



Third Study Commission
Criminal law and procedure

Meeting in Oslo (Norway), June 1985

Conclusions

THE JUDGE FACED WITH JUVENILE DELINQUENCY

On the basis of the reports of the delegates of the judges of Austria, Belgium, Brazil, Denmark, England, Finland, France, Germany, Israel, Italy, Ivory Coast, Liechtenstein, Luxembourg, Morocco, the Netherlands, Norway, Portugal, Scotland, Senegal, Spain, Sweden, Switzerland, Tunisia and of the general report of the president, Raymond Screvens, the third study-commission of the IAJ reached the following conclusions.

The creation of systems specially designed for juvenile offenders is justified by the necessity of preventing that they be marked, at the threshold of their lives, by penal sanctions, and of trying to rehabilitate them, so that they may be prepared for their future life in society.

The hope to achieve some result should be the principal motivation. When such hope should become smaller, or altogether disappear, more appropriate measures, even penal in character as the case may require, should take the place of the previous ones.

With this view as a starting point, and even considering the sometimes hardly convincing experiences made in this field, some considerations can be drawn from the comparison of the various systems having as their common goal the fight against juvenile delinquency.

a. The judicial solution is the solution adopted by most systems.

b. Jurisdictions or judges, specially charged with the task of dealing with cases concerning juvenile offenders, seem to be a system apt to attain a good individualization of the measures to be taken, thus better keeping pace with the real development of the minors.

Although the position of such judges is often embedded in national traditions, in any case it seems preferable that professional judges be trusted with those cases, and that, in addition, the possibility be given to resort to institutions of social assistance.

In Scandinavian countries a system exists, where normal (i.e. non-specialized) judges deal also with cases concerning juvenile offenders, in which cases specialized personnel (for juvenile social welfare) may be heard. Such a system is regarded as very satisfactory by the delegates of those countries.

c. The system ought to be a flexible one, to make it possible for the judge to react in an adequate way to various needs. Such flexibility should be taken into account in various respects:

1. Flexibility concerning measures ranging from a simple warning or rebuke with no further consequences, to measures of social protection with a punitive nature, passing through a series of measures of (re)education.

2. Flexibility between the different regimes foreseen for the different age-groups, with a possibility of applying to a case belonging to one group the regime foreseen for another, be it younger or older, depending on the mental and physical development of the young offender, and having regard to his social environment.

3. Flexibility during the executional phase, with a possibility of modifying the inflicted measures, according to the development of the case under consideration.

d. Procedures should be as informal as possible, without, however, diminishing the right of defense as a whole.

e. It should be normal that the minor be provided with legal assistance. The role of the assistance in case the accused is proved guilty should be solely intended for the welfare of the minor.

f. The majority of the delegates was in favor of a system of proceedings and trials with nearly no participation of the public, allowing however for the presence of persons having a direct interest in the proceedings, such as parents, representatives of social institutions, etc. Other delegates, instead, expressed the view that the principle of the public trial should prevail even in proceedings concerning juvenile offenders, allowing for the possibility of ordering a proceeding in camera, at the discretion of the court.

In no case disclosure of the identity of the minor by the media, and according to some delegates, public report of the proceedings should be permitted.

g. The right of appeal in cases concerning juvenile offenders is essential. According to the majority of the delegates, the appeal should be adjudicated upon by a court consisting of one or more specialized judges.

h. It is desirable that prisons and institutions for juvenile offenders and those for adults should have separate accommodations.