



Third Study Commission
Criminal law and procedure

Meeting in Vienna (Austria), 11 - 13 November 1981

Conclusions

PROCEDURAL PROTECTION FOR PHYSICALLY OR MENTALLY HANDICAPPED PERSONS

Representatives of the following 19 countries took part in the meeting: Federal Republic of Germany, Austria, Belgium, Brazil, Ivory Coast, Denmark, France, Greece, Italy, Liechtenstein, Luxembourg, Morocco, Norway, Netherlands, Portugal, United Kingdom, Sweden, Switzerland and Tunisia.

Written reports came from the following countries: Federal Republic of Germany, Austria, Belgium, Brazil, Denmark, France, Italy, Japan, Luxembourg, Morocco, Norway, Portugal, United Kingdom, Sweden, Switzerland and Tunisia.

All the countries represented agreed that cases involving physically handicapped persons should be regarded as cases involving normal delinquents. It is important however that these persons should be assured the defence necessary for their special situation.

The law in the majority of the countries represented provides exclusive rules concerning the mentally handicapped only. The Commission expressed its view that the judicial authority only should always have the final decision in cases concerning delinquents who are healthy mentally.

In principle all delinquents are penally responsible for their offences, but the present law in the vast majority of the cases of the countries present provides a possibility that the mentally handicapped delinquent does not have penal responsibility.

The question of penal irresponsibility of the delinquent should be decided upon by the judicial authority only after having received all the necessary information including an independent expert medical opinion.

After the penal irresponsibility of the delinquent has been established, the judge only should decide whether the delinquent is a danger to the public order and safety and thereupon invoke the appropriate measures in the public interest, and also in the interest of the delinquent, consisting of internment for treatment in a suitable hospital.

The Commission is of the opinion that a delinquent who is to be held responsible for his deeds but who is suffering from mental deviation dangerous to the public order should, as decided by the judge, receive treatment, either in a closed or open setting, in order to regain his mental balance and to be rehabilitated.

It is desirable that the judicial authority, in addition to the hospital authorities, review the situation regarding the delinquent frequently.