

SECOND INTERNATIONAL CONGRESS OF PENAL LAW (Bucharest, 6-12 October 1929)²

Topics:

1. Responsibility of societies.
- 2 The application by the judge of one state of foreign penal laws.
3. A single judge or a collegiate of the tribunal.
4. Penal pursuit by the Associations.

I. - Responsibility of societies.

I. Internal Penal Law.

The second international Congress of Penal Law

noting the continual increase and the importance of societies and recognizing that they represent social forces in modern life; considering that the legal order of any society may be gravely affected when the activity of any society constitutes a violation of the penal law,

Expresses the desire:

1. - That there should be introduced into the law of each country efficacious measures of defense against the infringements by the Societies perpetrated in pursuance of their aims or interests, or by means furnished by them and which involve their responsibility.
2. - That the enforcement of measures of social defense to the society should not exclude the possibility of an individual penal responsibility for the same infringement of persons who are responsible for the administration or direction of the given society, or who have committed the infringement by means furnished by the society.

This individual responsibility may be augmented or diminished according to the case.

II. International Penal Law.

The second international Congress of Penal Law

considering that war has been outlawed by the Pact of Paris of August 1928; recognizing the necessity of assuring international order and harmony by application of effective sanctions to the states responsible for the violation of the said Pact,

Expresses the desire:

² RIDP vol. 7, 1, 1930, pp.10-14 (French). RIDP vol.19 3-4, 1948, pp.415-418 (English). See also RIDP vol.19 3-4, 1948, pp.413-415.

That the organizations called upon to study the means of making more efficacious the principles of the Pact of Paris and of bringing them in line with the dispositions of the Pact of the League of Nations, take into consideration the proposals adopted in 1926 by the first International Congress of Penal Law on the subject of the establishment of an international criminal jurisdiction and of the cases of responsibility of the States and persons that should be within its competence.

II. - The application by the judge of one state of foreign penal laws.

The Congress

considering that while judges of each State are as a general rule empowered to apply only the particular law of that state (*Lex fori*), the respect for the individual rights, and the interest of good international relations may demand the application, in certain exceptional cases, of a foreign law,

Expresses the desire

1. - a) That the repression of an offence against the Common Law committed in any given country, as well as abroad, should be subordinate to the condition that this offence be recognized as such and punished by the foreign territorial law (*Lex loci*);
b) That the judge should take into consideration the dispositions of the foreign territorial law, when they are more favorable to the delinquent;
c) That the demands of this law, relative to the necessity of a complaint, should be observed.
2. - That, with regard to offences, committed in any given country, as well as abroad, the judge may, among the elements on which his decision depends, take into consideration also the age at which the personal Law fixes the penal majority.
3. - That, in the case where the existence or the gravity of the offence depends on certain family relations of the accused with the victim or with a third party, these relations should be judged, except for a plea founded on public order, according to the law indicated by the rules of international private law.
4. - That the refusal of application and the false interpretation of foreign penal law should be sanctioned by the regulating court of each state.
5. - That there should be adopted, through an international agreement, a table of punishments and measures of security provided for by the laws of the relevant states.
6. - That every penal sentence legally pronounced by a competent judge, following the law normally applicable, be admitted to produce abroad, under the control of the local judicial authority, the effects necessitated by international cooperation, when they conform to the

public order of the country where they are to be carried out.

Supplementary proposal.

The Congress

considering that, for the application by a judge of foreign penal law, it is necessary that there should be placed at his disposal reliable information; considering, on the other hand, that only the League of Nations has the means necessary for collecting such an information, begs the Rumanian government to be good enough to intervene in the S.D.N. with a view of organizing an international office of legislative and jurisprudential documentation.

III. - A single judge or a collegiate of the tribunal.

The Congress expresses the desire:

1. - That the collegiate should be maintained absolute to judge crimes and in quality of appeal in the judgment of offences and contraventions.
2. - That the collegiate should also be maintained in principles, for the judgment of offences in court.
3. - That exceptions to these principles be admitted with extreme prudence, in a limited and progressive manner, without disorder, and chiefly by gradually extending the powers of the police judges to try crimes of lesser importance as well as offences against forestry and hunting laws.
4. - That other extensions of the power of the single judge be reversed, in every case, until the independence of the judiciary and the prestige to which it has a right are effectively assured, and until there should be assured a select recruitment by a remuneration in keeping with the high offices it occupied in the State.

Supplementary resolution (Conti).

Generally, the institution of a single judge like that of collegiate should both be maintained; the two forms complete each other in the development of corresponding systems of procedure.

The judge, having to be a lawyer, a psychologist and a sociologist, to have a knowledge of the offences as well as of delinquents, in particular of the danger they present to the community, the required specialization can be better attained in the case of individual judges than in that of the collegiate.

When a collegiate tribunal is to be called upon to perform duties which demand such specialization, a member of the tribunal should be delegated for this purpose.

In particular, it should be within the competence of single judges to judge faulty or involuntary

offences (culpa), and deliberate offences of lesser importance, while it should belong to the collegiate tribunal to judge deliberate offences of the greatest gravity.

Further, in dividing these offences into more or less serious ones, the collegiate could assign itself the former, according to the type of sheriffdom. The single judge should also be empowered to perform actions relating essentially to the procedure, and to the research and leaving to the collegiate tribunal actions which suppose deliberation.

Functional power. - To the single judge will belong in general the examination; he may also be delegated to acts of research by a collegiate charged with the examination. For the single judge will be reserved the procedure by penal decree. For instance, before a collegiate, there will belong to the president the accomplishments of acts which are proper to him, before, during or after the debate; and also there may belong to a delegated member of the collegiate the accomplishment of acts separated from and outside the court.

The judgment of petitions (appeals, annulments, etc.) will belong as a rule to the collegiate, as well as judgment on the difficulties of fulfillment.

To the single judge will belong the supervision of the enforcement of the penalty, and, as a rule, the administrative procedure referring to the measures of security in whichever way they complete the penalty.

IV. - Penal pursuit by the Associations.

The Congress expresses the desire:

1. - That there should be given to the members of associations of moral character the right to verify and prosecute the infringements of the penal law, which are within the sphere of their interest, under the responsibility of the association itself.
2. - That the attribution of this right to prosecute, as well as the determination of these infringements, be left to the determination of each legislator.
3. - That, in all cases, the right to prosecute be allowed specially to the associations which have as aim the prevention or the repression of crime.
4. - In the states where the subsidiary private accusation is not recognized, it would be necessary to confer on the said associations the right of constituting themselves civil parties.