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SHORT-TERM IMPRISONMENT

GENERAL REPORT PREPARED BY THE SECRETARIAT

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CHAPTER I

INTRODUCTION

Object and study outline

1. The problem of short-term imprisonment has been placed on the agenda of the London Congress on the recommendation of the Ad Hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders, which met in New York in May 1958 and worked on the basis of the studies made by the former International Penal and Penitentiary Commission (I.P.P.C.).

2. On the basis of the proposals made earlier by an ad hoc advisory committee of experts who met in Geneva in 1955, the Secretariat prepared a study outline which was worded as follows:

(a) The application and effects of short-term imprisonment (the law and the administrative practices in force; a statistical study with regard both to the type of offenders sentenced to short-term imprisonment and to the use of other penalties; if short-term imprisonment of offenders is considered effective for their social rehabilitation, an explanation of the particular factors which make it so should be given).

(b) Alternatives to short terms of imprisonment (a description of existing alternatives; the number and types of offenders for whom they are used and the effect they have on the use of short-term imprisonment in the system; alternatives proposed for the future, if any).

Should short-term imprisonment and the alternatives to it not be applied universally in your country, please indicate where they are used.

Documentary material

3. The outline served for collecting data from various regions of the world, through the Secretariat's social defence correspondents. The following documents have been received:

Chile	Penas privativas de corta duración.
Republic of China	Information on short-term imprisonment.
Federation of Malaya	Information on short-term imprisonment.

India	Report on short-term imprisonment.
	Short Sentences and Alternatives Suggested (Chapter IX of the Report of the U.P. Jail Industries Inquiry Committee, Lucknow, Superintendent, Printing and Stationery, Uttar Pradesh (India), 1956).
Japan	Report on short-term imprisonment.
	The Present and Future of the Penal Treatment in Japan, by Yoshinobu Watanabe, Director of the Correction Bureau, Ministry of Justice, Tokyo (Chapter V.1: Short-term deprivation of liberty). Seminar of the International Penal and Penitentiary Foundation, Strasbourg, 1959, Vol.I.
Morocco	Note sur l'emprisonnement de court durée
New Zealand	Report on short-term imprisonment.
Union of South Africa	Report on short-term imprisonment.
United Kingdom	Papers on alternatives to short-term imprisonment submitted by the U.K. Colonial Office concerning certain Territories in Africa:
	The Use of the Probation System (Kenya, Uganda, Tanganyika, Zanzibar, Sierra Leone, Northern Region of Nigeria).
	Extra-Mural Labour in Tanganyika.
United States of America	Report on short-term imprisonment.
	The Local County Jail. Speech by Commissioner Anna M. Kross on 1 September 1959 before the National Jail Association, at the 89th Annual Congress of Correction of the American Correctional Association, Miami, Florida.
	Prisons and Correctional Alternatives, by Sanford Bates (in Prisons and Crime Prevention in Missouri and the Nation, Proceedings of the Washington University Conference, St. Louis, Missouri, 5-6 December 1958).

4. In the case of Europe, a somewhat more detailed outline was used as a basis since account was also taken of certain suggestions made in 1958 by the United Nations European Consultative Group on the Prevention of Crime and the Treatment of offenders for the study of short prison sentences passed on young adults and delinquent alcoholics. The 1959 survey carried out through the Secretariat's European correspondents brought in reports from fourteen countries, which were

referred to a European working group,[1] convened in Strasbourg from 31 August to 4 September 1959 at the invitation of the Council of Europe and with its co-operation. The six countries designated by the European Consultative Group to take part were Belgium, France, the Federal Republic of Germany, Sweden, the United Kingdom and Yugoslavia. The World Health Organization and many non-Governmental organizations likewise took part in the discussions. The conclusions reached by the Working Group will be published in the United Nations International Review of Criminal Policy, No. 15.

5. The reports and the conclusions of the Seminar on modern penal treatment, held at Strasbourg from 7 to 12 September 1959 by the International Penal and Penitentiary Foundation (I.P.P.F.) have also been used in so far as they relate to the problem of short sentences. This applies in particular to the following three reports, published in the Seminar's first volume:

Experiment in individualization of treatment in the case of short sentences, by Charles Germain, avocat général at the Court of Cassation, Paris, (pp.183-188);

Observations on short sentences of deprivation of liberty, by Karl Peters, Professor of Criminal Law at the University of Münster, Westphalia, (pp. 189-205);

Penal Treatment: General Report, by Jean Dupréel, Director-General of the Prison Administration, Brussels (pp. 454-466, particularly Section V, on short sentences). [2]

References

6. In the text of the report which follows, references to the documents listed above will be given simply as "op. cit., p. ...", and bibliographical indications will only be given, as and when necessary, in the case of a small number of works of a more general character.

1/ The series of European reports covered the following countries:

No. 1 Belgium	No. 8 Federal Republic of Germany
No. 2 Yugoslavia	No. 9 Norway
No. 3 Sweden	No. 10 Spain
No. 4 United Kingdom	Nos. 11 and 12 Italy
No. 5 Greece	No. 13 Denmark
No. 6 Finland	No. 14 France
No. 7 Netherlands	No. 15 Israel

2/ See Seminar of the International Penal and Penitentiray Foundation, Strasbourg, 1959. Fascicules I and II.

CHAPTER II

THE CONCEPT OF SHORT-TERM IMPRISONMENT

Definition in terms of duration

7. The question of the treatment of prisoners will obviously take on a different aspect according to whether the term of imprisonment to be served is three months, six months or one year. It would therefore be desirable to define the meaning of "short-term imprisonment".

8. The definition of the short sentence according to maximum duration is rarely supplied by the law itself. The Indian Penal Code makes the maximum duration of penal servitude for less serious offences six months, and the same limit is found in special laws and in local legislation. The laws of some other countries, such as Israel, follow the Indian example and prescribe as a general rule only the maximum sentence carried by a given offence.

9. The position is different under the legal systems of the European and the Latin type; here the criminal codes generally indicate the minimum and the maximum terms of the various types of penalty involving deprivation of liberty. The outer limits of the various sentences laid down in this way for the guidance of judges always overlap more or less, so that it is only rarely that a specific kind of sentence may be described as being exclusively "short-term".

10. From the legislative provisions and regulations governing administration of the various types of penalties (detention, imprisonment, rigorous imprisonment, etc.) it is sometimes possible to draw conclusions as to what is regarded as a short sentence by the law or by the prison administration (cf. France, Netherlands, Union of South Africa, etc.).

11. In the resolutions which it adopted in 1946-48,[1/] the International Penal and Penitentiary Commission was concerned with short sentences proper, i.e. those not exceeding three months. The same limit occurs in the criminal statistics of many countries and it constitutes the maximum penalty of deprivation of liberty applied to petty offences in certain countries, either under the particular penal code (e.g. in Switzerland) or under special legislation (e.g., in Norway). A typical short-term penalty is detention (Haft) under the German Penal Code; it has

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1/ See Recueil de documents en matière pénale et pénitentiaire (Bulletin of the International Penal and Penitentiary Commission), vol. XIII, No.3/4, November 1948, pp. 341-343.

a maximum duration of six weeks, or in exceptional cases three months. In China a sentence of penal detention with hard labour may be as long as four months; in addition there is ordinary detention of one day to two months. In Japan the maximum term of penal detention is twenty-nine days, but the number of prisoners in that category is very small. In Latin American countries the maximum duration of detention (arresto) varies considerably. In Cuba it may last up to one year; in Chile up to sixty days; in Guatemala up to one year; in Argentina up to six months, and in Uruguay up to two years.

12. In Denmark five months is the term used as criterion in determining where the sentence is to be served, whereas in Belgium, the Netherlands and the United Kingdom the limit is three months.

13. Most countries or territories included in the survey seem to regard any sentence of less than six months as "short-term": Belgium, the Federation of Malaya, Finland, Greece, India, Japan, Kenya, the Netherlands, New Zealand, Norway, Tanganyika, Uganda, the Union of South Africa, the United Kingdom, certain states of the United States (e.g., Massachusetts). More often than not, there is a secondary dividing line drawn at three months, by legislation, practice or statistics.

14. The limit which emerges from the criminal statistics of the Federal Republic of Germany is nine months.

15. While taking into account the six months limit or other subdivisions, many countries such as Chile and other countries of Latin America, China, France, Israel, Italy and Spain, and to some extent the United States of America, appear also to consider that all sentences not exceeding one year should be described as "short-term". Article 717 of the French Code of Criminal Procedure crystallizes that distinction by providing that central prisons shall house only convicted prisoners having a sentence of more than one year still to serve; other persons sentenced to correctional imprisonment (i.e. to sentences of less than one year) must therefore be detained in a maison de correction. In one of the Italian reports and in the Chilean report an interesting parallel is drawn between the one-year limit in question and the possibility under the laws of certain countries, by means of suspended sentences (sursis), of avoiding the enforcement of a considerable number of sentences not exceeding one year, in particular those passed on first offenders.[2/] A further argument, mentioned in several of the reports is that re-educational treatment cannot be effectively carried out in less than one year.

2/ But see paragraph 326 below

Other criteria: differentiation according to the type of offence, the kind of sentence and the prison régime

16. As is already apparent from the foregoing, in most countries penalties are classified not so much according to the duration of each kind of sentence as by the legal character of the offence they are designed to punish. In principle, offences are divided as a rule into three or into two categories: major offences (crimes) - offences of medium gravity (délits) - and minor offences (contraventions) or into major offences (délits) and minor offences (contraventions), subject to a great diversity in the legal terminology used by the various penal systems.

17. Leaving aside the few instances of a stock short sentence already mentioned, the kind of penalty involving deprivation of liberty cannot be the decisive factor in defining the short-term imprisonment, since the different sentences and the minimum and maximum terms prescribed by law nearly always overlap partly, and in some cases very considerably. This was pointed out by the author of one of the Italian reports with regard to his country, and also by the United States correspondent. To take an example, in Chile, correctional offences of medium gravity and ordinary correctional offences are punishable by sentences of imprisonment of sixty-one days to five years, whereas in Brazil "reclusion" carries a maximum term of one year. Even "reclusion" or rigorous imprisonment in the European sense of the word, which generally signifies a sentence of deprivation of liberty of a kind more harsh than ordinary imprisonment, may have a very low legal minimum duration: in Sweden two months or in Italy fifteen days. In Japan the minimum term of imprisonment with or without forced labour is one month except in the case of certain serious crimes. On the other hand, the length of ordinary detention (gaol sentence or police lock-up), the least rigorous form of deprivation of liberty, may have a high maximum: two years in Denmark, and in Italy three years or even five years, if there are aggravating circumstances.

18. In France and in other countries the difference between short-term and long-term sentences is essentially a difference of prison administration. Moreover, the institution where the sentence is served is frequently the same for both categories of sentence, in which case any possible differences between them laid down by law or regulation become purely academic, as one of the authors of the Italian reports points out.

19. However, as the French correspondents observe, administrative practice has had to establish a distinction based on considerations other than mere duration,

because prisoners serving short sentences are not, as a general rule, of the same type as those serving long sentences, and consequently require different treatment. The great practical difficulties in the way of effective treatment in nearly all conntries are well known. Moreover, in countries like Denmark, for instance, the trend is towards a type of treatment which is not different from that applied for longer sentences but approximates it.3/

20. The gravity of the problem is recognized everywhere and - again to quote the French report - it is a penal as well as a penitentiary problem; it requires not so much the reorganization of the internal regime as a solution in the shape of a genuine substitute, to be provided by penal law, since the effective enforcement of short sentences is closely related to the question of alternatives.

The purely conventional character of the concept of short-term imprisonment

21. One provisional conclusion is inescapable: the concept of short sentence involving deprivation of liberty varies greatly from country to country as regards both duration and the types of sentence and the offence involved. "Short-term imprisonment" is not a precise legal concept. Legislation being so varied, the only point that can legitimately be raised is a more precise definition of the short sentence from the point of view of duration. The maximum duration which seems to be accepted for various reasons by a large number of countries is six months. In Latin American countries and in Spain, on the other hand, there is a tendency to regard all sentences not exceeding one year as short sentences.

22. The United Nations Working Group convened at Strasbourg in 1959 adopted the following conclusions on this subject (Conclusions 1 and 2):

> "Short-term imprisonment is not generally defined by law or regulations, but in the practice of courts and prison authorities in most of the countries consulted a short sentence is considered to be one of not more than six months.
>
> "In taking this as the limit, the Group has borne in mind that the prisoner often spends less time in the penal establishment than was stipulated in the sentence, either because he has already been held for some time on remand, or has been sent to a classification centre or is granted remission of part of his sentence."

3/ See paragraphs 181, 193 and 209.

23. Mr. Jean Dupréel, in his capacity of rapporteur to the Strasbourg Group, undertook an essential part of the work, namely the summarizing and formulating of the findings of the discussions. It was he, again, who in his report on penal treatment for the Seminar of the International Penal and Penitentiary Commission held in Strasbourg at the same time, defined the various meanings of the expression "short sentence": Everybody seems to agree that a sentence of less than three months must in any case be regarded as a short one, that a sentence of three to six months may also be regarded as a short one, and that a sentence of more than six months involves the problems connected with sentences of medium duration. This, however - he goes on - by no means excludes the fact that real penal treatment must be applied continuously for at least nine months.4/

4/ Op. cit. p. 460.

CHAPTER III

INDIVIDUALIZATION OF THE PENALTY BY THE JUDGE; LEGISLATIVE AND JUDICIAL REFORMS RELATING TO SHORT-TERM IMPRISONMENT

Wide discretionary powers given to the judge

24. Some concern is felt about the almost universal and steadily increasing use of short-term imprisonment. Through their discretionary powers, judges are not only inclined to impose the shortest terms of imprisonment permitted by law; they also admit many grounds for the reduction of sentences, especially extenuating circumstances. This is the case in such countries as Chile, Greece, Italy and Spain. The reference by the Italian State Counsel General to the "debasement of penal sentences" and the "minimum-term complex", mentioned in one of the reports, would probably apply in many other countries too. In Italy and elsewhere, it is exclusively in the courts that the practice of short prison terms is crystallized, despite the high maximum terms permitted by law. Legislators have thought fit to give the judge power to adapt the sentence to the individual case; on condition that he state the reasons for his decision, the judge may, within the maximum and minimum terms provided for each offence and for each type of penalty, impose the penalty he thinks best, in the light of all extenuating and aggravating circumstances.

25. In Chile, on the grounds of extenuating circumstances, short-term imprisonment is imposed in a very large number of cases, indeed in practically all cases, even for offences punishable be severer penalties. Short sentences are often imposed for offences punishable by imprisonment for terms of 541 days to three years. If there is more than one circrumstance lessening liability are present, the judge may reduce the penalty by one grade in the scale of penalties, consequently, the sentence may be sixty-one, 100, 200 or 300 days, i.e. less than one year. Similarly, where there is a single extenuating circumstance, the minimum term within the particular grade must then be imposed. Even if there are no extenuating circumstances, the judge may nonetheless pronounce sentence for any term whatsoever within the limits set by law. Thus, on the basis of the above-mentioned rules, prison sentences of considerably less than one year are often imposed for offences punishable by imprisonment for sixty-one to 541 days (petty thefts, bodily injury, damage, etc., all of which occur frequently) even in the event of a further offence. Experience shows that the courts tend to impose the minimum penalty in these cases.

26. This sort of clemency on the part of the courts is found in most countries; although the law provides a very broad range from which judges may select the penalty for each particular case, in practice the maximum penalties are rarely applied. In Denmark, for instance, simple detention may be imposed for a term ranging from seven days to two years; but actually it rarely exceeds two to three months, and in 1955 the average term for prisoners sentenced to simple detention was fifteen days.

27. In practice, therefore, the authority of the judge to adapt the sentence to the individual case is the most frequent cause of short-term imprisonment.

28. In the United States of America the length of prison terms varies greatly, not only from one State or part of the country to another, but even in identical cases and under one and the same law, according to Mr. James V. Bennett, Director of the Federal Bureau of Prisons. But on the whole, the frequency of short-term imprisonment seems to be as serious a problem in the United States as in most other countries.

29. One or two countries seem recently to be getting away from this trend towards minimum penalties; in Japan, for example, the courts deliberately avoid short prison sentences, especially for offences against property.

30. A trend towards longer penalties has been noticeable in the United Kingdom since the war. At the same time, in order to reduce the number of prison sentences, especially short-term sentences, the British courts have been required since 1958 to state the reason for imposing imprisonment, not only on minors, but also on all adult first offenders; thus, it must now be established in each individual case that no other method of dealing with the offender is appropriate.

31. The Strasbourg Working Group (conclusion 25) thought that legislation was desirable in the form of a measure suggested by English law, "namely that courts should be required, in the case of first offenders, to specify their reasons for sentencing them to unconditional terms of imprisonment and to explain why other measures were not suitable".

Proposals aimed at establishing a relatively high legal minimum for all prison sentences or at modifying the scale of penalties

32. In view of this trend in the courts towards short and very short penalties, it has been suggested that all short-term imprisonment be eliminated. For example, the Chilean delegation to the Second Latin American Congress of Criminology

(Santiago 1941) proposed the elimination of short-term imprisonment and its replacement by conditional sentences and other measures. However, a member of the Brazilian delegation maintained that to reject short-term imprisonment as a matter of principle was going much too far; in his opinion, only very short penalties of a few days' duration were objectionable. In India, many prison reform committees from 1920 on have been advocating the abolition of short-term imprisonment, and the 1957 conference of prison officials (All-India Conference of Correctional Officers) gave special attention to the question of suitable alternatives for short-term penalties.

33. According to one of the Italian reports, the problem could be solved by making the minimum term of imprisonment six months and substituting other penalties or measures, of which several were suggested for prison sentences of less than six months. Once the severity of the prison sentence was re-established in this way, the raising of the general minimum to six months would be counterbalanced by use of the suspended sentence and other measures.

34. Other penologists do not go as far. In Sweden and Denmark, the current law provides that the absolute minimum term of imprisonment must not be less than one month. In Norway, the minimum is twenty-one days. Some other countries set the minimum at seven days. The Swedish delegate to the Strasbourg Working Group said that the legal one-month minimum seemed to have worked satisfactorily; the Swedish courts at present often impose sentences of six weeks.

35. A committee on reforms appointed in 1956 in the Union of South Africa took up inter alia the problem of short-term imprisonment, and gave some thought to the Swedish principle that a definite term of imprisonment should not be less than one month, but dropped the idea, as it was not supported by the judiciary. However, today very short-term imprisonment is applied in the Union of South Africa only as a last resort.

36. With the object of securing a reduction in the number of very short sentences through legislative measures, the Working Group at Strasbourg took the view in conclusion 26 that "the law should never prescribe a sentence of less than seven days and that courts should as a general rule avoid imposing sentences of less than one month".

37. In addition, reference was made to a proposal made by the Benelux Prison Commission and advocated by the Netherlands correspondent in his report, namely to eliminate some medium-term sentences, since the useful effects of short sentences should be achieved within three months, while effective prison treatment required

at least nine months of imprisonment. This is the point of conclusion 27 adopted by the Strasbourg Working Group which notes the suggestion that "sentences should either be for periods of one week to three months or for nine months and more. A short sentence ought to produce results in less than three months, whereas any genuine treatment of prisoners requires their presence in a special institution for at least six months (here account must be taken of the time a prisoner is held on remand or under observation, and the possibility of a remission of sentence). It will be noted that such a system need not prevent the courts from imposing sentences of between three and nine months, provided they were suspended sentences, so that in the event of recidivism a cumulative sentence of more than nine months could be imposed."

Suppression of short-term imprisonment for technical or administrative offences

38. The Belgian correspondents suggest that purely technical or administrative offences that do not contravene public morality should be punished otherwise than by short-term prison sentences.[1/] The Yugoslav correspondent likewise feels that these offences are a separate problem. In German law, purely technical violations are punishable by a police fine, which does not have the character of a criminal penalty and is clearly distinguishable from the fines imposed under the Penal Code. Some other countries also make this distinction between the many purely technical violations arising under contemporary laws and regulations and offences against the penal code as such.

39. Mr. Karl Peters[2/] deplores the legislative and judicial encroachment of modern criminal law upon the domain of minor offences and the growing tendency to impose criminal penalties for civil and administrative offences (the concept of negligence, the need to do away with quasi-offences, etc.). In practice, this question mainly concerns violations of the motor vehicle laws, which constitute the bulk of short prison sentences and fines as well. The problem cannot be solved by penology alone; it will have to be dealt with by legislation.

1/ See also Jean Dupréel, op. cit., page 447.

2/ Op. cit., pages 193-194.

Other legislative and judicial reforms

40. The Strasbourg Working Group concluded that, to reduce the excessive number of short sentences, it was necessary to enlarge the existing possibilities for the courts of applying other measures and that, correspondingly, courts should be encouraged to make use of such substitute measures (conclusions 12 and 13). Accordingly, everything should be done at the judicial level to encourage judges to make as much use as possible of their discretionary powers and replace short-term imprisonment by such measures as fines or suspended sentences[3/] or the other measures dealt with in chapter IX below.

3/ Jean Dupréel, op. cit., page 447.

CHAPTER IV

THE FREQUENCY OF SHORT-TERM IMPRISONMENT

41. To get an idea of the incidence of short-term imprisonment in relation to the total number of convictions, we must first ascertain the proportion of cases settled by fines.

Frequency of fining

42. Replies on this point, from the European countries especially, refer at times only to offences of medium gravity (correctional offences) and at other times to correctional and petty offences, while some replies do not give particulars; consequently, the figures and percentages would not seem to be comparable from one country to another.

43. Subject to this reservation, fines would appear to be the commonestcnest form of penalty in Sweden, where in 1956 they represented more than 95 per cent (318,000) of the penalties imposed, while the number of penalties involving deprivation of liberty was very small (9,400). In Finland in the same year, 95.3 per cent of all sentences consisted of fines.

44. In Norway approximately 90 per cent of the violations are settled out of court (by agreement to pay fines imposed by the police), while fines are imposed in nearly 10 per cent of convictions for correctional offences. The settlement of fines out of court by payment to the police, particularly in respect of violations of the motor vehicle laws, plays a significant part in several other countries too; in the Union of South Africa, for example,"admission of guilt" may be paid by a first offender. However, Norway was the only country which sent in figures relating to this procedure.

45. In Denmark in 1955 fines were imposed (apparently for correctional offences only) in 18 per cent of the convictions. In the United Kingdom in 1954 93 per cent of those found guilty of non-indictable offences and about a third of those found guilty of offences of a more serious nature, the so-called indictable offences, were fined. In the Federal Republic of Germany in 1957, fines represented 67 per cent of all sentences, and in the Netherlands in 1956 62 per cent. In France fines were approximately 55 per cent of all sentences imposed for correctional offences in 1955, and in 1956 in Israel they were 55 per cent (or 84 per cent if sentences to either a fine or a term of imprisonment

are included). In Spain fines in 1955 amounted to 12 per cent of sentences for correctional and petty offences.

46. It is estimated that in the United States at least three-quarters of all sentences are fines. In the absence of sufficiently accurate general statistical data it is reported, for example, that in 1955 in the lower courts of Massachusetts, 106,824 persons were sentenced to fines, 16,638 to probation and 8,141 to imprisonment. Of these offences, the majority (109,738) represented violations of motor vehicle laws, and this group also accounted for most of the fines (89,264). Of those convicted of drunkenness, 4,282 were placed on probation, 4,621 were given fines only, and 5,634 were sentenced to short-term imprisonment.

