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THE CASE FOR SHORT-TERM IMPRISONMENT

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1. There are in all Western States today, two types of criminal sanctions which dominate: Fine and imprisonment. Of these two measures, the fine is the oldest, and has at all times been most commonly used. Imprisonment is a relatively new invention which is no more than 250 years old. In the 18th century, imprisonment slowly replaced the different corporal punishments, which up to this time had dominated the sanctioning system for the more serious crimes, and which had been introduced into Europe along with christianity and canonic law.

Short-term imprisonment (imprisonment for six months or less) has been considered a "problem" for more than one hundred years, and the root to this is to be found in those historical changes which took place in the 18th century. Fines are relatively cheap sanctions to administer and rather easily made proportionate to the crime in question. However, they have one drawback; when the offender has no means of subsistence, he will obviously be unable to pay his fine. In earlier days, when fines were in the form of restitution to the victim, it was possible to handle this by ordering the offender to work off the fines for his victim. However, this became difficult when the fines were to be paid to the state. In such cases, short-term imprisonment for non-payment of fines became the solution. And since that time all of our nations have had an increasing number of this type of short-term prisoners. As far as I know, only Sweden has been able to manage this problem.

Beside short-term imprisonment for non-payment of fines, the changes in the 18th century (which terminated the employment of corporal punishment) did raise more serious problems. Corporal punishment was a cheap sanction and likewise easy to administer proportionate to the crime, according to the old rule "an eye for an eye". As long as opposition against the inhumanity of the rules laid down in the Bible was non-existent, this system worked and the state could execute murderers, burn

witches and hang thieves with the best consciousness. When the humanitarian ideologies of the 18th century changed the basic value-systems of the enlightened statesmen, the time was ripe for less bloodshed, and the use of imprisonment became the substitute.

However, imprisonment is not a cheap form of punishment. On the contrary, it is very expensive. With its introduction, there subsequently appeared an economic problem in criminal policy for the first time. The states were forced to build prisons, to pay for the food and the clothing of the convicts and to pay salaries to those who guarded them. The prisons were turned into huge organizations, which (like all organizations) were eager to expand and to show how effective they were in combating crime. With an increasing need for more prison space, (overcrowding in prisons has always been a problem) and with the introduction of the treatment-theory as the basis for handling convicts, the prison-systems have for a long time been deficient in a method for the elimination of short-term prisoners.

Furthermore, since it is a basic principle that the punishment shall be proportionate to the offence in question, the introduction of imprisonment raised other problems. Who can tell what the right, just and reasonable punishment measured in terms of days in prison is for the crime of burglary or assault? Do burglars deserve longer periods of incarceration than those who have assaulted other persons? The fact is, that we do not have any answers to such questions since there doesn't exist any objective yardstick to use for an evaluation. It all depends upon the predominant political and ideological values existing in a society at a given time. The law-makers have certainly been aware of this problem and in most laws they have left the choice to the courts by constructing laws in such a way that the courts have a great deal of freedom concerning the length of the actual sentence. But since the courts generally try to be as lenient as possible, they will for the most part administer very short punishments. There are exceptions to this, but at least in Scandinavia there is a very clear tendency among all courts to try to be lenient. Practically all punishments given by our courts are close to the minimum of the latitude described by law. As an example it may be mentioned that according to the Swedish Criminal Code an assault (without aggravating circumstances) may be punished with imprisonment

from one month to two years. As a result, in the year 1972, 33% of the sentences were for one month and a further 41% one to three months. Above one year we only find 0,5% of all the sentences. Similarly, the crime of rape gives the courts a possibility for sentences between 2 and 10 years of imprisonment, but the courts never sentenced anyone to more than 4 years in prison for this crime. In fact, they went below the prescribed minimum of two years in more than every fourth case. And for theft, which has a minimum of 1 month and a maximum of two years, 90% were sentenced to 6 months of imprisonment or less. These figures clearly show, that the courts in the absence of some objective yardstick to help them choose the right proportionate sentence, fall back on a principle of leniency and humanity. This gives as a result a great number of short sentences to imprisonment. Furthermore, the increased number of such sentences within the last 30 years can be attributed to the influential prevailing criticism of prison as a means to achieve social control.

