

SIXTH INTERNATIONAL CONGRESS OF PENAL LAW (Rome, 27 September – 3 October 1953)⁶

Topics:

1. Criminal protection of international conventions on humanitarian law.
2. Protection of personal freedoms during criminal proceedings.
3. Social-economic penal law.
4. Problem of unification of criminal punishment and criminal measures.

I Section: Criminal protection of international conventions on humanitarian law

The VIth Congress of International Penal law:

1) Taking into account that the States who adhered to the Geneva Conventions of 12 August 1949 are obliged to promulgate appropriate measures in order to provide for the punishment of serious violations of the said Conventions;

Having regard to the fact that in the majority of the State Parties the respective measures in force are insufficient to achieve the above aim.

2) The Congress is of the opinion that national implementation legislation should be inspired by common principles and for this reason the State Parties who adhered to the Geneva Conventions of 12 August 1949 should propose a draft law envisaging possibly uniform criminal sanctions.

3) The above mentioned draft law should by all means establish definitions of serious violations of the said Conventions and indicate the degree of the seriousness of the violation. The draft law ought to apply to all offenders regardless of their nationality.

⁶ Association Internationale de Droit Pénal, *VI^e Congrès International tenu à Rome du 27 septembre au 3 octobre 1953 sous les auspices du Gouvernement de la République Italienne. Comptes rendus des discussions*, Milano, Giuffrè, 1957, pp. 58 (sect. I), 179-182 (sect II), 218-220 (sect III), 309-310 (sect IV). Translation in English: K.Ligeti.

II Section: Protection of personal freedoms during criminal proceedings

The VIth Congress of International Penal law:

Having regard to the fact that within the rules of criminal procedure and their application a balance should be established between the interests of criminal prosecution and adjudication to fight crime for the benefit of the public and the right of personal freedom and human dignity of the offender, being regarded innocent unless proven guilty in a fair trial ;

Having regard also to the fact that criminal proceedings should be conducted in a way that both the material facts of the case are established and the personality of the offender are identified;

Taken into account both the written reports, the general report, the discussions and the proposals presented during the work of the second section;

Concerning the proposal of the Drafting Committee the following essential conclusions were adopted which adequately reconcile the interest of the justice system and the citizen subjected to criminal proceedings,

The issues submitted to the Congress concern the regulation and the functioning of:

- 1) the police,
- 2) the investigation,
- 3) the pre-trial detention being in line with the common principles of civilized nations and the rights of the accused as defined in the Universal Declaration of Human Rights.

I.

Concerning point 1 the Congress adopts the following principles:

1) Police actions are indispensable to investigate the offence, to reveal its way of commission and secure material evidence.

The police must collect all facts connected to the offence.

These police actions must by all means be subjected to judicial scrutiny.

The police records must be submitted to a competent judge without delay.

2) The criminal police must conduct investigations according to the instructions and under the authority of the investigating judge.

Consequently, each State must appoint sufficient number of investigating judges enabling them to accomplish their judicial tasks.

- 3) Any crime scene investigation falls within the competence of the judiciary and not of the police, the latter being limited to conduct only preliminary investigative functions.
- 4) The police should be kept free of all extrajudicial influence.
- 5) Reminding the fact that everybody who is involved in criminal investigations regardless in whichever capacity, he/she is required to respect the rules of professional secret.
- 6) The recruitment and the formation of the police should provide during preliminary investigation for the highest level of guarantee for human rights. The recruitment of the police should be done with a high degree of precaution; the units of the criminal police should be seconded by personnel sufficient to carry out its functions properly.

The Congress is convinced that the abuse of authority by high ranking police officers should be prevented save for the exercise of disciplinary or penal measures.

II.

Concerning point 2 the Congress adopts the following:

7) In the course of arrest and pre-trial detention ordered by the judge and during the first questioning relating to the identification of the accused, he/she must be warned by a judge prior to any declaration that he/she benefits from the right to refuse to answer unless a defense counsel is present. The accused being questioned at the crime scene also benefits from the right to be assisted by a defense counsel.

