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International Summaries

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From France

The Penal Courts in Europe

France has joined other European countries in introducing a sentence review court, supporting the rehabilitative goal of sentencing—resocialization of the offender.

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ACQUISITIONS

This essay discusses the evolution and present state of penal courts and judges in Europe, especially regarding imprisonment, parole, and appeal processes. Specifically, the penal court and function of the "judge of sentence application" in Portugal, Poland, and West Germany are reviewed, and the reestablishment of a sentence review board in France is examined.

History of penal courts and judicial intervention in sentence implementation

The power of judges to intervene in the administrative process of carrying out an earlier judge's sentence began as a means to protect the rights of the convicted and

to modify, if appropriate, particular sentences. Parole, a common form of judicial intervention, is now an accepted legal institution in all civilized countries and modifies original judgments. The paroled offender goes free before the date set by the original judgment, and a portion of the original sentence is served under supervision but outside the institution. Regardless of the widespread and accepted use of parole, it still constitutes indirect judicial interference in the court's jurisdiction.

Many countries have established other means of judicial intervention. In 1913, Italy gave judges authority in two areas: to counsel the Ministry of Justice in parole matters and to be responsible for overseeing the application of security classifications. After World War II, France introduced in some penal institutions a progressive method that permitted a judge rather than a prison official to pass inmates from one security level to another. This was called the judge for implementation. Later called the sentence review judge, this official had authority not only over security classifications but also over matters beyond the scope of the prison—

for example, presiding over the committee for probation and for aid to ex-offenders. With a decree of September 12, 1972, the sentence review judge assumed his greatest responsibility. This decree created commissions, true penitentiary groups ruled over by the judges, for carrying out sentences in France. Shortly thereafter, France passed a law conferring on these judges the power to accord all prisoners a range of sentences from 3 years of prison to parole.

However, beginning in 1975, the French progressive movement began to lose favor, and the sentence review judge began to lose power. By 1978, the judges were limited to making decisions about freedom for a restricted category of prisoners.

Current European systems of judicial intervention

Penal courts and judges are independent units in systems where there is a separation of powers. Their power differs from a traditionally jurisdictional one, and the function is often more administrative than

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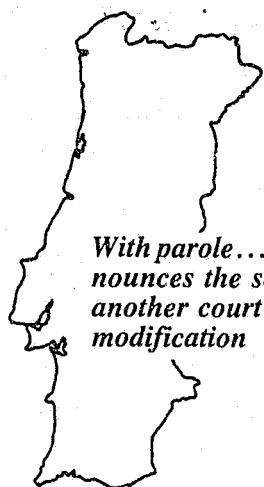
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judicial. Such a system supports the rehabilitative goal of sentencing, re-socialization of the offender. It allows the penal process flexibility beyond the original judgment and both permits the resolution of human conflicts and assures satisfaction of basic human rights throughout the various stages of sentencing and its enforcement.

Three European countries with different political regimes and penal systems, Portugal, Poland, and West Germany, have created judges with various degrees of power over the enforcement of sentences.

Portugal



With parole...one court pronounces the sentence...and another court decides on modification

In May 1944, Portugal introduced the prison court to Europe for the first time. The law established four courts of sentence enforcement, in Lisbon, Porto, Coimbra, and Evora.

The territorial jurisdiction of these courts depends on location of the penal establishment, rather than the place of conviction, but extends over several areas. The courts of sentence enforcement can modify or substitute sentences or security measures. In particular:

1. The court assesses the degree of danger from delinquents who were

previously considered dangerous but whose condition has changed, ruling on modification of sentences or security measures.

2. It decides whether to extend sentences for abnormal, dangerous, and ill-behaved offenders.

3. It decides when an offender is no longer considered dangerous.

4. It decides whether to set new sentences or security measures for offenders whose previous penalties were deferred by parole or release on bail but whose conduct is considered bad, abnormal, or dangerous.

5. It can lessen security measures.

6. It can grant parole and revoke or reduce the duration of a sentence.

7. It rules on incidents occurring during enforcement of a sentence and on incarceration of the insane.

The authority of the court covers two areas: (a) enforcing or modifying security sentences already given; and (b) granting or revoking parole.

The main function of the Portuguese court of sentence enforcement is to continue enforcing penalties set by the original court, inasmuch as judicial decisions cannot be changed except by judicial decision. The principle is most valid when dealing with parole—that is, one court pronounces the sentence of imprisonment and another court decides on modification.

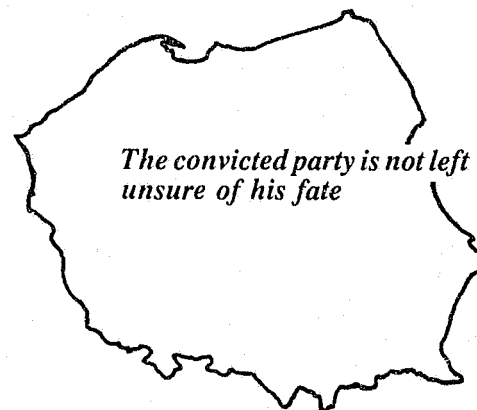
The judge of the sentence enforcement court has the right to visit penitentiaries and prisons to talk to long-term inmates and listen to their demands and to rule on disciplinary action. In short, he has the same authority as the enforcement (compliance) court in France or a penitentiary judge in Poland.

