General trends on dangerous offenders treatment in Europe

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A.- It is well-known, that the concept of preventive measures and penal substitutes with regard to 'dangerous' offenders have been supported by the Social Defence movement, founded in the early 20th century.

However totalitarian regimes distorted this option relatively promptly. They introduced idionym crimes (delictum sui generis) and security measures, whose implementation led to the creation of concentration camps, whereas, at the same time the emergence of penal authoritarianism influenced a number of democratic countries.

After the Second World War, Filippo Gramatica has also attempted to establish the notion of "dangerousness", as a form of anti-sociability.

But "dangerousness" is not a clear legal concept. It is also -as Council of Europe accepts- vague in scientific terms. That's why the French great judge Marc Ancel reacted, considering that it aimed to reintroduce the doctrine of the potential dangerous offender with its well-known and disastrous consequences.

Ancel enriched the Social Defence movement with new principles and led the New Social Defence movement.

He concurred with the maintenance of the concept of dangerousness in the field of penal law provided that it would be subject to the principle of legality.
An approach of this type has been recognised as the dominant one within European penal legislation.

Relevant penal provisions have been introduced in most european states.

B.- The turning point.

At the present time, we are experiencing a renaissance of the notion of dangerousness.

Firstly, September 11, 2001 is considered as the starting point of its re-emergence. It has become the cause of various policies and measures associated mostly with public security, but not limited to the fight against

terrorism, which is currently an issue of fundamental concern to the international community.

It is being used to a higher extent on matters relating to public order, public safety, protection of public property and financial systems.

There is an emerging trend to widen dangerousness' scope of application, so that it covers the full range of criminal behaviours.

Secondly, it should be pointed out that the emergence of new forms of organised crime and the public impact of these new phenomena played an important role in this development. Nowadays, we are increasingly the witnesses of particular repugnant crimes and other acts of repulsive cruelty, which represent a significant fear factor that has negative social impact.

In this framework, security and subsequently public safety is often considered as the most fundamental right.

However, we should bare in mind that in states under the rule of law there is a need to find ways of balancing various fundamental rights.

Right of freedom and right of security are equal in importance in order to live a life of peace, growth and prosperity.

Finally, the need and desire of all interested parties to protect people's fundamental rights and public and private goods from modern-day threats shaped the legislative framework.

C.- European Union.

As regards the European Union's approach, it's basic principles on the treatment of dangerous offenders are set out in the Treaty of Amsterdam, of 2 October 1997. With the entry into force of the Treaty of Amsterdam, the Union sets itself the target to create an area of freedom, security and justice. That involved a strengthening of cooperation between the Member States in particular by the alignment of criminal law, the harmonisation of the Member States' criminal justice systems and the application of the principle of mutual recognition in criminal matters. The European Arrest Warrant (EAW) is the first instrument implemented in the EU that puts into practice the above mentioned principle.

In addition the Treaty of Lisbon, signed on 13 December 2007, has created the conditions for the EU to widen the scope of criminalisation of terrorism,

organised crime, money laundering and corruption. The danger posed by the perpetrators of those criminal offences has led to the criminalisation of many preparatory acts.

Also, current developments in EU legislation show that in a wide variety of cases, the legislator promotes an approach that criminalises the stages preceding the actual commission of the offence. For instance, it is increasingly common for legislative instruments to impose criminal liability on specific preparatory acts, equating them with committed offences. Indicative example of the trend to consider some preparatory acts punishable is the case of counterfeiting currency (Directive 2014/62/EU), the case of preparatory attacks against information systems (Directive 2013/40/EU) and the case of solicitation of children for sexual purposes (Directive 2011/93/EU).

Furthermore, the EU legislator adopts proposals to include criminal responsibility for attempting particular offences and in so doing equates the crime of attempt with committed offences. Indicative example is the case of modes of currency falsification or uttering of counterfeit currency (Directive 2014/62/EU), the case of misuse of inside information and market manipulation (Directive 2014/57/EU), the case of illegal system interference or illegal data interference (Directive 2013/40/EU) or the case of trafficking in human beings (Directive 2011/36/EU).

