be created and used to the widest possible extent.

2. Efficiency in drug law enforcement is not tantamount to solving the world's substance abuse problems. At this moment, there are no agreed-upon criteria of "success" in solving the drug abuse problem. Success in one respect may mean failure in another. Consequently, it is proposed that national efforts be directed at the establishment of success criteria and that these criteria be directed to the maximum prevention of disfunctioning of human beings as a result of drug abuse and at the minimum expenditure of national resources, including law enforcement, to achieve this end.

3. By all available criteria, prevention of substance abuse with regard to any substances which may be deemed particularly detrimental, can better be achieved by production and manufacture and distribution control. Consequently, it is proposed that the related legislation especially with respect to amphetamines and other psychotropic substances, be strengthened in all nations.

IV. Treatment and rehabilitation of drug offenders

1. For drug addict offenders treatment and rehabilitation are far more significant than punishment. Consequently, governments are urged either as an alternative to punishment or in connection to punishment to provide rehabilitative conditions for drug abusers having committed an offence. However rehabilitative conditions should be imposed only where necessary to terminate the disfunctioning of the offender, in order to protect society from the dangers which may emanate from disfunctioning drug offenders.

2. Treatment regimes frequently rest on a misunderstanding of the problem and of the individual involved and endeavor to achieve unnecessary and unattainable goals. For many substance abusers, no more than normal rehabilitative efforts, but no medical treatment, are indicated. All treatment programs for substance abusers ought to be vigorously reviewed as to aim, method, and success rate.

3. Experience demonstrates that only a wide range of treatment approaches can hope to reach all the underlying problems of the wide variety of substance abusers. Governments ought to be encouraged to experiment with the multi-modality treatment approach to a more efficient prevention of substance abuse.

4. Substance abuse is largely a social and occasionally a mental health problem. To the largest extent possible, responsibility for organization of treatment services for substance abusers ought to be transferred from the Departments or Ministries of Justice to the Departments or Ministries of Health and Welfare.

5. Substance abuse education among youth has frequently been counterproductive to the desired end of prevention. Greatest care must be exercised in the design and execution of drug abuse education programs.

6. Be it resolved, that on the basis of world-wide collective experience, it should be the effort of all systems to help drug abusers to solve their problems and to protect general public against

the dangers emanating from drug abuse. This requires considerable community involvement.

V. International drug control

1. All regions of the world are affected in some way by production, manufacture, trade, traffic or consumption of narcotic drugs and psychotropic substances, as well as by some secondary aspects of related problems.
2. The drug problem is of world-wide concern and requires urgently increased co-operation between all States and relevant International organizations and agencies.
3. Co-operation among States should be manifested initially by:
 - a) ratification of, or accession to, the Single Convention on Narcotic Drugs 1961, and the 1972 Protocol amending this Convention;
 - b) ratification of, or accession to, the 1971 Convention on Psychotropic Substances;
 - c) increased collaboration on the international, regional and bilateral level in programs dealing with law enforcement, judicial functions, scientific research, treatment-rehabilitation and any other appropriate measures to prevent drug abuse.
4. The emphasis of international and national drug control schemes shall be altered from purely repressive to more socially oriented.
5. In view of the various efforts made by the UN organizations its specialized agencies and other international organs and organizations, emphasis should be put on efficient coordination which should be ensured by the United Nations. With the view of ultimately achieving effective international control of narcotic drugs and psychotropic substances, other international control schemes -besides strengthening the existing system- should be considered. This could be done by e.g. a direct international control scheme. Another field of consideration is the integration of international drug control measures into broader systems of social and human protection.
6. The United Nations; international agencies and concerned organizations should develop more studies especially about psychotropic substances and their effect to alert the public at large and governments of the potential dangers involved in such substances and of the urgent need for putting them under efficient and constantly up-dated control.
7. All States are urged to provide more data and exchange of information as to all aspects of the problem of drugs so that the control systems can be scientifically and factually based.
8. The United Nations Fund for Drug Abuse Control (UNFDAC) should devote resources for evaluating intervention programs. Therefore it is recommended that UNFDAC is given increased resources *inter alia* for this purpose.

VI. Recommendation on the preparation of the Congresses of the A.I.D.P.

Although mostly unacquainted with the classified-systematized approach to report-writing for

international comparison, most national reporters generated considerable enthusiasm for the questionnaire type; classified-systematized approach here used and join in recommending the resolution that in the future all Congress topics of the A.I.D.P. be prepared in this fashion to assure worldwide comparability of information for maximally efficient problem solving in the line with the most advanced thinking of the social and behavioral sciences and in furtherance of the interest of crime prevention and criminal justice.

Section III. Compensation of the victims of criminal acts

The Congress, convinced:

- that the compensation of the victim, as a means to restoring the legal and social equilibrium violated by the criminal act and in consideration of the modern criminal policy, efficiently supplements the penal law sanctions, with particular respect to the re-socialization of the convict; furthermore convinced

- that an efficient compensation represents a public task based on the modern criteria of social solidarity, especially in cases when the offender is unknown, under no criminal procedure or convicted but insolvent,

accepts the following conclusions:

A) Compensation of the victim from public funds

1. The majority of the participants of the Congress recommend that the primary compensation for the victim of a crime should be made from public funds by the State or some other public Institution. The decision whether such compensation should be administered by a legally independent fund, a special compensation board, through existing social welfare or social insurance agency, should be left to the various legislators.