47. In New Zealand in 1957, almost one-quarter of the male offenders who appeared in Magistrates' Courts were fined (21,659 out of a total of 83,187), as were also nearly three-quarters of the women who appeared before these Courts (3,618 out of 4,797).[1/] The majority of the above-mentioned 21,659 cases involving fines dealt with traffic offences.

48. In China fines which could be converted into hard labour within a period of not more than six months were imposed in 547 of the 8,547 sentences pronounced during a recent year.

Frequency of prison sentences up to six months

49. A distinction must be made between the frequency of such sentences in relation to all major penalties imposed (whether deprivative of liberty or not) and frequency in relation to all sentences imposing the various penalties deprivative of liberty; unconditional sentences and suspended sentences must also be distinguished. In addition, there is the question of the frequency of recidivism. Here again, some replies refer to offences taken as a whole, and others refer only to correctional offences and not to petty offences.

50. To begin with countries where fining is common prison sentences are rare, Sweden reports that in 1956, 600 (approximately 15 per cent) of the offenders sentenced to imprisonment at hard labour and 4,675 (approximately 85 per cent) of the offenders sentenced to simple imprisonment received sentences of three months

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1/ These totals appear to represent all the cases heard in the courts concerned, and not the number of sentences imposed.

or less; almost 75 per cent of the latter were sentenced for driving while under the influence of alcohol or other traffic offences.

51. In Finland in 1956, 3,558 or 2.2 per cent of all offenders convicted were sentenced to imprisonment for less than six months, and the average term of imprisonment has noticeably decreased; persons who receive a sentence shorter than six months now represent almost 60 per cent of all sentences, as against 52 per cent in 1952.

52. In Norway in 1957 there were 1,671 prison sentences of five months or less for correctional offences, out of a total of 5,035 sentences, including 2,537 prison sentences.

53. In Denmark, out of a total of 7,220 men convicted in 1955, 5,328 were sentenced to ordinary imprisonment, including about 2,200 who were sentenced to unconditional imprisonment for six months or less, and 486 who received unconditional sentences of simple detention. Unconditional sentences (simple detention and imprisonment) represented 52.5 per cent of the cases, and unconditional imprisonment of six months or less 30.6 per cent of the cases.

54. In the United Kingdom out of a total of 106,371 persons found guilty of indictable offences during 1954, 18,617 were sentenced to imprisonment; of these 9,869, representing 9.3 per cent of those found guilty of indictable offences, received sentences of six month or less. Of those found guilty of non-indictable offences, 1.3 per cent were sentenced to imprisonment (with or without the option of a fine) for six months or less. Of the 28,838 prisoners received on conviction, 19,957 (69.2 per cent) had sentences of six months or less.

55. In the Federal Republic of Germany in 1957, sentences to imprisonment in the technical sense (excluding rigorous imprisonment) amounted to 32 per cent of all convictions. Approximately 71 per cent of the prison sentences were for terms of three months or less; 23 per cent were for three to nine months. Sentences to very short-term detention (Arrest) were very few (.09 per cent in 1957).

56. In the Netherlands, in the years 1953-1956 imprisonment (gevangenisstraf) was imposed in about one-third of all sentences; this penalty has become substantially more frequent in recent years. Sentences for terms of less than six months made up over two-thirds of all prison sentences imposed.

57. In Belgium, terms of imprisonment of six months or less represented 80 per cent of the unconditional prison sentences and 90 per cent of the suspended prison sentences imposed in 1955.

58. In Italy, sentences of up to six months and up to one year represented respectively 60 per cent and 80 per cent of all prison terms, while in Spain sentences of imprisonment for six months or less constituted one-half of all sentences.

59. In Switzerland sentences of imprisonment for six months or less represented more than 85 per cent of all prison sentences imposed in 1955 and sentences of less than a month represented 46.7 per cent; more than half were suspended sentences.[2/]

60. In Yugoslavia about 80 per cent of all prison sentences involve terms of less than six months, and more than 90 per cent involve terms of one year or less.

61. In France, of the 77,000 persons convicted of correctional offences in 1955, 73,000 were sentenced to imprisonment for a maximum term of one year, including 29,000 who received suspended sentences. The number of persons sentenced to terms of less than one year who are dealt with by the prisons administration is, on the average, about five times greater than the number sentenced to longer terms.[3/]

62. In Morocco the number of prisoners serving sentences of less than one year on 1 January 1956 was 1,264, or about one-third of all prisoners; the number serving longer sentences was 2,590.

63. In Israel the introduction of the suspended sentence has led to a substantial decrease in prison sentences since 1954, despite the growth in population; sentences of imprisonment amounted to 1,865 in 1956, as compared with 4,955 in 1953. Prison sentences represent less than 5 per cent of all penalties imposed, and sentences to imprisonment for less than one year are more than 88 per cent of all sentences.

64. In Japan, short sentences are likewise avoided as much as possible, and the number of such sentences is actually fairly small.[4/] In 1957, apart from 136 persons sentenced to detention for less than thirty days, 3,553 persons were sentenced to imprisonment with forced labour for terms of less than six months for offences against the Penal Code; these represented 4 per cent of the total number of persons in this category (88,225). The number of persons sentenced to imprisonment was 865, 412 (47 per cent) of them being sentenced to terms of less

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2/ Karl Peters, op. cit., pages 191-192 (quoted by Hans Schultz).

3/ Charles Germain, op. cit., p. 184.

4/ Yoshinobu Watanabe, op. cit., Chap. V. See also the communication sent by this correspondent to the United Nations Secretariat, containing inter alia the figures for 1956.

than six months. During the same year a total of 5,745 persons were sentenced for offences against special laws; 1,718 (29.9 per cent) were sentenced to terms of less than six months. Together, these various sentences of six months or less represented 5.9 per cent of all sentences (5,683 out of an over-all total of 94,835). The corresponding figures for 1956 show a ratio of 7.1 per cent (7,329 out of an over-all total of 102,150). However, it is explained that the figures include cases in which the execution of sentence is suspended, this measure being widely used.[5/] According to the prison statistics for 1957, the number of new prisoners sentenced to terms of not more than six months was 5,534, or 11.5 per cent of the total of 47,770 new prisoners.

65. In India, approximately 84 per cent of the prisoners sentenced to imprisonment during 1951-1953 received terms not exceeding six months; about one-third were in fact sentenced for periods not exceeding fifteen days. The figures for 1951 are 179,397 and 133,873 respectively out of 368,561 prisoners sentenced to imprisonment; the figures for 1953 are 158,683 and 94,831 respectively, out of a total of 310,639. However, the figures for prisoners sentenced to terms of fifteen days and under include the various alternatives to short-term imprisonment, and these are estimated at one-fifth of all sentences. In West Bengal, during the 1954-1957 period, about 94 per cent of the total number of prisoners were sentenced to terms not exceeding six months. In 1955 in the State of Madras 74 per cent of the prisoners were so sentenced, and in Uttar Pradesh 45 per cent. In the State of Bombay during the year 1955, sentences to terms of three months and under represented about 40 per cent. In the State of Uttar Pradesh,[6/] of the 60,000 or so newly convicted persons taken into custody in 1954, 25 per cent were sentenced to periods of less than thirty days, 15 per cent to periods of thirty to ninety days, and 18 per cent to periods of three to six months. Thus 40 per cent or about 24,000 convicts had sentences of less than three months.

66. In the Federation of Malaya, nearly 60 per cent of the offenders committed to prison in a given year have been given sentences of less than six months. In China in 1957, more than 6,000 prisoners were sentenced for periods of less than one year while about 4,000[7/] received suspended sentences.

5/ Presumably this comment also applies to the figures for 1957.

6/ Report of the U.P. Jail Industries Inquiry Committee, op. cit., paragraph 123.

7/ This figure is probably included in the first, since the number of persons given suspended sentences does not appear in the general statistical table annexed to the document.

67. In Kenya in 1957, about 21,000 offenders were given sentences of less than six months, and in Tanganyika the number was about 20,000 in the same year. In Uganda, also in 1957, 1,416 persons were given sentences of up to three months' imprisonment.

68. In the Union of South Africa, persons serving sentences of less than six months represented on the average 90 per cent of the daily prison population.

69. In New Zealand, more than two-thirds of the male offenders committed to prison in 1957 for categories of offences in which some of the sentences given were for less than six months, actually received such sentences (1,790 less than six months and 806 over six months).8/

70. In the United States, statistics covering the less serious offences are not very reliable. It is, however, estimated that nearly a million persons each year receive short prison sentences, in most cases for drunkenness, though as a result of the various alternatives, such as probation, applied at the present time, short sentences are fewer than a generation ago. One consequence of the large number of very short sentences imposed is that the local prison population is constantly changing. In 1955, for example, in fifty-eight Californian counties, 89,639 persons convicted of drunkenness spent an average of twenty days in prison, and 135,736 persons convicted of other offences received sentences of an average length of seventy-five days. In the same year, about 470,000 persons were committed to the town jails of California and about 235,000 to the county jails.

Frequency of suspended sentences and similar measures

71. Conditional sentences (including suspension of enforcement, probation and stay of sentence) represent an appreciable proportion of all penalties involving deprivation of liberty for less than one year. The following particulars supplement the information already provided in this connexion:

72. In Belgium, 59 per cent of those sentenced to one month's imprisonment, 49 per cent of those sentenced to three months and 41 per cent of those sentenced to six months were given conditional sentences.

8/ The statistical tables communicated, leaving aside serious offences, refer only to certain types of offences, selected on the arbitrary basis referred to above, hence they do not give an indication of the total number of persons serving terms of imprisonment.

73. In Yugoslavia, more than half of the sentences covering one year or less are conditional.

74. In the United Kingdom, offenders put on probation represent nearly a quarter of all those convicted for indictable offences.

75. In Finland, nearly a third of those sentenced to terms of imprisonment of under six months are given conditional sentences.

76. In the Netherlands, in 1953, conditional sentences were given in about 25 per cent of the cases involving penalties of less than one year's imprisonment; by 1956, however, unconditional sentences had become more frequent, and the proportion dropped to 20 per cent.

77. In the Federal Republic of Germany, more than half of the very short sentences consisted of probation; in 1957 this course was adopted on the average in 42 to 44 per cent of the cases involving sentences of less than nine months' imprisonment.

78. In Norway, more than half of those sentenced to imprisonment for correctional offences were given suspended sentences.

79. In Denmark, about 30 per cent of all persons sentenced to simple detention and imprisonment in 1955 were given suspended sentences. In 1950, execution of the sentence was suspended in the case of 67.3 per cent of all first offenders sentenced to deprivation of liberty; the practice of suspended sentences is on the increase.

80. In Israel, 10 per cent of all those convicted were given suspended sentences and a further 10 per cent were released on recognizance or placed on probation.

81. Suspended sentences are common in Spain and Italy, but no figures have been given.

82. In Chile, the number of conditional sentences is not large; there were 232 instances during the years 1957-1959.

83. In the Indian state of Uttar Pradesh, only about 1,000 offenders received suspended sentences in 1954, but it is hoped to raise this figure by amending the law on probation and by extending probationary services. During the same year, 1,740 persons received an admonition or were let off scot free.

84. In New Zealand, 1,156 offenders were placed on probation by the lower courts. In addition, there were 1,109 cases in which suspended sentences were given (chiefly for failure to comply with maintenance orders). This compares with 2,589 prison sentences (the duration is not specified in the figures given for these courts) and over 2,000 cases in which other penalties were imposed.

85. In Kenya, in 1957, 1,956 probation orders were made. Moreover, of the 1,795 probation orders which expired during that year, 1,414 seem to have given satisfactory results. In Uganda, 356 probation orders were issued in 1957. In Tanganyika, the number in 1950 was 31, but the figure increased by 1957 to a total of 923 orders, 497 of them made by the Dar-es-Salaam courts, 225 by the Tanga courts and 219 by the other courts in the Territory.

Conclusions to be drawn from the statistical analysis

86. In the first place, it is all-important to realize that the proportion of cases in which use is made of penalties or measures other than those involving deprivation of liberty-including fines, to which reference has been made above - for the punishment of petty offences and the less serious correctional offences varies very greatly from country to country.

87. Taking sentences involving deprivation of liberty alone, it can be said that 60 to 90 per cent of these were short sentences, though some of the figures given above appear to refer only to the less serious offences and not to wrong doing as a whole, while others leave petty offences out of account. Nevertheless, suspended sentences were given in an appreciable portion of the cases involving relatively short sentences, especially those not exceeding one year's imprisonment. Here the proportion varied from 20 to 50 per cent, while in the case of sentences of less than 3 months, it was as high as 70 per cent.

88. On the other hand, sentences of over six months' imprisonment are comparatively unusual today in certain countries such as Sweden, for example. This can be taken as a very good sign; the fact that short sentences predominate always indicates to some extent that everywhere - fortunately - the commonest offences are the less serious ones. For instance, under the Spanish Penal Code, the penalty laid down for 88 per cent of all offences is arresto mayor, which entails imprisonment for a maximum of six months. The developments which have taken place do nevertheless show how greatly efforts to reduce the number of short sentences have succeeded in curtailing the use of the short sentence in favour of the various alternatives advocated since the beginning of the century and today universally accepted, namely the suspended sentence, probation and fines.

89. Statistics of the frequency of short prison sentences are therefore only of limited value, since in order to obtain a reasonably accurate reflection of the true state of affairs in a given country, frequency must always be considered in relation to the various other possible penalties or methods, such as fines and

suspension of sentence. In no case do the figures quoted above - they are far from complete, incidentally - enable any comparison to be made between the various countries. As the early chapters of this survey have already made clear, legislative and judicial systems and statistical methods differ too widely to permit of any direct comparison on an international scale in connexion with the problem of short sentences, any more than with so many of the other questions with which criminal statistics are concerned.

Age-groups of persons sentenced to short-term imprisonment or alternative penalties

90. Some information has been supplied with regard to age. In the United Kingdom, short sentences are distributed fairly evenly over the different age-groups. Young people under 21 years of age form a fairly high proportion (43 per cent) of those receiving short sentences. In Israel, young adults account for 39 per cent of offenders receiving such sentences, whereas in Finland, for example, the great majority of such offenders are over 21 years of age.

91. In Sweden, it has been found that some offenders become harmless with age and that as the danger of recidivism subsides, measures other than imprisonment would appear appropriate. According to the Danish correspondents, age is less important as a crime-producing factor in the case of offences punishable by short-term imprisonment than in crime as a whole; in Denmark, offenders committed to local prisons are on the average appreciably older than those detained in State prisons. The inference from this is that serious criminality is more characteristic of younger persons (up to the age of thirty).

92. In Kenya, of the 4,262 men who were on probation at the end of 1957, about one-third were under eighteen years of age and one third over twenty-five. In Uganda at the same date, 276 out of a total of 435 persons under supervision were less than eighteen years of age. Contrary to the practice in the two territories, more than half the probation orders made out in 1957 in Tanganyika were issued to adults.

Recidivism

93. Some countries have supplied information on the number of recidivists.

94. In Belgium in 1955, recidivists accounted for 35 per cent of all conditional sentences and 72 per cent of all unconditional sentences. Taking only persons given sentences of less than six months, recidivists represented 90 per cent of those with conditional sentences and 81 per cent of those whose sentences were not suspended.

95. In the United Kingdom, over half the number of persons sentenced to imprisonment had served a previous sentence and over half the rest had previous proved offences, while less than a quarter had no previous offence.

96. In Finland, in 1956, the number of recidivists sentenced to imprisonment for less than six months was slightly higher than the number of first offenders. On 1 January 1959 about a quarter of those serving short sentences were in prison for the first time. Recidivism was less frequent amongst those who had served their sentences in prison colonies than among those who had been in closed prisons.

97. In Denmark, the rate of recidivism among first offenders given either conditional prison sentences or unconditional sentences of five months or less averaged 35 per cent. According to a study published in 1954,[9/] most of the offenders detained in local prisons are recidivists or "intermittent offenders".

98. Norway communicated the results of some earlier research into recidivism occurring after prosecution had been suspended or a conditional sentence passed; the rate of recidivism was shown to be about 10 per cent. More comprehensive research is in progress.

99. In Spain, the rate of recidivism is about 12 per cent.

100. In Italy, the proporation of recidivists is much higher among persons sentenced to short terms of imprisonment than among those sentenced to long terms.

101. In Sweden, persons sentenced for drunkenness while driving - the largest group among those sentenced to short-term imprisonment - show one of the lowest rates of recidivism, 15 to 16 per cent.

102. In Israel there were 802 recidivists out of a total of 2,803 offenders sentenced to short-term imprisonment. The report from Israel contains a detailed analysis of a number of recidivist cases compared with first offenders in terms of nine different factors.[10/]

103. In Japan, the number of recidivists and habitual offenders among those sentenced to short terms of imprisonment has greatly increased of late.

104. In the Federation of Malaya, recidivists sentenced to short terms of imprisonment constitute more than half the prison population.[11/]

9/ See paragraph 160.

10/ See paragraphs 278-280.

11/ International Survey of Programmes of Social Development (United Nations Publication, Sales No.: 59.IV.2), page 133.

105. In the Union of South Africa, it appears from figures on first offenders that about half the number of first offenders and 65 per cent of the daily average of all prisoners become recidivists.

106. It would be difficult, solely on the basis of the above information, to appraise the effectiveness of short-term imprisonment compared with other measures. Obviously, as one of the Italian reports points out, opportunities for recidivism are infinitely more frequent for offenders imprisoned for a short period than for those put out of harm's way by a long period of detention, and in any case minor delinquency is itself much more common than more serious crime.

Type of offences punished by short-term imprisonment

107. As one might expect, the reports received and the statistical tables attached to them show that the offences punished by short-term imprisonment are in all countries those of minor gravity against persons (willful or accidental) wounding or assault and battery and against property (theft, fraud, damage, etc.). In a number of countries - European and other - each of these categories accounts for about one-third of the total number of the total number of sentences, the number of offences against property being slightly higher, or even markedly higher, as for instance in Chile, Japan and China. The vast majority of offences in these two categories (usually more than 75 per cent) are punished by terms of imprisonment of less than six months, but a large number of the sentences are conditional. In addition, there are the minor sexual offences (indecent exposure, etc.), neglect of the family, vagrancy and begging, tax offences and a great number of other punishable actions. In some countries drunkenness in public is a fairly frequent or even a very frequent offence. Here are some details by countries:

108. According to the information given by the Swedish representative at Strasbourg, most offences against property are not punished in Sweden by short terms of imprisonment; such terms are frequent for acts of violence, but probation is also used. Exhibitionism is punished by short terms of imprisonment. Drunkenness is punishable by fines only, not by imprisonment; and the same applies to vagrancy; however, traffic offences due to drunkenness are treated differently.

109. In New Zealand, a short term of imprisonment (less than six months) may be given for a great variety of offences: less serious cases of offences against

property, assault or sex offences, offences against good order such as drunkeness and offensive conduct, offences against the rules ensuring public safety such as traffic offences, and finally, non-compliance with court orders, such as breach of probation or default on the payment of a fine. Breach of maintenance orders is usually punished by a period of imprisonment with initial suspension of sentence.

110. In Japan, short sentences are usually given for such offences as obscenity, gambling, violence, intimidation, trespass, destruction of property, obstruction of official business, bribery, arson, and negligence causing injury or death. In Japan, short-term imprisonment is as far as possible avoided for offences against property. On the other hand, for certain offences such as wounding (actually the number of these is fairly small) it is felt that they should be re-examined with a view to raising the maximum limits at present provided for under the law, in order to reduce the number of cases where short sentences are given.

111. In the United States, traffic offences constitute the bulk of minor offences and are usually punished by fines. Sentences for failure to support the family usually involve terms of probation. Cases of alcoholism constitute about half the total number of short terms of imprisonment.

112. In the matter of short-term imprisonment, road traffic offences have recently become a special problem in a great number of countries, and the increase in the number of road accidents is causing the authorities great concern: the relevant offences include driving while drunk, bodily injuries, death caused by negligence, hit-and-run driving, etc. The attitude of the courts towards offenders who thus jeopardize public safety is reflected for example in New Zealand by the fact that in 1957, in 344 of the 943 cases that came before the lower courts, the offenders were given terms of imprisonment and also had their driving licences cancelled, while most of the others had their licences cancelled. In Belgium, exceptions to the principle of non-execution of sentences of less than two months are made particularly in cases of driving while drunk, which has been a punishable offence since 1958, and hit-and-run driving.

Discrepancies between penal theory and legislative and judicial practice

113. After examining the situation in Europe, the Strasbourg Working Group reached certain conclusions which are undoubtedly valid for other areas too (Conclusion No. 3):

> "The statistics supplied by the various countries show that the great majority of sentences of imprisonment passed by the courts

are of short duration. Sentences of six months and less form on the average more than 75 per cent of all prison sentences. That proportion shows the importance of the problem of short sentences and brings out the distinct contrast in this respect between, on the one hand, the legislations which provide for such penalties and the courts which apply them and, on the other, the teaching of penological doctrine in which attention has for some time been drawn to the highly undesirable aspects of this type of penalty."

CHAPTER V

WHERE AND HOW SHORT SENTENCES ARE SERVED

114. Local prisons, district prisons, court prisons and remand prisons, or correctional prisons, are generally used for short sentences (as, for example, in Belgium, Finland, Greece, Italy, Norway and the United Kingdom), or at any rate for terms of up to three months (Netherlands), five months (Denmark) or even one year (France and Morocco).

115. The "remand prison" in France and elsewhere is a place of detention located near the courts and used mainly for the custody of offenders under arrest but not yet tried. When the sentence passed by the court is a short one the prisoner is not transferred to an institution specially intended for prisoners serving sentences; he remains at the remand prison and serves his sentence there.[1/]

116. In Japan, too, sentences of up to six months may be served in the institution in which the prisoner was kept during the trial - remand prison, juvenile prison, etc.

117. This procedure has been made necessary by the state of affairs prevailing up to now in a great number of countries.

118. In the State of Uttar Pradesh in India, short sentences are usually served in the small district jails, which are as a rule not furnished with modern equipment.[2/]

119. In the United Kingdom, according to the information given to the Strasbourg Working Group, the overcrowding of closed prisons and lack of classification often compel the Administration to put three prisoners with short sentences in the same cell (the authorities of course avoid putting only two prisoners in a cell together). Other countries also have to resort to this, e.g. the Federal Republic of Germany, where two-thirds of the cells are occupied by three prisoners, owing to the fact that the population has increased by a third since 1945, without any increase in the number of prisons.

1/ Charles Germain, "L'observation scientifique des délinquants en France", Seminar of the International Penal and Penitentiary Foundation, Strasbourg, 1959, Vol. I, p. 79.

2/ Report of the U.P. Jail Industries Inquiry Committee, op. cit., paragraph 123.

120. In France, according to the reply received from the French correspondents, it has been impossible to work out a satisfactory system for lack of buildings and sufficient funds, with the result that there is an indiscriminate mixing of persons undergoing short prison sentences, and they are kept in complete idleness.

121. In Italy, the number of persons serving short terms and of cases where suspension of sentence has been revoked is very small; in local prisons, no distinction is made between those serving short sentences and those serving longer sentences, and in court-house prisons used for detention prior to trial and for terms of imprisonment of less than two years, the emphasis is on the custody rather than on the treatment of prisoners, and this is even more true of the local prisons which are under the direction of magistrates.

122. In Yugoslavia, according to the statements of the Yugoslav delegation to the Strasbourg Working Group, sentences of up to one month are served in local prisons where it is difficult to arrange any suitable work, and sentences of one month to one year are served in central prisons, which are special semi-open institutions. The cell system has not existed since the war and the congregate system is therefore applied even to sentences of less than a month; since the number of these prisoners is fairly high it is generally necessary to house several prisoners in each cell.