It is evident that the EU has repeatedly implemented criminal-law instruments that confront preparatory acts or attempts of crime as committed offences due to the dangerousness of the offenders.

The EU legislator is doing so also in order to facilitate criminal investigations and the implementation of judicial cooperation in criminal matters between the competent authorities of the Member States.

D.- Council of Europe.

As regards the Council of Europe, it is certain that in a rapidly-changing world, is in reality the ultimate guarantor of human rights, democracy and the rule of law in Europe.

Council of Europe, promotes the idea that protecting the public from dangerous offenders must be carried out while respecting the fundamental rights of dangerous offenders and established legal guarantees.

Indicative example, its first Recommendation Rec(82) 17 concerning custody and treatment of dangerous prisoners, which underlined the importance of safeguarding rights of dangerous offenders.

Undoubtedly, the Council of Europe can keep the right balance between the need to protect society and the need to safeguard dangerous offenders' fundamental rights given its high standards of quality and its efficient evaluation mechanism.

It is also certain that the European Court of Human Rights is playing a predominant role on issues such as the promotion, protection and effective application of human rights. Its judgments guided Council of Europe's legislative initiatives.

It is well-known that in the case of *Maiorano and others v. Italy* (application no. 28634/06, judgment of15 December 2009), the Court made it clear that the state had an obligation to protect its citizens from dangerous offenders.

In the case of *M. v. Germany* (application no. 19359/04, judgment of 17 December 2009), on the otherhand, concerned the rights of the offender in relation to secure preventive detention and putted an end to an additional penalty of indeterminate duration of sentence imposed retroactively (Art. 7, § 1).

The above-mentioned judgments, the emergence of new types of criminal behaviour and the need to sanction them adequately in order to keep public safety were among the reasons why it was thought there is a need to review the treatment of dangerous offenders, which eventually led to the suggestion of specific measures against them in order to reduce re-offending.

The Council of Europe Recommendation CM/Rec(2014)3 concerning dangerous offenders, adopted by the Committee of Ministers on 19 February 2014, constitutes an important development in the field of penal law.

The target of the recommendation is to keep the right balance between the protection of public safety and the rights of offenders without undermining the reintegration of offenders which remains a crucial aim of sentences.

As you have heard before, a dangerous offender is defined as a person who has been convicted of a very serious sexual or violent crime and who at the same time presents 'a high likelihood' of re-offending with further crimes of the same nature. In this situation, which is defined as 'risk', a risk assessment

on the one hand and a risk management on the other hand are required. Of course risk assessment has its own limits and it cannot provide protection from any future danger.

The measures that can be imposed after obtaining authorisation from a judicial authority shall comprise the ‘secure preventive detention’, the ‘preventive supervision’ and the ‘treatment’.

The application of such measures is, in essence, an attempt to control, monitor or detain offenders designated as dangerous even after their prison sentence has been served.

The measures can be imposed only on a small minority of the offender population.

They are imposed not on the basis of the unlawful nature of an act, since no act has been committed, but due to a high likelihood of re-offending.

Member states should take into account the rules contained in the recommendation every time they want to deal with the phenomenon of "dangerous offenders".

It is very important to underline that the above recommendation does not contain any obligation to member states to introduce secure preventive detention or preventive supervision into national law.

E.- CONCLUSIONS

To sum up, there's a gradual shift away from the punishment of a committed offence to the control of a pre-delinquent behavior in order to prevent negative or tragic outcomes from happening.

In this new framework the re-emergence of the notion of dangerousness should be subjected to the principles of legality and proportionality.

It is also very important to restrict the number of offenders classified as “dangerous” to the minimum necessary.

I would like to conclude my contribution by stressing that in this high risk society of ours, policies and measures against dangerousness can result in

more freedom and greater security and subsequently public safety only if we show full respect for human rights.

The Member States of the Council of Europe are the heirs and guarantors of a legal and political tradition, the core of which is the human being and its needs, anxieties and aspirations. Also, we have to remember that Europe constitutes an example of Democratic Governance, which is recognised across the world.

That's why we bear a great responsibility.

An effective balancing between conflicting rights and needs presupposes the respect for human dignity.

This task lies within the responsibility of each State and each and every citizen.-