



Third Study Commission
Criminal law and procedure

Meeting in Madeira (Portugal), November 1982

Conclusions

ALTERNATIVES TO SHORT-TERM IMPRISONMENT AND THEIR APPLICATION

The discussion was limited to the criminal law as applied to adults only.

For a basis of discussion, a short term of imprisonment is considered to be not more than six months. Certain members considered however that the application of sentences of less than 15 days could have a beneficial psychological effect without encountering the harmful effects of desocialisation and of prison corruption.

A substitution of the sentence can be considered as such when the principal sentence required by law for the offence is a (short-term) prison sentence.

In the majority of the countries present no real substitutes exist.

In certain countries a legal directive in the law requires that a short term sentence of imprisonment is replaced by a substitute sanction unless exceptional circumstances make necessary the infliction of a prison sentence.

In other countries the law itself gives a choice between different sanctions amongst which short term imprisonment is one.

Some others again offer the judge a variety of sanctions as a result of which either the sanction of imprisonment is applied as a last resort only, where no other sanction could be considered appropriate or where the sanction of imprisonment is considered to be necessary to maintain respect for the law.

Among the alternatives to prison already in operation in some countries are the following:

- Warning,
- Fines,
- Suspended sentence with or without conditions,
- Conditional sentence with or without probation and or fine,
- Temporary or permanent withdrawal of driving, or hunting licence,
- Confiscation of weapons or vehicles
- Suspension of the right to one's professional activities
- The temporary or permanent closing of businesses
- Prohibition to possess cheques books.

In come countries an important role is played by the public prosecutor who can decide that the case should not be prosecuted (under certain conditions or without conditions).

RESOLUTION

The Commission expresses as its view that, concerning punishment of petty and medium crime, a large variety of sanctions should be available to the judge. Moreover the Commission is of the opinion that the penalty of short term imprisonment should be imposed only as a last resort, except in cases where no other penalty seems appropriate.