123. In Belgium, sentences of less than three months are served in district prisons under a modified cell system with loud-speaker extension in each cell, cinema shows, etc., and sentences of three to six months are served in a semi-open establishment (Merxplas, etc.).

124. In Sweden, according to the statements of its representative at Strasbourg, prisoners serving short sentences normally live communally, and it is left to the director in charge of each group of institutions in the country to decide whether a prisoner shall be committed to a cell or sent to a prison colony. In Finland most short sentences are served in colonies. The open system is also used, although to a lesser extent, in Denmark.

125. Later, in chapter VII, reference will be made to the recent tendency for certain short sentences to be served in open prisons - hitherto considered appropriate only for the longer sentences. Leaving aside this innovation, the system used for the execution of short sentences in closed institutions appears in the main to be that of confinement in separate cells except possibly for labour purposes.

126. However, a large proportion of prisons of the local type, of which there are very many, are extremely small and often have very little space. For example, two-thirds of the local prisons in Denmark cannot take more than ten and twenty prisons. In a number of countries the authorities are becoming aware of the need to replace these very small prison buildings by larger establishments with better equipment, as is stated in chapter VII below.

127. Pending such reforms, and as a result of the overcrowding of prisons in many countries, a congregate régime seems to be commonly found in Europe and elsewhere, for many of the replies to the inquiry refer to the indiscriminate mixing of persons under arrest and convicted prisoners in the local prisons, and its harmful effects.

128. In the United States of America, as in many other countries, local prisons continue to present a serious problem. According to the information supplied to the Secretariat by the Director of the Federal Bureau of Prisons, it is estimated that there are about 3,200 county jails and perhaps some 10,000 police and municipal lockups. It is also estimated that nearly 2 million people pass through these prisons each year, that their average daily population is about 100,000, and that more than half the inmates are serving sentences of up to one year.

129. The ineffectiveness of short terms of imprisonment in the United States appears to be due in large part to the fact that the establishments in which they are served are used also for detention prior to trial, the temporary detention of juveniles and women, the detention of witnesses, and even for the custody of persons awaiting committal to mental institutions. Furthermore, the turnover of this heterogeneous population is extremely high (see the statistical data given in chapter IV).

130. Very few of the 10,000 local prisons and 3,000 country jails are adequately equipped even for housing the prisoners. The premises are usually overcrowded, the sanitary conditions are defective and the prisoners remain idle. With rare exceptions there is a complete lack of facilities for professional treatment in local prisons in the United States: the staff are too few in number and they lack training and professional direction. The main reason for these deficiencies is the reluctance of taxpayers and their elected representatives to give adequate financial support.

131. Mrs. Anna M. Kross, Commissioner of the Department of Correction of the City of New York, spoke very much along these lines on 1 September 1959 at Miami, Florida, at the eighty-ninth Annual Congress of Correction of the American Correctional Association. The local county jail has in her opinion produced more

habitual criminals than all other correctional institutions combined and is the prime gateway through which offenders pass towards the penitentiaries and the reformatories. Although the number of local jails is far higher than that of all other penal and correctional institutions combined and although millions of persons are compelled to pass through them, they are the most neglected of all the various types of penal and correctional institutions. The apathy and indifference of the public is still today an obstacle to any attempt to improve conditions. Politicians are reluctant to change conditions so long as they do not feel they are backed by an awakened public conscience.

132. If the local county jails were removed from the sphere of politics and placed under centralized State control the situation would improve, since it would then be possible to appoint qualified staff who would be adequately paid and would enjoy security of tenure. Mrs. Kross accordingly made the basic recommendation that the authorities of each State should assume more direct responsibility for the supervision of their local county jails. In addition, in her opinion the Federal Government should grant the States the same privileges and subsidies in this sphere as it does in the fields of education, health and social welfare. Approved standards for the administration of local county jails would then be established, and the Federal Government, through the State,would assist only those county administrations which complied with the standards prescribed for the improvement of the conditions and operation of local jails. This method has proved effective in improving the operation of schools, health services and welfare agencies and the local authorities would be unlikely to object to that kind of assistance, especially as it would permit of some reduction in local taxes. Accordinglto Mrs. Kross, it is a well-known fact - although no official figures are available - that the Federal Bureau of Prisons considers the majority of county jails unfit for the detention of its own prisoners, and has eliminated such jails from its current inspection list, although they still continue to be used for State and county prisoners.

133. More particularly, Mrs. Kross stressed that the dual use of local county jails as places of temporary detention and as institutions for the serving of sentences is altogether contrary to sound practice in penitentiary matters and defeats the very purpose of the jail itself. That observation is true for many countries in all parts of the world.

CHAPTER VI

IS THE SHORT SENTENCE HARMFUL OR OF LIMITED VALUE?

Ineffectiveness and other undesirable aspects of short-term imprisonment

134. The answers to the inquiry reveal that in all parts of the world short-term imprisonment presents an urgent practical problem. All the reports emphasize the dangers of moral contamination resulting from the corrupting influence of contact with criminals, particularly those awaiting trial, in prisons which are used at the same time for serving short sentences, they also point out the lack of any really positive results from such sentences.

135. To judge from information received as a result of the Secretary-General's inquiry it would appear that the countries undergoing development, in Asia, Latin America (see paragraph 32 above) and elsewhere, are the ones most strongly opposed to short sentences.

136. The correspondent of the Federation of Malaya considers that prisoners sentenced to short-term imprisonment present an almost insoluble problem which has a definite bearing on recidivism; even a good prison system cannot reform an offender in a few weeks or months, nor can a short-term sentence be considered an effective deterrent. The Moroccan correspondent considers that such penalties have very little value as deterrents. As a rule they are far from helping to reform convicted prisoners; in fact, they are more likely to corrupt, because of the contacts made in prison. The reformation or deterrent effect of short sentences seems non-existent especially in the case of hardened offenders, as the correspondents of New Zealand, India and Chile, and others point out.

137. The Indian correspondent concedes that a short term of imprisonment can act as a shock and so help to reform the offender, but thinks that in the promiscuous conditions found at present in the prisons this rarely happens. Since re-education is out of the question within the space of three months in small district jails, the penalty is purely afflictive and degrading, the offender loses his fear of prison and his self-respect suffers, according to the Inquiry Committee of the State of Uttar Pradesh,[1/] which was strongly opposed to short sentences and in favour of the various possible alternative measures.

1/ Report of the U.P. Jail Industries Inquiry Committee op. cit., paragraph 127.

138. The Japanese correspondent says that short-term imprisonment is an undesirable system from the point of view of penal policy, but since a considerable number of offenders are in fact sent to prison for short periods, an attempt must be made to minimize the resultant evils as far as possible. The Institute for prison research and staff training recently established by the Japanese Ministry of Justice is at present studying the penal effect of short-term imprisonment.

139. The drawbacks of short sentences, particularly in the case of occasional offenders, are well known: the moral stigma, loss of employment and difficulty in finding new employment (report from Greece), material and moral damage to the offender's family (U.P., India). The United Kingdom correspondent states that the chief difficulty at the present time is the upheaval in the offender's life and the social reintegration necessary after a short sentence. Generally speaking, the damage caused to those sentenced to short-term imprisonment by having a police record is out of all proportion to the seriousness of the offence.2/

140. In France it is realized that since resources are not available for evolving a satisfactory system, the very principle of the short sentence is invalidated by the fact that it has no educative value except possibly as a deterrent, since penal theory tends to attach increasing importance to treatment in open institutions.

141. Mr. Karl Peters3/ goes so far as to claim that the number of officials, the institutions and the funds employed in connexion with short sentences are out of all proportion to the results obtained and could be used to much greater advantage for the administration of long-term sentences, for which facilities are inadequate.

142. The opposition of penologists to short sentences, as confirmed once again in 1950 by a resolution adopted at the International Penal and Penitentiary Congress at the Hague, is based, according to Mr. Charles Germain, on the following arguments:4/

It is impossible during a short sentence to get to know the offender and his needs sufficiently well to adapt the treatment to his requirements.

2/ Karl Peters op. cit., p. 190.

3/ Ibid., pp. 190 to 191.

4/ Op. cit., page 183.

Even with a knowledge of the offender's personality the re-education treatment in prison requires a minimum length of time which the short sentencesdoes not afford.

While it thus offers no prospect of re-education, the short sentence has nevertheless most of the inherent disadvantages of any penalty involving deprivation of liberty: risk of contamination, weakening or severance of social and family ties, difficulty of reinsertion of the prisoner in the community after release.

143. Conclusion No. 5 adopted by the Working Group at Strasbourg recalled that "the criticism directed against short sentences is that they have all the drawbacks of deprivation of liberty in any form with none of its advantages. In fact, habituation to prison life, the danger of moral contamination and the break with the family, the social and occupational environment are not, in this case, offset by any constructive contribution provided by a sufficiently lengthy treatment".

The short sentence as a deterrent

144. Although the short sentence is probably inadequate in many cases to prevent recidivism and often fails to act as a serious warning, it is nevertheless thought to have a certain value as a deterrent. Several correspondents in Europe and elsewhere believe that the idea of "making an example" should be upheld, even though the relative ineffectiveness and even harmfulness of such sentences are admitted (this, for instance, is the view expressed in the Belgian report). According to Mr. Sanford Bates[5/] a certain element of deterrence will always be necessary, but the retribution, or the ddiscipline, or whatever the unpleasant consequences are of committing offences against the law should be constructive and not such as to make the offender more bitter and more anti-social; "It is a task of some difficulty to make an offender sorry that he committed a crime and yet improved by a prison residence".

145. When a first offender is convicted without suspension of sentence it is generally for preventive reasons. There is today one typical and very common case, where there will be general agreement with the correspondent of the Netherlands and others that the short sentence may serve purely and simply as a

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5/ Op. cit., p. 30.

deterrent: the case of driving under the influence of alcohol. Hence Norway, for instance, has ruled out suspension of sentence for drunken driving and imposes a definite sentence of twenty-one to thirty days. Other similar cases which call for prison sentences as a deterrent are, according to the New Zealand report, obstruction of police in the course of their duties, violence and certain types of theft. In the United Kingdom it was found necessary to impose short-term prison sentences for the fairly common offence of stealing registered letters, as a means of discouraging the thieves.

146. In view of this, the report from Spain emphasizes that in these and other cases there should be no hasty generalization of the aims of special preventive treatment; not all persons sentenced to short terms of imprisonment are in need of re-education, and a rational conception requires merely that the short sentence should not harm the offender, without necessarily aiming at any hypothetical reform.

147. Nearly all the correspondents remarked that a considerable percentage of offenders who have been imprisoned once for a short period do not lapse again, and there is a tendency to conclude that a punishment not involving deprivation of liberty would have been sufficient in their case. But whatever form the penalty assumes the majority of first offenders - in the United Kingdom the percentage is as high as 80 per cent - do not come before the courts again. This might very well be attributed in part to the deterrent effect of the penal law which was sufficient for all these first offenders in question, as it is indeed for the general public, a fact which must also be borne in mind.

148. There is therefore a feeling that short sentences are to some extent necessary because they are after all more effective as a deterrent than fines, and this opinion was confirmed by the Working Group at Strasbourg. In discussing the reasons for the disparity between penal theory and day-to-day practice the Group arrived at the conclusion that "short prison sentences are not to be condemned unreservedly: our judgement of them must be more qualified. In the present state of institutions and in view of the nature of the penalties or measures at the disposal of the courts to combat crime it is virtually impossible to do away with short sentences" (Conclusions 6 and 7).

Short and long sentences

149. The principle of making the punishment fit the crime[6] thus cannot be abandoned altogether. While it is evident that short sentences are of little use for re-education purposes because they afford little opportunity for bringing systematic influence to bear on the offender's personality, there is more reluctance nowadays than formerly to recommend longer sentences in cases where none of the alternatives to short sentences (suspension of sentence, fines, etc.) could really be applied. For reasons of equity, where an offence of medium gravity warrants six months' imprisonment, courts would hesitate to impose sentences three or four times their length, simply for re-education purposes. What is therefore needed is an improvement in the methods of applying short sentences, just as methods have been improved for long sentences.[7]

150. In the opinion of a number of countries (Brazil, Federal Republic of Germany, Greece, Japan, Spain, United Kingdom, Yugoslavia), it is not only impossible to do away with the short sentence, but it is not even desirable. The argument is that for various reasons the short sentence has a definite and necessary place in penal law.

151. Several correspondents (China, Union of South Africa, and others) point out that minor offences may justify a long sentence, yet the maintenance of law and order in some cases calls for deprivation of liberty. The United Kingdom report maintains that there is no reason why a short sentence should not be of use in certain circumstances, from a social as well as a penal point of view, since there are numerous instances where a prison sentence of some kind is inevitable but need not be a long one. Where, as the Belgian correspondents say, the offender must be made to realize the reprehensible nature of his conduct, the Strasbourg Group took the view that the psychological effect of the warning to the individual, either in the form of an actual term of imprisonment or by the judicial sanction alone, differs from one person to another. There are offenders to whom one day in prison would be as effective a deterrent as a long sentence to hundreds of others.[8] In the view of the correspondent of the Union of South Africa, short-term imprisonment is a relative concept for which a specific

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6/ Jean Dupréel, op. cit., p. 447.

7/ Charles Germain, op. cit., page 184.

8/ James V. Bennett, "A New Day for Missouri Corrections", Prisons and Crime Prevention in Missouri and the Nation, op. cit., page 9.

period cannot be prescribed as a norm, since it naturally depends on the personality and the temperament of the individual, his background and upbringing, etc., so that for some types a month in prison might seem a long-term punishment.

152. The correspondent of Yugoslavia departs even further from the long-established view, and holds that the general tendency to make penalties more humane should be directed not only to the method of enforcing them, but also to the duration of the term; hence he argues that the short sentence actually has certain advantages from that point of view.

153. The Norwegian correspondents consider that it might be unwise to discontinue the practice of short sentences, however desirable that might be from the point of view of individual treatment, as long as there is no guarantee that longer-term sentences provide better protection for society. Similarly, one of the Swedish correspondents puts forward very clearly the view that the problem should be viewed from a broader point of view than hitherto. At the end of the nineteenth century it was thought that longer sentences served a more useful purpose and even today there is a tendency to leave the matter there; but such heavy penalties can not be justified unless it can be proved that short sentences, however they are enforced, are much less effective than longer sentences in preventing recidivism.

154. The Working Group at Strasbourg also wondered whether it would be really desirable to do away with short sentences, and reached the following conclusions:

> "Present trends in penology are towards more diversification of the means available to judges, so that they may have greater freedom to adapt the measures they take to each individual case. Instead of condemning short sentences outright, it is preferable and more realistic to accept them, provided they are applied with a certain discrimination, having regard to the individual factors present, and with the necessary precautions to avoid harmful effects" (conclusion No. 8).

> "There are cases in which a sentence of imprisonment is considered necessary by the courts as a deterrent, even though the circumstances of the case may not justify any long-term deprivation of liberty and the personality of the offender may not require any lengthy treatment" (conclusion No. 9).

> "It cannot, however, be established from criminal statistics to what extent the effects of short prison sentences on recidivism are the result of the deprivation of liberty or of the judicial sanction alone" (conclusion No. 10).

155. The Group summed up its views conservatively as follows (conclusion No. 11):

> "Hence, though short-term imprisonment may still legitimately be maintained if limited to certain unavoidable cases, we must admit that in view of the present-day possibilities of treatment in penal institutions, its generalized application by the courts has deplorable consequences. Reforms are needed ...".

Factors which can give the short sentence a certain usefulness

156. Whatever can be said about the harmful effects or at any rate the ineffectiveness of the short sentence, the problem cannot be solved without taking into account all the factors which in any given country affect the general penal policy with regard to both offences and the penalties designed to check them.

157. The correspondent of Yugoslavia points out that every penalty has at least some effect in helping to prevent crime in general or to deal with the individual case, and that there is no penalty with which no fault can be found, though this does not mean that they can be abolished. In determining when the short sentence is justified as a means of combating crime, he maintains that there are two essential points to be considered - the nature of the offence and the personality of the offender; but the question of how effective the sentences can be also depends on many specific factors such as the social structure of the country, the incidence of criminality, etc.

Distinction according to types of offenders

158. Any realistic solution of the problem demands that one fundamental distinction be made, namely the different effect which in practice short sentences appear to have on different types of offenders.

159. There is first of all the type of petty offender found everywhere, of low intelligence and difficult to influence on account of his unforthcoming outlook, as pointed out by the correspondents of Denmark and the Federation of Malaya. Mrs. Kross, Commissioner of the Department of Correction of the City of New York, lists the types of petty offenders and other socially ill people found in local jails: vagrants, prostitutes, the aged, the homeless, alcoholics, narcotic addicts, sex deviates and the mentally ill.

160. One of the few studies on the personality of offenders sentenced to short terms of imprisonment (less than five months) is that carried out by Karen Berntsen and Karl O. Christiansen in Denmark; it reveals the fact that about 30 per cent

of such prisoners show marked personality defects and about 30 per cent are not likely to respond to resocialization treatment although they badly need it.9/

161. Thus there is no doubt that the short sentence is still as undesirable today as it always was for the "asocial" type of offender.

162. The Yugoslav correspondent gave a more detailed definition of the different types of offenders for whom the short sentence would seem respectively appropriate or to be avoided. The latter category would include minors, morally weak persons, recidivists (or, to quote the Greek correspondents, habitual offenders), persons without visible means of support, psychopaths, apart from a few exceptions - since all such persons need special treatment, as is recognized by modern penal codes. Short-term imprisonment would on the other hand be necessary and even to some extent effective for those first offenders who cannot be given suspended sentences and those leading an orderly existence but repeatedly committing offences through negligence or light-heartedly infringing the highway code; those guilty of minor offences committed out of violence, brutality, whim or thoughtlessness (e.g. gangs of young hooligans), and those who do not comply with suspended sentence requirements, etc. or show bad faith in not paying their fines.

163. The Commission appointed to revise the Penal Code of the Federal Republic of Germany emphasized the profound change brought about in the prison population by the fact that today the great majority - three-quarters to four-fifths - of the adults serving short sentences are casual offenders, by intent or negligence, and about one-third of all convictions in the Federal German Republic are for traffic offences. The problem of short-term imprisonment now appears, therefore, in a quite different and more hopeful light with regard to such purely casual offenders, particularly unintentional offenders who do not require re-education treatment, than it appeared at the time when the abolition of the short sentence was first mooted towards the end of the last century, a period during which the prisons were filled with beggars and vagrants and other asocial elements who came back time after time.

9/ "The resocialization of short-term offenders (with special reference to the Danish prison system)", International Review of criminal policy, No. 6 (United Nations publication ST/SOA/Ser.M/6), pages 25 to 39 (with summary in French and Spanish, pages 40 to 41). The investigators concerned continued their observations after the publication of this article, and some data on the subject have been furnished to the Secretariat by Mrs. Berntsen.

164. This change, evident in Europe and elsewhere, in the actual composition of the petty offender class should be given special attention by the penologist and should induce him to approach in a more positive way than hitherto the problem of a "socially effective application of short-term imprisonment" according to the European suggested outline.

165. In order to illustrate the effects of the short sentence from the different points of view briefly outlined, the Working Group at Strasbourg proposed (conclusion 4) that "studies might be undertaken to show how short sentences are applied in judicial practice, as regards both the offences for which they are used and the offenders on whom they are imposed. Such research should be so designed as to elucidate the cases where short-term imprisonment may be indicated and those where it is not."

166. During the discussion the Group stressed the change of outlook leading to the recognition that short sentences are necessary even though it is agreed that the scope of their application should be limited. The change has been attributed to the concept of individuality of treatment; so fine are the distinctions drawn that one wonders what are the appropriate limits, and who are the appropriate recipients in the case of the various types of sentence, particularly the short sentence.

CHAPTER VII

CONDITIONS GOVERNING THE EFFECTIVENESS OF SHORT-TERM IMPRISONMENT

Elimination of present shortcomings

167. Certain conditions of a negative kind emerge from what has been said in the previous chapter; and these make it imperative to try to eliminate the chief shortcomings of short-term imprisonment. Thus, above all, the moral corruption resulting from the promiscuous contacts and idleness so often prevalent in local prisons must be combated, and an effort should be made to prevent the development of a negative outlook in offenders undergoing detention not associated with any treatment. It is quite natural, as several correspondents point out, that the prison authorities should have so far directed their attention mainly to long-term imprisonment because of the social gravity of the kind of crime involved. Despite the fact that minor delinquency, which short-term imprisonment is intended to combat, is much more frequent, penologists have as yet given little thought to the positive organization of such imprisonment.

168. According to most of the replies, the possibility of suitable treatment, and even the need for it, are considered rather limited. It is argued that the aim should be to mitigate the dangerous effects of short-term imprisonment rather than make it really effective, and to preserve the offender as far as possible from the harmful influence of the prison environment (this is the view, for example, of the Belgian and French correspondents).

Provision of suitable premises and need for competent staff.

169. In several countries it is hoped to provide better facilities in local prison premises either by constructing new court prisons, such as the one to be built in Greece, at Athens, or by transferring prisoners with longer sentences, and young offenders, to new prisons, as in the United Kingdom, since this enables existing local prisons to be re-organized for short-term prisoners.

170. Mrs. Kross, Commissioner of the Department of Correction of the City of New York, recommends, very much as a general principle, that the large number of very small and completely inadequate local prisons in the United States should be replaced by relatively few larger institutions, better organized and able to put into effect a modern rehabilitation programme under the direction of trained

staff. The same recommendation might well be widely applied to other countries and regions. A plan for centralizing small maisons d'arrêt is now under consideration in France.1/

Types of detention and methods of treatment

171. Proposals for reform relate to the various existing or possible types of short-term imprisonment, from cellular confinement to special institutions for short-term imprisonment, open institutions, a régime of semi-liberty, and detention not undergone continuously but at weekends only.

172. In addition, various means are advocated - first and foremost, that of putting short-term prisoners to work - as a basic principle of a system designed to prevent the corruption of the prisoner. As a further step towards a constructive system some go so far as to recommend for this category of prisoners the maximum degree of scientific observation and classification, as well as the use of welfare and other methods adapted in a simplified form to the particular purpose.

173. These various means are examined below.

Observation of prisoners, including those awaiting trial

174. The Seminar of the International Penal and Penitentiary Foundation (Report of Section I) observed that "It is impossible, and probably pointless, to provide a complete medico-psychological and social examination for all offenders at the judicial stage" and also that efforts are now being made to extend observation at the treatment stage to categories other than long-term prisoners in independent centres.

Obviously, there are considerable practical difficulties in the way of both systems as far as short sentences are concerned. For prisoners awaiting trial, however, a practical start has been made (see chapter IX, para. 417) and it can at least be affirmed that a social investigation may be decisive in avoiding short terms of imprisonment in individual cases. In the case of prisoners, as a rule, there can be no question of a searching examination in an observation centre in view of the relatively short period of the sentence; but less searching observation methods may prove useful, and even indispensable in certain cases, as shown by the following information.

1/ Charles Germain: "L'observation scientifique des délinquants en France", Seminar of the International Penal and Penitentiary Foundation, Strasbourg, 1959, vol. I, p. 86.

175. As in most other countries, in France there is no scientific observation at the penitentiary stage in virtually any of the institutions concerned with the administration of short sentences, and the reasons for this are given by Mr. Charles Germain.[2/] The first reason is bound up with the very nature of the short sentence, which does not allow sufficient time. The second is due to the physical impossibility of finding in small towns a team of technicians such as would be needed for the work of observation. The third reason is the difficulty of obtaining funds to pay such specialists in the case of small prisons when the scientific observation of prisoners is not legally compulsory. However, it is hoped that when the plan to centralize small prisons has been carried out it should be possible to equip each reorganized institution with an observation service to meet the requirements of modern penitentiary science.

