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# Alternative Penal Sanctions in Greece

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## ABSTRACT

In Greece, doubts about the effectiveness of prison and observation of its undoubted negative effects have led to an increase in the use of conversion and suspension of sentence, and a willingness to consider mediation and diversion. While the former represents a difference in the application of sanctions already available, the latter may herald a more deep-seated change in attitudes towards penal sanctions.

## THE LEGISLATIVE BACKGROUND

Greece's penal system is based upon a Criminal Code which was voted by the Parliament and put into force in the early 1950s.<sup>1</sup> Hence this Code, in its original version, was marked by at least three main characteristics, usual for criminal legislations of that time.

First, it had a strong punitive orientation. The penalties were mainly those which deprive a convict of his freedom or even of his life: death penalty for felonies;<sup>2</sup> incarceration for life and temporary incarceration for felonies (5 to 20 years); imprisonment for mis-

demeanours (10 days to 5 years), and jailing for minor offences (1 day to 1 month).<sup>3</sup> Certainly, pecuniary penalties for misdemeanours (in the latter case, pecuniary penalties are called 'fines'), have also been included in this Code, either as autonomous penalties,<sup>4</sup> or as penalties to which an imprisonment or a jailing can be converted by the court.<sup>5</sup> Initially, the only custodial penalties which might be converted into pecuniary penalties were those which did not exceed six months' duration.

Apart from these 'principal sanctions' there were (and still are) provisions for 'supplementary or accessory penalties', such as the deprivation of civil rights; the prohibition from exercising certain professions; the official publication of convictions; confiscation of certain 'instruments or products of the crime';<sup>6</sup> and suspension of the driving licence for traffic offences (which was none the less recently characterised as an 'administrative measure').<sup>7</sup> However, these accessory penalties are seldom imposed by the courts.

Secondly, a belief in the possibility of rehabilitation. The Greek Criminal Code (as well as the abolished Penitentiary Code of 1967) was predominated by the optimistic idea that criminals — particularly some vulnerable categories of them, such as young offenders, habitual offenders and the like — could be treated and 're-educated' in special insti-

tutions in order to be integrated into society (a rehabilitative ideal).

Hence, the Criminal Code introduced a long series of *sanctions* (penalties and security measures). These would have primarily a curative-reformative orientation and would (at least) incapacitate the offender as long as the latter seemed prone to continuing his criminal activity (a negative criminal prognosis). Such was the spirit of the specific penalties which were created for dangerous young delinquents,<sup>8</sup> for dangerous offenders with reduced criminal responsibility,<sup>9</sup> and for dangerous recidivists.<sup>10</sup>

Similarly, there have been introduced:

- (a) reformatory or curative measures for less serious cases of young delinquents;<sup>11</sup>
- (b) security measures for dangerous offenders with no criminal responsibility;<sup>12</sup>
- (c) safety measures for: alcoholics/drug addicts;<sup>13</sup> persons whose residence in certain areas can create problems to themselves or others, eg because of a 'vendetta';<sup>14</sup> aliens who should be repatriated;<sup>15</sup> and persons who have in their possession dangerous objects or products of crime.<sup>16</sup>

Most of these sanctions — with the exception of 'reformatory measures' for young delinquents — are rarely applied in practice.

Thirdly, the Greek Criminal Code adopts a clear *liberalistic view* and a concept of profound respect for the rule of law. One of the most important principles of the Code in this sense is the principle *nullum crimen nulla poena sine lege*, which is asserted *expressis verbis* not only in the very beginning of this Code,<sup>17</sup> but also in Article 7(1) of the Greek Constitution as well as in earlier Constitutions. According to this prin-

ciple, no penalty can be founded on customary or case law or interpreted by analogy; it can derive its source only in written (statutory) law, which describes in a specific way the criminal behaviour and has no retroactive effect against the offender (*in malem partem*).

No doubt this principle is very important as a guarantee of civil liberties. Nevertheless, the principle should be understood within a broader state-oriented context, where the official law plays the most important role and leaves no large discretion for parallel or extra-legal solutions to other parties, such as the judges and the victims (eg offences prosecuted upon complaint alone: their initial number in the Code was very restricted).

Over the past 45 years the above-mentioned infrastructure of sanctions in the Greek Criminal Code underwent no radical legislative modifications: *all the initial sanctions (penalties and safety measures) remained formally intact*, with the exception of the death penalty, which was recently abolished,<sup>18</sup> but which had been suspended *de facto* (as far as its execution was concerned) since 1972. Yet very important changes have occurred in the way in which this sanctions-system has been applied, since its introduction.