To this picture may be added that the number of new laws creating new kinds of criminal behaviour have increased rapidly during the last years. Due to the rapid changes taking place in our societies as a result of industrialization, hitherto unknown dangers have developed which it is urgent to acknowledge and subsequently control. To a large extent this is achieved by criminalizing the behaviour in question and to repress it by means of police, courts and prisons. Typical examples are to be found in the areas of motor-vehicle traffic, tax-laws, narcotics, air and water pollution and the safety of workers in industry. Practically all laws covering these new areas prescribe short-term imprisonment or fines as punishments.

The total picture we get by looking at criminal law and its development up to today is therefore, that - when fines are not considered a sufficient measure - it has more and more been geared toward short-term imprisonment.

This has happened for more than a hundred years, and all the time short-term imprisonment has been criticized.¹ The criticism seems to have been almost unanimous until around 1960, when new tendencies were to be found. It started when the International Penal and Penitentiary Congress

held its first meeting in London in 1872, discussing the topic: "Is it possible to replace the short imprisonments and the non-payment of fines by forced labour without deprivation of liberty?" The Congress agreed in taking a negative stand in the matter of short sentences, and it recommended the use of agricultural labour and work in prisons during the day-time with nights being spent at home. The next time the question of short sentences was discussed, at the Ninth Congress in 1925, also in London, the problem was formulated in the following way: What measures should be taken instead of imprisonment, with regard to offenders who have committed a petty offence or an offence which does not constitute a danger to public security?" This Congress also agreed in the disapproval of short prison sentences and recommended probation and fines to replace them.

After the second world war the topic was once more on the agenda of the International Penal and Penitentiary Congress, namely in the Hague in 1950, and it was also discussed at the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders in London, 1960. On both these occasions, Dr. *Hermann Mannheim*, the excellent criminologist and reformist, was the driving force behind the group which was fighting against short prison sentences. *Mannheim* has in fact made empirical studies of the subject and has directed a Home Office study of the psychology of short-term prisoners, which was carried out by *R.G. Andry* and published in 1963.

As can be seen from this summary of international conferences, at least the majority of those who have been present at the meetings have expressed a negative view of short-term imprisonment. Their opinion without doubt reflects the discussions taking place in their own countries at the time of the congresses. As mentioned, the problem has been discussed for a long time in England, and on the continent it has been a persisting sphere of discussion, especially in Germany.² Already before the end of the last century *von Liszt* expressed his wish to see short sentences abolished. That did not happen in his time, but after considerable debate the Federal Republic of Germany in 1969/70 took a long step in that direction when in principle it forbade sentences of shorter duration than six months.

However, the history is not in any way complete with these fragments. Most astonishing, there has also been a movement in the opposite direction. While, until very recently, there was a more or less general condemnation of short-term imprisonment for *adult* offenders, many experts in criminal policy have testified how beneficial short-term imprisonment is for *young* offenders. In a report published in 1967 by the Council of Europe, it is stated that while many countries within the European community have special institutions for young offenders sentenced to very short terms, there is at the same time a clear tendency to try to avoid the use of imprisonment of any kind for persons under the age of 18.³ This seems to show that the general opinion within these countries is negative to incarceration of teenagers. However, in England and the Federal Republic of Germany, the use of a "short, sharp shock" in the form of short terms of incarceration under strict discipline has become a part of the measures used against juvenile delinquents in these countries.⁴

In England the idea has been to let this type of punishment completely replace the use of imprisonment for youngsters up to 21 years of age. The English version is called "detention centers" and has a duration of about 1 - 3 months, while the German "Jugendarrest" in its most severe form includes up to 4 weeks detention.

There is an interesting inconsistency in the ways of thought concerning short-term imprisonment. While this measure at the same time is criticized as far as adult offenders are concerned, it is on the other hand considered by many to be very valuable when used against young offenders. It is to me something of a mystery how otherwise sensible policy-makers can get these incompatible ideas to fit into a sanctioning system which they claim to be built upon uniform ideas and aims.

