

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

Final activity report
concerning the report on decriminalisation
(Activity 22.13.1)

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I. Terms of reference

This final activity report represents the completion of Activity No. 22.13.1 of the 1977 annual programme concerning decriminalisation.

II. List of points referred to the Committee of Ministers for decision

The Committee of Ministers is invited to authorise publication of the report on decriminalisation.

III. Report

1. At its 19th plenary session, from 11 to 15 May 1970, the CDPC decided to set up Sub-Committee No. XIX to study decriminalisation problems.

2. The Committee of Ministers of the Council of Europe, meeting at Deputy level, adopted this proposal at its 192nd meeting which took place between 10 and 16 September 1970.

3. The Governments of Austria, Denmark, France, the Federal Republic of Germany, Italy, the Netherlands, Norway and Sweden were invited to nominate representatives to sit on Sub-Committee No. XIX.

On recommendations from the Bureau and the Criminological Scientific Council, the Secretariat appointed four scientific experts.

The Chairman of the sub-committee was Professor L Hulsman (Netherlands).

4. The committee met on the following dates:

1. 20 and 21 April 1972 (Strasbourg)
2. 9 October 1972 (Dordrecht)
10 to 13 October 1972 (Amsterdam)
3. 9 to 13 April 1973 (Strasbourg)
4. 24 to 28 September 1973 (Copenhagen)
5. 10 to 14 June 1974 (Strasbourg)
6. 30 September to 5 October 1974 (Berlin)
7. 9 to 13 June 1975 (Strasbourg)
8. 29 March to 2 April 1976 (Strasbourg)
9. 15 to 19 November 1976 (Strasbourg)
10. 21 to 25 March 1977 (Strasbourg)
11. 17 to 21 October 1977 (Strasbourg)
12. 13 to 16 December 1977 (Strasbourg)
13. 6 to 10 March 1978 (Strasbourg)
14. 11 to 15 December 1978 (Strasbourg)

Given the importance of the subject and the experience acquired in several member states, the Committee of Ministers authorised the committee to meet away from Strasbourg, viz in Copenhagen, The Hague and Berlin. At these hearings, specialists in decriminalisation (legislators, law professors, administrators, educationists etc) gave their views on the legal, social and moral questions raised by the process of decriminalisation.

5. The Committee on Decriminalisation began its work in 1972. Its terms of reference required it to make a comparative study of the trends and criteria applied in decriminalisation, notably by listing recent examples in Council of Europe member states and analysing the reasons for them in their legal and social context. Special attention was to be given to evaluating the extent to which acts cause damage to individuals and society. The study was to focus on the possible undesirability of:

- criminal law being applied to conduct which does not result in social damage;
- criminal law being used as a means of enforcing moral, religious or philosophical ideas;
- criminal law being used as a way of imposing social measures.

6. In order to collect the information it needed so as to bring its work to a successful conclusion, the committee:

- had at its disposal when starting its work several studies which had been drawn up for it by specialists in the subject;
- carried out an inquiry in Council of Europe member states on decriminalisation Bills then being debated or planned;
- held three hearings in Amsterdam (1972), Copenhagen (1973) and Berlin (1974) at which specialists in decriminalisation were invited to state either their own points of view or those of the organisations they represented;
- drew up a two-part questionnaire on decriminalisation: the first part concerned all types of conduct punishable by law which had been or were being depenalised or decriminalised in some member states, and the second part concerned acts which until that time were indictable but which from then on no longer fell within the scope of criminal law. All Council of Europe member states were asked to reply to the questionnaire.

7. The general part of the report, drawn up on the basis of contributions from several members of the committee, is followed by a special part on property offences with examples of decriminalisation schemes (cheque, credit card and credit sale offences, petty fraud, shoplifting and thefts from manufacturing firms by employees). The property offences selected provide a clear illustration of what is argued in the general part. They reflect significant changes over the last 50 years, during which time property has increased and the place it occupies has been modified.

The committee makes no recommendations on the decriminalisation of offences. Instead, it has chosen to make available to member governments and to all who have a part in the legislative process a variety of schemes which may prove a useful source of inspiration. After describing specific situations relating to a number of offences, the committee proposes decriminalisation schemes.

