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Penal Reform

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Charles HALE, United Kingdom, Socialist Group

1. 1959 - 11th Session - First part

A. Draft Recommendation - submitted by the Legal Committee

The Assembly,

Recognising the need for further coordination and the exchange of information in the field of penal questions;

Considering that it is desirable to ensure the progressive implementation of the recommendations of the first United Nations Congress on Prevention of Crime and the Treatment of Offenders, held at Geneva from 22nd August to 3rd September 1955;

Desiring to facilitate the continued study of methods of penal reform and inter alia the classification of prisoners;

Believing that no one should be deprived of liberty except by due process of law and that no one should be punished except for a proven breach of the criminal law,

Recommends to the Committee of Ministers :

1. that it should study the recommendations of the United Nations Congress on Prevention of Crime and the Treatment of Offenders held in 1955 and consider the desirability of a progressive implementation of such recommendations ;
2. that it should consider the desirability of organising a system of interchange of prison executives (for example, Deputy Governors), between member countries for periods of study of methods of prison administration;
3. that Member Governments be asked to adopt, as part of their national law, the following principles :
    a. that a first offender who has committed an offence punishable, by imprisonment shall, unless a serious crime is involved, receive a suspended sentence or be placed on probation or accorded some similar treatment;
    b. that no person shall be provisionally detained in prison without an order of a Court, and such provisional detention shall not be continued unless the Court shall certify that detention is strictly necessary and give its reasons therefore;
    c. that no person shall be imprisoned for inability to fulfil a contractual obligation;
    d. that every prisoner suffering from a mental or physical ailment shall be given appropriate psychiatric or medical treatment.

B. Explanatory Memorandum

1. Introduction

1. On 29th April 1957, I and a number of my colleagues presented to the Consultative Assembly a Motion for a Recommendation on Penal Reform (Doc. 674). The Legal Committee, to whom the Motion was referred, has duly studied it at its meetings in September 1958 and in March 1959.

2. General observations

2. In the 18th Century the main and almost exclusive object of the criminal law was to mark society's detestation of crime and to deter others from committing crime. Convicts who escaped the scaffold were left to rot in loathsome dungeons, themselves breeding-grounds of vice. The work of John Howard who devoted the latter half of.his life to visiting prisons and investigating conditions throughout Europe exposed terrible conditions. Nevertheless, after his death came a period of increasing severity, which did nothing to reduce the incidence of criminality.

3. The work of the Italian School, and, in particular, the writings of Beccaria and the scientific theories of Lombroso, now largely discounted, at least served the purpose of focussing the attention of the community on the criminal as well as upon the crime. From that period a primary object of penal reform has been the classification of offenders.

4. The object of penal reformers is not to make things " easy" for criminals. On the other hand, it is generally conceded, for example, that in one vital respect the present general overcrowding of prisons, in old and inadequate buildings, has made more difficult the provision of full-time work in prisons—an essential condition for preparing the prisoner for his return to civil life. It is recognised, too, that there are cases of habitual offenders who have become virtually incurable enemies of society and for whom stringent measures are essential.

5. It is, however, now generally conceded that the careful classification of prisoners, not only by age and sex, but in relation to their history, adaptability, mental and physical and psychological condition is an essential prerequisite to the process of reform.

6. The cost of crime prevention, and the cost of a prison system, is a very heavy item of public expenditure. In many countries the prison population still includes a considerable proportion who should not be there at all. First offenders, for whom the publicity of their trial and the humiliation involved arc likely to provide an effective insurance against repetition; persons awaiting trial and refused bail or unable to provide bail; and persons imprisoned for debt, or, more technically, for failing to comply with an order of a competent court for the payment of instalments of debt, form too large a proportion of the population of many prisons in Western Europe.

7. A further object of classification is the selection of persons who may be suitable subjects of special curative treatment, usually of a psychiatric nature. These are commonly but inaccurately referred to as " psychopaths " for convenience—though the word has no clear technical definition. In this field a considerable number of experiments are being conducted in most of the member countries. Your Subcommittee have had the opportunity of visiting the newly equipped institution at Rome, together with the institutions, first, for classification and, secondly, for treatment at Utrecht. It is too early to be able to ascertain to what extent new methods of treatment may produce permanent results but there is room for a reserved optimism. As this particular subject is on the agenda of the United Nations Congress on Penal Reform it is, for the time being, outside your Committee's terms of reference.

