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NEW VENTURES OF LAW ENFORCEMENT IN ISRAEL

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Criminal courts in many countries have recognised the great judicial value of the information that is collected from professional people for the specific purpose of informing the court about the background and possible prospects for the rehabilitation of criminal offenders. This implies that in modern society many criminal courts find it necessary to make use of individual examinations for the purpose of treating a mass phenomena. It also means that nowadays the judiciary is increasingly confronted with the necessity of having at its disposal a complementary service which is *per se* not of a judicial nature. Social services may, however, be converted into a quasi judicial service while serving a judicial authority, as is the case with the probation service.

The social services themselves may sometimes require court intervention in order to achieve their own objective in a treatment process. This could be the case, for instance, if a probationer is brought back to court for breach of a probation order, and the court decides not to cancel the probation order but rather to adjourn the case for a further trial period after having duly warned the probationer. A court which follows such line is entering, on a legitimate basis, as it were, into a kind of treatment process. We are faced here with a unique situation which has still many potentialities for further development.

This interrelationship of two different disciplines in a judicial setting of a criminal court involves inherently new aspects in law enforcement. In many instances it may involve an adjournment of a case for the purpose of preparing a social investigation at a time when all other factors for completing the case have already been established. To many judges this may seem unfair towards an offender, who is entitled to a speedy trial. Yet, it is submitted that an adjournment seems justified

in view of the manifold hazards involved if a sentence is imposed without such investigation. The need for an investigation is particularly evident in those instances in which the court is considering to impose a prison sentence.

Other aspects to consider are whether the investigation is a pre-hearing or a pre-sentence report, or whether statutory provision has been made for such investigation and whether they are undertaken in special instances only. Is the yardstick for a "serious" case the type of the offense alone, or is it also the condition of the offender, or is it both? Does the law prescribe the contents of the investigation, or is this left to the discretion of the investigator? Is the report which is submitted to the court regarded as part of evidence, and is the investigator part of the judicial service, or does he belong administratively to a different governmental department or to a public agency? There are a host of other questions, and different methods are operating in various countries, depending on their traditions, habits and customs in relation to crime and punishment.

One can observe a certain amount of reluctance on behalf of the judiciary to be guided by another discipline in matters which traditionally belonged entirely in the domain of judges. Social and medical services focus their examinations on social, psychological and crimino-genic factors, *i.e.* matters, on which the judiciary has usually no intimate knowledge, and for which judges may even have a certain distrust. Not only do judges resent being dependent on other services before imposing a sentence, but this resistance is also enhanced by the frequency with which the Court is impelled to adjourn a case for the sole purpose of receiving a social report.

Occasionally a social report will confront the

judge with a conflict situation. The content of the social investigation may be mainly focused on the individual offender, whilst the court has an overall responsibility towards the community itself. On this score a different appreciation of the situation may result. Furthermore, there exists an undercurrent of fear lest the social investigation may indirectly force the judiciary to experiment and to be burdened with social matters. There is no doubt, of course, that it is easier and sometimes more expedient to impose a prison sentence by taking into account mainly the gravity of the offense and the recidivist behaviour patterns.

Matters become much more complicated and they are bound to cause uneasy feelings if the social investigation reveals important personal factors which may have had direct bearing on the commission of the offense. In other words, a social investigation may have an unsettling effect on judges because it introduces a new element, and by doing so, it causes a certain amount of uncertainty. It is submitted, however, that if this does happen it can only be in the interest of justice. If the envisaged prison sentence, for instance, is ultimately imposed notwithstanding the social investigation, it has a wider and sounder basis. If, on the other hand, the investigation has led to reconsideration and perhaps also to a revised view on the envisaged sentence, it has served another worthwhile purpose.

SOME ASPECTS ON PROBATION

Probation was introduced in Israel for juvenile offenders in 1922. It was, however, seldom used and no probation officers were appointed until 1937, when a probation service for juvenile offenders was established. By then full-time probation officers were appointed, whose functions have been defined to be twofold: (a) to obtain information for the court prior to its making any disposal; and (b) to supervise those offenders who have been put on probation by the court. It was only with the enactment of the Probation of Offenders Ordinance of 1944 that provision was made for the first time for probation for adult offenders. A special department for adult probation, however, was established only in 1951. Although this ordinance is still in existence—applying to adult as well as juvenile offenders—several amendments were introduced in recent years which have considerably widened the scope

of the existing ordinance. They are, in effect, as follows:

(1) Probation, which was listed in the Criminal Code Ordinance of 1936 as one of the various kinds of punishments, was deleted as such from the Code. Thus the law established, in a technical sense, that a probation order could no longer be regarded as a means of punishment. It was a logical consequence of the existing provision in the probation of offenders ordinance of 1944, under which probation may be granted following a conviction, or in certain instances the court might issue an order for probation without proceeding to a final conviction.

