

FOURTH INTERNATIONAL CONGRESS OF PENAL LAW (Paris, 26-31 July 1937)⁴

Topics:

1. In what way can penal law of each country contribute to the protection of international peace?
2. International exchange of information concerning the criminal record of the accused.
3. Is it desirable that the judges should be able to retain and punish a deed which is not expressly within the scope of existing legal provisions? "Nullum delictum sine lege".
4. What guarantees should be given to the accused in the course of preliminary inquiries?
5. What should be the part of the justice in the execution of penalties and of measures of security?

I. - In what way can penal law of each country contribute to the protection of international peace?

The fourth Congress of Penal Law

considering that war is a scourge which puts in peril not only the belligerent countries but the material and moral interests of the whole world; considering that the development of the international conscience can contribute efficaciously to the realization of the work of the peace organization; considering that the law of each country as it is addressed directly to individuals, can usefully contribute to the protection of property, from which results peace between the nations; seeing that penal legislations which become more and more numerous tend to protect international relations by the repression of deeds such as crimes against the safety of foreign states and all the other acts hostile to a foreign state and of a kind likely to create danger of war or to disturb international relations; considering that certain legislations even repress propaganda and pressure in favor of war, the outrages of a foreign nation as well as the diffusion of false news and documents which would endanger international relations,

The Congress esteems

That, in order to contribute to the maintenance of peace among the peoples, it is desirable that, in addition to the attacks on the laws and interests of the state, the criminal law of each country should deem it an offence to attack the fundamental laws and interests of foreign states and those of the international community.

⁴ RIDP, vol.15, 1, 1938, pp.54-58 (French). RIDP vol.19 3-4, 1948, pp.421- 424 (English).

II. - International exchange of information concerning the criminal record of the accused.

1. - Providing facilities for an international exchange of information concerning the criminal record of the delinquent is an absolute and evident necessity.
2. - The criminal records should be exchange and, within the limits of possibility also the investigation-sheets of criminal biology concerning the delinquents.
3. - The exchange shall take place in cases defined by special conventions.
4. - To carry out this exchange, there should be constituted in each country a central national bureau of documentation which will unite the material concerning the former behavior.
5. - For the use of this material gathered in the central bureau and for the diffusion of this material to the interested states, it is desirable to create an international coordination centre.
6. - The Congress expresses the desire that the states should proceed to a progressive unification of systems of the identifications.
7. - The Congress believes it useful to conclude a unilateral number of states to define the above-mentioned methods of international exchange.

III. Is it desirable that the judges should be able to retain and punish a deed which is not expressly within the scope of existing legal provisions? “Nullum delictum sine lege”.

1. - The principle of legality in judicial proceedings, a necessary guarantee of individual right, has as a consequence the exclusion of the analogous method, in the interpretation of penal law.
2. - It is desirable that the dispositions of the penal law which define offences be conceived in terms general enough to facilitate the adaptation of the jurisprudence to social needs.
3. - The exclusion of the analogous method concerns only the texts which include the recriminations, which determine the penalties or which provide for causes of aggravation.
4. - The principle of legality which forbids the analogous method relates to the security measures as well as to penalties.

IV. - What guarantees should be given to the accused in the course of preliminary inquiries?

To reply to the demands of a good justice, guaranteeing in fair measure the interests of social defense and individual liberty, the contradiction between the accusation and the defense must be assured as much before the examining magistrate as before the tribunals called upon to make decisions on the results of the examination.

This must be organized by each state in the frame of its national law.

It is desirable, however, that the accused should always be attended by his counsel when before the examining magistrate and that the counsel should receive with the shortest possible delay information on the action of the examination.

It is desirable also that the counsel may intervene (in a measure by which the examination cannot be impeded) in the investigations, examination of causes and surveys, and in every action not liable to be renewed before the judge.

It is desirable also that preventive detention should be ordered only in cases exactly determined by the law, and that all decisions affecting the liberty of the accused be liable to submission to a juridical control.

V. - What should be the part of the justice in the execution of penalties and of measures of security?

1. - The principle of legality which must be at the base of penal law as it is at the base of criminal law in general, in the same way as the guarantees of individual liberty, demand the intervention of the judicial authority in the execution of penalties and measures of security. The penal administration charged with this execution must be autonomous and independent.

2. - The intervention of the judiciary must include a mission of supervision and a certain power of decision.

3. - This supervision will be regulated by the national law; it may include the control of the exact application of the laws and rules in prisons, especially in view of the realization of the ends assigned to the penalties and measures of security in their application to each convict or prisoner. It may be exercised either by a commission of supervision established in each penitentiary and including magistrates and qualified persons interested in penitential questions and in the patronage of free men, or by a judge delegated for this purpose, with a permanent standing. The members of this commission should be chosen by the judicial authority; it should

be presided over by a magistrate, the highest in rank who belongs to it. It should exercise its control by a periodic and obligatory visit of its members; it should note the declarations made in reports addressed to the judicial authority which should transmit them to the superior penitential authority.

4. - The judicial authority should have the power to terminate penalties or to make essential changes in their execution. To it should equally belong the power of ruling the suspension, adjournment, the modification or substitution of measures of security, as well as the prolongation of imprisonment or the setting free of persons sentenced to an indeterminate sentence. The decision must be taken either by the judge selected by each national legislation, who, as far as possible, will be the same judge who pronounced the sentence, or by a mixed commission including a presiding judge and two or several persons chosen from among doctors, advocates or members of the societies of patronage. The members of this commission must be chosen by the judicial authority and nominated, in preference, from among members at the commissions of supervision. The law must indicate in a limited way the measures which should be ordered by the judge or by the mixed commission. It should determine the juridical guarantees which must accompany the decision and which it may vary with the gravity of the decision to be taken.

The law must foresee also cases in which the decision will be liable to appeal, and organize this appeal either before a superior judge, or before a central commission created according to the same fundamental principle as the local commissions.

5. - It is desirable that the magistrates be associated with the work of patronage of the social readaptation of the condemned or the prisoners after their liberation. In the countries where there exist official committees of patronage, it should be obligatory for certain number of magistrates to take part in them.