

THE RECOMMENDATION FROM THE PERSPECTIVE OF CONTEMPORARY CRIMINAL POLICY DISCUSSIONS

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SPAIN

Criminal treatment of dangerous offenders

Two different systems::

1. Attempts to solve the problem in the field of criminal punishment (recidivism, life imprisonment).
2. Attempts to solve the conflict through the imposition of Security Measures (Secure supervision, secure preventive detention).

Clarification of some concepts and principles of Criminal Law

1. Penal consequences applicable to those persons who commit a criminal offense:

- a) The criminal punishments
- b) The security measures

2. kinds of dangerous offenders taking into account their capability of chargeability

- a) Un-chargeable offenders
- b) Demi-chargeable offenders
- c) Chargeable offenders

Clarification of some concepts and principles of Criminal Law

1. Penal consequences applicable to those persons who commit a criminal offense:

a) The criminal punishment

Goals:

- To impose an affliction to the offender due to the bad crime he has committed.
- Aims to prevent the commission of further criminal offenses

Basis: Chargeability.

Clarification of some concepts and principles of Criminal Law

1. Penal consequences applicable to those persons who commit a criminal offense:

b) The security measures

Goal:

- Related to the “individual prevention”

Basis:

Criminal dangerousness

Clarification of some concepts and principles of Criminal Law

2. kinds of dangerous offenders taking into account their capability of chargeability

a) Un-chargeable offenders:

- ▶ Security Measures.

b) Demi-chargeable offenders:

- ▶ Security Measures + Punishment

c) Chargeable offenders:

- ▶ ¿Punishment + Security Measures?

Dangerous offenders: An historical preoccupation

► PROTÁGORAS:

“to whom do not obey, even though he has been punished and re-educated, we must to throw him out the city or to kill him, given that he is an incurable”.

► Plato:

“those who uses force to implement his plan and stokes the fire of sedition, must be considered the most dangerous enemy of the State and sentenced to death”.

Recommendation concerning Dangerous Offenders

- ▶ Has addressed this issue taking into account the strictest European standards regarding the respect of fundamental rights.
- ▶ Criminal dangerousness should not be treated through the imposition of a Criminal Punishment, but through the imposition of a Security Measure.

¿Are the Criminal punishments the appropriate tools to treat the dangerous offenders?

There are 2 ways:

❖ Imposition of a heavier sentence: Recidivism.

- Basis: Chargeability.
- ¿Mandatory or optional?

❖ Imposition of the life sentence

- Collide face to face with the concept of criminal punishment: Basis is not the “dangerousness”
- Criminal law of “author”, dignity, cruel, inhuman, degrading punishment.

¿Are the Security Measures the appropriate tools to treat the dangerous offenders?

- ❖ **Basis: Criminal dangerousness (OK).**
- ❖ **Some problems:**
 - Risk assessment.
 - Proportionality between the damage caused to the offender due to the imposition of the measure and the public security.

Conclusions

- ▶ Recommendation: Protection of human rights but also taking into account the need to provide protection to the society from the behaviour of dangerous offenders.
- ▶ Criminal Law of different countries is perfectly capable of balancing the rights of dangerous offenders with the need to provide security in society.

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