

## XIIth INTERNATIONAL CONGRESS OF PENAL LAW (Hamburg, 16 – 22 September 1979)<sup>12</sup>

*Topics:*

1. Crimes of carelessness. Prevention and treatment of offenders.
2. The protection of the environment through penal law.
3. The protection of human rights in criminal proceedings.
4. Immunity, extritoriality and the right of asylum in international penal law.

### **Section I. Crimes of carelessness. Prevention and treatment of offenders.**

*The participants in the 12th International Congress on Penal Law in Hamburg*

Recognizing the objectives of the criminal law under conditions of scientific and technical progress, as well as of social change in the contemporary world,

Acknowledging the increasing danger posed by the consequences of negligent offences with regard to the most important individual and social values and welfare,

Recognize that perfected forms and methods in the prevention and reduction of careless crime are a necessary element in the protection of the aforementioned values and welfare.

Considering the prevention and reduction of careless offences to be an integral part of the prevention and reduction of crime in general,

*the participants in the Colloquium have adopted the following Resolutions:*

1. Ever increasing attention should be paid to causes and conditions which facilitate the perpetration of negligent offences in the contemporary world. Particular importance is assigned to the study of conditions surrounding the commission of careless crimes in the realm of transportation, particularly of road traffic, as well as to other sectors of social life in which acts of carelessness will pose an increased danger to essential social and individual values, in particular occupational safety, the utilization of new types of energy and materials, and environmental protection.

2. Action against criminogenic factors which contribute to the commission of careless offences, as well as public education to encourage a sense of duty and adherence and appreciation of the standards of care, may be regarded as the primary strategy in the prevention of careless crime.

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<sup>12</sup> RIDP, vol. 50 1-2, 1980, pp. 225-247 (French); p. 226-228; 231-233; 238-241; 245-247. (English)

3. a) The decision of whether a careless act should be criminalized or decriminalized should take into account all aspects of the impact of such a decision upon economic, social and other factors in the concrete context of social evolution.

b) Cases of the most careless behavior from a social point of view, which entail damage to social and individual values and welfare should be considered breaches of criminal law.

c) Careless acts of less seriousness should be dealt with as administrative or civil sanctions. Social and educative measures should be widely employed in connection with prevention and deterrence of these less serious careless acts.

4. a) Criminal liability for careless acts should always be consonant with the principle of culpability with its subjective element according to prior legislation based on conduct violating standards of care in view of the seriousness of the harm caused that was foreseen or could have been foreseen as well as (where provided by law) the degree of danger of such breach.

b) No person should be punished because of unintended consequences of his act, or, if at all, only where he foresaw or could have foreseen these consequences.

5. Sanctions for careless offences should take into account the alternative forms of sanctions available as well as the characteristics of the offender. Sentences other than imprisonment should generally be used and where a sentence of imprisonment is imposed semi-detention or analogous measures should be used. There might also be used exemption from punishment but a requirement of community work or education.

6. Scientific research in the field of careless acts must be conducted on an interdisciplinary basis, with particular attention to the study of its causes and the conditions under which it occurs, to the typology and classification of offenders, and the development of adequate and multiple measures of prevention. The genesis of the behavior of careless criminal conduct must be studied using the data of sociology, criminology, psychology, and other social sciences. It would be desirable in the future to develop international collaboration and coordination of the efforts of the research workers and experts of different nations in the area of the prevention and reduction of careless offences.

## **Section II - The protection of the environment through penal law.**

### ***Preamble.***

1. The protection of the environment has become a pressing question in today's world. Humanity which is proud of its scientific and technical accomplishments, cultural and educational developments finds itself threatened by self-destruction.

2. It is therefore necessary to take energetic measures to protect life and its quality against

that which threaten them. This objective requires that the conflicts which can arise between economic development and the protection of the environment be resolved. It requires, likewise, coordination and cooperation not only at the national level but also at the international level.

***Recommendations at the national level***

3. In this sphere it is necessary above all to preserve the environment. The principal role belongs to non-penal disciplines. However, the penal law must, first of all, intervene to assure the efficacy of these non-penal disciplines, especially administrative law or civil law. In this role the penal law on the one hand performs auxiliary functions. On the other hand it is also necessary that the penal law intervene in an independent role in cases of serious attacks on the environment.

4. For the effective protection of the environment, it is indispensable to recognize, besides the protection of human life and health, values such as water, air or soil which constitute at the present moment the minimum to be protected by penal law. It is necessary to extend, as soon as possible, this protection to other values, especially the flora and fauna and the struggle against vibrations or excessive noises.

5. With regard to special penal law, it is implicit that it is not necessary to limit one's self to the traditional provisions but that it is also necessary to initiate or to develop specific provisions concerning environment. These provisions should provide for the application of penal sanctions both for violations of the administrative and civil regulations or administrative and judicial orders, or for any other forms of endangering the environment.