8. At its XXVIIIth plenary session, held from 19 to 23 March 1979, the CDPC:

- adopted the general report on decriminalisation together with the special part on property offences;
- requested that the report be complemented by a summary;
- recommended the printing and publication of the whole report and hoped that it would be given wider circulation than usual.

9. At its meeting on 29 November 1979, the CDPC Bureau adopted the summary of the main conclusion, which now forms a new Chapter 11 of the report on decriminalisation (see Addendum II to CM (80) 51).

ANNEXE/APPENDIX

Liste des experts gouvernementaux et scientifiques
ayant participé aux travaux du Comité

List of governmental and scientific experts
who participated in the work of the Committee

AUTRICHE : Ministerialsekretär Dr Roland MIKLAU, Bundesministerium für Justiz, Museumstrasse 12, VIENNA 1.

DANEMARK : Mr. Tage BAEKGAARD, Chief Constable, Domhuset, DK-6000 KOLDING

FRANCE : M. Maurice VIENNOIS, Conseiller à la Cour d'appel, 5, rue Henri Duchène, 75015 PARIS

M. Régis DE GOUTTES, Magistrat, Détaché à la Direction des affaires juridiques du Ministère des Affaires étrangères, 1, Quai d'Orsay, 75007 PARIS

Mlle Christine CHANET, Magistrat, Direction des affaires criminelles et des grâces, Ministère de la Justice, 13, Place Vendôme, 75042 PARIS

REP. FED. D'ALLEMAGNE : Dr Hartmuth HORSTKOTTE, Bundesgerichtshof, Oldenburghalle 58, D-1 BERLIN 19

ITALIE : M. Sergio CIANO, Ministero di Grazia e Giustizia, Direzione Generale per gli Istituti di Prevenzione e di Pena, Ufficio Studi e Ricerche, Via Arenula, ROME

M. Vitaliano ESPOSITO, Magistrato di Tribunale Applicato alla Procura Generale delle Corte di Cassazione, Via Manzoni 214/O Parco Flory, 80123 NAPOLI

PAYS-BAS : M. le Professeur L.H.C. HULSMAN, Steegoverslloot 61, DORDRECHT

NORVEGE : Mr. Elg ELGESEM, Assistant Director of Public Prosecution Eidsivating Statsadvokatembeter, Storgaten 32/34, OSLO-Dep.

Mr. L. DORENFELDT, Director of Public Prosecutions, Grubbegate 1, OSLO-Dep.

Mr. Helge RØSTAD, Judge of the Supreme Court, Hoyesterett, OSLO-Dep.

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SUEDE : Miss Karin RINGBERG, Assistant Judge and Legal Adviser of the Ministry of Justice, Justitedepartementet, Fack, 103 10 STOCKHOLM 2

Mr. Ake IHRFELT, Assistant Judge and Legal Adviser of the Ministry of Justice, Justitedepartementet, Fack, 103 10 STOCKHOLM 2

Mr. Jan VILGEUS, Assistant Judge and Legal Adviser of the Ministry of Justice, Justitedepartementet, Fack, 103 10 STOCKHOLM 2

Experts scientifiques

DANEMARK : Mr. Berl KUTCHINSKY, Senior Lecturer, Institute of Criminal Science, University of Copenhagen, Sankt Peders Straede 19 D-1453 COPENHAGEN

REP. FED. D'ALLEMAGNE : Prof. Dr. h.c. Werner MAIHOFFER, Fakultät für Rechtswissenschaft, Universität Bielefeld, Kurt-Schumacher-Str. 6 48 BIELEFELD

SUISSE : M. le Professeur Jacques BERNHEIM, Directeur de l'Institut de médecine légale, Université de Genève, 38, Boulevard d'Yvoy, 1211 GENEVE 4

ROYAUME-UNI : Dr. Dennis CHAPMAN, Assistant Director of Business Studies, University of Liverpool, P.O. Box 147, LIVERPOOL L 69 3 BX