176. In the larger maisons d'arrêt in France there are at present twenty or so observation sections known as psychiatric annexes. Their purpose is mainly to detect mental anomalies and illnesses among prisoners awaiting trial. These annexes have been the starting point for the methodical observation of offenders. They also admit for examination purposes prisoners who are to be confined in a psychiatric hospital. In Mr. Germain's view these annexes could be used as a future basis for the creation of proper centres for the criminological examination of short-term prisoners.

177. The Belgian correspondents feel that a very short period of separate confinement is indispensable if only for observation and for the detection of perverts and anti-social elements.

178. Isolation in observation cells for a maximum of thirty days is the rule in Italy but it is not applied in the case of minor or unintentional offences.

179. In Japan short-term prisoners who are classified as being difficult to reform are subjected to thorough observation.

180. Observation during the initial period in the cells is often regarded as impracticable for offenders serving short sentences, although it is emphasized that it would be useful to study the offender's personality even in such cases.

2/ Ibid., p. 86.

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181. In Denmark, on the other hand, increasing importance is attached to the observation of prisoners even in the case of short sentences. The study by Karen Berntsen and Karl O. Christiansen of an experimental group (mentioned in chapter VI, para. 160) has led to suggestions for a new programme of treatment to be based on a thorough individual investigation.

182. The Strasbourg Working Group put forward the following somewhat cursory view in conclusion No. 37:

> "Short-term prisoners should so far as possible be subjected to psychological and social observation specially adapted to them and designed to ascertain cases of serious abnormality, to draw attention to potential recidivism and to provide if necessary for psycho-social aid. This applies in particular to cases in which any treatment necessitated by the prisoner's condition cannot be undertaken in view of the short duration of imprisonment".

Separate confinement as part of a constructive régime

183. As previously mentioned, the separate confinement of a prisoner for a very short period may be necessary if only for purposes of observation.

184. Reference should be made, in addition, to the information in chapter V on the application of the régime of cellular confinement. The isolation of short-term prisoners is sometimes laid down by law (for example in Spain, Greece, Italy and elsewhere), but the practice frequently differs to a more or less great extent, as has been shown. Individual day and night imprisonment of prisoners serving maximum sentences of up to one year in penitentiaries is provided for by article 719 of the French Code of Penal Procedure. While advocating special institutions Spain, like other countries, recommends solitary confinement in order to avoid contamination. For the same reason, in Japan prisoners serving short sentences who show good prospects of rehabilitation are kept as much as possible in cellular confinement; those sentenced to less than two months imprisonment have priority to serve their sentence in a cell (article 25 of the administrative regulations governing prison law).

185. The Commission for the reform of penal law in the Federal Republic of Germany has proposed a new type of short-term detention called Strafhaft, ranging from one week to six months and quite distinct from imprisonment as such. It is designed particularly for those guilty of involuntary offences and would involve up to three months of cellular confinement (possibly of a less rigorous

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kind), this period being reduced to about four weeks, by which time it should have attained the desired psychological effect. Those serving Strafhaft will be kept apart from all other offenders in order to avoid contamination.

186. Mr. Charles Germain points out that although confinement in cells, particularly in the case of long sentences, is no longer viewed with great favour today, it may still occasionally have advantages for short sentences. It may be suitable because of its severity for certain prisoners on whom the cell may have a beneficial effect through intimidation, or again for aggressive individuals or perverts from whom other prisoners must be protected and, conversely, for certain offenders whom it is desirable to protect against the dangers of promiscuous contacts.3/

187. All these occasionally contradictory but valid reasons may be used as grounds for solitary confinement in the practice of the various countries. Unless a measure of classification is feasible, solitary confinement is frequently the lesser evil for short-term prisoners and it appears useful for very short sentences as having a sobering effect and imposing a period of reflection, even if not all prisoners respond to it.4/

188. In the United Kingdom, as was stated at Strasbourg, total cellular confinement is considered undesirable because the prison staff should be in a position to exert a constructive influence on the prisoners. The discussion on this occasion showed that the drawbacks of cellular confinement become particularly apparent when the sentence is of some length. Most psychiatrists nowadays have rather unfavourable views on the effects of isolation. Thus, cellular confinement was abolished in Sweden and elsewhere after the last war. In Belgium complete isolation is nowadays limited to one month, with no bad psychological effects - according to psychiatrists.

Classification in the administration of short sentences

189. The Strasbourg Working Group discussed the problem of treatment of different categories of prisoners. It noted that short-term prisoners frequently "have to undergo imprisonment which is not only devoid of any element of treatment (stimulating work, educational opportunities, social aid) but is enforced in

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3/ Op. cit., p. 186.

4/ Karl Peters, op. cit., p. 197.

/...

surroundings which actually exert an unfavourable influence on them" and suggested that "the remedy would appear to be the setting-up of specialized institutions or departments making it possible to separate first offenders from recidivists and young adults from other prisoners, so as to reduce the dangers of promiscuity and to facilitate some kind of treatment" (Conclusions Nos. 29 and 30).

190. The Yugoslav correspondent suggested that in view of the large number of short-term prisoners, efforts should be made to classify at least those sentenced to terms exceeding three months; a basis for individualized treatment only exists in fact when the prison term exceeds three months.[5/] In this connexion certain practical achievements are already to be noticed, particularly with regard to use of open institutions (see paragraph 200 et seq.).

191. In Japan short-term prisoners are separately classified according to whether they are easy or difficult to treat. Where persons in the former category, particularly those guilty of involuntary offences, cannot be kept in separate confinement, they are placed in communal cells, due account being taken of a available classification data such as the nature of the offence, age, and so forth.

192. In Morocco sections in each institution, including those used for sentences of less than one year, are set aside for groups of prisoners selected according to different criteria (type of sentence, age, sex, personality, state of health, religion) and various methods are used in an attempt to mitigate the effects of social maladjustment resulting from imprisonment.

193. In Denmark prison terms of more than five months are served in State prisons, where prisoners are divided into categories and the treatment is intensive; there is a recent trend for sentences even of four to five months to be served in the State prisons, but the Copenhagen local prison already provides treatment comparable to that of the State prisons.

Special institutions

194. Spain recommends special institutions for offenders serving short sentences and emphasizes the need for such institutions to be properly equipped, like any other penal institution.

5/ Ibid., p. 203.

195. With a few exceptions, there are no special institutions for serving short sentences even today. There are special semi-open institutions in Yugoslavia (see paragraph 225).

196. In the United Kingdom adult prisoners serving a sentence for the first time may be transferred to special local prisons of the open type if the sentence exceeds three months.

197. In the Federal Republic of Germany, there is a special institution in Lower Saxony for first offenders serving sentences not exceeding three months.6/

198. Belgium has a special institution for certain first offenders who have committed acts of pure negligence, i.e., persons who in most cases have not suffered a social stigma by being sentenced. The régime applied includes work which is simple but sufficiently interesting and various forms of activity in common, the prisoners being kept separated at night in small individual cubicles.7/ The Strasbourg Working Group considered this experiment of setting up a special prison a noteworthy new departure (conclusion No. 31). The Strasbourg Seminar of the International Penal and Penitentiary Foundation also took note of this experiment in Belgium with first offenders sentenced to terms of imprisonment for unintentional offences such as manslaughter, or injury through carelessness. The special institution at Malines to which prisoners are sent is not exclusively designed for short-term prisoners, although they are in the majority. According to the conclusions of Section II of the Seminar segregation is based on the theory that it is important to ensure that this type of offender does not come into contact with ordinary criminals. Moreover, rehabilitation usually presents no problem and there is therefore no need for the usual educational and occupational training. Such prisoners are put to industrial tasks which require little previous training but keep them suitably employed. The treatment given to them aims at strengthening their character, their will-power and their sense of social responsibility.

199. In Sweden open prison camps, although not special institutions, mostly house people serving short sentences for drunken driving and coming from all levels of society.

6/ Ibid., p. 199, footnote.

7/ Jean Dupréel, op. cit., p. 464.

Open institutions

200. The recent trend towards allowing short-term prisoners the benefit of serving their sentence in an open institution has led to interesting developments in different parts of the world. In addition to work outside the institution or under a régime of semi-freedom as described below (paragraphs 221 et seq.) two examples may be quoted, one in Asia, the other in Africa. In 1956 the Hong Kong Prisons Department took over the former Chimawan centre for disabled persons for use as the Colony's first open prison. For the present, it receives short-term first offenders, and up to 700 prisoners can be accommodated. Afforestation is the offenders' main occupation. In 1957, an "open prison" for certain long-term first offenders and for short-term first offenders was opened by the Nigerian Government in Buea, Southern Cameroons. About 300 prisoners operate three dairy and vegetable farms.[8/]

201. For some time - in Sweden in particular[9/] - it has been thought that a solution to the problem of short sentences is the use of open institutions, though this must not be allowed to encourage the already frequent use of short sentences.[10/]

202. In Sweden it was feared earlier that the general preventive effect of short-term imprisonment would be lost in open conditions and that there would not be enough work, but this latter problem also existed in closed institutions. In the meantime, the regulations have instituted the open system; one-third of all prisons today are open institutions, numbering about forty-five, with room for 1,600 persons, the total prison capacity being 4,600. The camps provide the prisoners with simple work (in forestry and road-building) and also have workshops. Ever since this change took place, over thirteen years ago, all prisoners in both closed and open institutions are employed. It frequently happens however that first offenders and recidivists have to be placed together because of overcrowding in the institutions. In this case a process of careful selection is necessary: homosexuals, vagrants, and violent offenders are not put in open institutions.

8/ International Survey of Programmes of Social Development (United Nations publication, Sales No.: 1959.IV.2), p. 112.

9/ Jean Dupréel, op. cit., p. 456.

10/ Karl Peters, op. cit., p. 197, referring to the United Nations Congress of 1955 (United Nations Publication, Sales No.: 1956.IV.4).

203. According to information given to the Strasbourg Working Group, first offenders in the United Kingdom are usually placed in open institutions if the sentence exceeds three months; the proportion of the total number of prisoners serving short sentences exceeding three months in open institutions is about one-quarter. First offenders convicted of assault and battery, or sexual offences against women, are not sent to open institutions. But certain recidivists selected after observation are sent there.

204. According to information given at Strasbourg, the number of persons who escape from open institutions is apparently very small in the two countries mentioned above, even where there was no preliminary observation of short-term prisoners.

205. In Belgium, where very short sentences are usually not enforced, prisoners with sentences exceeding three months are transferred to a central institution of the semi-open type operating under a congregate régime. At Strasbourg the Belgian delegation gave information about an experiment which is being conducted at Merxplas in an institution for sentences from three to six months operating under a congregate day and night régime. It was decided to abolish dormitories and replace them by rooms for four to six persons in blocks. The groups are made up after a fairly thorough observation of the prisoners, and not haphazard, and the system is considered preferable to a community of large and inadequately supervised dormitories.

206. In Italy offenders who can be removed from their place of residence without any ill-effects are sent if possible to open institutions for agricultural labour - there are several of these institutions with a total capacity of 2,800.

207. The Netherlands correspondent also advocates labour camps (land reclamation or road building projects) for prisoners with sentences of not more than five months.

208. In Finland a large number of short sentences are served in labour colonies and prison colonies. The open system has proved highly satisfactory for short-term prisoners and it has been found that recidivism is less prevalent among those detained in a colony than among offenders of the same type who were sent to prison before the system was introduced. In virtue of a Statute of 1946, sentences of less than two years may be served in a State labour colony by those

sent to prison for the first time and, in the case of subsidiary imprisonment for non-payment of fines, even by recidivists. In addition there are prison colonies - open institutions organized on the same lines as the State labour colonies - where sentences of less than six months are served even in the case of prisoners sentenced to a subsidiary term of imprisonment for non-payment of a fine. There are three prison colonies for men and one for women; they are governed by a Statute of 1954.

209. An interesting experiment in the form of "simplified" treatment has been tried in Denmark following the special investigation by Karen Berntsen and Karl O. Christiansen (see paragraph 160). Its particular aim is to make more frequent use of open camps and to increase education through work in the short sentence system. For the time being the open system is not generally applied to prisoners serving sentences of less than five months. Since the capacity of the existing local prisons is adequate there is a certain reluctance to establish open institutions for short-term prisoners.

210. A simplified form of treatment has been in force since March 1958 in the State prison of Kragskovhede (a Dansih institution of the semi-open and open type) designed to avoid expending effort on a kind of treatment which from the outset must be considered ineffective and to relieve the officers of the institution in the interests of the general programme of long-term treatment. The short-term prisoners are housed together in a special block situated some distance from the State prison. Here, the education is concentrated in short periods of two to three weeks, each morning being devoted to instruction, whereas the educational programme for the other prisoners goes on as usual. Following these educational periods, the prisoners are put to work and attend technical courses according to their type of work. A social worker is attached to each block. The person responsible for the treatment is a senior warder, who is in charge of a group of prison officers specially assigned to the prisoners in the particular block. Instructors, psychologists and other officials concerned with general treatment in the institution take a very minor part in the treatment of these prisoners.

211. In his general report on penal treatment presented to the Seminar of the International Penal and Penitientiary Foundation held at Strasbourg, Mr. Jean Dupréel notes: "Theoretically, it seems that open establishments are to be preferred, but with so many conditions and precautionary measures that, in practice, the cellular prison, with its latest improvements, seems likely in the majority of cases to remain the most suitable type of establishment for the enforcement of sentences whose short duration makes it impossible to use the data that would be made available by adequate scientific observation."

212. The Seminar (report of Section II) took the view that the requirement for previous observation of cases resulted in too restricted a use of the considerable opportunities offered by open institutions, and mentioned that some countries had already begun sending to open institutions all prisoners who did not clearly appear to be unsuited for such treatment (e.g. persons guilty of crimes of violence, some sexual offenders and absconders). It felt that "this practice might well be adopted with advantage even for short-term prisoners and recidivists, in order to avoid the very artificial atmosphere of closed prisons".

213. On the basis of the reported experience of several European countries, the United Nations Working Group took a fairly favourable stand on open institutions. In its conclusion 32 it "took note of the fact that in several countries short sentences, particularly for first offenders, are normally served in open prisons, though exceptions are made for those convicted of certain sexual offences and offences of violence, and for potential absconders. In the present state of the closed prisons in which short sentences are usually served, open prisons can offer a more positive treatment in a less artificial atmosphere. It has not, however, been established that the results in terms of recidivism are more favourable".

Putting prisoners to work while serving short sentences

124. Most of the reports draw attention to the overriding importance of work, but at the same time they point out the great difficulty of organizing productive work in prisons where short-term sentences are served.

215. No doubt work should eventually be made compulsory, if only for the sake of maintaining discipline.

216. In most cases, short-term prisoners can at best be given simple tasks to keep them occupied, as is done systematically, for example, in the Belgian institution for involuntary offenders (see paragraph 198).

217. It is usually impossible to organize vocational training for short-term prisoners, both for lack of time and because prisoners in this category are by no means a homogeneous group. Nevertheless, in Belgium intensive vocational training courses have been giving good results.

218. In Morocco, organization of work for the purpose of avoiding the dangers of idleness and helping to reform prisoners by teaching them a trade has been steadily improving, especially in the maisons d'arrêt, where prisoners are prepared in this way for taking up a working life upon their release. Various workshops, operating under State management, are being installed in light, spacious, well-equipped premises.

219. In China, prisoners under sentence of less than one year are assigned to small-scale handicraft work to inculcate habits of industriousness and application.

220. In Japan, too, the moral value of work is stressed, and accordingly short-term prisoners classified as readily reformable are employed on hard tasks designed to keep them physically and mentally fit, including public work schemes outside the prison, agricultural work, etc.

Work outside the prison and on work sites

221. The Belgian correspondents suggest work outside the prison and on work sites. These methods of semi-freedom are gaining popularity in various parts of the world.

222. France is experimenting with them in a programme of individual treatment of short-term prisoners, described by Mr. Charles Germain (see paragraphs 266-271 below). For employment on outside work sites, a prisoner is assigned to a team which works outside the prison under the supervision of prison administration officers and returns to the prison every evening or only at week-ends. The system seeks to appeal to the prisoners' sense of responsibility, for they are not kept under constant surveillance. It enables them to maintain or acquire working habits and to earn sometimes quite sizable wages.

223. Part of the same experiment is a system of trust and voluntary semi-freedom discipline, whereby an individual prisoner is placed with a private employer and is employed on the same footing and at the same wage rates as his free fellow-workers. He travels to and from his place of work freely, without administrative supervision. Watch is kept over him only by a delegate of the discharged prisoners' aid committee, who discreetly keeps an eye on his out-of-prison activities.

224. In Italy, too, consideration is being given to a system of semi-freedom to be applied to short-term prisoners as soon as they begin serving their sentence, in the form either of work outside the institution or of permission to go outside for training or instruction.

225. In Yugoslavia, persons sentenced to terms ranging from one month to one year are sent to special institutions - a lumber camp near Zagreb and an agricultural colony near Belgrade. According to statements made by Yugoslav delegates at Strasbourg, the experience of these semi-open institutions, to which prisoners are sent without observation, has been fairly satisfactory.

226. In the United Kingdom, prisoners who work outside are lodged in special premises, away from other prisoners, in order to avoid daily searches as they come and go.

227. In the United States, many counties and communities have instituted forestry and agricultural work programmes for short-term prisoners. Although these camps and institutions often share the drawbacks of the local prisons, they have the great advantage of providing the prisoners with an occupation and a relatively healthy environment. A fairly recent development in short-term imprisonment is a plan known as the Huber Law. It originated in 1913, when this Law was enacted in Wisconsin to make it possible for prisoners to be employed ten to twelve hours a day as agricultural workers while serving their sentence. The plan was suddenly given broader application during the Second World War, when arrangements were made for prisoners at Appleton, Wisconsin, to work in war plants. These prisoners, who returned to the prison at night, had to pay the cost of their imprisonment, maintain their families and make restitution to their victims. Variants of this system were introduced in California, Minnesota, North Carolina, North Dakota and Vermont and are being considered in a number of other states. According to the Director of the Federal Bureau of Prisons, the Huber Law offers a better solution than does confinement in the usually poorly equipped local prisons. He recalls, however, the view of some penologists that a prisoner who qualifies for the Huber Law programme would do even better on probation; and if he required intensive treatment, placement in an open institution might have a more radical effect on him than work under the Huber Law.

228. The Uttar Pradesh, India, Jail Industries Inquiry Committee[11/] has proposed that short-term prisoners whose past conduct did not show depravity and who

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11/ Report of the U.P. Jail Industries Inquiry Committee, op. cit., paragraph 129.

could not be given the advantage of probation or treatment of any other type should be sent straight away, on conviction, to an open camp for prisoners for useful employment on works of public utility which did not require any skill. Although the transportation of prisoners might be costly, the Committee felt that the cost would be less than that of their maintenance in a closed prison where there was not sufficient work for them. In the camp, the prisoners could earn, contribute to the cost of their upkeep, and still save something to help their families. Another idea put forward by the Committee was that short-term prisoners sentenced for travelling without a ticket could be usefully employed on projects connected with the development of railways in jobs which did not require any skill; while thus employed on laying new lines they would be able to earn enough to pay their upkeep and fines and save some money for their return to their homes.

Some psychological aspects of a constructive régime

229. As noted in chapter VI, the immediate effect of short-term imprisonment, particularly on an offender who is sent to prison for the first time, is a shock to the psyche, since deprivation of liberty is a sobering experience and a solemn warning. This "shock" - though some would prefer not to use the term - should be salutary in that it should bring the prisoner to his senses and cause him to reflect on what he has done; but that is not always the case. Some authorities feel that this admonishment, this sharp lesson, is the only positive effect that can be expected from a short imprisonment and they urge that an effort should be made to avoid anything that might deter the prisoner from active co-operation. Thus, unnecessary humiliation should be avoided, and there should be establishments specially designed for the enforcement of such sentences, free from over-conspicuous security arrangements.12/

230. Apart from the very short sentences, which are intended mainly as an admonishment, some countries, the United Kingdom for example, advocated a strict and very dynamic régime, including the provision of social services, with a view to offsetting the harmful effects of short-term imprisonment.

231. The United Kingdom delegation at Strasbourg stated that, for better results with short-term imprisonment, a brief induction period of two to three weeks would be desirable to instil in the prisoner a positive attitude towards his imprisonment. However, an experiment along those lines in Sweden a few years ago was a failure.

12/ See, for example, Karl Peters, op cit., p. 196 and Jean Dupréel, op. cit., p. 461.

Belgian correspondents propose that an orientation pamphlet should be given to prisoners on arrival, to cushion the inevitable shock of incarceration. After a very brief initial period of confinement to cells, which is the practice in Belgium and elsewhere, prisoners may be transferred to a congregate régime with a social fabric based on responsibilities, opportunities for initiative, rewards and punishments.

232. Thinking along the same lines, the Strasbourg Working Group concluded that "while the essential value of work of educational methods and other elements of modern treatment in penal institutions must not be neglected, it is important to make use of all other techniques likely to have a favourable influence on the prisoner" (conclusion No. 36).

233. In the opinion of the New Zealand correspondent, the main positive contribution of short-term imprisonment is probably in many cases that it imposes on the offender a period of discipline, orderly living and adequate physical care, during which he has the opportunity to reflect on his offence and make good resolutions for the future. The Finnish correspondent, taking much the same attitude, mentions several elements of social life - relating to hygiene, discipline, work, etc. - as being about the most that it could be hoped to achieve in educating a prisoner serving a short sentence.

234. According to the Norwegian correspondents, education should mainly take the form of helping the prisoner to help himself.

235. It is stated in the Spanish report that short sentences should be carried out with severity but without either undue harshness or sentimentality; others, too, advocate a strict but humane regime.

236. The Netherlands correspondent feels that effective treatment requires at least nine months, but that imprisonment up to three months for adolescents and up to five months for adults can have its effects without warping the prisoner's personality. Where sentences run from three or five months to nine months, care should be taken lest the prisoners develop a negative mental attitude; moreover, there should be some separation of first offenders from recidivists, depending on whether their attitude is negative or positive.

237. Most penologists believe that it is not practicable to institute a progressive regime for short-term sentences. According to the Finnish correspondent, no progressive system can be applied because most short-term

prisoners have had no vocational training, and many of them are incapable of benefiting by training or education of any kind. In China, progressive treatment is accorded only to prisoners serving a sentence of over one year. In Japan, the Ordinance for progressive treatment is not applied where the sentence is under six months, but a similar type of treatment is given in accordance with the regulations of each institution. As everywhere else, in China and in Japan stress is laid to the fullest possible extent on work and on moral suasion.

Education, individual guidance, group therapy, etc.

238. In addition to religious instruction, the individual guidance method is widely used in Japan. In the case of offences committed through negligence, the method consists of individual interviews and reading, designed to make the offenders reflect carefully on what they have done and realize the danger they have become for the community.

239. It is similarly recognized in Belgium, according to the statements made at Strasbourg,[13/] that what involuntary offenders need most is character training and will-power development; stress is laid on making them understand their duties towards society and the obligations they assume when they engage in a dangerous activity. They are not taught the highway code, which most of them have broken, for usually they know it quite well and the majority of accidents are due to a more or less deliberate violation of the rules. Care is taken, moreover, not to give them preferential treatment: the regime in the special institution in which they are confined (see paragraph 198 above) is the same as in other prisons. They have some educational opportunities, such as lectures and radio broadcasts, but actually, the average intellectual level seems no higher than in other prisons.