As I have suggested above there can be seen some change in the direction of a revaluation of short-term prison sentences in the last 15 years. This is nicely summed up in a report presented by a Committee of Research Workers on the short-term treatment of young offenders set up by the Council of Europe:

"Although at one time it was generally thought that institutional treat-

ment had to be long to be effective, it now seems that short periods - at least for certain offenders - are of value. (....) We think that it is desirable to enlarge the range of short-term treatment possibilities in both the penal and social field. As a corollary to this we believe that there should not be an undue punitive emphasis in short-term treatment measures. In some countries there has been a movement towards abolishing short-term imprisonment. We think that in special cases a need would be felt for using short-term imprisonment.“⁵

2. Our empirical knowledge concerning the actual use of different criminal sanctions in various states around the world is very small. There have been many studies of purely legal matters, and there exist many discussions of sentencing-practice, all of which can be found in reports from the proceedings of international conferences. But, comparative information on how law works in real life has very seldom been based on reliable data. The main reason for this situation can be found in the methodological difficulties involved, since it requires knowledge of legal systems, sentencing practice, how sentences are carried out, and insight into the statistical mysteries hidden in official court and prison statistics. As we all know, we often have difficulties in mastering all of this within our respective home-countries, and it is therefore understandable that we hesitate to go outside our own jurisdiction.⁶

Nonetheless, everthough we lack more sophisticated information concerning the use of short-term sentences, there seem to be no doubt that these types of sentences are dominating in the Western world. I will present some statistical data to illustrate this statement.

In England and Wales, about 50 000 sentences involving incarceration are passed every year by the courts. Of these, 75% or 37 500 are “short”, that is for 6 months or less.⁷ And in the Netherlands, with approximately 18 000 sentences a year, no less than 90% are short sentences.⁸ In fact, more than 50% of all sentences were for less than 1 month. Furthermore, to this may be added, the Netherlands probably has the most lenient sentencing practice of all states in our part of the world. However, I would like to point out that the Netherlands does not have any particular low number of prison sentences in comparison with other European countries, but that the shortness of the prison-terms is excep-

tional.

The Scandinavian countries are usually considered quite similar in their criminal policy. One would therefore expect the sentencing-practice to be very similar too. However, this is far from being the case. If a person is convicted of an offence, the chances of this individual ending up in prison is much greater if he has appeared before a Finnish court, than if the court is a Norwegian or Swedish one.⁹ In the year 1975 the number of prison-sentences per 100 000 inhabitants for Scandinavia was the following: 438 for Finland, 389 for Denmark, 295 for Norway and only 199 for Sweden. Concerning the use of short sentences, we find that Norway and the Netherlands employed these in 90% of all prison-sentences, and the percentage for Denmark was 86 while Finland and Sweden had 83. However, short sentences of 3 months or less duration, were used in only 19% of the cases in Finland against 78% in Norway and Denmark, and 72% in Sweden.

As a result of the change in the 1969/70 Criminal Code in the Federal Republic of Germany, which reduced the number of short terms of imprisonment, a very interesting "natural experiment" has taken place (StGB § 47). This code instructed the courts to substitute fines for short terms of imprisonment¹⁰, consequently reducing the number of persons entering German prisons by 60%. Prior to the code change, the prison population was more than 140 000, whereas after the change it fell to about 60 000.¹¹ A substantial part of the reduction was due to fewer sentences for traffic-offences, but practically all other types of offences seem to have been affected as well. Unfortunately, I have not been able to find any criminological studies which investigate the effects on crime this type of reform might bring about. I am sure such studies exist, but they have not yet reached the libraries of northern Europe.