(2) A probation order may be made only after a written report by a probation officer has been submitted to the court. The filing of such a report seems to be most essential, and it should not be left to the whim of the court. Obviously, if probation is regarded as a means of treatment, there must be some selection of cases. If there is no report by a probation officer, the test for selection is made on the type of the offense, or the impression the offender makes on the court, or the fact of whether or not the offense is a first offense, or the age of the offender, or a combination of some or all of them together. Such factors can by no means be sufficient to guide the court when making a decision on probation. They are based to a large extent on impression, and no treatment method should be chosen by reason thereof. If, on the other hand, an appropriate investigation is made, the chance of error is considerably lessened, which is in the interest of all concerned.

(3) It remains now at the discretion of the court whether or not the report submitted by the probation officer should be shown to the parties concerned. The report is primarily a document for the guidance of the court, and the parties involved may be shown the report only by special permission of the court.

(4) Experience had shown that it is sometimes expedient for a male probation officer to be in charge of a female probationer, and for a female probation officer to be in charge of a male probationer. Such decision may depend on many factors which should not be hampered by legal provisions which may imperil the success of this particular method of treatment. Probationers are no longer dealt with, therefore, by probation officers according to their respective sex, but rather according to their personality make-up and their actual needs.

In the following pages two recently introduced amendments to the Criminal Code are going to be briefly discussed, each one of them constituting, in fact, a new venture of law enforcement in Israel. It may not be widely known that there is not yet a uniform and accomplished Israeli law in existence, and no written Constitution has yet been adopted by the Israeli Legislature. Indeed, the laws which have been in existence here have been as heterogenous and conglomerate as the population itself. As regards the regulation and punishment of criminal offenses, there are now three main sources in existence: (a) The Criminal Code Ordinance of 1936, introduced by the British Mandatory Government and largely based on the criminal law of England; (b) Amendments to different ordinances as introduced by the Israeli legislators; and (c) Laws of the State of Israel as passed by the Knesset (Parliament of Israel).

CONDITIONAL PRISON SENTENCE

Section 18 of the Criminal Law Amendment (Methods of Punishment) Law, 5714-1954, provides for a conditional prison sentence. Until then this method of disposal was not available to the courts in Israel. This section provides: (a) that a Court which may impose a prison sentence may also impose a conditional prison sentence; (b) an offender upon whom a conditional prison sentence was imposed will not serve this sentence unless he is convicted again during a specified period of not less than one year and not more than three years of an offense which has to be mentioned when sentence is passed; and (c) the court shall not impose a conditional prison sentence in case a prison sentence is imposed on the additional offense.

The procedure to be followed has been that whenever a conditional prison sentence was passed, its activation was made conditional upon the conviction of the offender for a further offense of the type involved in the sentence. The immediate result of this law was a considerable decrease in the number of prison sentences proper and the imposition of an increasing number of conditional prison sentences instead. But it also became evident that the mere fact that the prison sentence was conditional resulted in heavier sentences than usually being imposed. This is an interesting feature in the field of sentencing policy. In other words, it has been our experience in Israel that there is often a greater amount of

leniency on behalf of the courts in instances in which an immediate prison sentence is imposed, and there is a more severe attitude towards an offender when the prison sentence is made conditional. This is apparently based upon the assumption that if the offender forfeits the chance he was given, he should carry the whole burden of the sentence. However, after several years of experience it was felt that changes in this law are desirable in order to enhance the effectiveness of this method. The provisions of the law with regard to conditional prison sentences were therefore amended and enlarged by a law which came into force on June 13, 1963. The most important new features in this law are the following:

(a) If the court imposes a conditional prison sentence, it may also make a probation order under the Probation of Offenders Ordinance of 1944. Such an order can be made for the whole period of the condition or of part of it.

(b) When a court imposes a prison sentence for an additional offense, it may not order that the whole of such punishment shall be on condition.

(c) When a person who has been sentenced to conditional imprisonment is convicted of an additional offense, the court must order the activation of the conditional sentence. Such an order must be made by the court which convicted the accused of the additional offense or by another judge of that court.

(d) A court which convicts the accused of an additional offense, but does not impose a prison sentence for that offense may order, on grounds which have to be stated in writing, an extension of the conditional period for a further period of not more than two years, if the court is satisfied that under the circumstances of the case it would not be advisable to activate the conditional prison sentence forthwith. This section can be made use of only in a case when there is a first conviction for an additional offense.

On the face of it, a conditional prison sentence can be an important treatment measure which comprises two relevant features: it provides the offender with a last chance to keep out of prison, and it is a means of prevention par excellence. This measure pre-supposes, among others, considerable maturity on the part of the offender. The offender is expected, after having received a conditional prison sentence, to know how to behave and also how to solve his problems—in relation to himself and to society. It is ques-

tionable, however, whether the usual delinquent has sufficient foresight and will-power to restrain himself and not to commit another offense once he has received a conditional prison sentence. It is therefore not surprising to find a high percentage of conditional prison sentences which have to be activated. Consequently, it seems imperative to make use of this measure very selectively, because otherwise it can easily defeat its purpose. In light of these considerations it was realised in Israel that in order to be able to help the delinquent in the process of rehabilitation, some amendments in the existing law were desirable, and have been enacted.