6. Serious attacks on the environment being most frequently committed by juridical persons and private, public or State enterprises, it is necessary either to admit the penal responsibility of these, or impose on them respect for the environment by civil or administrative sanctions.

7. Concerning individuals, it is necessary to retain the responsibility, not only of those who have substantively carried out the wrongful act but also of the directors and public functionaries who have given the order or permission to commit the offence or have permitted it to be committed.

8. In the concern for effectiveness one must not limit himself to monetary sanctions, but must provide to the extent, the juridical system permits a broad gamut of sanctions, especially such as the temporary interdiction of production, the closure of the enterprise, professional interdiction, publicizing the conviction and in the most serious cases the penalties deprivative of liberty.

9. In order to make the penal law for environment effective, it is necessary to facilitate by a gamut of appropriate measures the prevention discovery, and prosecution of offences. One important measure is to appeal to the conscience of the public concerning the importance of this type of offence.

### ***Recommendations at the international level***

10. It is not sufficient to protect the environment at the national level. In effect, the nature of the environment is such that the damage may harm non-national territories, especially the high seas or cosmic space, by acts of pollution, abusive exploitation of resources or any other attack on the environment...

11. On the other hand, the necessity of protection appears also when the harmful acts are committed or tolerated by one State against the environment of another State as well as by a foreign entity (an individual, juridical person, ship, etc.) or even when an attack on the environment arises by inadvertence or negligence from an international territory or on the national territory of a neighboring State.

12. It is necessary to elaborate a future international definition of the principles, norms and limits of the minimum tolerance the application of which will, above all, be realized on the basis of a common approach by the national courts.

13. Serious aggressive and deliberate acts against the environment must be classified as international crimes and must be punished in an appropriate manner.

14. The principle developments consist in the elaboration or application of conventions regional as well as universal, and environmental codes which shall serve as model for national laws. These conventions should impose the obligation on the signatory States to impose penal sanctions for acts dangerous to the environment and should provide in those cases for international assistance including extradition. In the absence of such conventions the extraterritorial application of the national law may offer a solution.

15. On the other hand, it is necessary to exchange information concerning attacks against the environment which affect the international community. The organizations which already exist should be encouraged to add the attacks against the environment to the field of their activities.

16. There is also an urgent need to pronounce the principles for the solution of the conflicts of laws with a view to reducing the tensions which result from the unilateral application of national laws.

17. Lastly, it seems highly desirable to develop the cooperation between the States, in the perspective of establishing regional courts, then an international court.

### ***General conclusions***

18. The above-mentioned recommendations are the minimum conditions which must be observed by each State to obtain the uniform protection of the environment for the common interest among developing countries and industrialized countries.

19. The conflict between the short-term economic interests and the long-term ecological interests should be resolved for the advantage of the latter interests.

### **Section III- The protection of human rights in criminal proceedings.**

#### **Preamble**

*The XIIIth International Congress on Penal Law of the A.I.D.P. from 16th - 22nd September 1979, in Hamburg,*

having regard to the fundamental importance of safeguarding the innate dignity of every person in criminal proceedings,

having regard to the international and regional Covenants and Conventions on human rights and their interpretation through competent international instances,

aware of the fact that human rights principles expressed in legislative texts are not always fully implemented in the administration of criminal justice,

endeavoring in some selected areas of human rights to contribute to their further reinforcement by a precise formulation of certain minimum requirements,

expecting that basic theoretical principles should be implemented in practice throughout the world without consideration of political, ideological or religious frontiers and without any discrimination whatsoever,

*adopts the following resolutions.*

#### **1. The presumption of innocence.**

The presumption of innocence is a fundamental principle of criminal justice. It includes inter alia:

a) no one may be convicted or formally declared guilty unless he has been tried according to law in judicial proceedings ;

b) no criminal punishment or any equivalent sanction may be imposed upon a person unless he has been proved guilty in accordance with the law;

c) no person shall be required to prove his innocence;

d) in case of doubt the final decision shall be in favor of the defendant.

#### **2. Procedural rights (so-called « equality of arms »).**

The defense shall have substantial parity in proceedings and shall be given effective ways to challenge any evidence produced by the prosecution and to present evidence in defense.

The defendant must be informed of his rights at all stages of the proceedings.