In connection with this short survey regarding the use of short prison-terms, a word should be said about the type of offences which short-termers have committed. England and Wales can be taken as a fairly typical example of the situation for countries outside of Scandinavia. The report on the work of the Prison Department in these countries shows that in the year 1976, approximately half of the short-term

sentences were for the following property offences; theft, burglary, handling of stolen goods and damage to property.¹² For those who end up in prison by default of payment of fine, there exists a slightly different picture, comprising only about 1/3 property offences and an increased number of motoring offences.

The picture we get from the Scandinavian countries is somewhat different. In Sweden, 50% of the sentences are for motoring offences, mainly driving while under the influence, while only 25% are recorded for property offences.¹³ A similar picture is to be found in the other Scandinavian countries as well. The reason for this large number of drunken drivers in Scandinavian prisons is not solely reduced to the fact that Scandinavians are more often drunken behind the wheel. Essentially it can be seen as a result of the courts very strong view on this particular type of offence. As an example, in Norway, 0,5 promille alcohol in the blood automatically gives the driver 3 weeks imprisonment. One might imagine that there would be a critical overcrowding in French or British prisons if one involved this same strict attitude from the side of the law in these countries.

3. From the figures presented above, it can be seen that short sentences are very common, and there is no need of much statistical imagination in order to envisage the enormous number of people passing through the prison gates every year.

There is good reason to stop and to start thinking. Is this rational crime policy? The answer to this question depends upon what aims we want to achieve by using punishment in general.¹⁴ Leaving aside the metaphysical answers to this, there can only be one main reason left, namely, we punish people as a means to keep certain unwanted and harmful acts of behaviour under control. Imprisonment is the most severe control measure we have to our disposal, next to execution, which in most of our countries is either abolished or extremely seldom used. As I have pointed out, there are historical reasons for the use of imprisonment today and we have now been using it for a long time. Indeed, most people seem to have accepted it as a natural part of the control mechanism utilized by the state. However, every policymaker, who has given the problem more than a superficial thought, will agree that we use

imprisonment simply because we lack other means to combat crime. After all, the state, which is responsible for law and order, has to do *something* which shows that it is taking its peacemaking duties seriously!

Because punishment, and especially imprisonment, is something extremely negative to the person who is subject to it, we have come to defend its use by means of ethical statements and inventions. In my opinion, the question concerning our right to inflict pain in the form of punishment upon a fellow-citizen, is not difficult to answer: In short the individual has done something against the rules of the society, which in the interest of the unity of society give us a right to punish him in order to 1) stop him from repeating the unwanted behaviour, and 2) to show other people what will happen to them if they do similar acts of disobedience. However, since this ethical principle may lead to increased use of punishment, another principle must be added stating that punishment must be employed as little as possible, meaning it must only be used when it is absolutely necessary in order to safeguard the real basic values of society. Yet, neither of these principles tell us anything about the form of punishment to be used and they certainly do not imply that imprisonment is the proper type.

The view of punishment which I have expressed here is contrary to the opinion of the "progressive school" of penology. To this school belonged those individuals who initiated the opposition against short-term imprisonment. The basic principle of the school expounded the idea that criminals should be placed in institutions in order to be "treated" or "re-socialized". The main argument behind the criticism of short-term imprisonment was simply, the terms were too short for treatment. For this school of thought, the ideal place for an offender was a closed institution, preferably not called prison but "correctional institution", "hospital" or something similar, where the offender was placed for an indeterminate time, and where psychiatrists, psychologists and social workers could influence him away from his "sickness", criminality. He was to be cured by treatment, not by punishment.

This school of penology has in fact played an important role, but not in the way its supporters have thought. The influence of the school, per-

haps most strongly felt in Scandinavia, has been to make punishment more human. In fact, the idea of treatment has meant more kindness, less discipline, more use of help and assistance, and less of punishment cells and hard labour. But it has never had any effect on the outcome, for it has had no influence at all upon the rate of recidivism.¹⁵ And in some states, it has had at least one bad effect, namely the introduction of the use of indeterminate sentences.