240. The Italian correspondents draw attention to the need for further study of special individual and group psychotherapy for short-term prisoners, particularly for some recidivists to whom it would be unwise to give such treatment in a régime of freedom. The Belgian correspondents suggest that group therapy might be tried for offenders in week-end gaol.

241. In the United States of America, where these methods were rapidly introduced in prisons, self-analysis through group discussion and interaction therapy are recommended.[14/]

13/ See also Jean Dupréel, op. cit., p. 464.

14/ Sanford Bates, op. cit., p. 31.

242. In the view of Dr. R.C. Simpson, representative of the World Health Organization to the Strasbourg Working Group, there is no group therapy technique suitable for short-term imprisonment; group therapy must aim at transforming the personality and must continue from six months to a year at the rate of two or three hours a week. He felt that therapy of less than six months' duration would have only a superficial effect. On the other hand, he favoured the continuation of medical treatment upon release, recently provided for in the United Kingdom.

243. Dr. Simpson explained that, whereas group psychotherapy, as applied to mental patients in psychiatric hospitals, calls for the interpretation of the processes of the unconscious and may be dangerous, socio-therapy (or group counselling), has nothing to do with the unconscious and involves no danger; nevertheless, the psychotherapist might sometimes have to be consulted in deciding on the proper treatment for a given prisoner.

244. The California system of non-medical group counselling, lasting some twelve sessions, has been tried out in United Kingdom prisons with encouraging results, according to the United Kingdom delegation at Strasbourg. Groups of eight to ten prisoners spend a period of about twelve weeks together and hold open discussions, which the head of the group, a staff member who may be of any rank makes no attempt to direct. Gradually the prisoners come to discuss life in prison, the nature of crime, and finally their personal difficulties, and they are thus able to help one another and at the same time in an easy way to develop their relations with the staff, while the latter begins to take a greater interest in their work. This method is considered feasible where the sentence is at least three months. Training of staff for group counselling takes ten days.

245. In conclusion No. 38, the Strasbourg Working Group, noted: "It appears that the present techniques of socio-therapy (or group counselling) could be used to advantage in specialized departments set aside for short-term prisoners. The common discussion of their cases may help to make the prisoners aware of their responsibilities and duties towards society. This, however, can only be conceived of when the actual stay of the prisoner in the institution will at the least be for two or three months."

Training and recreation

246. As already noted, it is impossible to offer real vocational training during a short sentence, with the exception of intensive training courses (see paragraph 217 above), which could certainly be given to some short-term prisoners as is done in Belgium.

247. In the largest Danish local prisons, several classes have recently been organized. Attendance is optional, but a great many prisoners attend. Special teaching methods are used, because of the rapid turnover of the prison population.15/ The Belgian correspondents say that recreation is to be organized on a constructive plan.

248. In Japan, involuntary offenders who are in prison - there are very few of them - are treated in cellular confinement and encouraged to take correspondence courses. Since they have no special need for education, the treatment they receive is different from that accorded to other prisoners; stress is laid particularly on the social and civic aspects of intellectual training.

Social welfare

249. There is increasing recognition of the value of social welfare services, even in the case of short-term sentences. In Norway, it is hoped to have social workers attached to local prisons. In Denmark, increasing use is made of their services in local prisons. In Belgium, to lessen the inevitable psychological shock of incarceration it is recommended that at least the special cases should be placed in the care of a social worker.

250. In Japan, on the basis of a programme of treatment and education planned when the offender is admitted, inquiries are made and other measures taken to prepare for his release, in close liaison with voluntary visitors, rehabilitation officers, etc.

251. Considerable penitentiary after-care is provided in France for offenders placed in semi-liberty as part of the experiment of individual treatment of short-term prisoners described in paragraphs 266 to 272.

252. In the United Kingdom, prolonged penitentiary after-care is provided for recidivists whose latest offence is a minor one and only warrants a short sentence. This practice, which is a break with tradition, will probably be confirmed by law. In addition, psychological treatment is given by regional mental hygiene clinics.

15/ See para. 210.

253. Thinking along the same lines, the Strasbourg Working Group emphasized the value of psycho-social aid where such treatment as the prisoner's condition necessitates cannot be undertaken because of the shortness of the term of imprisonment (see paragraph 182 above).

Conditional and absolute release

254. The "social reinsertion" of an offender serving a short sentence is complicated by the fact that the sentence is not long enough to prepare him adequately for a return to freedom; in the meantime he may very well have lost his job, and it is often desirable to reinstate him in a new environment, according to Mr. Charles Germain.16/

255. Nevertheless, some effort is being made in different countries, as will have been seen from the above, to make the best possible preparations for release, save in the case of very short sentences.

256. The procedure relating to conditional release is usually rather lengthy, and therefore impracticable for most short sentences. In special circumstances, however, provisional release may be granted by way of a pardon in some countries (Belgium, Denmark).

257. An unusual practice which represents an equivalent of conditional release is described below (paragraphs 273 and 274).

Intermittent imprisonment ("week-end arrest", etc.)

258. Intermittent imprisonment is a new method advocated by several countries (Belgium, the Netherlands, etc.) in the case of very short sentences.

259. This type of imprisonment was first applied to adolescents in the form of week-end detention in the Federal Republic of Germany, and of compulsory spare-time appearance at attendance centres in the United Kingdom (see chapter VIII below, paragraphs 291 et seq.). The only example of the application of this latter type of mere deprivation of leisure time to adults is found in the Federation of Malaya, where some short-term sentences are now being replaced by assignment to compulsory attendance centres. Since short-term recidivists constitute more than half of the prison population, an attempt is being made to reduce the number of first offenders and others who would be liable to sentences of less than three months by applying this new measure to them. An ordinance relating to compulsory attendance was issued on 1 January 1957 and attendance centres were established at Kuala Lumpur

16/ Op. cit., p. 183.

and Penang. It is hoped that courts will order offenders who seem suited to this type of treatment to attend the centres in their spare time and that the result will be to reduce recidivism among persons guilty of minor offences. Under this system, they will be able to continue in their normal employment. So far, only a very small number have been assigned to these centres.[17/]

260. In some regions of the Federal Republic of Germany, week-end detention is now being applied in the case of adults given short sentences, in order not to disrupt their work routine. Nevertheless, according to that country's representative at Strasbourg, there are conflicting views on the method, and the results have not been very satisfactory. According to Karl Peters,[18/] who puts forward a number of arguments against this new form of imprisonment, if a short sentence is served by stages, its salutary effects on an adult are diminished. The recent bill reforming German penal law provides for the new measure of "correctional detention" (Strafhaft) in the form of continuous imprisonment for one week to six months or of imprisonment for one to four week-ends, the latter measure being intended particularly for occasional offenders and, among them, to those guilty of driving offences.

261. In the Union of South Africa, "periodical imprisonment" is one of a number of penalties provided by law to avoid confinement in prison and the consequent loss of employment in the case of persons who have committed minor offences. Periodical imprisonment is a more severe penalty than a suspended sentence or a fine payable in instalments. Because the offence is too serious to be overlooked altogether, some restriction of the person's liberty is called for. The sentence is served at intervals, over week-ends and at any other time when the offender is not required to work. Under section 334 bis of Act No. 56 of 1955, such periodical imprisonment shall be for a period of not less than 100 hours and not exceeding 1,000 hours.

17/ International Survey of Programmes of Social Development, op. cit., p. 113. Further information also received more recently from the Malayan correspondent.

18/ Op. cit., pp. 201-202.

262. In the United States, notably in Wisconsin,[19] "restricted probation" has been employed with success; the offender is committed to gaol, or to a house of correction, with the understanding that he works at his regular trade during the week and spends his week-ends in confinement. This system seems to be applied mainly to men who refuse to support their wives; the delinquent husband is thus able to continue to earn his living and so provide for his wife's support instead of being deprived of his earnings by imprisonment.

263. Some penologists feel that a very short sentence of, say, three weeks served by the offender during his annual vacation would be a better solution than week-end arrest. This possibility was mentioned at the Strasbourg meeting.[20]

264. In considering week-end arrest as a measure making it possible "to have short-term sentences served in such a way as not to affect the offender's social position", the Strasbourg Working Group merely noted that "arrangements for week-end arrest could only be considered in proximity to an appropriate institution" (conclusions Nos. 39 and 41).

Practical experiments in individualization of the short sentence

265. It will be recalled that the Strasbourg Working Group reaffirmed the principle (see paragraph 154) that penal measures should as far as possible be adapted to the individual case, even where the sentence was short.

266. In connexion with the problem of a "socially effective application" of short-term imprisonment aimed at "a rational system of short sentences with special regard to the offenders' social rehabilitation", as envisaged by the Ad Hoc Committee of Experts in 1955,[21] Mr. Charles Germain[22] described a practical experiment involving convicted prisoners sentenced to one or more terms of imprisonment not exceeding one year in aggregate, begun in 1952 at Strasbourg and in several other judicial divisions in France.

267. Before deciding whether a convicted person should be committed to prison, the procureur de la République obtains the advice of the president of the correctional court which pronounced the sentence and of the chairman of the after-care committee as to the advisability of immediately enforcing the sentence.

19/ Sanford Bates, op. cit., pp. 28-29.

20/ See also Karl Peters, op. cit., p. 202.

21/ E/CN.5/319.

22/ Op. cit., pp. 185-188.

The procureur, who is also furnished with a social case-history, decides whether the sentence should be enforced forthwith, or whether there should be an indefinite stay of execution.

268. If the first course is adopted, the chairman of the committee, who is a member of the court designated by the Minister of Justice with the agreement of the Supreme Council of the Judiciary, is entitled to choose between the following three courses:

Solitary confinement;

Group work outside the prison under the supervision of the prison staff;

Semi-freedom.

269. If the second course is adopted, the committee chairman places the offender on probation; if the outcome is satisfactory, the procureur de la République causes the sentence to be remitted by way of pardon.

270. The system thus introduced constitutes a distinct advance towards the individualization of the short sentence, since it offers four alternative ways of adapting the sentence to the offender's personality: solitary confinement, employment outside the prison, semi-freedom or a deferred sentence. The last-named means of enforcement will have to be abandoned as soon as probation becomes a judicial measure under the new probation Act now in preparation.

271. According to Mr. Germain, the experiment demonstrates that the administration of short sentences can be rationalized, so as to throw the emphasis on the social rehabilitation of the offender without weakening the repressive value of the penalty, since the need for a deterrent is not overlooked.

272. By 1 January 1957[23/] 549 persons had been placed in employment outside the prison and 407 - of whom only twenty-six were subsequently returned to the ordinary régime - were in semi-freedom. Until 1 October 1956 the experiment covered only the arrondissements of Toulouse, Lille, Strasbourg and Mulhouse, but it has since been extended to Amiens, Châlons-sur-Marne, Poitiers and Rouen. The prison administration is contemplating the possibility of further extensions wherever after-care committees are sufficiently well-equipped to deal with the increased responsibilities which the reform entails.

273. The Seminar of the International Penal and Penitentiary Foundation (report of Section III) took note of a practice developed in New Zealand which appeared

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23/ Roger Vienne: "La readaptation du détenu à la vie libre", Seminar of the International Penal and Penitentiary Foundation, op. cit., Vol. I, p. 257.

calculated to serve a purpose similar to that of conditional release while enhancing the value of short sentence treatment. In accordance with certain legislative provisions, a judge may link a sentence of deprivation of liberty with a subsequent period of supervision for a year, to help and give guidance to persons who have been finally or conditionally released. Supervision is exercised by a probation officer.

274. The information transmitted to the United Nations Secretariat by the New Zealand correspondent seems to refer to the same practice, but it is ascribed to one particular magistrate when dealing with young offenders who are not depraved. He frequently imposes a sentence of one month's imprisonment followed by twelve months' probation on offenders between the ages of eighteen and twenty-three whom he considers unsuitable for Borstal or for probation alone. He considers that a month in prison, followed by a constructive period of help and supervision, is more useful as a salutary shock than a longer sentence. He is of the opinion that this practice is effective in keeping these young people out of further trouble.

275. The two practical experiments just described indicate that the methods of applying short sentences can be brought up to date in various ways, by recourse to different techniques which have some of the characteristics of prison treatment along with those of alternatives to imprisonment such as semi-freedom or a probation period in freedom.

Appraisal of the effectiveness of the various ways of carrying out short sentences

276. Doubts have been expressed as to the feasibility of evaluating the effect of short sentences on any scientific basis. Hardly any statistics are available of recidivism in such cases, nor would such statistics have proved anything as to the effect of the sentence or of the individual treatment from the point of view of its deterrent effect or its reformative effect, as the United Kingdom report states.

277. In Denmark, an assessment is being made of the experiment begun in 1952, as already mentioned above (see paragraph 160); it consisted in subjecting a group of 126 prisoners, including some serving short sentences (up to five months), to a socio-psychological investigation and giving them such treatment and social assistance as seemed appropriate. The method appears to be successful, since according to provisional figures there is an appreciably lower rate of recidivism among prisoners in the experimental group than among those in a test group of

126 prisoners who were not subjected to investigation (29 per cent and 42 per cent, respectively).[24]

278. In conjunction with the United Nations Secretariat survey, an experiment was conducted in Israel, by means of a comparative study of the cases of first offenders and recidivists, to ascertain the conditions in which short sentences are effective. This study, carried out in 1956-1958 on nineteen persistent recidivists and fifty-seven first offenders (a ratio of 1 : 3, the same as that of recidivists and non-recidivists in the prison population), covered cases for which social case-files were available (the Observation and Classification Centre of the Prison Service began work in 1956). It was expected at least to provide some indication of the type of offender likely to profit from a short sentence.

279. An analysis of nine different factors yielded the following data:

1. Age. Over two-thirds of the recidivists were young adults. Short-term imprisonment seems to have a more salutary effect on grown-up persons who have reached a certain level of maturity; it is not to be recommended for young offenders, especially if other types of punishment have been tried and failed.

2. Intelligence, mental make-up and educational background. The recidivists were less intelligent and more disturbed in their mental make-up than first offenders and included a high percentage of illiterates and semi-illiterates.

3. Professional background. Recidivists have less frequently had training in a trade or profession than first offenders, and they show greater instability in their work records. (Similarly, among first offenders, this instability is more marked among young adults than among older adult persons.)

4. Physical condition. The incidence of disease is probably in conformity with the health pattern of the population generally.

5. Mental health. More than two-thirds of the recidivists were deeply disturbed persons, whereas the majority of the first offenders were normal. Short sentences are particularly unsuitable for recidivists with serious personality disturbances.

6. Economic situation. The average recidivist generally comes from a less stable environment.

7. Childhood. No significant differences were noted between the two groups.

24/ Communicated by Karen Berntsen to the United Nations Secretariat in 1959.

8. Personal status. About half the subjects in the two groups were single, but there were more married persons and fewer divorced persons among first offenders.

9. Behaviour during imprisonment, prognosis, early release and recidivism. Most prisoners behave well in order to shorten their sentences. The pessimistic prophecies about the majority of the recidivists were borne out by their subsequent behaviour.

280. It is still too early to draw scientifically valid conclusions, because too few cases were analysed. One provisional conclusion is, however, possible: the offender who is older, more mature, married, more intelligent, better educated and economically more stable is more likely to profit from a short sentence (if imprisonment is necessary at all). Offenders who do not fulfil those conditions seem less likely to benefit from a short sentence and should receive longer treatment, adapted to their needs.

CHAPTER VIII

SPECIAL CATEGORIES OF OFFENDERS

A. Young adults

Less frequent use of short-term imprisonment

281. Formerly, short-term imprisonment was a type of sentence very frequently passed on young offenders and especially on actual minors, the ordinary sentences being reduced in view of the offender's youth. Short-term imprisonment has, however, been recognized as particularly ineffective and dangerous for young persons and, as the Moroccan correspondent recalls, it is being gradually replaced by various educational measures, in institutions or in freedom.

282. The tendency today is to reduce as far as possible the number of young persons serving short sentences and at the same time substitute other methods. Several countries have experimented with new forms of deprivation or restriction of liberty and in other countries such measures are about to be introduced.

Separate institutions and special departments

283. In dealing with cases where short-term imprisonment appears unavoidable, many countries segregate young offenders from adult prisoners either in separate institutions or in special departments of ordinary prisons.

284. As an example of a special institution for short-term deprivation of liberty, mention should be made at once of the re-education centre in the United States at Highfields, New Jersey, where systematic efforts have been made since 1950 to provide young first offenders with short-term treatment capable of yielding at least some of the results which in the past had been regarded as possible only with the help of fairly long institutional re-education. The average length of stay in the small centre at Highfields is four months; the young people live relatively freely in small groups. Group psychotherapy is applied[1/] and the results of the treatment appear encouraging. The essential factor here, as in specialized institutions for long-term re-education, is to give active encouragement to the young prisoners serving their sentence in conforming to certain positive requirements, as provided in the youth correction

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1/ International Survey of Programmes of Social Development (United Nations Publication, Sales No. 59.IV.2) p. 110.

programmes of several states of the United States of America, so that they do not merely sit out their sentence[2/] whether fixed or indeterminate. The Swedish delegate at Strasbourg laid stress on the need to consider not only the vocational training of young offenders, but also the salutary influence of mere conversation with the convicted prisoner; he considered that psychological therapy as practised at Highfields was useful: it did not take up much time, and results could be achieved within two months and sometimes within a few weeks.

285. In the previous chapter (see paragraph 181) reference was made to the fact that a wing of the local gaol at Copenhagen has been set aside for young adults serving sentences up to five months under a régime of treatment in depth. Moreover, the number of short sentences has been greatly reduced by certain procedural measures applied by the Director of Public Prosecutions (see chapter IX, paragraph 413).

286. In Greece there is a special agricultural institution for young adults. In Italy, first offenders under the age of twenty-five, whatever the duration of their sentence, are detained in special departments of the institutions for adults. Other countries have special establishments only for long-term re-education, combined with vocational training.

287. Information on this same subject was also given at Strasbourg. In the United Kingdom, young offenders serving sentences of more than three months are normally transferred to special centres for young prisoners. These centres are staffed by specially selected officers, and there is a very active programme which includes vocational training, physical training, education, etc.

288. Special institutions for young inmates under the age of twenty-two are found in Sweden. Successful results have been achieved even with persons detained for two or three months only. All the inmates are subjected to an initial brief period of observation for one to two weeks. A new institution has been set up recently on the "small group principle", in which every block of twenty inmates is subdivided into two groups of ten to make observation easier, even though, for work purposes they join other groups. More young persons than adults must be kept in closed institutions, because they lack discipline and are inclined to escape.

2/ James V. Bennett: "A New Day for Missouri Corrections", Prisons and Crime Prevention in Missouri and the Nation, op. cit. page 9. The author points out that about 37 per cent of all persons convicted in Federal and State courts are young people aged 18 to 25; this creates an increasingly serious situation which the correctional programmes referred to above seek to remedy.

289. In the Federal Republic of Germany, approximately one-quarter of the young offenders are treated under the Juvenile Court Act, and the remainder - approximately 50,000 - are tried under the general penal code. The small number of persons in the latter category who are sentenced to short terms of imprisonment are detained in separate sections of the prisons for young offenders serving special sentences of more than six months (Jugendstrafe). There are also special departments in ordinary prisons. Observation and social services are provided for the young inmates. Very short sentences are generally served in local gaols, as is the case in other countries. The German delegation at Strasbourg stressed that the legislation in force since 1954 (including the measures quoted below) shows clearly that the treatment of minors and young adults can be improved.

290. Belgium has not differentiated so far between adults proper and young adults in the execution of short sentences, but measures similar to those taken in Germany are contemplated. In the St. Gilles prison some young adults are already subjected to intensive observation.

New forms of deprivation or restriction of freedom

291. With a view to reducing the number of short sentences of imprisonment imposed on young offenders, two countries in particular, the United Kingdom and the Federal Republic of Germany, have created new methods of treatment since the war. In the United Kingdom these measures were designed originally for younger juveniles, but they have also proved useful for young adults of seventeen to twenty-one. Although this report cannot actually go into the various ways of treating young adults convicted of less serious offences, it should be recalled that a United Nations Working Group convened in Strasbourg in 1957 and the European Consultative Group at its sessions in Geneva in 1956 and 1958 examined the over-all problem of the treatment of young adult offenders.3/ Reference should be made to these studies in connexion with the application in Europe of the new methods, whose purpose is to modify the nature of short-term imprisonment for young offenders or to provide alternatives. The Strasbourg Working Group of 1959 based its work on those studies; it also took note of additional information such as was given by the British delegation on "detention centres" and "attendance centres" and by the German delegation on "special measures of detention for young offenders" (Jugendarrest).

3/ ST/SOA/SD/EUR/5, ST/SOA/SD/EUR/6 and Add.1.

292. The detention centres set up in England some seven years ago were at first intended for young offenders in the age-group fourteen to seventeen, and were later extended to cater for the age-group seventeen to twenty-one; to begin with, the tendency was towards a rather coercive régime, but since then there has been a switch of emphasis to stimulating and educational activities, though the duration of detention (one to six months, with an average of three months), rules out any real educational treatment. The young men are required to be alert, well-mannered, clean and tidy, and they must obey orders. Every officer is in charge of a group of twelve young men and reports on their behaviour. Relations between the youths and the staff are good, the latter being specially selected.

293. Forty-four hours of work per week form the basis of the treatment. The inmates do domestic work or farming, or perform light industrial tasks. The small sums they earn are spent in the canteens, but smoking is not allowed. There are day courses for backward inmates and evening courses for all. Physical education and organized games are of a strenuous kind. Periods of religious worship and instruction are given by clergymen. Entitlement to receive visitors and to engage in correspondence is an additional moral comfort. On the whole the young inmates accept with a good grace the standards laid down, even though they are high. The young man who arrives at the centre under police escort after his conviction, has had a shock. He regains his equilibrium at the centre, but the first fortnight is the hardest. Gradually he feels that he is making progress and is proud of it. Whereas in Borstal institutions the régime tends towards discipline by consent, in detention centres there is an imposed discipline which it is hoped will become second nature and foster ingrained habits.

294. Originally the young people sent to these centres were first offenders; but this is no longer exclusively the case. More than 40 per cent of the inmates have had several previous convictions, which explains the differences in the results achieved: 63 per cent of first offenders do not relapse into crime, 52 per cent of young recidivists with two or three convictions do not appear again before the courts, but only 33 per cent of those who had previously undergone treatment in an institution do not relapse into crime. Generally speaking, the new offences are not serious.

295. The cost of running the centres is high, much higher than the average cost for penitentiary institutions.

296. The German Jugendarrest, intended as a replacement for short-term imprisonment for juveniles, lasts continuously for one to four weeks, usually a

fortnight, or it may be served in the form of week-end detention. On the argument that purely educational measures have made too little impression on some young offenders, this short detention system has been added to the statute-book in order to force them to undergo a period of reflection in a cell. According to psychological and psychiatric studies, confirmed by experience, this régime should not be applied to a young adult for longer than four weeks. The staff at the institution, and in particular a representative of the juvenile judge, attend to the young prisoner in his cell. He must also work either in his cell or side by side with other inmates, in a workshop or in the gardens. He may take part in sporting activities and has access to a library. Group-counselling sessions are held twice a week. Conversation is one of the main educational means in this régime. The experience with week-end detention in big towns is not regarded as very satisfactory.

297. With these two methods, the British and the German, the proportion of success is approximately two-thirds; and it was found at Strasbourg that this proportion is substantially the same in other countries which have not instituted any such method or which use different methods.

