



Third Study Commission
Criminal law and procedure

Meeting in Tunis (Tunisia), 23 - 25 October 1980

Conclusions

THE POSSIBILITIES OF AN APPEAL OR FOR NULLIFICATION IN THE CASE OF A SENTENCE
FOR A CAPITAL CRIME

Representatives of Austria, Belgium, Denmark, Ireland, England, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Senegal, Sweden, Switzerland, Tunisia, participated in the deliberations.

After considering the papers submitted by all the different countries the commission came to the following conclusions:

1. That the legislation of all the represented countries provide the right of appeal on matters concerning violation of the law in capital cases.
2. However in only a few countries, Netherlands, Italy and Sweden, does the law guarantee to the accused the right to a second trial (de novo) on appeal.
3. In other countries, Austria, Denmark, Norway, Portugal and certain Swiss Cantons, legislation restricts the appeal to a review of the sentence, which may confirm, increase or reduce the sentence.
4. The appeal is always heard by a superior court.
5. If the appeal is from the decision of a court composed of one or more professional judges sitting with "lay judges", the appeal is considered by either a court composed entirely of professional judges (in Austria - the Court of Appeal or Supreme Court - Denmark and Norway) or in Italy and Sweden a court including lay judges, which court is then considered to be of a superior degree.

The Commission notes that the diversity of penal procedures on capital matters in the different countries has not made it possible for the delegates present to adopt a common resolution recommending the institution of a system of appeal different from that now in existence in the several countries.

The Commission notes that the majority of its members come from countries which at present do not have such a system of appeal and do not consider that their respective laws be amended in such a way as to permit a full appeal on facts and law.

The same delegates together with the other members of the commission, when adopting the hypothesis that if one of those countries should allow the creation of such a system of appeal, this system should contain the following conditions:

1. The review of the case ought to contain a consideration de novo of the facts and the punishment.
2. When the criminal court contains lay judges, it could be preferable to bring the appeal before a jurisdiction of the same nature, meaning that the court should not be composed solely of professional magistrates.

3. Such an appeal should be open both to the accused and the public prosecutor as far as the penal decision is concerned and to the civil party as far as the specific civil interest is concerned.