

SEVENTH INTERNATIONAL CONGRESS OF PENAL LAW (Athens, 26 September – 2 October 1957)⁷

Topics:

1. The modern orientation of the notions of committing the crime and participation (complicity).
2. The control of judicial appreciation in the determination of punishments.
3. The legal, administrative and social consequences of condemning.
4. The offences committed onboard of aeronautical vehicles and their consequences.

I. Section: The modern orientation of the notions of committing the crime and participation (complicity)

The Congress:

A. Establishes

- 1^o. The concepts referring to the participation vary according to the doctrinal inclination in connection with the fundamentals of criminal law;
- 2^o. Nevertheless consent is possible in regard of certain number of directives considered as acceptable for the majority of penalists.

B. – Estimates that in regard of intentional offences:

- 1^o. The regime of criminal complicity, inherent to each judicial system, shall take into account the differences deriving on the one hand from the act of participation of each individual in a common action, while on the other hand from the personal culpability and the personality as such;
- 2^o. The participants cannot be held responsible and cannot be sanctioned, unless they have been aware of that one of the participants or different co-operating participants have performed an action qualifying as an offence or as an aggravated form thereof;
- 3^o. The strictly personal circumstances which eliminate, diminish or aggravate the responsibility or the sanction shall not influence but the very participant in regard of whom such circumstances exist;
- 4^o. Taking into consideration the effective differences between the perpetrator and the diverse participants following categories shall be accepted:

⁷ RIDP, vol.29, 1958 –12, pp. 228-229; 234; 236; 238; 241-242. Translation in English: K.Ligeti.

The person who by his action carries out the material and subjective elements of the offence shall be deemed as perpetrator. In case of offences committed by omission the person in regard of whom the obligation to act exists shall be deemed as perpetrator;

Co-perpetrators are those who carry out together the actions, with a common intention of committing the infraction;

Who mediates a person not to be held criminally responsible to commit an offence shall be deemed as the mediating perpetrator;

Instigator is the person who intentionally instigates the perpetrator to commit an offence. The commencing of the perpetration by the instigated perpetrator is necessary so as the instigator be punishable. Yet under each judicial system instigation not resulting in actual perpetration may be object of a sanction based on the dangerous character of the instigated offence;

Accomplice in a strict sense is the person, who intentionally assists the principal perpetrator to commit the offence. This assistance may be delivered previously, simultaneously, or in case preliminarily mutually consented, following the offence.

5°. Complicity following the perpetration of the offence and not being accorded previously, as the receiving of stolen goods shall be punished as special crime;

6°. The sanctions applicable to the participant can be provided for in the law with reference to committed or attempted offence but must be judicially determined so as to take into account the role and the personality of each of the perpetrators.

C. – Reveals that

In the domain of faultive offences, according to a first opinion, the responsibility must be established individually and the criminal participation can not be conceived, while according to another opinion certain forms of the faultive offences allow the application of the rules of participation.

D. – Establishes:

1°. Legal entities cannot be held responsible for offences unless provided for in the judicial systems. In such cases the ordinary sanction shall be financial penalty independently from security measures like judicial winding up, suspension of actions or appointment of a commissioner;

2°. According to a first opinion the rules of the participation do not apply to legal entities however according to a contrary opinion it is up to each juridical system to regulate this problem;

3°. Members responsible for the direction of legal entities can be punished for offences they committed personally.

II. Section: The control of judicial appreciation in the determination of punishments.

The second section concluded its work with the following resolutions:

Considering that the legality of the incriminations constitute an essential guarantee of individual liberty, and that the principle of legality of sanctions being just as much fundamental does not prevent the judge to have a great power of appreciation necessary to realize the modern criminal policy of individualization.

Establishes that:

- 1º. The power of judicial appreciation may not be considered as an arbitrary power and it has to be exercised in a legal form, in conformity with the general principles of the law;
- 2º. To exercise correctly, the penal judge must receive specialized education, and appropriate criminological studies;
- 3º. It is necessary, at least in respect of certain categories of perpetrators, to be entitled to make use of the results of an examination of the personality, initiated by the judge and concluded by an expert appointed by him being different from the one appointed by the prosecution;
- 4º. This examination of the personality must, as all the elements required for the determination of the sanction, be the object of contradictory debates, while the judge keeps his entire liberty of appreciation;
- 5º. When exercising his power of appreciation, the judge shall conveniently be guided by precise legal directions, which can be used in particular matters;
- 6º. The judicial decision, flowing from a full contradictory debate and being based on a legal procedure which allows a thorough examination, must always be precisely reasoned and must be announced publicly after the public debates whenever provided for in the rules of penal procedure;
- 7º. Every determination or every essential amendment of the judicial decision shall be made object of judicial recourse either in the form of appeal, cassation or if necessary revision, as provided for in the general conditions of each national legislation.

III Section: The legal, administrative and social consequences of condemning

The section finally recommends the General Assembly to adopt the following resolutions:

The extension and the complexity of the problem submitted to the third section do not allow it present conclusion in respect of the questions desiring discussions of merits. The section cannot state but the result of its work and express its wish that such works are going to be continued in the future.

The section commences with revealing that laws and regulations referring to penal condemnation depriving political or civil rights or having a judicially incapacitating character follow three different trajectories.

