



Third Study Commission
Criminal law and procedure

Meeting in Siofok, 27 September - 2 October 2006

Conclusions

THE WAY CRIMINAL SYSTEMS DEAL WITH THOSE WHO ARE MENTALLY ILL
OR MENTALLY HANDICAPPED

The subject chosen for discussion by the Third Study Commission this year was "The way criminal systems deal with those who are mentally ill or mentally handicapped". Written reports were received from more than 20 countries and delegates from more than 25 countries attended our two sessions and made valuable contributions to our discussions.

Mental illness or mental handicap affects a significant number of those who come before the criminal courts. It may be relevant at the time of the offence and may reduce or extinguish criminal liability. It may be relevant at the time of court proceedings and cause special difficulty for the trial judge in the conduct of those proceedings. And those with mental health problems may require special care and management after court proceedings to prevent harm to themselves and to the community.

An offender's mental health should be a relevant factor for consideration by a prosecutor who has discretion as to whether to bring charges. In minor cases, where adequate support and treatment can be provided, the risk which a mentally ill offender presents may be safely managed in the community without the need for court proceedings. Where there are court proceedings, such an offender may be ordered to remain under supervision, and required to attend for this treatment rather than being detained. The Commission noted with interest a Canadian sentence called a "conditional sentence of imprisonment" which sets a period of imprisonment but allows an offender to remain at liberty, subject to court-supervised conditions as to house-arrest or curfew, directions for compulsory medical treatment, regular progress reports to the sentencing court and sanctions for breach of conditions. The Commission also noted a pioneering scheme in the United States where specialist mental health courts have been established, with expertise to deal with the 15% of defendants in the United States who suffer from mental illness or mental handicap.

Whilst concepts of punishment and retribution may not always be appropriate, all criminal systems have developed rules and procedures to protect society against unpredictable, violent and dangerous behaviour by those who are mentally ill. Such people may have to be detained against their will, sometimes without limit of time. A trial may sometimes have to be delayed to allow the recovery of someone who is suffering from a temporary mental illness so that he may take a full part in his trial. But for others, such a full part may never be possible and there must be just and equitable procedures for ensuring that such a defendant is legally represented, that the case is properly investigated, fairly prosecuted and proved to the proper standard, so that a mentally ill or handicapped defendant's human rights are safeguarded.

Because these cases threaten the liberty of some of the most disadvantaged and vulnerable in our society, judges have special responsibilities. They should not bow to the pressure of public opinion which sometimes sees an order made in a criminal court for treatment in hospital as a soft-option for those who are merely pretending to be ill. Judges should ensure that expert medical evidence is of high quality, and open to scrutiny and challenge; that those detained are kept in an appropriate place; and

that in humane conditions they receive proper medical supervision and treatment. On a regular basis, the need for continued detention should be reconsidered in a judicial process, and the burden of proving the need for continued detention should be upon the authority seeking to detain. A judicial decision for release should not be over-ruled by the executive.

The Third Study Commission chose with acclamation Mme. Mary Moreau from Canada as its next President. The two Vice-Presidents will be M. Momble Messey from the Cote d'Ivoire and Mr Bauduin from the Netherlands.

The subject for discussion next year will be: "Juveniles in the Criminal Justice System".