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LEGISLATION CONCERNING JUVENILE DELINQUENCY IN VIENNA (AUSTRIA)

Frank D. Hearly

It is inevitable that juvenile delinquency definitely increases during and following wars. Such increased delinquency in Vienna (Austria) after World War I resulted in new legislation to meet the problem. Its primary aim was not punishment but the treatment and care of juvenile offenders. The author, a doctor of laws from the University of Vienna, a former practicing attorney in that city, and a Master of Arts in Psychology, is thoroughly familiar with that legislation and presents its principles here.—Editor.

In the period following World War I Vienna held first place in Europe in legislation concerning juvenile delinquency. A brief outline of the principles of this legislation, prior to the occupation of Austria by Germany in 1938, may therefore be useful.

As early as 1811 the Austrian Civil Code had provided for the care of juveniles and minor persons. This law provided that guardians be appointed for orphans and illegitimate children, such guardians to be under the control of the judge. In the course of time the provisions of the law were enlarged to include children neglected or ill treated by their parents. In view of the greatly increased number of such cases during and immediately after the first World War this guardianship was taken out of the hands of individuals and entrusted to associations and agencies devoted to the care of the young.

The City of Vienna created the Juvenile Board, which was charged with the general guardianship of all juveniles who did not receive appropriate care and education at home and therefore were exposed to the dangers of neglect. The Juvenile Board was provided with a staff of well-trained social workers of both sexes and was further assisted by private agencies.

It was upon the above mentioned institutions that later legislation concerning juvenile delinquency was based, namely the law entitled: "Law concerning the treatment of juvenile offenders" (Juvenile Court Law), published in 1928. The primary purpose of the law was not punishment but the treatment and care of juveniles. The law applied to any person under the age of 18 years at the time an offense was committed and included: educational measures, penal measures, legal proceedings, and infliction of punishment.

The vital points of this law are:

Educational Measures

1) If a juvenile under the age of 18 years commits an act punishable under the provisions of the Penal Code and if it is obvious that his delinquency was due to his lack of education, the Juvenile Court takes the necessary tutelary steps without regard to punishment of the crime. In such a case the juvenile may be put under

educational control or he may be sent to a public educational establishment, a boys' home, or to an approved family. Before the Court takes the appropriate educational measures, it must communicate with the "Juvenile Board" or the local "Juvenile Court Aid." If the "Juvenile Board" or the "Juvenile Court Aid" is prepared to take care of the juvenile, the Court may leave further educational measures to these agencies.

2) In public educational establishments the juveniles receive room, board, clothing, and instruction. They shall be prepared in an adequate way for earning a living. They shall be kept as far as possible in the open air and kept occupied with gardening and farming.

They must remain where they are placed as long as required for their education, but in any case are dismissed at the age of 20 years. After a stay of one and one-half years in an educational institution the director may send the juvenile to an approved family or to another institution or to suitable employment; after a stay of three years he may permit him to leave. An honorary visiting committee composed of five persons and nominated by the department of justice sees that the instructions regarding the treatment of the pupils of public educational establishments are carried out, and to that end the committee is required to visit these establishments at least once a month.

Penal Measures

1) Minor persons, i.e., persons under 14 years of age, charged with an action under the provisions of the Penal Code are not capable of guilt.

2) Juveniles charged with an action under the provisions of the Penal Code shall not be sentenced, if, for special reasons, they are not mature enough to comprehend the illegality of their action, or to act in accordance with their comprehension.

3) Otherwise to juveniles charged with an action under the provisions of the Penal Code the following special measures have to be applied:

a) Only jail sentences may be imposed (instead of the more severe prison).

b) Instead of imprisonment for life a period of punishment up to ten years shall be inflicted. (Capital punishment had been abolished in Austria in 1919.)

c) The maximum penalty must be reduced to half that exacted under the Penal Code.

d) Discrimination otherwise connected with punishment under the Penal Code may not be inflicted.

e) Control of juveniles is not to be entrusted to the police.

f) Expulsion from his domicile is prohibited where there is danger of consequent neglect.

g) If imprisonment of a juvenile is necessary and it is impossible to predict with any degree of certainty the length of time required to correct his destructive tendencies, the Court may fix a skeleton punishment within a minimum and a maximum penalty, until the purposes of the punishment are achieved.

h) Instead of exacting a short imprisonment or a fine the Court may leave the correction of the juvenile to the person charged with his education or to the school. In less serious cases the Court may simply admonish the juvenile.