If I may sum up my main criticism of the treatment-oriented penology, it is as follows. Firstly, the idea that "criminality" is something which may be treated like an illness is in itself illogical. If a person wants money he can work for it, which is to be preferred, but if he gets it by tax-evasion or theft, this certainly does not mean that he is a sick person who is in need of treatment. Secondly, there exists no empirical evidence that different and specific ways of dealing with criminals has any better or worse effect in terms of recidivism. In a report from the Home Office Crime Policy Planning organization of Great Britain, the results are summed up in these words: "- different types of institutions appear to work about equally as well, and rehabilitative programmes - whether involving psychiatric treatment, counselling, case work, or intensive contact and special attention, in custodial or non-custodial settings - appear overall to have no certain beneficial effects."¹⁶

Thirdly, a treatment-oriented system can easily become unjust. For example, when two persons have committed similar offences, they may be treated differently. One may for a long time be kept in an institution, while another, who is considered to have no need for treatment, is let out immediately. Certainly, there could be no objections to this if we had objective criteria describing when a person is "healed" and when he is not. But such criteria does not exist, except in statistical terms. We know very well how many recidivists there will be in a group of 100 convicts sentenced to imprisonment, but we have no way of telling which individuals will commit new crimes or the unfortunately smaller group of individuals who will never return to prison.

Fourthly, the treatment-oriented system has a conservative effect on the use of institutionalization. Instead of abolishing the use of incarceration, the state will build new institutions, owing to the prevailing treatment

ideology which seems to justify their continued use. For an outsider, such institutions may look very nice (they may even be called “hospitals” or “clinics”) but to those who are placed there against his/her will as a result of being defined criminal, it will always be what in fact it is, that is to say, a prison.

To sum up: If we want to reduce the use of imprisonment and other types of incarceration, there seems to be only one answer, and that is to change the philosophy upon which our system is based today. We must get rid of the treatment-orientation, and start calling punishment what it is. We must look at the measures we use against criminals as a part of the control-system of society. We should let ourselves be guided by an absolute humane principle, namely, to use imprisonment as little as possible, and reserve this type of punishment for those offences which we consider dangerous to our social values.

4. Turning back to the short-term imprisonment, these guidelines might give a solution to the problem which has given prison reformers such a headache for more than a hundred years. My solution is that we begin reducing the length of all prison sentences. Those prisoners who today are given 12 years imprisonment should be given 6 years, and those given 6 only 3, etc. Coming to the bottom of the scale, we should simply give alternative sanctions to those persons we today send to prisons for - let us say 4 months or less.

The result of this radical change will be a reduction of the prison population to less than half of what it is today. But the bulk of those in prison will be offenders sentenced to short terms, and *that is exactly the aim of the proposal*. With the exception of a small handful of criminals, whom we are forced to lock up in order to safeguard people's lives (e.g. terrorists) or the security of our states (e.g. spies) there is no reason for using long-term imprisonment at all. When we abandon the treatment-philosophy, no arguments (outside of these exceptions) will exist for the use of extended terms, that is, more than 2 or 3 years imprisonment, for any crime.

How does this way of thinking satisfy the accepted doctrines of penal philosophy? According to these there are two main “theories of punish-

ment", namely special prevention and general prevention. Both of these theories are in accord with how we believe punishment functions. In the case of special prevention, it is the deterrent effect upon the future behaviour of the offender which the pain of punishment is purported to influence, and in the case of general prevention, it is potential criminals who are supposed to be deterred. The question then is whether short term imprisonment satisfies these theories.

I do believe that this is the case. Concerning the theory of special prevention, there exists now enough empirical evidence to show that the rate of recidivism does not vary with the length of the prison term. Whether we give a group of offenders 6 months imprisonment or 18 months, there exists no noticeable effect upon the reconviction rate.¹⁷ In fact, there is some reason to believe, that the reconviction rate probably would have been the same for this group if we had not sent them to prison at all.

There is, however, one drawback in this way of reasoning. Even if the rate of recidivism is in fact very little influenced by the punishment we use, incarceration prevents the prisoners from committing new crimes during the time they are incarcerated. With shorter terms, new crimes will come faster for those who continue with crime and subsequently, this will give the police more work. A slight increase in the number of crimes committed may even be the result from such a policy, but on the other hand we should not overestimate this effect.