## USE OF SANCTIONS

To begin with, there has been a continuing trend away from custody towards pecuniary penalties and non-custodial measures and such penalties now predominate. This practice of the courts in progressively reducing the use of custody has also been followed by the legislature. Thus, the maximum penalty limit for conversion of imprisonment into pecuniary penalty<sup>19</sup> and for suspension of sentence<sup>20</sup> was raised from the initial

Table 1

USE OF SANCTIONS					
Years	Convicted persons, adults and minors	Autonomous pecuniary penalties	Suspension of sentence	Newly admitted convicts	Newly admitted detainees on remand
1958	88,950	1,891 (2.3%)	10,796 (13.3%)	10,078 (12.4%)	2,438 (3.0%)
1968	66,685	785 (1.2%)	11,480 (17.8%)	8,160 (12.6%)	3,535 (5.5%)
1978	115,734	6,917 (6.0%)	21,791 (18.8%)	6,190 (5.4%)	2,366 (2.1%)
1988	132,925	14,746 (11.1%)	15,745 (11.9%)	4,125 (3.1%)	2,482 (1.9%)
1989	108,983	9,829 (9.0%)	12,972 (11.9%)	3,757 (3.5%)	2,828 (2.6%)
1990	109,190	10,464 (9.6%)	11,939 (10.9%)	4,552 (4.2%)	2,690 (2.5%)
1991	112,203	11,840 (10.6%)	11,069 (9.9%)	4,455 (4.0%)	3,007 (2.7%)
1992	107,564	9,371 (8.7%)	9,822 (9.1%)	5,248 (4.9%)	3,630 (3.4%)

The number of convicted persons does not necessarily correspond to the real fluctuation of criminality, given the fact that in recent years on several occasions the courts had to interrupt their normal functioning due to lawyers' strikes etc.

upper limit of six months (in 1950) to one year (in 1970), to 18 months (in 1984) and recently to two years (in 1991). As a result of this tendency, while the total number of convicted persons was steadily rising, the number of total prison population was respectively diminishing.

This tendency towards a restriction of custodial penalties in favour of conversion and suspension of sentence is certainly common to most of the European countries and to the USA, but is not self-evident. In fact, during recent years, serious crime reported to the police (reported felonies) has dramatically increased from 1,041 cases in 1980 to 4,455 in 1988; 4,692 in 1990; 6,551 in 1991; 6,510 in 1992, and slightly decreased in 1993 to 6,348 cases (17.4 felonies per day, among them 4.1 cases of armed robbery).

On the other hand, it is true that reported total criminality (ie felonies together with misdemeanours) has

remained fairly constant during recent years, with a slight upward, but noted, trend: from 295,353 offences in 1980 to 311,179 in 1988; 330,803 in 1990; 358,998 in 1991; 379,652 in 1992, and 326,476 in 1993. Hence, the average rate per 100,000 inhabitants in Greece amounts to approximately 3,300 offences and is comparatively low. According to Interpol Statistics for the year 1991, there were 4,613 cases of crimes per 100,000 inhabitants in Italy; 6,581 in France, 6,649 in Germany, and 922 in Portugal.

However, the majority of these offences (and the picture becomes clearer if one takes into account the statistics on tried offences in 1992), are only of minor importance: about 60 per cent of the penalties imposed by the courts are for imprisonment of less than one month (64,349 out of 107,564 offences); in addition, about 47 per cent of them concern mainly the non-payment of insurance taxes or similar labour

offences, traffic offences and market inspection offences (respectively: 5,179 offences out of 30,621 and 14,548 out of 107,564 total cases in 1992).

Consequently one would expect that this constancy in total criminality would be considered by the policy makers as not deserving of their particular reaction, and that, furthermore, the increase of serious crimes would lead them to take more rigorous measures in order to establish 'law and order'. Yet this has not been the case, at least for minor and medium levels of criminality. As was noted above, the legislator increased considerably the initial upper limit of conversion and suspension of sentence. In addition, he also took interesting initiatives to encourage non-custodial strategies either on the level of sentencing, or even afterwards, during the imprisonment.