4) If there is a possibility that without detriment to the administration of justice or to the juvenile himself the carrying out of a sentence and the infliction of punishment might be avoided and educational measures substituted, the Court may suspend sentence for a probationary period of from one to five years. The Juvenile Court may give all necessary instruction to protect the juvenile from relapse during his probation. The Court may alter such instructions at any time, may extend the time of probation, or place the juvenile under control. If it becomes obvious during the time of probation that the correction of the juvenile cannot be achieved by the more lenient measures, the suspended sentence may be carried out.

Legal Proceedings

1) A separate Criminal Court has been established for dealing with juvenile delinquents. It functions at the same time as the Court for the protection of wards under 18 years who are not receiving the necessary education.

2) In cases which belong to the competence of the Jury in usual criminal procedure, a Jury Court (consisting of Judges and laymen) is competent with juveniles.

3) In the Jury Courts the presence of one teacher is mandatory, and that of one practicing or retired social worker advisable. If the accused is a girl, a woman shall be a member of the Court.

4) Only judges who excel in pedagogical understanding may be appointed judges in juvenile delinquency matters. It is advisable that they shall have studied psychology, psychiatry or pedagogy and that they have had experience at a Court for the protection of wards.

5) The public prosecutor need not prosecute in cases involving a trifling offense, when the Court for the protection of wards has already taken adequate steps and further measures do not appear necessary.

6) If both adults and juveniles are involved in an action the procedure against the juvenile delinquent must be carried out separately from that against the adults.

7) In the procedure against the juvenile all circumstances which may be useful for the judgment of his bodily and mental

character must be investigated. In any doubtful case the juvenile must be examined by a physician.

8) The Criminal Court shall collaborate with the "Juvenile Board" and with the "Juvenile Court Aid." These agencies may investigate the personal circumstances of the juvenile, check the observance of the instructions given him, and observe the success of these orders.

9) The juvenile must be provided *ex officio* with defense counsel in criminal procedure.

10) Imprisonment on remand is to be avoided as far as possible. Juvenile prisoners upon trial must be kept separate from adults. Solitary confinement must be avoided if possible. During the imprisonment on remand the juvenile has to be kept occupied and his education uninterrupted.

11) The examining magistrate may take part in the session of the Court and in its decision. He must be excluded however if the juvenile, at least at the beginning of the session, opposes his assistance.

12) Time and place of sessions in juvenile matters must be fixed in such a way that the juvenile does not come in contact with the adult defendants.

13) During the session the judge may order the juvenile defendant to leave the session-hall temporarily if any discussions to be conducted might have a bad influence upon him. The discussions conducted in the juvenile's absence need not be communicated unless this is in the best interest of the juvenile.

14) The publicity of the session must be suspended *ex officio* or on motion if required for the good of the defendant. This measure also applies to the publication of the sentence. The juvenile's parents, teacher, guardian, and deputies of the "Juvenile Board" and "Juvenile Court Aid" may assist, however, at the secret sessions.

15) Sentences imposed on juveniles must not be mentioned in certificates of good conduct, if a penalty was for not more than two years and if the juvenile has been blameless for five years following the expiration of that period.

Infliction of Punishment

1) Persons charged with the care of juvenile prisoners should excel in pedagogical understanding. They should be familiar with the principles of psychology, psychiatry, and pedagogy in connection with their occupation.

2) The aim of the punishment is to train the juveniles in self-control, diligence and social attitude.

They shall be trained for earning a living according to their abilities.

They are to be treated with earnestness and kindness.

Their sense of honor must be developed and treated with consideration.

The prisoners receive regular educational instruction.

Their physical development is promoted by gymnastics, sports and games.

3) Juvenile prisoners must be separated from adult prisoners. There may be no contact between the two groups. Imprisonment of more than one month's duration must take place in special establishments or departments for juveniles.

4) Juveniles must serve their imprisonment in community. They are to be kept apart from their fellow prisoners only for their own good or for that of their fellow-prisoners.

In the case of solitary confinement the juvenile has to be kept in a different cell by day and by night. In the open air, for attending divine service, and for classes he may be admitted to the community of his fellow-prisoners. In any case, juveniles kept in solitary confinement shall receive at least two visits daily, such visits lasting at least half an hour each.

5) If there is danger that the infliction of the punishment applied in the general way might harm the juvenile, especially by aggravating his morbid or abnormal state, or if it appears that the aim of the punishment might not be achieved for some reason, then—after the hearing of the testimony of a physician—the Court may order exceptional measures. These exceptional measures may have to do with the form of confinement of such prisoners, their movement in the open air, their education, occupation, or food. Such prisoners have to be kept in a special department of the prison and are under constant control of a physician.