298. The Yugoslav delegates at Strasbourg said that under their country's amended Penal Code, young offenders - who can now only be sentenced to imprisonment from one to ten years or subjected to measures of re-education - may be committed for four weeks to "**disciplinary centres**", which are now being set up, along the same lines as the centres existing in other countries.

299. According to the survey carried out by the Secretariat, detention centres are also being planned in New Zealand under the Criminal Justice Act of 1954. Young adults in the age-group seventeen to twenty-three will be detained there for a maximum period of four months.

300. While it was careful not to decide at this stage in favour of any one of the variants of short-time deprivation of liberty for young offenders referred to above, the Strasbourg Working Group endorsed them in the following terms:

> "As regards young adults, the British experiment of detention centres seems most interesting. These are medium-security institutions, accommodating between seventy and eighty prisoners, in which the régime applied is firm but kindly, designed to exert a good influence on the young people detained there for relatively short periods (average three months), by the use of active methods appealing to the individual sense of discipline and responsibility" (conclusion No. 33).
>
> "The system of arrest for offenders under twenty-one years of age ("Jugendarrest") applied as an educational measure under the law of the

Federal Republic of Germany is another form of short-term deprivation of liberty for a particular group of that category of offenders. It is either week-end arrest or arrest served continuously, with an average duration of two weeks and a legal maximum of four weeks; it is generally served in cells in special medium-security institutions called "Jugendarrest-Anstalten" accommodating from fifteen to forty inmates" (conclusion No. 34).

301. The British attendance centres operate by deprivation of leisure only, and place less restriction on freedom than "week-end arrest" under the German system. Attendance centres were originally set up for younger juveniles, but an experimental centre for young adults aged seventeen to twenty-one has now been set up. The principle of this punishment is that the young offender, is deprived of his leisure on Saturdays and required to attend at the centre for a few hours at a time making up a maximum total period of twelve hours. The premises are similar to school premises and comprise installations for physical exercise and handicrafts; the juveniles also have to do fatigues of a domestic kind. They come on their own without police escort; if they do not appear, the officer in charge of the centre inquires into the reason why, and they are required to report on a different day. Recalcitrants are rare. If a young offender refuses to do what he is told while at the centre, he is sent home and made to come back twelve times for one hour at a time, instead of six times for two hours at a time; if he is persistently difficult he is brought before the court again. The centres for the younger age-group are directed by specialist police officers; the centre for young adults at Manchester comes under the Prison Commission. The kind of young people sent to the centre are those on probation whose behaviour has not been good, or those guilty of offences which, though minor, demand a punishment heavier than a fine - by and large, minor offences against property, vary occasionally offences of violence, and sometimes wilful damage or damage to property. A complete study of the centres for the younger age-group (approximately 1,200 cases each year) carried out by the University of Cambridge has shown that the proportion of successes is more than 62 per cent; for first offenders alone, the proportion is 73 per cent.

302. The Strasbourg Working Group took cognizance of this institution in conclusion No. 42:

"In Great Britain, young offenders under twenty-one can be required by a court to attend at special centres at week-ends for a maximum period of two hours on each occasion and of twelve hours in all. The regime of the centres is one of brisk and strict activity, including physical education, work and handicraft."

303. Among new measures involving restriction of freedom intended for young adults, the Group also took note of "a Swedish bill providing for a regime of probation comprising an initial period of institutional observation and treatment" (conclusion No. 43).

B. Alcoholics

304. The problem of alcoholic offenders was raised at the 1958 session of the European Consultative Group,[4/] and it was provisionally decided to include this subject as far as appropriate in the study of short-term imprisonment. Pending a thorough study, to be undertaken possibly with the help of the World Health Organization, the survey on short sentences contains some information on this special category of offenders, who in most countries comprise a considerable fraction of the total number of persons sentenced to short terms of imprisonment.

305. The effect of the short sentence is particularly open to doubt when chronic alcoholism is involved,[5/] but the punishment may be useful in other cases, such as cases of drunken driving, as a salutory warning to the offender. Although alcohol plays an important part in involuntary delinquency, it would appear to be somewhat over-optimistic to attempt a course of anti-alcoholic treatment during the period of detention.[6/]

306. Thus, the Belgian correspondents suggested residence in the open section of a psychiatric institution as an alternative to imprisonment for less than three months; if the sentence is for a longer period, early release could be contemplated so that the offender can be placed in an open section. Alcoholics should be subjected in penitentiary institutions to individual psychotherapy and medical treatment with drugs. It should also be compulsory for them to undergo a course of treatment at a mental health clinic following early release.

307. In Denmark, more than half of the short-term prisoners in the experimental group referred to in paragraph 160 had indulged in excessive drinking. In two-thirds of the cases, it was felt that intense social re-training, including anti-alcoholic treatment, would be more appropriate than short-term imprisonment.

4/ ST/SOA/ST/EUR/6, paragraphs 226-229.

5/ See, for example, Alternatives to Short terms of Imprisonment, Report of the Advisory Council on the Treatment of Offenders, Home Office, London, H.M.S.O., 1957, paragraphs 28-34.

6/ Jean Dupréel, op. cit., p. 464.

Offenders are sometimes required to abstain from alcohol or obliged to undergo anti-alcoholic treatment, as special conditions for suspension of the sentence. Institutional treatment is sometimes necessary. Thirty per cent of the inmates in State prisons (where sentences of over four months are served) had indulged in periodical abuse of alcohol, and almost 9 per cent had been actual drink addicts. More than 10 per cent of all those (including long-term prisoners) supervised by the Danish Welfare Society were under anti-alcoholic treatment as ordered

308. Several reports referred to the usefulness of forbidding offenders access to premises licensed to sell alcohol, even as the main punishment in place of imprisonment (Yugoslavia, Italy).

309. Generally speaking there are no special institutions for alcoholics sentenced to short-term imprisonment; committal to an institution, when prescribed as a precautionary measure by a penal code, is invariably for a fairly long period. Greece, for instance, possesses a special therapeutic institution, run as an agricultural prison, to which alcoholics serving sentences of more than six months are committed. In Italy, alcoholics, whatever the duration of their sentence, are committed to "institutions for physically or mentally impaired persons" where they receive ordinary prison treatment and appropriate medical treatment.

310. In Finland treatment is given in an institution under the Ministry of Social Affairs; it lasts a year, with the possibility of conditional release after six months. In Norway alcoholics are committed to a special institution under the Ministry of Social Welfare or to a workhouse or a house of refuge under the Ministry of Justice; the length of stay is eighteen months, or in some cases three years, with transfer where necessary. Under a legislative amendment adopted in 1959 an alcoholic, instead of being committed to a workhouse, may be placed in private care or permitted to work for a private employer outside the institution. If the sentence is short, recourse is had to social welfare measures and the inmate is encouraged to join a temperance organization. In the new Swedish probation institution for certain young adults (see paragraph 303 above) provision will be made for group discussions on subjects which will include alcohol.

311. In the United States, alcoholics comprise about half the number of commitments to short-term institutions. According to the United States correspondent, these offenders should be sent to centres specially equipped for the treatment of alcoholism. Offenders who do not require institutionalized treatment should be given fines or probation terms. Those requiring imprisonment either in

the interest of their own welfare or for the protection of the public should be committed to State institutions with well-developed treatment programmes.

312. In the opinion of the New Zealand correspondent, a short term in prison does little to help the alcoholic, apart from providing him with adequate food, clothing and shelter while he is there. Fines are a frequent alternative to imprisonment to punish drunkenness. An habitual drunkard may, on a complaint being lodged by a member of his family, be committed by the court to a State-approved Salvation Army institution for alcoholics for a period of time. A very small number of people who would otherwise have been sentenced for drunkenness are treated in this way.

313. In New Zealand in recent years there has been increasing public interest in alcoholism and improvement in the facilities available to help alcoholics. The medical aspects of the problem are being more widely recognized, and public hospitals have set up clinics for out-patient treatment, as well as admitting alcoholics as in-patients. The recently formed National Society on Alcoholism has set up information centres for advice and help to alcoholics and their families, and the Salvation Army is extending its facilities for shelter and clinical care. Alcoholics Anonymous groups have recently been given access to penal institutions and their work is being extended. It is hoped that gradually all these efforts will have the effect of providing adequate care not only for those alcoholics who are protected by their friends or their families from coming into contact with the law, but also for many men who now find themselves in prison as a result of their alcoholic problems.

314. One delegate to the Strasbourg Working Group said that as a judge he tried to avoid committing a real alcoholic to prison or even remanding him in custody; he preferred to let him free on condition that he undertook to follow disintoxication treatment in a psychiatric clinic and to appear before the court when required to do so. This delegate tended to regard medical treatment with drugs as an accessory to more thorough-going action, both of which are hard to organize in an ordinary prison.

315. In the Federal Republic of Germany there is an institution in Bavaria - the only one of its kind - where all alcoholic offenders are sent for special treatment. Court orders for committal to special disintoxication institutions are rare.

316. In Sweden, alcoholics serving short sentences are put in touch with temperance societies. According to information supplied by the delegate of one of the Benelux countries, in the Netherlands there are clinics for alcoholics, with a psychiatrist,

a psychologist, a social worker and a representative of the authorities on their staff. They intervene at the request of the patient, his family or the authorities. In one of the larger towns in the Netherlands there is a psychiatric centre which collaborates with the criminal and ordinary police and deals, inter alia, with offences committed under the influence of drink. This sounds like a very interesting para-judicial institution.

317. Reference was also made to the Alcoholics Anonymous movement, which often does very useful work, especially when the meetings are directed by a psychiatrist.

318. Dr. Simpson, the WHO representative at the Strasbourg meeting, stated that special treatment was possible during short sentences. A three-day treatment to induce aversion can be sufficiently effective and alcoholics are also subjected to some psychotherapy. In addition, the assistance of Alcoholics Anonymous can be obtained. There is no way of compelling an alcoholic who is at large to undergo treatment; a short sentence of imprisonment can therefore provide the opportunity for subjecting the person concerned to anti-alcoholic therapy. The treatment used in England makes the consumption of alcohol extremely unpleasant and even dangerous. In all circumstances the treatment should be administered by specialists under strict medical supervision and should be accompanied by psychological guidance.

319. The Strasbourg Working Group's conclusion No. 35 states as follows:

> "Short sentences without medical treatment were considered useless for alcoholics. Provision should be made for expert medical treatment in special clinics and follow-up treatment given, possibly utilizing organizations such as 'Alcoholics Anonymous'."

CHAPTER IX

ALTERNATIVES TO SHORT-TERM IMPRISONMENT

General observations

320. Since local prison conditions are what they are, even today, almost everywhere in the world, and since for want of material resources reforms come about slowly, there is no doubt that criminal penalties suitable as alternatives to short-term imprisonment should be used as widely as possible.

321. There are three main measures under penal law which may be substituted for short-term imprisonment:

- Conditional or suspended sentences, which may or may not be combined with educational supervision in freedom (probation);
- Fines;
- Labour penalties served outside the prison.

322. In the view of the French correspondents, the choice among these three measures should be based far less on the length of the sentence than on the offence committed, as one or other of them may be unsuitable for some offenders.

323. Fining would seem to be a method which could profitably be used more extensively as an alternative in most countries. Treatment in freedom in the form of conditional sentence or probation is already widely practised in many countries. It is generally considered that it could be extended still further, but some countries feel that it is already so widespread that it would be impossible to go further without jeopardizing the protection of society against crime. Penal labour without deprivation of liberty, is still a new method and relatively little used.

The conditional sentence (suspended sentence), probation, court warning, etc.

324. As regards the frequency of the conditional sentence and probation in different parts of the world, the data derived from the survey of short-term imprisonment are given in chapter IV above.

325. As an example, let us take the juridical institution of conditional or suspended sentence in a country which was one of the very first to introduce this measure and where the courts apply it on a large scale. The Belgian law of 1888, as amended in 1947, allows courts which pass a principal sentence of imprisonment

not exceeding two years, and provided the prisoner has not previously been sentenced for a major crime or incurred a principal sentence of imprisonment of more than three months, to order that the enforcement of the sentence shall be suspended for a period not exceeding five years. If the offender is not again sentenced to more than one month's imprisonment, the sentence is considered void.

326. The conditions governing the use of the suspended sentence vary greatly from country to country. In some countries suspension is limited to penalties not exceeding one year (see paragraph 15 above as regards Italy and Chile), while in others it is applied to penalties not exceeding two or three years, or no such limits are laid down. The length of the probation period also differs according to the legal system concerned. Penologists consider that it would be particularly beneficial to replace short-term imprisonment by a far longer period of probation spent in freedom.

327. For some time there has been a discernible trend[1/] in several countries to impose no formal limitations on the suspended sentence - or probation for that matter - in the case of first offenders. Thus the Italian correspondents suggest studying the possibility of granting conditional suspension more than once to "multi-occasional" offenders. (See below for remarks on the United States of America, India, Japan, etc.).

328. On the other hand, objections have been made to the more or less automatic use of the suspended sentence in the case of first offenders. In France, according to the correspondents' report, many correctional courts, reluctant to impose short prison terms, systematically suspend the enforcement of the first sentence, thus diverting the institution from its true purpose. The same complaint is made against the courts in other countries. To avoid this, a standing precedent established by the federal court in Switzerland requires the judge to state the reasons for granting suspension of sentence, which incidentally is a frequent practice. Conversely, in England recent legislation requires the judge specifically to state the reasons if he imprisons a first offender (see paragraph 30 above). At Strasbourg, in October 1959 the European Commission on Crime Problems, established by the Council of Europe, on the occasion of its second meeting similarly disapproved of the automatic granting of conditional sentences, arguing that the suspended sentence, probation and similar measures

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1/ The Twelfth International Penal and Penitentiary Congress made a similar recommendation at the Hague in 1950.

ought not to be applied automatically as it might give the offender the idea that "you have nothing to lose the first time".

329. For some time now a number of European countries have been considering the possibility of combining the suspended sentence with some form of after-care involving guidance and assistance, and with the observance of certain rules of conduct laid down by the judge (cf. the Swiss Penal Code). This is similar to the suspended sentence as applied under the probation system in the Anglo-Saxon countries. A condition laid down more and more frequently is that the offender must undergo psychiatric or psycho-therapeutic treatment (cf. the Netherlands, etc.). In the Federal Republic of Germany educational measures of various kinds may be ordered by the judge, particularly for adolescent or young adult offenders. The Scandinavian correspondents feel that the treatment associated with the present lenient methods should be made more effective by extending the supervision which may accompany them. Under a Danish reform proposal made in 1953, in lieu of a penalty the offender would actually be required by the authorities to undergo any treatment prescribed and to submit to effective supervision. Sweden points out that a more frequent use of probation and intensified supervision would require the employment of professional as well as voluntary workers.

330. France has just introduced a system of probation (article 738 et seq. of the Code of Penal Procedure), which provides for a probation period considerably longer than that of short-term imprisonment and for measures of supervision and assistance designed to make treatment in freedom really effective.

331. In Belgium, a bill on probation has been placed before Parliament. It is designed to allow courts, in the same circumstances as for the suspension of the sentence, to suspend sentence and bind the offender over, subject to special conditions to be laid down by the judge. To help the offender to observe the specified conditions he will be placed under the guidance of a probation officer, who will report to a probation commission on the aid and supervision given. If at the end of a probation period of one to five years the suspension order has not been revoked, no sentence will be pronounced.

332. This system of probation does not supersede the suspended sentence but is complementary to it. The judicial authorities may order a preliminary social enquiry so as to be able to decide on the measure most suited to the offender's character - probation, a suspended sentence or an unconditional sentence.

333. In the meantime an experiment is now under way in Belgium. The prosecuting authorities, taking advantage of their discretionary powers (see below,

paragraph 410 et seq.), have organized a semi-official system of probation for exceptional cases worthy of consideration, and the results have been encouraging. Similarly, the juvenile division of the Brussels correctional court sometimes suspends sentence, binding over defendants in their own recognizances.

334. Under this system of probation, the decision as to what conditions should be imposed is of prime importance, as the Belgian correspondents point out. According to the particular case, the offender may be ordered not to engage in certain occupations, to reside or otherwise in a specific place, not to visit certain establishments or associate with certain persons; or he may be required to work or have his leisure pursuits supervised. Finally, surety for the voluntary recognizances in which the offender is bound over may be asked, in cash or in kind (luxury articles, radio set, motor-scooter, etc.). This last suggestion met with some opposition from the Working Group at Strasbourg on the grounds that it might give rise to annoyance rather than have a reforming effect.

335. Several European countries note that conditional sentences - as a rule concerning relatively short prison terms - have given good results and that revocation is rare. In the Netherlands, suspension of sentence - with or without supervision - has somewhat decreased lately as compared with unconditional sentences, while in Denmark it is on the increase. In Norway it is not considered desirable for conditional sentences and suspension of prosecution to be used more widely than they are (paragraphs 410 et seq. below), because they are already applied to the fullest extent consistent with respect for the law.

336. In Morocco, where conditional sentences have been in use since 1914 and are now governed by articles 51 to 54 of the Moroccan Penal Code of 1953, they have also produced satisfactory results on the whole, and revocation is relatively infrequent. The conditional sentence, which has long been applied in this country, thus seems to be an excellent system for the individualization of punishment and a particularly effective substitute for actual imprisonment.

337. In Chile, where conditional remission of the penalty exists under Act No. 7821 of 1944, judges make relatively little use of it.

338. Probation probably the most frequent alternative to short-term imprisonment, was advocated in 1951 by the United Nations Economic and Social Council in its resolution 390 E (XIII) as a method by which terms of imprisonment, and in particular short-term imprisonment, could be avoided. The practical importance of

the application of that method of assistance and supervision in freedom in the United Kingdom and elsewhere, in respect of adults as well as young offenders, is well known.

339. In a number of English-speaking countries, in addition to probation there is also a form of mere suspension of sentence. For example, the American correspondent defines probation as the suspension of a sentence for a fixed period under conditions imposed by the court, but unlike mere suspension of sentence, including the supervision and guidance of the offender during the period fixed by the court.

340. According to the Director of the Federal Bureau of Prisons, the cost of imprisonment in the United States is ten times the cost of a properly organized probation service, including close supervision of each case. Yet, experience has shown that offenders are being committed to prison who could just as well be granted probation.[2/] Probation seems to be particularly indicated for the trivial or accidental offender who can be disciplined extramurally.[3/] In Missouri, where the repeal of statutory limits in the granting of probation has been recommended, it has been pointed out that from 70 to 80 per cent of offenders could be released on probation under the supervision of trained officers whose case-loads are small enough for them to provide effective therapeutic supervision.[4/]

341. The American correspondent states that, like fines and short-term imprisonment, probation is used universally in the United States. However, the extent to which it is used varies, like other penalties, from court to court. Some judges use it regularly, others rarely. The general trend has been towards an increased use of probation, and as a result there has unquestionably been a decline in the ratio of prison sentences to total number of convictions. Because of the profusion of probation departments - under city, county, State and federal administration - over-all data concerning the numbers and types of minor offenders sentenced to probation terms are hard to obtain. A California study indicates that in the period 1956-57 probation was used most frequently for adults convicted of such offences as non-support, drunkenness, drunken driving and petty theft. The use of probation by Missouri courts has greatly increased, particularly in the rural

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2/ James V. Bennett, "A New Day for Missouri Corrections", Prisons and Crime Prevention in Missouri and the Nations, op. cit., p. 8.

3/ Sanford Bates, op. cit., p. 29.

4/ Group reports, Proceedings of the Washington University Conference, op. cit., p. 38.

areas.[5] The rate of recidivism among federal probationers is only 16 to 18 per cent,[6] which shows the effectiveness of the system.

342. The use of probation, like that of fines, will undoubtedly continue to increase slowly - states the American correspondent - with the desirable result of minimizing the number of petty offenders who are sent to prison. It may be considered a desirable alternative to short-term imprisonment where the protection of the public and the needs of the offender do not require his confinement for treatment.

343. In New Zealand, under the Criminal Justice Act of 1954, the court may release on probation any person convicted of an offence punishable by imprisonment. As this Act also restricts the imprisonment of persons under twenty-one years of age, probation is widely used for young people who commit offences for which older persons would be sent to prison. It is also used for adults likely to respond to the probation officer's guidance. The period of probation is from one to three years. It may be accompanied by a term of imprisonment of less than a year or a fine, or an order to pay costs or to make good the damage caused by the offence, such payments to be made by instalments under the supervision of the probation officer. Probation is subject to statutory conditions relating to place of residence, employment and associates, which must be approved in each case by the probation officer; the court may impose further conditions on the offender to ensure good behaviour. Reference should also be made to the practice mentioned in chapter VII, paragraphs 173 and 174, of following up a very short term of imprisonment by a long period of probation. Lastly, a short prison sentence - in this case up to three months - may also be imposed on a probationer who refuses to comply with the conditions of his probation, where it is felt that he needs a lesson.

344. In the Union of South Africa, under Section 352 of Act 56 of 1955, on the basis of information and recommendations by the "Prisoner's Friend" - usually a retired magistrate or other court official specially appointed to a court to assist short-term prisoners before or after the trial - the court may, provided

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5/ William Bates, "Missouri Corrections and the Crime Problem", Prisons and Crime Prevention in Missouri and the Nation, op. cit., p. 22.

6/ James V. Bennett, "A New Day for Missouri Corrections", Prisons and Crime Prevention in Missouri and the Nation, op. cit., p. 8.

certain serious crimes are not involved, postpone the passing of sentence for a period not exceeding three years. The offender is then released subject to one or more conditions, e.g. that he make good the damage or render some specific service to the person aggrieved, submit to instruction or treatment or attend some specified centre for a specified purpose. The court may order the conditions to be inserted in recognizances to appear at the expiration of the specified period. If at the end of the period the court is satisfied that the person convicted has observed all the conditions, it may discharge him without passing any sentence; this would almost amount to an acquittal. The court may also postpone the passing of sentence, as mentioned above, but without laying down any conditions, or it may pass sentence but order the operation of the whole or any part of the sentence to be suspended on certain conditions.

345. In Canada, the adult probation services are new, and it is reported that since 1953 developments in this field have been dramatic. In 1958, six of the ten provinces had public adult probation services and a seventh had the beginnings of a probation service provided through private agencies. There were then 200 full-time probation officers employed across the country. 7/

346. In 1956, the Probation Service in Kenya (see also paragraph 348) reported a similar expansion in that country, on different lines from the Canadian system. There, for several years probation hostels have been used both for juveniles and for adults; they are now, five in number. The urgency of constructing a modern probation hostel at Nairobi was explained as follows:

> "As the City population increases, it is axiomatic that problems of delinquency, destitution and vagrancy multiply in direct ratio. Many of these unfortunate people only require accommodation and security for a few months and this should be made available at the psychological time, that is, when they are placed on probation." 8/

347. In British overseas territories in Africa the general pattern of probation legislation and the administration of probation services is similar to that of the United Kingdom, but is also based on experience acquired in the Far East and elsewhere. Most of the services have been built up since 1945. In a purely advisory capacity, the Colonial Office helps the territorial governments and gives

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7/ International Survey of Programmes of Social Development, United Nations Publication, Sales No. 59.IV.2, page 113.

8/ Ibid.

them technical assistance. A memorandum on the policy advocated, and a model probation law for overseas territories were circulated to governments in 1957, and have stimulated the development of the system. The main factor limiting expansion is shortage of trained staff, and for this reason the system is confined largely to urban areas. In the more remote areas, supervisory duties are sometimes carried out by voluntary helpers.