### NON-CUSTODIAL STRATEGIES

As can be deduced from the statistical evidence, only about 5 per cent of those convicted each year are committed to prison and more than half of them remain there simply because they do not have the funds to pay off their fines.<sup>21</sup> By virtue of recent laws,<sup>22</sup> even these underprivileged people can avoid confinement if they agree to work for the community. Moreover, for persons sentenced to a term of imprisonment of between two and five years, the possibility exists to serve their sentence outside prison, under *probationary supervision*.<sup>23</sup> Besides, a suspension of sentence is provided for offenders whose case has not been tried finally (on appeal) or irrevocably (before the Supreme Court).<sup>24</sup>

### VARIATION IN SENTENCE SERVED

On the other hand, in the case of a person who, because of the seriousness of his offence, does not avoid confinement, a series of measures can still keep him in contact with society,<sup>25</sup> or reduce the period of the detention. The latter can happen chiefly in three ways:

- (a) The convict can work off part of his sentence, especially in the so-called farm prisons, where the sentence is reduced by two days for each day's work — the 'good time allowance'.<sup>26</sup>
- (b) The convict can ask the court for *conditional release* (parole) after serving three-fifths of the imposed custodial sentence and at least one year, or 20 years in the case of incarceration for life.<sup>27</sup> It is noteworthy that, according to a recent modification, parole is granted in any case, unless the court judges for concrete reasons that a convict's conduct, during detention, renders absolutely necessary his further confinement in order to prevent him from committing new offences.<sup>28</sup> Hence conditional release has become almost automatic, following this modification. It is also important to stress the fact that 'good time allowance', as described above, is also taken into account when conditional release is considered by the court.
- (c) Thirdly, the convict of any offence can submit a *request for pardon* to the President of the Republic.

The President decides after receiving a proposal by the Minister of Justice (consulted by an advisory body, mainly constituted by judges), and has the authority to reduce the sentence or give a total pardon.<sup>29</sup> Furthermore, in certain offences there exists the possibility of judicial pardon before confinement

('abstaining from punishment') if the victim of a negligent homicide or of a negligent bodily harm is the offender's next of kin and the court judges that the offender has already suffered for his act.<sup>30</sup>

### WHY THE GROWTH IN ALTERNATIVE STRATEGIES?

If one wishes to try to explain why Greece's policy makers insist on maintaining the option for non-custodial strategies in spite of the increasing levels of serious crime, two main reasons would be emphasised.

First, there is a deep scepticism, if not disappointment, among social scientists, Government policy makers, legislative organs and the public itself regarding the (in)efficiency of imprisonment and, especially, its supposed ability to 're-educate' people. It seems that prison has become a school for crime and a place of idleness and corruption. This situation has deteriorated in recent years due to the overcrowding of prisons: according to recent statistics, about 6,610 detainees were confined in April 1994 in places where normally and officially, 'only' 4,090 persons can live — in other words, about 60 per cent more detainees than the prisons' capacity. Although this situation is similar to that in most European countries, one cannot disregard the fact that, with so many prisoners residing very close to one another, even in places originally planned as workshops or recreation rooms, no serious effort to re-educate inmates through work and education can be undertaken. Nevertheless, important projects concerning the professional training of prisoners have been promoted and realised in Korydallos Prison since 1991 (near Athens, the biggest prison in Greece, with about 1,350 inmates).

Secondly, the initial punitive and rehabilitative tendency of the penal system in Greece gradually gave way to a new, more humanistic and justice-model-oriented concept. A criminal is no longer considered to be an 'extra terrestrial' and is seen simply as a person who must pay for his crime. Under the influence of the Recommendations of the Council of Europe, especially R(87)3, which deals with the 'Standard Minimum Rules for the Treatment of Prisoners', better known as the 'European Prison Rules', punishment and particularly imprisonment has been regarded in fact as the *ultima ratio* of every legal order, which must be imposed and executed only in serious cases and with respect to the prisoner's personality. Therefore, initiatives in favour of *decriminalisation and depenalisation* have deeply marked recent Greek penal developments.<sup>31</sup> Yet more important is the fact that courts in principle exercise restraint in sending offenders to prison without serious reason. This is with the exception, perhaps, of detainees on remand — about 29 per cent of the total prison population — and of small drug dealers/users who make up about 34 per cent of this population. On the other hand, numbers of women and young prisoners have remained at a rather satisfactory low level: 4.3 per cent and 5.8 per cent of this population, respectively. Moreover, conditions in prisons seem to have been somewhat ameliorated in recent years, and prisoners' rights are, in a way, better respected by the authorities than before, especially after Greece voted a new Code on Treatment of Detainees in 1989 and ratified the International Convention against Torture of 1984<sup>32</sup> and the European Convention for the Prevention of Torture of 1987.<sup>33</sup>

Finally, the old ideas, that the state has the monopoly of punishment and that

punishment is the only way to respond to offences, have also begun to be revised in Greece. A lot of offences of a so-called 'private character' have been transformed into cases which can be prosecuted only upon complaint by the victim.<sup>34</sup> Furthermore, some forms of diversion are being elaborated *de jure* or *de facto* by the competent authorities, especially when there are offences prosecuted upon complaint of the victim. In such cases, the prosecutor in collaboration with the police has the power, according to Article 25(4)(a) of the Law 1756/1988, to mediate between the opposite parties and to try to find an extra-judicial solution for their dispute. Similarly, where there are indications that a conciliatory arrangement of the dispute can be found, the courts sometimes interrupt or postpone the procedure and ask the parties to reach a mutual understanding.<sup>35</sup> Within this framework, the danger of abuses due to diversion techniques, for example, because of 'net-widening' of the field of repression, is eventually small.