The minority of the participants favor compensation from public funds but recommend that such compensation should occupy only a subsidiary position leaving primary responsibility with the offender.

Some participants do not favor the creation of public 'Compensation arrangements,' believing either that existing institutions are adequate, or that public compensation fails of its object of criminal policy.

II. The supporters of the compensation for the victim from public funds recommend the consideration of the following principles by the legislator in constructing this new institution:

1. Compensation should cover at least damage caused by intentional crimes against life and limb. Compensation for the victim of a crime against property should be paid only in particularly serious cases when lack of such compensation would be intolerable for the victim.
2. The immediate victim of the crime should be entitled to compensation. In addition, those dependents should be entitled to compensation whose support has been affected by the crime.
3. Compensation should be a legal right as opposed to an “ex gratia” act.
4. If the compensation is paid by government body or public institution, the claim is transferred to the latter (*cessio legis*). In the enforcement of this claim against the offender the principles of modern criminal policy must also be taken into consideration (resocialization of the convict, protection of the economically weak offender).
5. Apart from other sources the public fund for compensation should also be drawn from tax revenues.
6. The decision whether the compensation should be awarded by a judicial or an administrative proceeding has to be left to the national legislator. Similarly, it has to be left to the national legislator whether the criminal court judge should be empowered to decide on the possibility or necessity of a compensation for the victim from public funds, in the course of his adjudication over the criminal act itself. Finally, it should be left to the national legislator whether the prosecutor should be entitled to claim the compensation for the victim from public funds.
7. Foreign nationals who, within the country (or on a vessel or aircraft of this country) fall victim to a crime (see para 1, above) should be compensated according to the same principles as citizens, regardless whether the foreigner's own State would grant reciprocity.

B) Compensating the victim within the criminal proceedings (action civile, “adhaesionsprozess”)

- I. The majority of the participants of the Congress favor the adhesion process in which the claim of the victim for compensation can be enforced within the criminal proceeding, admitting however that this process may have certain disadvantages.
- II. In the regulation of this process the national legislator should take into consideration the following principles:
 1. The victim must have the right to choose between an ordinary civil proceeding and the adhesion process.
 2. The adhesion process must necessarily be a mixed structure of civil and criminal procedural elements.

3. It should be left to the national legislator to decide whether the adhesion process might be instituted, in addition to the victim, by the prosecutor. The same applies to the question whether the court might award a compensation for the victim “ex officio”.
4. The procedural rights of the victim in the adhesion process must include at least the right to adduce evidence /also regarding the criminal case/ and the right to appeal /at least as regards the decision on the compensation claim/. The accused must have the same procedural rights as the complainant.
5. The obligation of the criminal court to decide on the civil claim remained controverted. It was recommended, however, that the adhesion process should be restricted to a decision on whether the claim was justified, when the decision as to the amount of compensation would be left to the appropriate civil court or to a subsequent special criminal procedure.
6. Execution in advance of the decision on the compensation claim must be ensured in order to provide the victim his remedy as rapidly as possible.
7. The judgment of a criminal court awarding civil compensation in the adhesion process should have the same status as the corresponding decision of a civil court for the purpose of foreign execution.

C) Promoting victim compensation through other means

Indirect measures for victim compensation:

1. Compensation as a pre-condition or decision in the conditional suspension of the penal procedure or of the execution of the penalty, in probation or conditional release, taking however into consideration the economic situation of the offender;
2. Consideration of a full or feasible compensation in punishment, clemency or, rehabilitation.

Section IV. The suppression of unlawful seizure of aircrafts

Considering that international civil aviation is of great utility to all mankind and that in modern society and in the international community it has become valuable and quite important to everybody, it merits particular protection against the unlawful seizure of aircraft in the conflicts between nations and various groups by being kept out of the theatre of operations.

In its most frequent manifestations the unlawful seizure of aircraft is nothing but a form of terrorism; it may then be noted that considerable progress has been made on the international level by the adoption of conventions concerning the unlawful acts against the security of civil aviation / especially the conventions adopted at The Hague in 1970 and in Montreal in 1971/.

Hence, the International Association of Penal law, assembled at its XIth Congress, strongly recommends to all States that have not yet done so, to ratify these Conventions and to implement them in their national legislations with a view to augmenting their efficacy on the international and national level.

The International Association of Penal Law considers that these conventions -particularly those adopted at The Hague and in Montreal- create an obligation for the States to prosecute in a serious vein the offences envisaged in the above-mentioned conventions; it follows that premature pardoning, amnesties and other measures of a similar nature would mean that the sense and the spirit of these conventions are not fully respected.

The International Association of Penal Law, assembled in this Congress, also considers that, in the struggle against unlawful seizure of aircraft, the various methods and means of collaboration among the States should be furthered, including extradition and the idea of an International Penal Court.