348. In Kenya, probation is used by the courts for a wide range of offences and offenders. It is used very often in the case of women. On the whole, it is more successful for adults than juveniles, since adults are relatively static owing to their family responsibilities and enjoy a certain security because of their employment, whereas juveniles often travel long distances to the larger towns and then have no local ties. In 1954, an interesting experiment was begun, and the use of group probation in some 450 illegal Mau Mau oath-taking cases has proved very successful. The alternative would have been to intern the offenders in a detention camp or return them to overcrowded reserves where they would almost certainly have joined the active ranks of the Mau Mau. During the period 1955-1956, more than 2,000 of these oath-takers were placed on probation and the experiment is considered to be a great success.

349. In Uganda and Tanganyika, probation is not used extensively by courts administering African customary law but is use is gradually increasing. It is mainly used by other courts.

350. In Zanzibar, where there is little serious crime and juvenile delinquency has never been a serious problem, probation is comparatively little used, though it is employed in appropriate adult cases.

351. In Sierra Leone, where the system is also little used, it is applied equally to both adult and juvenile cases. It is used mostly in larceny cases, and only occasionally for offences against native law and custom, since the idea of probation conflicts with tribal beliefs which are clung to tenaciously. However, the use of probation is increasing.

352. It has only recently been found possible to introduce probation in Northern Nigeria, since for a long time the idea of supervision of a juvenile by anyone other than his parents or guardians was held to be contrary to Moslem tradition. At present, a shortage of trained staff limits its use to juvenile and first offenders.

353. In general, the Colonial Office encourages the establishment of sound probation services in limited areas to avoid dissipating the limited existing

personnel resources. Expansion of the system in any one territory is largely dependent on the quality of the probation officers and on the measure of local government support.

354. In India, where the various alternatives to short-term imprisonment constitute about a fifth of the total sentences, absolute discharge, after admonition by the court, is allowed under section 562 of the Criminal Procedure Code in respect of first offenders convicted of theft, dishonest misappropriation, cheating or any other offences punishable under the Indian Penal Code by not more than two years' imprisonment, when the court considers this course suitable, having due regard to the age, character and antecedents or physical or mental condition of the offender, or the trivial nature of the offence or any extenuating circumstances under which the offence was committed. The Probation Acts in force in the different States also contain provision for admonition (see paragraph 357 in regard to Uttar Pradesh).

355. Conditional suspension of sentences may be granted, under section 562 (1) of the Criminal Procedure Code, after a person has been found guilty of certain offences and with due regard to his character and the circumstances of the case. If the condition attaching to suspension of a sentence is not fulfilled, the suspension can be cancelled and the person immediately sent to prison.

356. An all India Act for the release of offenders on probation has recently been passed and will shortly be enforced in all the States. It extends the application of the system of probation to a very wide range of offenders and will go far toward reducing the bad effects of imprisonment on people who repent of what they have done and are likely to lead an honest life. The Act will help to separate the hardened criminal and the type of person who deserves a chance to mend his ways without imprisonment.

357. According to section 3 of the Uttar Pradesh First Offenders Probation Act of 1938,[9/] the courts may release an offender, after admonition, in the circumstances mentioned above. In 1954, 1,740 offenders benefited by this provision. The courts, thus do not seem to be using it very frequently, which may be due either to the traditional concept of punishment by imprisonment, or to the fact that the courts had no means of knowing the circumstances of the offence

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9/ Report of the U.P. Jail Industries Inquiry Committee, op. cit., paragraph 124, 125 and 128.

and the character of the offender because of the small number of probation officers. Recently, the Government appointed parole magistrates and the Inquiry Committee suggested that these magistrates and the probation officers could be increasingly utilized for placing before the court the facts about cases in which this provision of the law could be applied. The Committee felt that it could be applied in a very large number of cases involving simple hurt, rioting, gambling and similar trivial offences.

358. Section 4 (1), dealing with conditional release for a period of one year, provides for a personal bond, with or without sureties to be of good behaviour; but in the opinion of the Inquiry Committee, the provision needs to be modified so as to admit a larger number of offenders to this treatment.

359. The probation system is in force in 16 districts in the State of Uttar Pradesh and is also being tried intensively at Kanpur. Encouraging results have been achieved and it is considered that the system should be extended to other districts. More probation officers should be appointed so that a larger number of offenders could benefit from this form of treatment. At present there are paid probation officers, but some honorary or part-time officers could also be appointed if carefully selected and trained in the work. Section 4 of the 1938 Probation Act should be amended to include a larger age-group and a greater variety of offences. The condition that there should be no previous convictions should be removed so as to admit a larger number of offenders who are only technically habitual in respect of minor offences. The court should have wider discretion and have a free hand in determining the conditions of probation orders to suit the needs of individual cases, such as hospital treatment for physical or mental conditions, residence in a particular place or home, where home conditions are unsatisfactory, etc.

360. The Inquiry Committee came to the conclusion that there is a need to improve the existing system, and also pointed out that probation might be combined with fining, the probation officers assisting in the collection of the fines.

361. In China, it is felt that the question of the most effective alternatives to short-term imprisonment calls for further detailed study. But in present circumstances, the suspension of punishment and the probation system are highly recommended for general application. Detention or fines may be replaced by a reprimand if the motive for committing the offence is clearly excusable when regarded from the viewpoint of justice or public welfare.

362. In Japan,[10/] under three legislative amendments passed since 1947, the suspension of execution of sentence with probationary supervision is granted more freely and is in fact widely used. The requirements for suspension of execution have been relaxed (article 25 of the Penal Code); the execution of sentences of not more than three years - instead of two years - may be suspended and in certain circumstances a second suspension may be granted. A person granted suspension of sentence for the first time may at the discretion of the judge be placed under probationary supervision, but on the second occasion this measure is compulsory. A law was enacted in 1954 laying down standards of operation and procedure for probationary supervision. All these measures are in keeping with the international trend towards replacing imprisonment by probation.

363. With regard to the different alternatives mentioned so far and their use in Europe, the Strasbourg Working Group (conclusion No. 15) "saw no need to consider once more in detail those substitutes for short-term sentences which various congresses and meetings of experts have already been studying for some considerable time, namely the suspended sentence or probation, whether or not combined with certain special conditions such as the obligation to submit to psychotherapy, as well as a court warning and a bond to be of good behaviour".

364. Concerning the imposition of special obligations, the Group in conclusion No. 23, also "learned with interest of the various measures not involving deprivation of liberty as provided for by new legislation in the Federal Republic of Germany, particularly in respect of young adults. These include the authorization of the judge to exact certain costs or impose obligations (repairing damage caused, apologies, contribution to a recognized charity)".

Fines: rates and methods of collection; subsidiary imprisonment

365. In chapter IV reference was made to the very frequent use of fines nowadays to replace short sentences in countries where there is ample legislative provision for the imposition of fines, either alone or in combination with a conditional prison sentence or as an alternative to imprisonment (for example in Belgium, the Netherlands, the United Kingdom, Sweden, India, etc.). In Israel, sentence

10/ Yoshinobu Watanabe, op. cit., II.2, and V.2.

providing an option between a fine or imprisonment can be passed in some cases, and persons so sentenced may accordingly choose to go to prison.

366. In New Zealand, fines are a frequent alternative to imprisonment for a large number of offences including, as in most countries, drunkenness, breaches of traffic laws, etc. In the United States too, the use of fines has experienced an upward trend, with a consequent reduced use of short-term imprisonment. In the opinion of the American correspondent, this trend is likely to continue, but at a slower pace. Treatment considerations aside - he observes - fines have several characteristics which make them attractive to the sentencing judge. They are a source of income for the State, county or city; they are an economic penalty in a culture in which economic hardships are sharply felt; they do not impose the stigma that imprisonment does; they can be adjusted to the many measures of the offence more easily than other penalties; and, unlike imprisonment, they cost the State or city government virtually nothing.

367. As the American correspondent points out, fines may therefore be considered a desirable alternative to imprisonment in all cases in which the safety of the community and the individual characteristics of the offender do not require his imprisonment and in which the assumed values of punishment may be accomplished by this means.

368. Thus some countries, such as France and the United Kingdom, regard fines as a device hitherto insuffiently explored. In France a bill is under consideration whereby the fine could be adjusted to the financial resources of the offender. This may lead to a much wider use of pecuniary penalties in judicial practice. In the United Kingdom a review of maximum fines for various offences is being undertaken in order to make these penalties more effective. The Indial Jail Committee also recommended that fines could be used extensively to avoid imprisonment.

369. One of the Italian rapporteurs stresses the importance of adjusting fines to achieve equality, not only by raising fines for those who would otherwise not feel their effect but also by reducing them for poor offenders - this to be done to a much wider extent than provided for under the present legislation. The United States, Indian and other correspondents also emphasize the need to take into account the financial means of the offender, his family commitments, his age, state of health, etc. In the first place, money fines are unsatisfactory in the case of offenders too poor to pay them, and when this system is used with misdemeanents, very often it results in imprisonment for debt rather than for

crime, while in the case of well-to-do offenders, a fine may be the proper punishment, as a substantial fine entailing a real personal privation, may act as a deterrent and may also spare the defendant the wasted time in prison.[11/]

370. At Strasbourg, the Swedish delegate stated that in his country criminal policy was based wholly on the fine, which was the most common form of penalty; but he urged that whatever payment facilities are granted in case of need, fines should continue to be in the nature of a penalty. The United Kingdom delegation also stressed the importance of fines, not only from the point of view of their effectiveness if fixed with that in mind, but also with due regard to the cost of the penalty, since fines accrue to the State. Thus, in contrast to the practice followed in the nineteenth century, the rate of fines should now be fixed so as to make them a sufficiently heavy penalty. Other delegates pointed out that the possibility of imposing heavy fines was particularly useful, and even necessary, in the case of fiscal offences and offences committed for gain, from which the offender has derived considerable material advantage. In the latter case, restitution or confiscation must first be considered (see paragraphs 388 and 426 below), and failing those measures, fines.

371. In conclusion No. 16, on the subject of maximum fines provided by law, the Working Group expressed the view that "in regard to a certain number of offences for which the law prescribes short prison terms, a fine might be a more appropriate and more effective penalty" and that "to this end, it is desirable that the amount of fines prescribed by law be such as to permit of their use for the greatest possible number of offences".

372. However, as we have just seen, where fines are established at a fixed rate, inequalities arise. As a particularly effective remedy to this, Sweden in 1931 introduced a system of day-fines, based on the daily wage of the offender or his other sources of income: the "day-fine" thus has the same effect for everyone. Sweden considers this a fair system because it allows flexibility in allotting fines. Several other countries have adopted a system of the same kind, including some Latin American countries and, to some extent, Portugal (a minimum and maximum day-fine). The Belgian correspondents recommend day-fines. Provision is also made for the system in the draft German Penal Code of 1956, but an Act passed in 1920 already made provision for a flexible method of collecting fines.

11/ Sanford Bates, op. cit., p. 29.

373. The establishment by the judge of a period in which to pay, as provided by law, and payment by instalments, are other means of adapting fines to individual cases. When payment by instalments is not provided for by law, it is sometimes accepted in practice, as in Belgium. With the agreement of the Attorney General, the fine collectors may grant the defendant certain facilities, including payment by instalments; to that end, the authorities inquire into the monthly income and family commitments of the debtor. The latter must make every effort and undergo certain privations in order to pay the fine, but the renewed effort each month is psychologically beneficial. In the United Kingdom, an Act dating back to 1914 made provision for deferred payment and payment by instalments and had the effect of greatly reducing the number of imprisonments. Recently, the maximum term of imprisonment which can be imposed for failure to make maintenance payments has been reduced from three months to six weeks, and legislation has been passed empowering court to require compulsory wage deduction in such cases. The Norwegian correspondents believe that the system of collecting fines in their country could be improved, particularly in the case of smaller fines, in order to reduce subsidiary imprisonment, which is fairly frequent today. Subject to this condition, they favour an extended use of fines, which might be combined with conditional sentences, etc.

374. In the Union of South Africa, in cases which do not involve certain serious crimes the court may impose a fine but suspend the enforcement thereof until the expiration of such period not exceeding three years as the court may fix for payment in instalments or otherwise of the amount of the fine, the amount of any instalments and the dates of payment being fixed by order of the court. In cases involving a term of imprisonment as an alternative to a fine, the court may, where the fine has not been paid, at any stage before the termination of the imprisonment suspend the operation of such sentence and order the release of the person convicted on conditions relating to the payment of the fine or such portion thereof as may still be due, such as recognizances, with or without sureties, or the taking up of an employment and payment of the fine in instalments, etc.

375. In the State of Uttar Pradesh,[12/] where the system of fines is frequently used, the offender is usually not given time to make the payment. In almost all cases, sentence of imprisonment in lieu of fine is passed simultaneously and the

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12/ Report of the U.P. Jail Industries Inquiry Committee, op. cit., paragraph 126.

offender goes to prison if he fails to pay the fine immediately on conviction. The 1956 Inquiry Committee suggested that courts might be given executive instructions to allow offenders reasonable time to pay the fine either in a lump sum or in reasonable instalments, the sentence of imprisonment in lieu of fine being passed only when the offender refuses to pay the fine or is unable to pay it within the time-limit fixed by the court. The Committee proposed a new type of judicial procedure for conversion of a fine into imprisonment which would avoid administrative decisions and give the court an opportunity to examine all the circumstances which have prevented an offender from redeeming his promise. The court should have the power either to reduce the fine or extend the period of payment if the offender is needy and unable to pay through no fault of his own. The assistance of the probation officer or of the parole magistrate should be available to the courts in recovering fines. If the offender is employed, the fine could be collected from the employer, part of the salary being withheld. In the view of the Committee, all these measures will have a deterrent and moralizing effect on the delinquent while sparing him the hardship of being separated from his family. But it also pointed out that while fixing instalments, the court should also take into consideration all factors to avoid a situation which may result in the offender overdoing things to the detriment of his health, in order to earn extra money to pay the fine.

376. Subsidiary imprisonment for non-payment of fines is still fairly frequent in some countries, while in others, such as Sweden, it has been reduced considerably. The length of subsidiary imprisonment is occasionally limited by law to maximum terms lower than the general maximum of "short-term" imprisonment; for example in Belgium subsidiary imprisonment terms are three days, three months or six months according to the type of offence, and in Norway the maximum is three months. In the law of other countries, the length of subsidiary imprisonment may exceed that maximum; thus, there is no such limit in Finland, and subsidiary imprisonment in a labour colony may be ordered for a term of up to two years. In Chile, subsidiary imprisonment for non-payment of a fine for want of means is limited to one year, which is considered to be the maximum for short-term imprisonment (formerly it could be up to two years). One of the Italian rapporteurs considers that to ensure that lack of means does not constitute an aggravating circumstance for the indigent offender, the current rules in Italy for the conversion of fines should be amended, the maximum terms of two or three years and the rate of conversion being disproportionate. In his view, the judge

should specify in the sentence the length of subsidiary imprisonment to be served in default of payment and certain limits should be imposed for conversion to preclude arbitrary judgements.

377. According to the report of the American correspondent, the manner in which prison terms have been imposed upon offenders who are unable to pay fines has been severely criticized in the United States in recent years. Judges have followed a common custom in requiring persons who are unable to pay their fines to work them out at the rate of one day in prison for each dollar of the fine. (In a very small number of jurisdictions the offender may serve out his fine at a rate as high as five dollars a day). This was a reasonable arrangement fifty to seventy-five years ago when the daily wage was not much higher. But it is argued that the practice today discriminates against the indigent offender, whose penalty becomes much more severe if he has to serve a prison term at the low rate of one day for each dollar of the fine, whereas a citizen of even moderate circumstances can pay a twenty-five or fifty dollar fine without any great hardship.

378. In the United Kingdom, the conversion of fines is not automatic; the convicted person who does not pay a fine has to appear again in court and the authorities have to provide proof of means and show that the default is deliberate. In Sweden too, the offender has to appear in court a second time. In Belgium and France, conversion is automatic in the first conviction. In France a convicted person who does not pay his fine is, in principle, imprisoned for debt with a fixed scale of conversion.

379. In the opinion of the Belgian and French correspondents, subsidiary imprisonment should no longer be stipulated in advance. Similar proposals have been made in other countries (see paragraph 375 above in regard to India). The Strasbourg Working Group also urged putting an end to the automatic conversion of fines so that the judge can ascertain the reasons for non-payment of the fine (added family responsibilities, for example). It was felt essential to draw a distinction between inability to pay and deliberate refusal. In the new type of judicial procedure recommended by the International Penal and Penitentiary Congress at The Hague as early as 1950 it would be possible to establish whether the offender had defaulted in bad faith or if he has an excuse which would justify giving him time to pay. Thus while provision is made for imprisonment at the first conviction, the sentence should not be executed before the person concerned has had a further hearing. At the second hearing, the court would have to decide

whether the term of subsidiary imprisonment imposed previously should be served. In practice, it is sometimes difficult to determine whether default is deliberate or not and since it is a matter of dispute, it is for the judge to decide.

380. In the case of inability to pay, the original sentence should be altered. This is done in Yugoslavia, whose delegation pointed out that in the event of deliberate refusal it would be better to resort to forcible collection rather than to imprison the debtor as is the general practice. The French delegate agreed that the Treasury has a prior right as a creditor and can resort to any measure, but he did not agree that the decision should rest exclusively with the administrative authorities; that was precisely what had to be avoided, for before the conversion stage the defendant should have an opportunity to state his case in court.

381. It would thus be possible, as is now the case in France, to apply the suspended sentence with probation to persons who have been fined, the suspension being conditional upon regular payments being made. In needy cases, the offender would have a second hearing and the judge would order other measures. In the United Kingdom, supervision without actual probation is also possible during the time allowed for payment, although this method is not used as often as it might be.

382. With regard to the enforcement of subsidiary imprisonment, there is first of all the possibility of the offender making payments in order to reduce the term (see in this connexion paragraph 374 above concerning the Union of South Africa). Once the principle is accepted that conversion is not automatic, the only persons committed to prison would be those who deliberately neglected to pay their fine; here imprisonment would be coercive rather than reformatory, if the term were short, but if the term were longer, prisoners of this kind would be treated in the same way as the others (e.g. the Finnish labour colonies; see paragraph 208 above).

383. One idea mentioned at Strasbourg would be to adopt the opposite course and to make deliberate non-payment of a fine a distinct offence, entailing further proceedings, at which the judge would be able to impose either prison sentence or services in the form of work.

384. Summing up, the Strasbourg Working Group noted (conclusion No. 17) that in many countries a large number of short-term imprisonments were the consequence of non-payment of fines - which was regrettable, and The Group thought that the situation could be improved by the measures described below as regards the bases and the collection of fines (conclusions Nos. 18 to 20):

"The amount of a fine should be fixed with due regard to the economic position of the offender. One of the means of achieving this end is the system of day-fines adopted by several countries. This way of individualizing the punishment ensures in itself a better system of collecting fines and reduces the number of imprisonments for non-payment.

Everything possible must be done to ensure elasticity in the collection of fines: in this connexion, it would be desirable that the system of the payment of fines by instalments, already practised in certain countries, be applied more generally.

Furthermore, the automatic conversion of a fine to a term of imprisonment in the event of failure to pay is open to criticism. What is needed is provision for a more flexible judicial procedure, as it exists already in several countries, whereby a distinction may be drawn between those who refuse to pay and those who are in fact unable to pay. Deliberate refusal to pay a fine might thus become a separate offence incurring an appropriate penalty."

Conversion of short sentences into fines

385. Mention should be made of a method which is the opposite of that generally practised, namely the optional conversion by the court of short-term prison sentences into fines. Provision for this is made in the Greek Penal Code, and it is frequently applied in Greece, the amount thus received being used for a fund for the building of prisons.

386. In China likewise, conversion of a prison sentence to a fine is practised. Where the offence is punishable by imprisonment for less than three years and the offender is sentenced to not more than six months' imprisonment or detention, if the execution of his sentence would cause difficulty in respect of his health, education, occupation or family circumstances, the sentence may be commuted to a fine at the rate of one to three yuan per day. It may be mentioned finally that Japan under its revised Penal Code is planning to adopt a system whereby the court may at its discretion impose a fine in lieu of a prison sentence of less than six months. (For the practice in Germany in regard to sentences of less than one month, see paragraph 422.) In accordance with the "Principles" promulgated on 25 December 1958 amending the penal system in the Union of Soviet Socialist Republics, the short prison sentence may not be commuted into a fine nor may a fine be converted into a short-term of imprisonment.

Restitution for the damage done

387. The question of restitution for damage caused by a penal offence was recently discussed in the United Kingdom. Restitution has an ethical value, and it may be combined with probation or suspension of sentence, as is in fact already done in many countries; moreover, it is feared by the offender more than a fine. In the case of simple offences restitution for the damage may be a satisfactory alternative to a fine.[13/] It may also constitute the principal penalty, as in Mexico and certain other Latin American countries, the victim either being compensated in instalments or receiving an advance from a compensation fund financed by fines and State subsidies, which recovers the amount from the offender. The United Kingdom delegation at Strasbourg stated in this connexion that it is the custom among the Negroes of East Africa to let the victim choose whether the offender is punished or makes restitution, they consider the Western penal system entirely unsatisfactory.

388. Mr. Sanford Bates[14/] suggests that the question of giving a new and sericus place in the penal scheme to the practice of restitution as an alternative to punishment should be studied. He speaks of both direct restitution for the pecuniary damage suffered and public restitution by means of services rendered to the community whose interests have been affected and whose rules have been transgressed. This appears to him to be a far more appropriate punishment than imprisonment, since an offender in prison can do nothing to requite his wrong and is in fact, a burden on the community. He would be offered the choice of rendering service either to the individual or group he had injured or to the society whose rules he had broken. Some juvenile courts in particular have obtained results by applying the restitution concept.

389. This device has also been applied with good results in the Federal Republic of Germany, where young offenders may be ordered by the judge either to make restitution for the damage done or at least to apologize to the injured person, or to pay a sum of money to a charity or a public utility (see paragraph 364 above).

390. The Strasbourg Working Group's conclusion No. 22 reads simply: "Also connected with the system of fines are the various means of obliging the offender to compensate the victim, and attention was drawn to the South American experiment

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13/ Karl Peters, op. cit., p. 194.

14/ Op. cit., pp. 29-30.

of compensating the victim out of funds at the disposal of the court the amount being recovered in instalments from the convicted person."

Work or services rendered without deprivation of freedom

391. Reference has already been made to work outside the prison and on work sites performed under a system of semi-freedom (see chapter VII, paragraphs 221-228). Going further, but still keeping to a certain extent within the system of semi-freedom, the Spanish report suggests compulsory labour, i.e., a system similar to that of "remission of sentences through work" under Spanish law;[15/] this would entail house arrest or nightly detention in special establishments.

392. Another suggestion, offered by one of the Italian rapporteurs, was that fines should be paid off by the performance of work at the request of the prisoner and with the authorization of the judge. Remission of a fine by work, including work for the State or for a commune, is also provided for in the Swiss Penal Code, although this provision has not been applied in practice. France in particular has recently given consideration to the new procedure of requiring a convict to work as being on the same lines as that of imposing fines, but not to be confused with it. The convict would remain at liberty to carry on his usual occupation but would be obliged in his spare time to perform some service the nature and timing of which (week-end gaol, etc.) would be decided on a very flexible basis. The relative length and repetitive character of this method of atoning for an offence, like a fine to be paid in instalments, would have a reformative value.