Concerning the theory of general prevention, there is no evidence which indicates that the threat of long prison sentences have a stronger deterrent effect than shorter ones. The man in the street has very little knowledge of what kind of punishment the court would use if he committed a crime, and therefore it is unrealistic to believe that the deterrent effect will diminish if the actual prison sentences were shortened. Moreover, the professional criminal is, as we all know, not at all influenced by the threat of long sentences. After all, the professional criminals are those who today receive those extended sentences, and as a glance at statistics on recidivism shows, practically all of them commit new crimes when they are released from prison.

A last problem to be discussed is: What alternative sanctions should be used for those offenders who today are sentenced to short prison terms? In my opinion, the more or less old suggestions underlining the “alternative to imprisonment” format, which, by and large, have maintained priority on crime policy debate lists for the last five years, have given us very little help, since most of the suggestions have been too impractical. The day-fine system and various types of probation under strict control are the best substitutes.¹⁸ I must add, however, that the day-fine system only works when two conditions are fulfilled, namely that it is possible for the courts to check the real income of the offenders, and that it is prohibited to use imprisonment for default of payment of fines (except, perhaps, in extreme cases where the reason for non-payment is not lack of money but lack of willingness to pay). If we fail to produce this last limitation, the result could be a reproduction of the old type of short term prisoners back into the system. And that is what we want to avoid.

Anmerkungen

- 1 A survey of the criticism has been given by HERMANN MANNHEIM in: R. G. Andry *The Short-term Prisoner*, London 1963, p. XI-XX.
- 2 DIETER STENNER, *die Kurzfristige Freiheitsstrafe und die Möglichkeiten zu ihrem Ersatz durch andere Sanktionen*, Hamburg 1970, especially p. 85-87 with references.
- 3 *Short-term Methods of Treatment for Young Offenders*, Council of Europe, Strasbourg 1967, p.13.
- 4 In England detention centers replace imprisonment for young offenders, but in Germany "Jugendarrest" is used in cases not serious enough to be given youth prison (for some reason "Jugendarrest" is not called punishment but "a means of correction" - whatever the difference may be.
- 5 *Op. cit.*, p.83.
- 6 The difficulties are pointed out by W.H. HAMMOND in *Sentencing*, Council of Europe, Strasbourg 1974, p. 43-47, and in *Collected Studies in Criminological research*, Vol. XIV, *Means of Improving Information on Crime*, Council of Europe, Strasbourg 1976 (especially the paper by C.M. GLENNIE).
- 7 Computed from *Criminal Statistics of England and Wales 1971*, Home Office, London 1972.
- 8 H.V. HOFER, *Dutch Prison Population, Report from the Scandinavian Council of Criminology (17 Nordic Research Seminar)*, Stockholm 1976, p. 141.
- 9 The figures are from KNUT SVERI, *Straffereaktioner i Norden (Penal Sanctions in the Nordic countries)* printed in *Straffsystemer i Norden*, The Nordic Council, Stockholm 1977.
- 10 SCHÖNKE-SCHRÖDER, *Strafgesetzbuch, Kommentar*, München 1976, p. 535.
- 11 HANS-JÜRGEN KERNER, *Strafvollzug und Rückfälligkeit*, *Kriminologisches Journal*, 3/1976, p. 189-191.
- 12 *Report on the work of the Prison Department*, Home Office 1976, *Statistical Tables*, London 1977, tables 3.3, 4.2 and 5.2 plus the figures for "In default of payment of fines" in table 3.2, 4.1 and 5.1.
- 13 Computed from *Statistiska Meddelanden (R 1977: 4.1)*, National Central Bureau of Statistics, Stockholm.
- 14 On my main points, I am happy to be in agreement with NIGEL WALKER, *Sentencing in a Rational Society*, London 1969.
- 15 LIPTON, MARTINSON AND WILKS, *Effectiveness of Correctional Treatment, A Survey of Treatment Evaluation Studies*, N.Y. 1975 and S.R. BRODY, *The Effectiveness of Sentencing*, Home Office Research Unit 35, London 1976.
- 16 *A Review of Criminal Justice Policy 1976*, Home Office Working Paper, London 1977, p. 49.
- 17 "No evidence has been found that longer sentences. or longer periods of incarceration, produce better results than shorter sentences". (*A Review of Criminal Justice Policy 1976*, p. 48.).