It is now possible, therefore, to attach to a conditional prison sentence a probation order. It means in practice that the offender is not left on his own if he is genuinely trying to make good. He is being given all possible assistance to avoid forfeiture, as it were, of the privilege of the conditional prison sentence. Furthermore, it is now possible, in special cases, to extend for another period of up to two years the original period of the conditional sentence. An automatic activation of such sentence is thus being avoided. Previously, such activation was obligatory even in a case when the original conditional sentence was made on a severe offense, and the subsequent violation was of a minor character but it fell within the condition as stipulated in the original sentence. This sometimes led to rather absurd situations, and caused ill feelings, particularly among judges who had to enforce the conditional sentence. It should be pointed out, however, that the innovations take into account in particular the shortcomings of offenders with delinquent tendencies who can nevertheless benefit by supportive treatment if they are given sufficient time.

MANDATORY SOCIAL INVESTIGATION

Section 19 of the Criminal Law Amendment 5714-1954, (Methods of Punishment) provided for an additional important change in the law. This change relates to the pre-sentence report which has to be submitted to the court by a probation officer, and which is mandatory under certain circumstances. This section provided, in its original form that, when a person is convicted the court may, before imposing sentence, call for a written report by a probation officer containing certain specified particulars, but that the court might not impose a sentence of imprisonment,

other than conditional imprisonment, for a period exceeding one year until it has received such a report. The particulars which according to the law are to be included in such report are: (a) the past record of the accused; (b) the family status of the accused with full particulars, as far as possible, as to his parents, spouse, children, brothers and sisters; (c) the economic status of the accused; (d) the state of health of the accused and of the members of his family; and (e) additional special circumstances, if any, which brought about the commission of the offense.

It was also stated in this section that the probation officer may include in his report a recommendation to the court as to the nature of the punishment which has, in his opinion, a chance of reforming the offender. Thus for the first time the probation officer was required by law to make recommendations to the court in relation to the nature of a sentence. It was not suggested, however, that these recommendations should be binding on the court.

It was provided that this provision of section 19 should be enforced on the date fixed by the Minister of Justice by proclamation in the official Gazette, for it was impossible to give it immediate effect owing to the lack of sufficient probation officers to supply courts with the required report. Yet, even without the proper implementation of this provision there were a number of judges, who, from time to time, called for a probation officer's report, if they thought it was in the interest of justice. It was felt, however, that unless a social investigation is made mandatory by law, such method has no great chance to be generally accepted by the judiciary. Unless such standard is set, it may mean, great disparity in law enforcement. In other words, offenders who are tried in a court where a social report is required stand a better chance for individualized treatment from the mere fact that more factors are taken into account as compared to offenders tried in courts where reports are usually not requested.

At the same time it became obvious that it would be impractical presently, to apply this principle to all offenders who are candidates for a prison sentence of over a year duration. Some limitations had to be made in order to commence realistically with this innovation in law enforcement. Among the various possibilities, selection was made in relation to length of the prison sen-

tence and in relation to a particular age group concerned. It is no coincidence that the group of those under 21 years was found to be the most eligible for this purpose. More than seven years elapsed until this section was put into force—December 1, 1961—by special proclamation. The stipulation made then was that a written report by a probation officer is obligatory in instances in which the accused person had not reached the age of 21 years on the date of the commission of the offense, and it applied only to offenses for which the prescribed punishment exceeded six months imprisonment.

There was a further amendment, which became effective on February 1, 1964, stipulating that no report by a probation officer is necessary if the accused person is serving a sentence of imprisonment for another offense; or to offenses for which the prescribed punishment is a mandatory sentence of life imprisonment; or in respect to whom a report had been submitted within 12 months preceding the sentence and a copy thereof was submitted to the court; or in relation to certain specified security offenses.

The object of the latest proclamation is mainly to avoid undue and unnecessary delay in the administration of justice. It also had, however, another effect in that there exists no longer a stipulation regarding the length of the prescribed prison sentence.

In passing it should be mentioned that as far as juvenile courts are concerned the use of pre-

sentence reports by probation officers is no novelty, for they have been used there as a matter of routine for many years. It can safely be assumed that, in this respect, as also in other respects, procedures in the juvenile court and treatment methods as used thereby, are gradually being adopted in courts trying adults.

Some interesting figures are already available since this law has come into force. These figures reveal that an increasing number of investigations are requested by courts even in instances in which the submission of a report is not mandatory, *i.e.*, when offender is above the age of 21 years. Furthermore, many more offenders are now put on probation.

During 1961, *i.e.*, prior to the promulgation of section 19, the criminal courts (juvenile courts not included) requested a social investigation in relation to 870 offenders. By the end of 1964 this figure had arisen to 2225 offenders. In 1961, 686 adult offenders were put on probation; by the end of 1964 the number increased to 1486. It can safely be assumed that this tendency is going to be a constant one. It goes without saying that the probation service has also increased considerably.

One gains the impression that these innovations are bound to lead to a more satisfactory and a more unified system in law enforcement. It will ultimately also lead to a sounder appreciation of the limitations and effectiveness social services can make in the field of law enforcement.