

THIRD INTERNATIONAL CONGRESS OF PENAL LAW (Palermo, 3-8 April 1933)³

Topics:

1. For what offences is it proper to admit universal competency?
2. The jury of honor and the crime of slander.
3. Is it desirable to have, beside the penal code and the code of penal procedure, a code of the execution?
4. Should there be admitted in criminal matters the jury system or that of sheriffdom?
5. Is it proper to consider the accused as a witness at his own trial?
6. In what way could a better specialization of the judge be secured?

I. - For what offences is it proper to admit universal competency?

Considering that there are offences which are harmful to the interests common to all states, such as piracy, slave-trade, trading in women and children, drug traffic, the circulation of and traffic in obscene publications, the breaking and deterioration of submarine cables and serious offences against the radio-electric communication, notably the transmission or circulation of false or deceitful distress signals or appeals, coinage offences, forgery of papers of value or of instruments of credit, acts of barbarism or vandalism capable of bringing about a common danger:

Considering that in the contemporary codifications of penal law, there can be discerned a tendency towards a universal repression of certain of these offences, considering that certain codes or drafts equally incriminate the other serious offences which endanger the common interests of the states in their international relations.

The Congress expresses the desire that:

- 1.- The existing international conventions be revised, or that new conventions be agreed upon, to ensure the universal repression of all offences which the states would agree to consider as harming their interests or as dangerous to international relations.
2. - The right to inflict punishment which is attributed to the tribunals of the country where the delinquent is arrested, or of the country to which belong the authorities which arrested the accused, be subordinated to the following:
 - the unification of the laws of contracting countries regarding the offences susceptible to international repression;

³ RIDP, vol. 10 1-2, 1933, pp.156-161 (French). RIDP vol.19 3-4, 1948, pp.418-421 (English).

- the establishment of rules of cooperation between the states designed to assure the exchange of evidence for and against.

The Congress recognizes that:

1. - In default of the above conditions, extradition is preferable;
2. - The attribution of competence to the tribunals of the country where the delinquent is arrested is highly desirable, even in cases of offences against the Common Law, and when the extradition of the accused has not been demanded either by the state, on whose territory the offence was committed, or whose interests it directly harms or by the state to which the accused belongs by nationality.

II. - The jury of honor and the crime of slander.

The Congress

having heard the report and different opinions expressed in the third section; having established that this section, by several votes, has pronounced itself in favor of the maintenance of competence of ordinary tribunals in cases of offences against honor,

adopts the conclusions of the third section.

The Congress

considering the proposals of MM. Longhi, Perreau and Matter which aim at putting on the agenda of the next session of the Congress the study of this question: «Whether it is necessary to institute a special procedure in accordance with which the accused could ask the tribunal to pronounce its judgment on the question of honor alone, as distinct from penal offences»;

adopts by the majority of votes the proposition in question.

III. - Is it desirable to have, beside the penal code and the code of penal procedure, a code of the execution?

The Congress recognizes

that in the larger sphere and in the complex finalities assigned to penal execution by the new doctrine and legislations, one must henceforth admit the existence of a penal law, that is to say of all the rules and regulations which determine the relations between the state and the accused from the moment when the verdict of the judge is to be executed.

Nevertheless, considering that this penal law is still in a formative stage, especially in what concerns the security measures, the Congress limits its desire in the sense that from now on, there is to be given a complete juridical form to the execution, of which it is question.

IV. - Should there be admitted in criminal matters the jury system or that of sheriffdom?

The Congress esteems

that in the countries where the jury system is in the national traditions, this may be usefully amended in its recruitment and its functioning according to the ideas of each legislation; that in the countries which judge it preferable to substitute for the regime of the Assize Court, founded on the separation of the act and the law, a different system, this must include the institution of a single collegiate, formed by one or several magistrates and jurymen. These latter, at least twice as numerous as the former, must be chosen from all the social classes and satisfy the necessary moral and intellectual conditions.

V. - Is it proper to consider the accused as a witness at his own trial?

The Assembly recognizes that:

1. - The legislative principle in accordance with which the accused could be allowed to bear witness under oath at his trial is not to be recommended in continental legislations.
2. - However, if a country were inclined to admit the testimony of the accused, under oath, it should do so only in the case of the offence prosecuted following a private complaint and should adhere to its own law, with, present or future procedure.
3. - In addition, if the testimony of the accused, under oath, be admitted in the above case, it should be done under the double guarantee that it should not be obligatory for the accused and that the absence of a demand on his part to give evidence should in no way unfavorably prejudice the court against him.

VI. - In what way could a better specialization of the judge be secured?

1. - It is necessary to direct the judiciary organization in each country towards a greater specialization of judges.

2.- This specialization should be attained through the university and post-university education, which will permit the future magistrates and advocates to acquire knowledge of the sciences indispensable to the fulfillment of their functions, and consistent with the new trends in criminal law.

3. - The specialization of the judge will be done progressively in accordance with the local contingencies in each country.

The Congress has also adopted the following proposal:

“Among the measures of application to be studied, it would be interesting to examine the possibility of including in the collegiate of magistrates at a criminal sitting a specialized expert judge”.