393. The reports of the Greek and Yugoslav correspondents reject the concept of compulsory labour performed while the offender remains at large. At the Strasbourg meeting, too, the difficulty of organizing this type of labour and the drawbacks found whenever it was tried were pointed out. According to the Yugoslav report, one drawback was that to comply with this measure in the post-war period

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15/ Under art. 100 of the Spanish Penal Code of 1944 remission of sentences through work consists of crediting the prisoner with one day's sentence for every two days of work, whether manual or intellectual. This system, under which a maximum of one-third of the sentence can be remitted, is applicable to sentences exceeding two years. See Antonio Quintano-Ripollés: La Réadaptation du détenu à la vie libre, Seminar of the International Penal and Penitentiary Foundation, Strasbourg, 1959, vol. I, p. 252.

some offenders had to leave home and live in circumstances of considerable hardship, so that the puhishment was actually harsher than a prison sentence would have been. Where an offender was permitted to remain in his ordinary place of residence while serving such a sentence it was tantamount to a fine, since he did not receive the standard rate of pay for his work, and his freedom was greatly restricted. At Strasbourg the Yugoslav delegation also explained that Yugoslav legislation, following the example of Soviet legislation, had introduced the special penalty known as "collective labour" but that when the Penal Code of 1951 had gone into effect the system had been abandoned for a number of reasons, including practical considerations relating to the way in which the sentence was to be carried out. If the offender was not to be deprived of his liberty he would have to perform his work in the vicinity of his residence; he might, for example, be assigned to road or forest work in the village itself under the supervision of a traffic policeman or forest guard who might be a friend of his. If, on the other hand, the penal labour was to be performed at a place far from his usual residence he would have to be provided with food and lodgings and the system would be similar to deprivation of liberty. In principle the objection to this system is that under the Yugoslav Constitution labour is regarded as a human right; hence it should not at the same time be made a punishment - in prisons it can be regarded as an educational measure.

394. The delegation of the Federal Republic of Germany pointed out that sine 1920 the German Penal Code had provided for fines to be replaced by labour without deprivation of liberty; efforts have been made to apply the system in forest areas but because of the many practical difficulties involved it had had to be abandoned.

395. While acknowledging the merits of the French proposal mentioned above, other delegates raised the question of the kind of work that could be performed without having an adverse effect on the economy and the authority that would be responsible for organizing it. In countries where trade-unionism is highly developed difficulties could be expected. It was pointed out by way of analogy that in certain countries an unemployed labourer who was receiving unemployment pay could be assigned by the authorities to perform some public service, such as clearing away snow, but that for an offender who normally worked indoors it would be degrading in the extreme to be sentenced to work in the street or in a public park. It was also recalled that convict labour on public works projects existed historically long before imprisonment, which actually replaced convict labour in the name of progress.

396. With regard to Europe, the Strasbourg meeting summarized its discussions on the subject as follows (conclusion No. 21): "The Group also turned its attention to the possibility of substituting services (compulsory work) for a fine. It must be admitted, however, that there are many practical difficulties involved (publicity, opposition from trade unions, high cost for a small return)."

397. In some other parts of the world the feasibility of such sentences would seem to be greater, as may be gathered to some extent from what follows.

398. In the State of Uttar Pradesh, India, it has been proposed, as elsewhere, that voluntary labour should take the place of fines. Wide-spread unemployment in India sometimes makes it difficult to collect fines even if the offender is willing to pay. To provide a means of earning, the 1956 Inquiry Committee suggested that offenders might be employed on public works while continuing to live with their families. The fine would thus be paid in kind, for the benefit of the community and at no cost to the State which would not be the case if the offender were imprisoned for non-payment of fine.

399. Another proposal made in this Indian State concerns house arrest and compulsory labour by the offender for the community where he normally lives. House arrest has been found useful for women of good reputation and for offenders over sixty years of age. The State of Uttar Pradesh has about 1,000 prisoners over the age of sixty who cannot be usefully employed in prisons and who are a liability to the State and to society. If those among them to whom such a penalty can suitably be applied are required to work at their homes for the benefit of the State or community for several periods of an hour or two, they can make themselves more useful. By being employed compulsorily for the benefit of the community for a certain number of hours, a fixed period or one day a week, they can contribute to the good of the community and also have the satisfaction which comes of making such a contribution.

400. It is felt that these different alternatives, including the prison camps mentioned above (chapter VII, paragraph 228), would help to reduce the prison population to a considerable extent and make available for constructive work a large labour force at present lying idle in the prisons.[16/]

401. In the Union of South Africa male non-white prisoners with sentences not exceeding four months, whether as the actual penalty for the offence or imposed

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16/ Report of the U.P. Jail Industries Inquiry Committee, op. cit., paragraphs 127, 130, 131.

for non-payment of fine, may at their request be assigned to work for farmers for a small wage amounting to 9d. a day for the unexpired portion of their sentence. The amount earned is deposited at the prison by the employer to be handed over to the prisoner on discharge. The employer undertakes to feed and clothe the prisoner and to provide him with medical services and hygienic living quarters and bedding.

402. Legislation has been enacted in British Guiana, Mauritius and Tanganyika to provide a system whereby in certain circumstances, notably for the non-payment of fines, persons guilty of minor offences may be required to perform extra-mural work on public works projects instead of serving terms of imprisonment.17/

403. According to detailed information received more recently from the United Kingdom Government, the Secretary of State for the Colonies sent a circular to the Governments of the overseas territories in 1950 setting forth the views of the Government's Advisory Council on the Treatment of Offenders concerning the organization of work outside prisons as a substitute for imprisonment in the case of persons guilty of minor offences. The purpose of such extra-mural work, in the view of the Council, should be not only to make imprisonment unnecessary but also to enable the offender to continue the ordinary work by which he earns his living, while performing his extra-mural labour during his spare time.

404. Reference was made to the value of the proposed system of work outside prisons as an inexpensive means of dealing with large numbers of persons guilty of minor offences for which they have to serve short prison terms.

405. The Council recommended that the offender should not be sentenced to work outside the prison unless the court considered him likely to react well to such treatment, and unless he gave his consent. Rules were drawn up for the operation of the system, establishing the obligation on the part of the authorities to find such work opportunities, providing for the supervision of the worker and prescribing penalties for offenders who do not abide by the rules thus laid down.

406. The comments received from the Governments of the overseas territories show that the system recommended by the Advisory Council is often inapplicable locally for a variety of reasons:

(a) In the tropics the hours of the day during which outside work can be done by an offender in his spare time are limited;

17/ International Survey of Programmes of Social Development, op. cit., p. 113.

(b) The assignment of the necessary staff for the administration and supervision of outside work done by offenders during their spare time creates difficulties;

(c) The administrative problems arising from the division of responsibilities among different government departments make it difficult for those normally in charge of the labour of ordinary civilians employed on public works projects to ensure the supervision and discipline of offenders;

(d) Unless there is very strict control the system may give rise to abuse through favouritism, absenteeism and petty corruption.

407. Despite these difficulties, extra-mural penal labour has been provided for by the law in a number of territories, although the courts do not often have recourse to it.

408. Tanganyika, however, has been making experiments along these lines for a number of years, the system being that offenders are required to work not during their spare time but during normal working hours. Extra-mural work is not actually a penalty imposed by the court; but offenders sentenced to prison terms of less than six months or to imprisonment for non-payment of fines may choose extra-mural work as an alternative unless the court has ruled it out in a particular case. Before the offender can be permitted to do such work the district administrator must ascertain that there is an appropriate type of public works project to which he can be assigned, that he is medically fit for such service, and that extra-mural work is a suitable form of treatment in his case. Those who have opted for such work and have been accepted go direct to the place where they are to work without being first taken to prison. They are employed on public works for six hours a day for the duration of their sentences and those who are of good conduct and industrious can earn the usual remission of one-third of their sentences. They perform only manual labour for government departments, the High Commission for East Africa, the municipal councils and other public authorities. They are not allowed to work for private firms. They are not paid for their work, but receive either daily rations or an allowance equal to the retail price of ordinary rations. They may spend the night either at home or in unguarded camps. Those who stay with their families can thus continue to look after them and in many cases help to run the farm, although their earning capacity is greatly reduced while they are doing penal labour. Their conduct is generally satisfactory and there are few desertions. In 1956 a total of 3,627 offenders were assigned to extra-mural work and only 250 had to be sent to prison. The corresponding figures for 1957 were 4,939 and 401.

House arrest

409. This new form of restriction of liberty, proposed by certain penologists as a means of avoiding imprisonment in the case of minor offences, has long existed in Spain (art. 85 of the Penal Code) and in Argentina (art. 10 of the Penal Code) for women who have committed very minor offences. The same system is applied in the Indian State of Uttar Pradesh (see paragraph 399 above) for certain women offenders and for male offenders of advanced age. The proposal mentioned in paragraph 391 concerning compulsory labour for offenders sentenced to house arrest raises the question how such a sentence can be enforced. The Strasbourg Working Group decided in conclusion No. 40 that "practical difficulties, particularly in the matter of supervision, made confinement to the home impossible".

Procedural measures and judicial pardon

410. There are a number of measures falling within the scope of one phase or another of criminal procedure which in certain cases can be substituted for the imposition of short prison sentences.

411. In the State of Uttar Pradesh, India, the 1956 Inquiry Committee[18/] proposed that when no important matter of public interest is involved the Superintendent of Police should be authorized to drop or suspend proceedings after an admonition to the offender. A similar procedure is applied in the Union of South Africa in the case of payment of fines for example (payment of admission of guilt - see chapter IV, paragraph 44 above), and probably in other countries as well.

412. In the Federal Republic of Germany cases are often dropped or dismissed by the court in accordance with the principle of the advisability of prosecution; but this does not apply to traffic offences, vagrancy, prostitution, etc., or to recidivism.

413. In the Scandinavian countries conditional suspension of prosecution for a probationary period of several years is very widely practised for offenders of all ages, and more particularly for juveniles where the offence is not serious. In a circular to public prosecutors the Director of Public Prosecutions in Denmark has directed them, in the case of young offenders against property where the offence is of a certain gravity, as far as possible to ask for a sentence of

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18/ Report of the U.P. Jail Industries Inquiry Committee, end of paragraph 125.

commitment to youth prison, in preference to short-term deprivation of liberty. If the offence is less serious they should ask for a suspended sentence combined with supervision. This has resulted in a very substantial decline in the use of unconditional imprisonment for young offenders under twenty-one years of age.

414. Conditional suspension before judgement or sentencing, a measure similar to suspension of prosecution but applicable during the judicial stage of the proceedings developed to a particularly high level in English and American law.19/ (See, for example, paragraph 344 relating to the Union of South Africa and paragraph 331 et seq. relating to the Belgian bill).

415. As regards Italy, the author of one of the working papers proposes that the system of judicial pardon hitherto applicable to persons under eighteen years of age should be extended to cover such adult offenders as are likely to benefit from it. This measure, in spite of its name in Italian, is similar to those just described. It does not imply an express finding of guilt or a sentence to a specific term, and it is not even conditional on a subsequent period of good behaviour. It takes effect as soon as judgement is pronounced and wipes out the offence.

416. In the Federal Republic of Germany the judicial authorities may waive the penalty in cases of misprison, perjury or false statement made under constraint, less serious cases of incest, homosexual offences and so on. The penalty may be waived by the public prosecutor's decision not to prefer charges, by the court's dismissal of the case or by its decision not to impose sentence on the convicted offender. The practice waiving the penalty is becoming fairly considerable.

417. At Strasbourg the German delegation reported that a sort of social service, distinct from the probation system, was attached to the courts to give the judge a clear picture of the defendant, for the specific purpose of avoiding short sentences whenever possible in view of prison overcrowding. As a matter of fact, the investigations conducted by this service often make it possible to by-pass prison sentences. In the Union of South Africa a similar special service exists for accused and short-term prisoners (see the beginning of paragraph 344 above). Efforts in the same direction are being made in the State of Uttar Pradesh (paragraph 357 above).

19/ Karl Peters, op. cit., p. 195.

418. According to the Commissioner of the Department of Correction of the City of New York, Mrs. Anna M. Kross, the use of temporary release on the defendant's own recognizance would be another way of deducing the overcrowding in United States local gaols brought about by bail and fine cases.

419. Regarding the procedure for the enforcement of prison sentences, Karl Peters[20] recommends the establishment of closer relations between the courts and the enforcement authorities, in order to bring home to the judiciary the urgency of the short-term imprisonment problem. The judge should familiarize himself with the administrative methods of the enforcement authorities and see for himself the problematic nature of the short sentences through practical experience in this field for at least six months.

420. Still on the subject of enforcement, the Belgian correspondents recall the experience of the post-war years, when owing to the overcrowding of prisons, sentences of up to three months were not enforced; since then sentences of two months or less are no longer enforced save in exceptional cases. At first exceptions to the non-enforcement policy were made in cases of desertion of the family, certain motor vehicle violations and so on, and these exceptions became increasingly common - incidentally, as prison overcrowding declined. However, public prosecutors are advised to propose automatic pardon for all other short sentences unless the circumstances call for enforcement. Thus, under the unusual but flexible Belgian system pardon by the prison administration is used to adapt prison sentences to social needs by substituting fines for certain short sentences and by making sentences conditional.

421. In Morocco, by virtue of the dahir of 6 February 1958 the King may pardon any person sentenced by the courts of the Kingdom. Facts not known to the judge might make it apparent that imprisonment was not in fact the proper sentence. In this connexion, it should be noted that existing legislation does not allow fines to be substituted for imprisonment. Pardon may take the form of a simple remission of the penalty; it may also be conditional and may be effected through commutation. In such cases, pardon may provide a means of replacing imprisonment. Thus, when the prison sentence ordered seems inadvisable in the light of the offender's personality and the grounds of his application for pardon, the King may substitute payment of a fine for the prison sentence or remit the sentence on condition that no further prison sentence is imposed within five years. Furthermore, in 1954 the Moroccan Ministry of National Defence was given the right to suspend the enforcement of decisions of the Military Court.

20/ Ibid., p. 193.

422. Within the Strasbourg Working Group there were proposals to grant the executive the power to convert prison terms of less than one month into fines (German system) or compulsory work (French draft).

423. In some countries, on the other hand, it is felt that sentences imposed by the courts should not be modified too often. This point was stressed by the Swedish delegate to the Strasbourg Working Group, who said that criticism had been directed against the frequent use of pardons by the Ministry of Justice in his country.

Other substitutes

424. There is no doubt that short-term imprisonment has been largely replaced in modern penal codes by security measures intended for habitual and abnormal offenders, alcoholics and drug-addicts, idlers and vagrants. Between 1956 and 1958 the United Nations European Consultative Group on the Prevention of Crime and the Treatment of Offenders made a special study of the problems raised by the treatment of several of these categories of offenders.21/

425. In Japan recently, a special security measure has replaced imprisonment for prostitutes convicted of soliciting in the streets - the prostitutes are made to undergo a six-months period of "guided training".

426. A number of other principal or accessory penalties and measures, which may be substituted for short-term imprisonment, are proposed in several reports, including those of Italy, New Zealand and Yugoslavia; but some of these are rejected by other countries (e.g., Greece). In addition to court warning and the bond to be of good behaviour, already mentioned in connexion with the conditional sentence and probation (paragraphs 324 to 363), the measures proposed are:

Exclusion or suspension from public office or from a profession or trade;

Forefeiture or suspension of paternal authority;

Ban on residence or exclusion from certain premises;

Confiscation (see paragraph 370 above);

Order to pay the costs of prosecution;

Order to pay maintenance obligations;

Withdrawal of the driving licence.

21/ ST/SOA/SD/EUR/6 and Add.1.

427. Some of these measures have for a long time past appeared in penal codes, mainly as accessory penalties; others are still administrative or civil law measures. It has been proposed in various quarters that these measures be given the force of principal penalties to be imposed in place of the usual short prison sentences.

428. In certain specific cases, exclusion or suspension from a profession or occupation may have very serious consequences and accordingly could not be applied indiscriminately to all the minor offences punishable only by short prison terms.22/ However, with regard to some occupations which do not require very extensive technical training and involve a moral risk (abuse of alcohol, etc.) for unstable persons or expose them to other specific temptations, a ban of this kind in lieu of a short-term prison sentence may be entirely adequate to prevent the person concerned from committing a further offence.

429. Withdrawal of the driving licence is a criminal penalty in some countries such as the United Kingdom and Yugoslavia; in other countries it is still simply an administrative order. There is no doubt that in either case this measure is greatly feared, and it is particularly effective in dealing with certain offenders, especially young adults and persons convicted of drunken driving or other fairly serious motor vehicle offences such as unauthorized use of a motor vehicle. The best way to deal with young unlicensed drivers who commit offences would be to disqualify them from obtaining a licence.

430. In France a 1954 Act provides that the driving licence may be revoked as a penalty for tax evasion. This criminal police measure is gradually developing into a true penalty, and a very effective one against persons who need a motor vehicle for real or psychological reasons.

431. As stated above, most countries make considerable use of the ban on residence and exclusion from certain premises as special conditions connected with conditional sentences or probation; however, these measures may also be conceived as independent penalties, like the regulations or special conditions which in German practice a judge may impose, with or without probation, on young adult offenders (see paragraph 364 above).

22/ Sanford Bates, op. cit., p. 29, considers these penalties with respect to occupation as alternatives to imprisonment in general, but does not refer particularly to short prison sentences.

CHAPTER X

CLOSING REMARKS AND CONCLUSIONS

432. This report demonstrates, first of all that despite the rather strong current of opinion against short sentences, it would be difficult to do away with them entirely, for a variety of reasons most of which have already been considered; and secondly, that wherever possible, short prison sentences should be replaced by other penalties and measures which do not give rise to the harmful effects so often attributed to short-term imprisonment.

433. The study indicates that the expression "short sentence" does not have a uniform meaning but is, in fact, used to designate two categories of penalties - the very short-term sentence, usually not exceeding thirty days, and a somewhat longer sentence, which in some legal systems may be as much as six months and in others up to one year. Very often the the length of these short-term sentences is still further reduced by the general practice of deducting the time spent in custody before and during trial.

434. It would also seem desirable in the light of the existing data, as far as possible to curb the enactment of criminal or administrative statutes which too often stipulate short sentences for minor offences, either as independent penalties or as alternatives where a fine or administrative penalty cannot be applied. This mushroom-growth of short sentences must be avoided so far as is feasible. Accordingly, the substitutes listed below should also be embodied in all legal provisions, in addition to the penal statutes or penal codes laying down penalties for minor offences.

435. The problems raised by short-term imprisonment might also be solved in large part by the use of open or semi-open institutions rather than closed prisons. Special institutions for offenders sentenced to short-term imprisonment might offer another solution. However, as the present report indicates, some persons feel that this would run into a number of practical difficulties.

436. As for the treatment of the type of offender involved, it would appear that the majority do not require special prison treatment, which in any case could not be given during a short prison term. In most cases it would probably be more effective to provide these offenders during detention with constructive work paid at any rate adequately.

437. The following penalties and measures might in a great many cases be regarded as suitable substitutes for short-term imprisonment:

1. Conditional suspension of sentence;
2. Probation;
3. Fines;
4. House arrest;
5. Compulsory service or work for the State, the community or a public or semi-public institution;
6. Restitution for the damage caused;
7. Compulsory attendance at a rehabilitation centre, vocational training or other measures of a social character;
8. Bond to be of good behaviour for a specified period, with or without surety;
9. Exclusion from certain activities, or even occupations for a short period;
10. Exclusion from certain premises for a short period;
11. Judicial or administrative warning or restraint, decided in camera or in open hearing at the court-house or the offices of the administrative authority;
12. Obligation to report regularly for a specified period to a particular authority;
13. Pardon;
14. Withdrawal of the driving licence, temporarily or permanently;
15. Ban on leaving the country during a period not exceeding six months without prior authorization from the appropriate administrative or judicial authority;
16. Obligation to follow the instructions or accept the assistance of a social service agency and undergo ambulant treatment for a period of time.

438. This list of penalties and measures is not exhaustive; it merely gives a few examples. In every instance, they must be used independently, not combined or imposed simultaneously, to replace the short-term prison sentence, which should be avoided whenever possible and applied only when absolutely necessary.

439. Fines can of course be used more widely in economically developed countries than in less developed countries. This seems to be an important point; it may explain why compulsory work or service, either as an independent penalty or as an alternative to fines, seems to be regarded favourably in the penal codes of some

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countries. Thus, the Bolivian official draft Penal Code of 1943 provided that compulsory work for a short period might be substituted for fines and short prison sentences. Furthermore, this measure was to be independent of any other penalty and could be imposed as a principal penalty in certain cases. The nature of the work to be done, would be specific, with due regard to the offender's personality, employment background, and other factors. The work would be performed in the place where he lived or in the surrounding district. This draft code also provided that the work must be done for the benefit of the State, province, department or commune, and never for a private person or company. If such a penalty were imposed on an official, white-collar or manual worker, he would be required to work for some time without pay or at reduced wages. In no case was the protection afforded to the accused by the labour laws to be withdrawn because of the imposition of this penalty.1/ The Code of Greenland likewise provides for compulsory work both as a principal penalty and as an alternative to fining. The new Ethiopian Penal Code also contains provisions regarding compulsory work on behalf of the State or a public authority. Such work may be substituted for short prison sentences and fines.

440. House arrest seems to be quite a useful substitute, which may be applied to many types of offenders in certain cases. The Bolivian draft code also provided for house arrest.

441. Another quite useful device would seem to be payment of fines by instalments. The Brazilian Penal Code is very flexible in this regard. It grants a three-month time-limit for payment; if the fine is not paid at once, payment may be made by instalments over a two-year period or may be withheld from the salary or wages of the convicted person. This system of withholding from wages is also practised in the USSR and Bulgaria, where corrective compulsory labour without imprisonment seems to be combined with fines, 20 and 25 per cent respectively of the convicted person's pay being withheld.

442. The obligation to submit to treatment for a period of time may be combined with other alternative penalties or imposed alone in certain cases. This measure may be warranted in a great many cases, especially for young adult offenders.

443. The imposition of a great number of short sentences should be avoided, particularly very short penalties, which rarely have a preventive or deterrent effect;

1/ See Proyecto Oficial de Código Penal, Comisión codificadora nacional, vol. I, La Paz, 1943.I.

other more effective measures should be substituted. The effectiveness of such substitute measures will depend on the personal and occupational background of the accused, as well as on the character of the measures themselves. In some cases exclusion from certain activities undoubtedly has a much stronger preventive and corrective effect than fines. In other cases, compulsory work or service would be more effective than a fine or a few days in prison. In this connexion, the New York Act of 15 March 1960 against drunken driving may be mentioned. The only penalties provided by this Act are suspension of the licence for sixty days for a first conviction, and suspension for one hundred and twenty days for a second violation committed within a three-year period. A third conviction within that period results in the permanent revocation of the licence. The Act purposely did not make use of fines and short-term imprisonment, which had hitherto been almost entirely ineffective.

444. This report would seem to lead to the following conclusions:

(a) The short-term penalty involving deprivation of liberty, particularly in the form of very short prison sentences, should be avoided so far as possible, but need not be got rid of entirely;

(b) Short sentences should not be imposed wholesale but should be limited to specific cases in which they are deemed to be effective in the light of the individual factors and other circumstances. Where short-term imprisonment is necessary, the convicted person should preferably be sent to an open, semi-open or special short-sentence institution, if one is available. In any case, this category of prisoners should always be separated from other prisoners and required to work;

(c) Whenever possible, the penalties and measures listed above should be substituted for short sentences, and particularly for very short sentences. These penalties and measures should be regarded as penalties proper and not as accessory penalties. They may be combined so that in some instances several such penalties and measures could be applied simultaneously. Apart from assistance and treatment measures, there should be no imposition of these measures consecutively.

(d) Enforcement of these penalties and measures should be as flexible as possible, provided the flexibility is compatible with the purpose of the punishment.