- 18 Alternative Penal Measures to Imprisonment, European Committee on Crime Problems, Council of Europe, Strasbourg 1976.

Summary

By “short-term imprisonment” it is usually meant imprisonment for six months or less. Historically, the increased use of this type of punishment was partly a result of the change from corporal punishment to imprisonment, and partly a result of the increased use of imprisonment for default of payment of fines. Short-term imprisonment is today the most widely used form of imprisonment.

During the last hundred years imprisonment has been repeatedly attacked. The main argument against it has been that it allows too little time for treatment and rehabilitation of the individual offender. With the break-down of the treatment ideology, however, the situation has changed, and an atmosphere created which calls for a re-evaluation of the fundamental principles of punishment have been made.

In the future imprisonment should be used much more sparingly than it is today and should be reserved for those types of offences which represent a real danger to the society and its members. All prison sentences should be reduced in length; thus, those offenders who today are sentenced to very short sentences should be given alternative measures, and those with long sentences should be given short ones, which are less detrimental to the prisoners. Imprisonment for default of payment of fines should be abandoned except in those rare cases of obstruction on the part of the offender.

Résumé

Le cas de la courte peine

On entend généralement par courte peine privative de liberté les peines de 6 mois ou moins. Historiquement, ces peines ont remplacé les chatiments qui pénalisaient le non paiement d'une amende. La courte peine privative de liberté est la plus appliquée actuellement pour sanc-

tionner des délits peu graves. Pourtant depuis longtemps on lui reproche son incapacité d'amender le détenu à cause de sa brièveté. Elle devrait être appliquée aux délinquants qui présentent un danger pour la société.

De façon générale, toutes les peines privatives de liberté devraient être raccourcies; de cette manière, les courtes peines pourraient être remplacées par des alternatives. On devrait emprisonner les condamnés à l'amende qui ne paient pas que lorsque ils font montre de mauvaise volonté persistante.

Zusammenfassung

Der Fall der kurzen Freiheitsstrafe

Mit "kurzfristiger Freiheitsstrafe" ist im allgemeinen die Strafe von 6 Monaten und weniger gemeint. Historisch ist der vermehrte Gebrauch dieser Art Strafe das Resultat eines Wechsels von der Körperstrafe zur Freiheitsstrafe für Personen, die Bussen nicht zahlten.

Die kurze Freiheitsstrafe ist heute die am meisten gebrauchte Art der Freiheitsstrafe.

Während der letzten 100 Jahre wurde die kurze Freiheitsstrafe mehrmals angegriffen. Das Hauptargument war, dass sie zu wenig Zeit zur Behandlung und Rehabilitation für den individuellen Täter ermögliche. Mit dem Durchbruch der Behandlungs-Ideologie hat sich dies gewandelt und es wurde eine Atmosphäre geschaffen, die nach einer neuen Beurteilung der fundamentalen Prinzipien des Strafens ruft.

In Zukunft sollte die Freiheitsstrafe nur noch selten gebraucht werden und dann nur für jene Personen, die eine wirkliche Gefahr für die Gesellschaft und den Einzelnen bedeuten.

Alle Gefängnisstrafen sollten in ihrer Länge reduziert werden. Auf diese Weise erhalten Delinquenten, die heute zu kurzen Freiheitsstrafen ver-

urteilt werden, Alternativstrafen und solche mit langen Strafen kurze. Diese sind weniger nachteilig für den Einzelnen. Gefängnisstrafen für Personen, die Bussen nicht bezahlen, sollten abgeschafft werden, ausser in jenen seltenen Fällen, in denen sich der Delinquent besonders renitent verhält.