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

### **3. Speedy trial.**

Criminal proceedings shall be speedily conducted without, however, interfering with the right of the defense adequately to prepare for trial. To this effect:

- a) adequate structures, institutions, resources and personnel shall be provided for the effective functioning of the criminal justice system;
- b) time limits should be established for each stage of the proceedings;
- c) it should be possible to sever complex criminal cases involving multiple defendants or charges, and this possibility should be used whenever reasonable;
- d) efforts aiming at decriminalization should be continued;
- e) different criminal proceedings should be established for cases of different gravity;
- f) mutual assistance in criminal matters should be further facilitated;
- g) administrative or disciplinary measures shall be taken against public officials who deliberately or by negligence cause unnecessary delay in any phase of the criminal proceedings;
- h) victims of delayed justice shall be entitled to compensation;
- i) empirical research and studies shall be conducted to enhance judicial economy and improve the efficiency of the criminal justice system.

### **4. Evidentiary questions.**

All procedures and methods for securing evidence in criminal cases which interfere with individual rights and liberties shall be based on the law.

The admissibility of evidence in criminal proceedings must take into account the integrity of the judicial system, the rights of the defense, the interests of the victim and the interests of society.

- a) Evidence obtained directly or indirectly by means which constitute violation of human rights such as torture or cruel, inhuman and degrading treatment shall be inadmissible.
- b) Otherwise unlawfully obtained evidence which is beyond doubt as to its veracity shall be admissible only subject to statutory provisions and judicial discretion on the basis of the values and interests involved.
- c) (*new b*) No one shall be convicted on the basis of an uncorroborated confession alone.

### **5. The right to remain silent.**

Anyone accused of a criminal violation has the right to remain silent and must be informed of this right.

## **6. Assistance of counsel.**

Anyone suspected of a criminal violation has the right to defend himself or to have competent legal assistance of his choosing at all stages of the criminal proceedings and to be so informed.

a) Counsel shall be appointed ex officio whenever the defendant by reason of personal conditions is unable to assume his own defense or to provide for such defense, and in those complex or grave cases where in the best interest of justice and in the interest of the defense such counsel is deemed necessary by the competent judicial authority.

b) Appointed counsel shall be paid reasonable fees at public expense whenever the defendant is financially unable to do so.

c) Counsel for the defense shall be allowed to be present and to assist the defendant at all critical stages of the proceedings.

d) Counsel for the defense or the defendant shall be provided with all incriminating evidence available to the prosecution as well as all exculpatory evidence as soon as possible but not later than at the conclusion of the investigation.

e) Any one detained shall have the right to access to, and to communicate in private with, his counsel personally and by correspondence subject only to reasonable security measures decided by a judicial officer.

f) No one may suffer any disadvantage for having fought with legal means for the protection of human rights in criminal proceedings.

## **7. Arrest and pre-trial detention.**

No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

a) No one shall be arrested or detained without reasonable grounds to believe that he has committed a criminal violation.

b) Arrest and detention shall only take place when necessary and should as far as possible be reduced to a minimum of cases and to the minimum of time. The risk of a continued criminal activity shall justify detention on remand only in the case of serious crimes or offences.

c) Detention shall not be compulsory but subject to determination by the competent judicial authority.

d) Alternative measures to detention shall be used whenever possible and may include:

- bail,

- undertakings by trustworthy individuals or groups,
  - limitations of freedom of movement,
  - imposition of other restrictions.
- e) Anyone arrested or detained shall be promptly brought before a judge or a judicial officer authorized by law to exercise judicial power and shall be informed of the charges against him; after appearance before such judicial authority he should not be returned to the custody of the ordinary prison authorities.
- f) Persons detained on remand shall be offered constructive activities consistent with their right to be considered innocent.
- g) No administrative preventive detention shall be permissible as part of any criminal proceedings.
- h) Any period of detention prior to conviction shall be credited toward the fulfillment of the sentence.
- i) Anyone who has been the victim of unlawful or unjustified detention shall have the right to compensation.

#### **8. Rights and interests of the victim.**

The rights and interests of a victim of a crime shall be protected, and in particular:

- a) the opportunity to participate in the criminal proceedings,
- b) the right effectively to pursue his civil interests.

#### **9. International protection.**

Governments are invited to ratify international covenants and conventions for the protection of human rights, to embody their relevant provisions into their domestic law and to accept all measures of implementation including the right of the individual to petition to competent international bodies.

#### **Special resolution**

*The Congress urges the adoption by the United Nations General Assembly of:*

- a) the A.I.D.P. Draft Convention for the Prevention and the Suppression of Torture;
- b) the A.I.D.P. Draft International Criminal Code submitted to the United Nations as a Draft Code of Offences against the Peace and Security of Mankind;
- e) the Draft Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (of the Sub-Commission on the Prevention of Discrimination and the Protection

of Minorities).

## **Section IV - Immunity, extritoriality and the right of asylum in international penal law**

### ***I. Immunity.***

1. Immunity, as used in the international penal law, is an institution of public international law, which, however, has considerable repercussions on the criminal policy of the States. From the point of view of the penal law, immunity may be considered as an exemption from the substantive penal law or as an exemption from criminal jurisdiction.