3. Comments on the draft Recommendation

3.1. Paragraph 1

8. The first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 22nd August to 3rd September 1955, to which fifty Governments sent representatives (including twelve Members of the Council of Europe) and to which the Council of Europe sent an official representative, laid down recommendations for approval by the Social Commission of the United Nations Economic and Social Council. In the light of the Social Commission's Report the Economic and Social Council examined these Recommendations at its 24th Session (2nd July to 2nd August 1957). On 31st July 1957, the Council

passed a Resolution approving the standard minimum rules for the treatment of prisoners and invited Member Governments to give favourable consideration to their adoption and to their application in the administration of penal and correctional institutions.

9. The Recommendations include detailed suggestions under the headings " Standard Minimum Rules for the Treatment of Prisoners " including Rules applicable to Special Categories, " Selection and training of personnel for penal and correctional institutions ", " Open penal and correctional institutions ", " Prison labour" and " Prevention of juvenile delinquency ".(United Nations document A/Conf/ 6/1).

10. This congress of experts recognised that inadequacy of prison accommodation would prevent, in many countries, the immediate adoption of their proposals. A set of standards of this kind is, however, clearly a matter which should be examined with a view to later adoption and implementation by Member Governments.

3.2. Paragraph 2

11. Your Committee has studied the role which the staff of prisons may be called upon to play in a new approach to penal administration. The United Nations Congress referred to " the change in the nature of prison staffs which results from the development in the conception of their duty from that of guards to that of members of an important social service demanding ability, appropriate training and good team work on the part of every member ".

12. Whilst the process of development from the conception of the " turnkey " to that of the qualified prison officer is developing, and your Committee have noted the general improvement in the standard of prison staff, the fact remains that in many countries there is numerically an inadequate executive staff overburdened with statistical duties.

13. Your Committee have had an opportunity of studying the methods of co-ordination being pursued by the Benelux countries. Inasmuch as many member countries have acquired special experience and special knowledge in certain fields of penal reform it is thought that great advantage would result from the exchange of senior prison executives as between member countries. It is thought that the appropriate exchange should be of assistant governors.

3.3. Paragraph 3

3.3.1. Sub-paragraph (a)

14. The practice of probation is now generally in use where the case is not of exceptional gravity—and particularly in the case of first offenders. It has proved eminently satisfactory. In the United Kingdom an Act has been passed in the current session providing that a Court shall not sentence a first offender to imprisonment unless the Court specially certifies its special reasons for so doing. This provision has for some years past applied only to juvenile offenders. Whilst there has not yet been any experience of its work in practice, it is suggested that this course might be generally adopted.

3.3.2. Sub-paragraph (b)

15. The recognition that a person shall only be imprisoned by due process of law is universally accepted in theory. This principle, which in the United Kingdom goes back to Magna Carta, is reaffirmed in Article 5 of the European Convention on Human Rights. Yet in practice many persons are detained for very long periods pending their trial. Such a practice can be justified only when strictly necessary, for instance because of the exceptional gravity of the offence, in crimes of violence, because of the record of the accused for absconding, or because of his mental condition, the fact that he has no fixed address, or the importance of the enquiry. The right to bail, often an essential to the adequate preparation of the defence, should be assured to all except in the exceptional circumstances indicated above. Refusal of bail often involves loss of employment and serious harm to family relationships.

3.3.3. Sub-paragraph (c)

16. Imprisonment for debt has been the subject of wide controvery since the days of Sir Samuel Romilly. In the United Kingdom, at the end of the eighteenth century, it was possible for a creditor to secure the imprisonment of the debtor for life. The creditor was liable to pay fourpence a day for the prisoner's maintenance, but this provision was rarely enforced. The creditor had, however, no remedy against the debtor's estate.

17. This matter has also been studied by the United Nations. The draft International Covenant on Civil and Political Rights, which is before the General Assembly, provides in Article 11 that " no one may be imprisoned merely on the ground of inability to fulfil a contractual obligation ".

18. The Legal Committee has included this provision in the present draft Recommendation, since it considers that the draft Covenant is unlikely to he adopted by the United Nations in the near future. There is, indeed, nothing to prevent Member States from recognising forthwith certain principles listed in that document.

19. The Committee emphasises that the principle advocated in paragraph 3 (c) of the draft Recommendation would apply only to contractual obligations and not to all forms of civil debt. Neither would it be operative in cases of fraudulent non-compliance.

3.3.4. Sub-paragraph (d)

20. The proposal in this sub-paragraph refers to a matter whose importance has been recognised by all civilised States. There are, however, very few States which have already made provision for the special psychiatric treatment of prisoners suffering from a mental ailment.