If an accused not having sufficient financial means asks for a defense counsel he/she should be provided accordingly.

8) Rules of procedure shall be regulated in a way to provide for the right of the accused and his/her defense counsel to submit proposals and to make reservation during each time the accused is questioned. The exercise of this right is of particular interest with a view to questions relating to the expert opinion and to the person of the accused.

Criminal investigation represents only the preparatory stage of the criminal process and the accused is entitled to the right of free defense in front of the tribunal.

9) Each State with a view to its system of criminal procedure should organize and conduct criminal investigation in a manner that provides for the widest application of the contradictory principle.

10) The accused may not be forced to respond to questions. The accused may change his/her attitude due to his/her interests and conveniences without prejudice to the right of defense.

11) No violation or pressure or disguised proceedings may be utilized in order to influence the accused's confession. Obtaining confession is not the goal of the investigation, confession is only one type of evidence;

Confession may be withdrawn at all stages of the procedure and the trial judge evaluates it in full independence with a view to all facts and other evidences of the case.

III.

Concerning point 3 the Congress recommends the following:

12) The issue of pre-trial detention is of ultimate importance: the accused should be taken for innocent unless proven guilty by definitive judgment. Pre-trial detention should remain an exception and the detainee enjoys the right to be brought to a judge without delay.

13) Nobody may be taken into custody without legal warrant issued and reasoned by a competent judicial authority.

Pre-trial detention may be ordered only in cases and under conditions stipulated in the law. Pre-trial detention may not be prolonged if the legal reasons justifying it no longer prevail.

Arrest may be ordered by the police only exceptionally if prescribed by the law and the arrested person should immediately be brought to a judicial authority.

14) It is important that the pre-trial detainee has the right to appeal and the right – at all stages of the procedure - to make a proposal to be freed.

15) It is highly desirable that the legal regime on pre-trial detention should not be unnecessarily rigorous and that pre-trial detention –if possible– should be enforced in separate institutes of detention.

The pre-trial detainee should be transferred in a most considerate and rapid way.

16) The judge should not be personally liable save for exceptional and limited cases or if national law provides for such special terms and forms of liability.

17) In cases of manifest error, the accused who suffered from unjustified pre-trial detention should be provided indemnification by the state, if the circumstance of the pre-trial detention were of wrongful character.

18) Proposals of participants of the section which were not considered by the above resolution are attached to the Congress proceedings.

III Section: Social economic penal law

The VIth Congress of International Penal law:

Having regards to the fact that the regulation of today's economic activities follow not only the system and epoch of the state and of its organs but also the groups of professionals, those regulations aim at a better and more just distribution of goods;

The Congress is of the opinion that on the one hand the legislators should do all reasonable endeavors to recognize the different systems and on the other hand international cooperation necessary in the field of economy should meet the requirements of complete and rapid comprehension of economic systems;

The Congress arrives at the following conclusions:

1 - a) The sanctioning provision of social economic law equal to the so called social economic criminal law and form part of the special part of criminal law similarly to fiscal penal law with particular characteristics.

b) Issues not foreseen by the law should be resolved by the application of the general principles of criminal law and of criminal procedural law with regard to the particularities of the subject matter.

2) The rigorous safeguards of the regulation are threatened by tempting lucrative operations which are forbidden due to their consequences; therefore, thoroughly efforts in the field of prevention should be required.

Those who belong to affected groups should be able to go on carrying out their profession and should be educated which is the best way to guide such activities in a good manner.

3 - a) The frequent amendments of the codes of conduct contained in regulation which protect the economic interests of the public need most precise edition and an efficient distribution even outside official publicity. These amendments impose extreme difficulties on the affected parties, therefore, retro-effective application of such norms should be precluded.

b) The fight against such crimes demands a certain extension of the notion of perpetrator and of accomplices and also the power to apply criminal sanctions against legal entities.