2. For reasons of certainty of the law, a definition, as precise as possible of the scope of effects of immunity, by means of international conventions, is desirable.

3. For considerations of criminal policy, a gradual immunity would be preferable. In this field certain categories of offenses could be excluded from immunity. Thus the necessities of criminal policy would justify, e.g., the exclusion of traffic violations from immunity, except in the case of persons with general immunity.

4. It is only with reservations that immunity should be accorded to the diplomats at a conference. The beneficiaries of immunity and the scope of immunity should depend upon the object of the conference, the organizing body, the rank of the participants and the function that they exercise in the course of the conference. For reasons of certainty of the law, it is important to determine, before each conference begins, the categories of participants who are to be the beneficiaries of immunity and the scope of the immunity.

5. When applicable, immunity is to exclude any measure of criminal prosecution against the person who is the beneficiary. However, the initial search for evidence shall be permitted to the extent that it does not require participation by the beneficiary unless the sending State has expressly authorized it. The beneficiary shall have, nonetheless, the right to be present while such search for evidence is carried out.

6. In the interest of close cooperation between the States for purposes of the penal law, acts of international judicial assistance are allowed even against the beneficiaries of immunity to the extent that such acts do not apply constraints from which the beneficiaries are ordinarily exempt.

7. Immunity does not exclude the exercise of self defense, even against beneficiaries, to the extent that self defense is allowed by the law of the receiving State.

8. The sending State has the obligation to prosecute according to its own law offences committed by beneficiaries of immunity in the receiving State. It should also resolve, at the internal level, legal problems which may interfere with the application of its own penal law to an offence committed abroad (e.g. the repression of narcotics traffic committed by a beneficiary of immunity in the receiving State).
9. Whenever immunity is terminated, the receiving State has the right to prosecute for offences, outside the scope of the official functions, committed by the beneficiary during immunity.
10. Whenever an international criminal court is created, it should also have jurisdiction to try offences committed by a beneficiary during the period of immunity in the receiving State.
11. International organizations should, on the request of the receiving State, renounce the immunity of their members in cases of serious offence in order to make prosecution possible. This is most important since in some cases there is no sending State with the jurisdiction to prosecute.

## ***II. Extraterritoriality.***

1. The « extraterritorial» areas remain completely a part of the State in which they are located. The sovereignty of the receiving State extends to those areas and may be subject only to certain restrictions. The notion of « extraterritoriality » is therefore a fiction in so far as it concerns those areas; one should, instead, speak of « inviolability ».
2. The receiving State is prohibited, in principle, from taking compulsory measures of criminal law against inviolable spaces.
3. Acts which infringe on inviolable areas may be accomplished with the consent of the organ responsible for that area, if they are permitted or necessary according to the law of the receiving State. To the extent that such acts involve the protection of such areas, the consent of the responsible organs may be presumed. However, the execution of those acts must be immediately stopped in case of opposition.
4. If no other means are available, acts which infringe on the inviolable areas are permitted even against the will of the responsible organ if they are done for the protection of persons who are found outside such areas and who have been attacked by acts coming from within such inviolable areas. This rule will also apply for the protection of persons who are the victims of attack within the inviolable area, to the extent that this involves acts considered as grave offences by the law of the receiving State.
5. If a person sought for a non-political offence takes refuge in an inviolable area, the State responsible for that area must first be requested by the receiving State to surrender this

person, if surrender is not achieved following such request, the surrender may only be sought by political means.

### **III. Right of asylum.**

1. Those who obtain asylum shall, in principle, be treated by the receiving State in the same fashion for penal purposes as any other foreigners who legally reside in that State.

2. The grant of asylum does not mean exemption from criminal prosecutions in the granting State. The granting State may prosecute a person who has obtained asylum for offences previously committed. It may also extradite him to a State other than the one in regard to which asylum has been granted to him. Minor offences which are connected with the flight of the person involved and his entry into the receiving State are to be excluded from prosecution (e.g. forgery of passport, illegal entry).

3. The effect of the grant of asylum should be broadened, in the interest of family unity, to the next of kin of the beneficiary (spouse, minor children), when there is reason to fear that the next of kin, in case of extradition, will be subjected to prosecution for political reasons, or that indirect pressures would be exerted on the beneficiary of asylum to return to the State with regard to which asylum was granted. The derived asylum of the next of kin remains in force in the granting State even if the primary beneficiary has himself been extradited.

4. Whenever extradition is not possible or not granted, the State of asylum must refer the case to its own criminal authorities for prosecution according to its own law. A State should also resolve, at the internal level, legal problems which may interfere with the application of its own penal law to an offence committed abroad.