- a) Infamy (*Ehrenstrafe*)¹, whereof the most typical examples are the legal prohibitions, the deprivation of civil rights, etc;
- b) prevention of crime, incapacitating the perpetrator from becoming a recidivist, in a most general layout (prohibition of exercising a profession, of hunting, of driving certain vehicles, etc.);
- c) the safeguarding of public interest, which ceases the access of the condemned offender to certain public functions, because of his judicial past.

These incapacitations or deprivations are often provided for in the law in an obligatory form, disregarding the particular circumstances. They are pronounced automatically either by the law or by an authority which might not be judicial.

Taking into account these facts, the section establishes that:

1°. The effort of criminal policy, which is engaged today in the social reintegration of the condemned offenders, is faced with the existence of these incapacitations and deprivations that the judge often ignores when determining the sentence. The reconsideration of the judicial consequences of a penal condemnation is unavoidably absent from present reform of the penitentiary system.

2°. Even if it is impossible to enter into the details of each national legislation, it shall be affirmed that all the legal consequences of a condemnation driven by the sole and unique goal of infamy have to be abolished, as well as legal prohibitions if not justified by the interest of either the condemned or the one to whom such prohibitions refers. Only those incapacitations can be sustained which justify the necessity to prevent the recidivist from perpetrating another crime in case such incapacitations are limited to the minimum;

3°. The danger of recidivism cannot be presumed by the law. As a consequence the deprivations and incapacitations must not be arranged for but in a decision taking the perpetrator's personality into consideration;

4°. For the purposes of the re-education of the condemned, measures shall be conveniently searched for in order to avoid that the administrative authority, with its decisions, does not take into account the program of social reintegration.

¹ *Sic* in the original French text.

5°. Though because of the lack of time it is not possible to go into details of the problem of criminal records there is a unanimous consent as to the necessity of taking measures for appropriate procedures to put an end to all incapacitations and deprivations which do not justify the behavior of the condemned. Not only such procedures have to be adopted to solicit the rehabilitation of the condemned by a simple, rapid and discreet procedure taking also into consideration his financial possibilities, but the law must provide for a full rehabilitation of rights, if there has been no relapse during a certain time.

6°. The secondary effects of penal condemnation, independent from the actual punishment and modifications thereof, could be provided for in a separate code on enforcement of criminal sanctions.

7°. A penal condemnation shall not be an automatic cause of ceasing neither a civil contract, nor a labor contract.

8°. The right to work is an essential individual right and therefore shall not suffer any detriment caused by any penal condemnation of whatsoever kind.

9°. A duly authorized parole service in charge of post penal assistance and social re-adaptation (patronage) is the indispensable condition of the necessary revalorization of the condemned;

10°. With respect to the principle of publicity of court hearings, the section deems necessary to provide for the harmonization of the actual criminal and penitentiary policies. With a view to the difficulty of this problem the section suggests to sacrifice the subsequent congress to the latter. Further the section recommends to pay more attention to the human personality.

IV Section: The offences committed onboard of aeronautical vehicles and their consequences

I. - The Congress esteems:

1°. That an international convention should desirably be concluded in regard of the regulation of the different questions of offences committed on board of aeronautical vehicles would be desirable;

2°. That such a convention shall not apply to vehicles other than aeronautical ones;

3°. That the power of the commander of an aeronautical vehicle involves the authority to take the necessary measures comprising the right and obligation to establish the commission of an offence;

4°. That the police authorities of the state of the airport must proceed according to the measures taken by the commander of the aeronautical vehicle, also in case when the state of

the airport does not vindicate penal jurisdiction.

II. The Congress establishes

that none of the rules of international law contradicts to the admission of competence based on the nationality of the aeronautical vehicle by national legislation. This principle does not exclude the admission of other different principles of penal jurisdiction by national penal law:

III. Considering that the opinions of the members of the section were different:

1^o. As to the necessity of concluding an international convention regulating the problems of criminal jurisdiction of the different states in regard of offences committed on board of aeronautical vehicles;

2^o. As to question whether principle of territorial competence or that of nationality of the aeronautical vehicle should be preferred;

3^o. As to the question whether the competence based on the principle of the nationality of the aeronautical vehicle shall extend to aeronautical vehicles resting on the ground or such competence shall be limited to aeronautical vehicles being in the sky;

4^o. As to the question whether to confer a particular jurisdiction to the state where the first landing took place in regard of the petty offences to be defined;

The Congress expresses its will,

that ongoing studies keep on developing knowledge concerning the abovementioned questions with a view to arranging for the necessary elements to form an extended scientific basis for such studies.

IV. The Congress also expresses its will,

that the principle of universal penal jurisdiction shall be applied to offences most grievously endangering aero-navigation.

V. The Congress

Considering the significant importance of regulating problems of offences committed on board of, by means of or against aeronautical vehicles:

Recommends to the I.C.A.O. to give priority to drawing up a convention of said character and charges the secretary general of the Congress to hand over the collected documentation, the minutes, the reports, etc. to the I.C.A.O. as soon as possible.

Professor BOUZAT proposes (recommends) the following:

States desirably should take all reasonable endeavors to institute an international regulatory forum with competence to resolve on conflicts of penal jurisdiction.