### CONCLUSION

To sum up, one could make the following remarks. Certainly the time has not yet come that imprisonment, according to the pertinent observation of J.-M. Varaut,<sup>36</sup> would appear to our minds as being as primitive as the bodily penalties of the past. Yet the effects of imprisonment are so negative in the overcrowded prisons of today, that the trend for non-custodial strategies increasingly gains the upper hand. Greece has also taken interesting initiatives, especially in the 1980s and afterwards, to strengthen its traditional non-custodial 'pillars' of conver-

sion and suspension of sentence and, at the same time, to introduce other similar measures. There have also been efforts to 'open' the prisons gradually, and to reinforce the prisoners' rights. Finally, there are also tendencies to experiment with new extra-legal strategies, such as diversion and mediation. Is this the dawn of a new era, beyond imprisonment? This is a rhetorical question, that suggests an affirmative answer but waits for its confirmation in the coming decades.

### REFERENCES

- 1 Law 1492/1950.
- 2 Art. 50 of the Greek Criminal Code.
- 3 Arts. 51-55 of the Criminal Code.
- 4 Art. 57 of the Criminal Code.
- 5 Art. 82 of the Criminal Code. This means that a convict can pay a certain amount (similar to the system of day fines in certain countries abroad) in order to redeem his imprisonment or jailing. If he cannot or does not desire this conversion, he must stay in prison according to the initial custodial penalty imposed. Art. 82 CC provides that conversion must be the rule and can be refused by the court only for concrete reasons.
- 6 Arts. 59-68, 76(1) CC.
- 7 Art. 103 of Law 2094/1992.
- 8 Art. 127 CC.
- 9 Art. 38 CC.
- 10 Art. 90 CC.
- 11 Art 122 ff. CC.
- 12 Arts. 34 and 69 ff. CC.
- 13 Art. 71 CC.
- 14 Art. 73 CC: 'prohibition of residence'.
- 15 Art. 74 CC: 'expulsion'.
- 16 Art. 76(2) CC: 'confiscation'.
- 17 Art. 1.
- 18 Art. 33(1) of Law 2172/1993 and Art. 1(12)(b) of Law 2207/1994.
- 19 Art. 82 CC.

- 20 Arts. 94-104 CC, in the case of first offenders.
- 21 It is noteworthy that among the 5,248 newly admitted convicts in 1992, 2,646 were sentenced to imprisonments of up to one year only, and another 1,348 to penalties from one to three years, the upper limit of the conversion being two years (there is no statistical evidence concerning the accurate number of penalties up to this upper limit).
- 22 Art. 61 of the Law 1851/1989 'Code on Treatment of Detainees' and Art. 2 of the Law 1941/1991, which modified Art. 82 CC.
- 23 Art. 100 and 100A CC, as they were formulated by Art. 4 of the Law 1941/1991 and Art. 1(3) and (4) of the Law 2207/1994. (These measures have not yet been implemented.)
- 24 Arts. 471, 497 and 507 of the Greek Code of Criminal Procedure.
- 25 eg. leaves of absence according to Art. 52 ff. of the 'Code on Treatment of Detainees'.
- 26 Art. 25 of Law 2058/1952 and the Presidential Decree 178/1980.
- 27 Art. 105(1) CC.
- 28 Art. 106(1) CC, as it was modified by Art. 33(2) of the Law 2172/1993.
- 29 Art. 47(1) of the Constitution and Law Decree 68/1968.
- 30 Arts. 302(2) and 314(2) CC.
- 31 eg. adultery: ex-Art. 357 CC; certain cases of abortion according to Laws 1729/1987 and 2161/1993.
- 32 Law 1782/1988.
- 33 Law 1949/1991.
- 34 eg. cases of abduction without consent of the female: Art. 327; threat: Art. 333; seduction of children below 15 years of age: Art. 339; damage to property: Arts. 381 and 382(2)(b); negligent bodily injury: Art. 315 CC as was modified by Art. 1(11) of the Law 2207/1994.
- 35 eg. in cases of offences against honour and reputation: Arts. 361 ff. CC and of house occupation contrarily to Art. 334 CC.
- 36 Varaut, J.-M. (1972) 'La prison, pour quoi faire?' La Table Ronde, Paris.

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