



Third Study Commission
Criminal law and procedure

Meeting in Dakar, Senegal, 26 November - 1 December 1983

Conclusions

THE JUDGE AND THE EXECUTION OF PUNISHMENT

Representatives of 16 countries have taken part in this meeting: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Senegal, Sweden, Switzerland, United Kingdom.

Written reports were given by the following countries:

Austria, Belgium, Denmark, Finland, France, Germany, Italy, Japan, Luxembourg, Morocco, the Netherlands, Norway, Portugal, Senegal, Sweden, Switzerland, Tunisia, United Kingdom.

R e s o l u t i o n

The institution of a judge or a court for the execution of sanctions has its basis in the essential principle that a sanction which has been imposed by a judicial authority should not be liable to modifications by any authority which does not belong to the judiciary.

Some countries have incorporated in their laws a set of rules, which created such a system of judicial control on the execution of sanctions. The representatives of the countries which do not have such a system in their laws recognise however the value of the principle, which wishes to establish a guarantee for the sovereignty of the judicial power.

The representatives unanimously recognise that the concept for the treatment of the convict complies with the principles and rules which have been defined by the major international organisations.

Consequently

- the commission considers it desirable that the penal administration be the responsibility of the Ministry of Justice or at least of a special department of another ministry which deals only with the penal administration;
- the commission is of opinion that the judge should have control over the execution of sanctions as these sanctions are directed towards social rehabilitation. Therefore it should be considered logical that the judge should be able to determine any modification of the sanction in relation to the personality of the convict and his behaviour and education in the penitentiary surroundings;
- the commission considers it advisable that apart from a judge, a court for the execution of sanctions be installed, with the public prosecutor present at the session *ex officio*;
- the jurisdiction should be limited to those convicts who reside or are detained within the district of the judiciary concerned and should cover any prison sentence or measure, whether it be executed in a closed or an open institution;
- the powers of the judge and the court for the execution of sanctions will be established in relation to the duration of the sanction or of the remaining part of the sanction;

- the commission furthermore shares the opinion that the procedure should in principle be a contradictory one, should not be open to the public, as it does not concern the examination of facts, nor the question of guilt, but modification of the sanction imposed only;
- the convicted should have the right to legal assistance by a lawyer of his own choice or appointed by the judiciary. The judicial authority has the right to ask the victim if he would like to make any observation;
- any decision should be motivated in an appropriate manner;
- all decisions concerning a suspension of a prison sentence or a measure or release on parole should be open to appeal depending on the national legislation, even to an appeal before the Supreme Court for both the convict and the public prosecutor.

In respect of the above expressed recommendations all the delegations present call upon the responsible political authorities in the respective countries to provide for the necessary institutions and their maintenance, which are indispensable for an efficient and humane execution of judicial sanctions.