4 - a) Regarding adequate reaction to crime, besides and instead of imprisonment and financial penalties in order to avoid criminal proceedings out of court settlements should be preferred in the framework of which judicial prohibition to exercise certain professions, the publication of the judgment and special confiscation may be applied. Such special confiscation should extend to all goods to which the offence aimed at regardless whether they belong to the perpetrator but with due respect to the rights of third parties.

b) The application of securing measures in order to retain illegally gained profit, provided that it does not serve as a basis for the indemnification of the victim, should be appropriate and should contribute to hinder further carrying out of the offence.

c) The severity of the reaction serves to assure that imposing only one sanction makes the sentenced person to do what he/she failed to do until then or to stop the illegal activity he/she engaged in until then and that he/she fulfils the obligation foreseen as compensation. His/her

entrepreneurship should be sanctioned by, *inter alia*, the deprivation of illegal advantages gained with restraint to market competitors, the prohibition to access the market, the closure of the legal person for a definite period of time, or the appointment of judicial supervision for the legal person's assets, as well as by provisional measures or by deprivation of certain rights or entitlements, the withdrawals of certain permits and the prohibition of related advantages.

5 - a) Ordinary criminal jurisdiction should be established for such offences and for imposing social-economic sanctions by specialized magistrates.

b) The investigation of such offences is rich in detail of less importance making, *inter alia*, necessary the establishment of specialized investigation units with special skills and competences. For the purposes of criminal prosecution for social-economic offences the rules of criminal procedure should be taken more flexible.

c) The collaboration of the victim ought to be solicited by encouraging, if possible, his/her compensation and by facilitating collective action by the affected professional associations. The civil judge may contribute to prevent recidivism by pronouncing that certain precisely defined activities of the offender are inadmissible.

6 – Provided that market mechanism allow for and with a view to the nature of the interest at stake self-regulation initiative taken by a certain group of individuals may be permitted. The guarantees of such self-regulation remain in the disciplinary jurisdiction of that group.

7 – In the special case when administrative authorities are entitled to impose certain sanctions for certain offences the separation of powers of the executive and judiciary must be respected and such sanctioning should be made subject to appeal before independent judicial body.

8 – Within the framework of a coherent social-economic policy of the state, the administrative bodies and the public prosecutor should be unified in a coordinative organism and should follow the same line of common conduct.

Liaison officers have the duty to maintain contacts among the diverse authorities and should take care of information indispensable for the judge.

IV Section: Problem of unification of criminal punishment and criminal measures

The VIth Congress of International Penal law:

In view that the introduction of security measures besides punishments into criminal law constituted a progress which allowed for overcoming the debate between different criminal law schools and for achieving more efficient results in reducing criminality and preventing recidivism;

Considering that the legal system followed by certain legislations apply to the same behavior and to the same individuals successive punishment as well as security measures pose some inconveniences both from a theoretical and practical point of view.

Considering on the other hand that the unification of criminal punishment and security measures does not raise questions except for a particular category of offenders who need special treatment, such problem could, consequently, remain within the general theoretical debate on the nature of punishment, and in particular concerning normal offenders it allows for concrete solutions that encompass both who share the above opinion and those who follow a different opinion;

In favor of the offender for whose re-education physical punishment may prove inappropriate and insufficient, the future reform of criminal legislation should be as much inspired as possible by the principle according to which instead of cumulating punishment and a distinctive security measure and subjecting the offender to different successive treatments, one single treatment should be prescribed from the very beginning which extends to different categories of individuals.

The following issues should be approved in particular:

- a) For offender younger than 16 years of age, the application of all forms of physical punishment must be excluded;
- b) For offenders with limited mental capacity it is suggested not to impose criminal punishment. Should such an approach not be acceptable for the national legislations, such offenders should be subjected exclusively to treatments taking into account their physical state.