The Portuguese enforcement court deals with three types of cases. The first concerns implementing prisoner security measures that have not been imposed at the time of sentencing or when sentence is withheld because of mental incompetence of the accused. The second concerns revocation of parole pending a review of the dangerousness of the accused. The third type of case deals with one of several problems: granting parole, prolonged leave, rehabilitation, pardon, and commutation of sentence.

After a hearing, the enforcement court grants parole in Portugal. Inmates having a sentence longer than 6 months have the right to ask for parole after serving half their sentence. The director of the penal institution establishes a plan for treatment of inmates and provides for the possibility of parole. The application for parole is presented to the sentencing court and is accompanied by the opinion of the director of the institution along with information regarding the inmate's ability to reenter society. If necessary, the judge can confer with the director's medical and psychological service providers or other penitentiary representatives.

The public prosecutor, the convict, and his attorney have the right to appeal. These appeals are treated in the same way as others in penal proceedings.

Poland



The convicted party is not left unsure of his fate

The penal court, as part of the high court, was introduced to the Polish system in April 1969 by the Code for Sentence Implementation. Before creation of this court, sentence supervision in Poland was the responsibility of the original judge and the public prosecutor who, as in other socialist countries, is given charge of all administration.

The Code for Sentence Implementation upholds and delineates the authority of the penal judge and the public prosecutor. In conflicts between the penal judge and the prosecutor, the penal court makes the final decision. The court's decision is obligatory, and the penal administration must abide by its ruling in the area of treatment.

The other intervention in treatment by the Polish penal court concerns cases provided for by law. The penal commission makes classification decisions on convicts in a penitentiary. The Code states that "the minister of justice can, in the form of a ruling, reserve the right to decide on the type of penal institution in which the sentence will be served and the system to be used with the convict."

According to Article 82 of the Polish Penal Code, the original court can, if it is convenient, determine the type of penal institution and the system for implementing the imprisonment, whereas Article 46 states "only the penitentiary court can modify the type of penal establishment or the system applied that is determined by the judgment: the convicted person has the right of appeal against such a decision."

The essential activity of the penal courts in Poland is in the area of parole. The penal court rules on parole; the convicted individual, his defense, and the director of the penal establishment have the right to bring a request before the court. The hearing must be held at the penal institution to enable the convict to be heard. The court must also hear the representative of the penal administration; the public prosecutor also must attend.

In the case of parole revocation, the court that awarded the parole has authority. Before making a decision on revocation, the court hears the parolee and his attorney. The public prosecutor's presence at this hearing is also required. Both the prosecutor and the convict have the right to appeal the decision to grant, refuse, or revoke parole. However, there are two limitations:

First, the prosecutor's appeal must be made within 3 days of the decision and should be examined within 7 days. The

time limit ensures the convicted party is not left unsure of his fate. Second, the convicted party cannot appeal an original refusal of parole except in the case of a favorable opinion by the penal administration. On the other hand, he can renew his application for parole within 3 months if his sentence is for 2 years or less imprisonment, within 6 months if the sentence is longer.

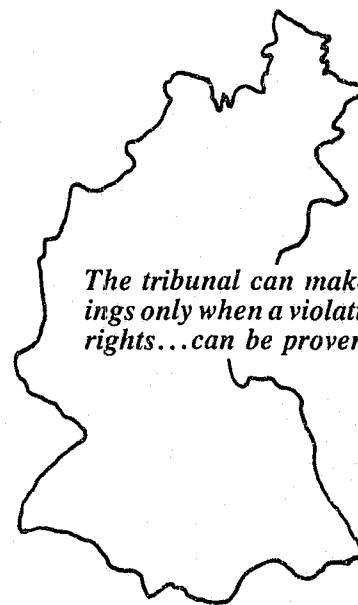
In the case of second offenders, the court decides whether or not the offender will be placed in a center for rehabilitation. The penal court in Poland decides not only on the means to implement the sentence of imprisonment (interruption of its enforcement, confinement to prison, or freedom under supervision), but also on the type of penitentiary treatment.

Poland is the only socialist country that has such penal courts. The penal judge was created in 1958. In 1969, the creation of a penal court tribunal created questions about the relationship between the single judge and the tribunal.

A characteristic of the penal court is its collegial administration. Unlike Portugal, which has a penal court consisting of one judge, Poland has both the penal judge and the separate penal court consisting of several judges. While not required, it is logical that when one of a court's judges is a penal specialist, he sits on the penal tribunal. One judge may be both a penal judge and the judge presiding in the penal court, but his role in the court is different in two ways:

1. The presence of the public prosecutor is required, and the presence of an attorney is allowed, both when there is risk that the inmate's situation will be damaged and when parole may be granted or revoked, thus requiring the presence of the convict.
2. In certain other cases, where the interests of the convict must be reinforced, the court is composed of one judge and two lay assessors.

West Germany



The law of the Federal Republic of Germany, passed in 1976 and effective the following year, foresaw judicial decisions concerning sentences that deprive a convict of liberty. The state of Karlsruhe was first to create such a penal jurisdiction.

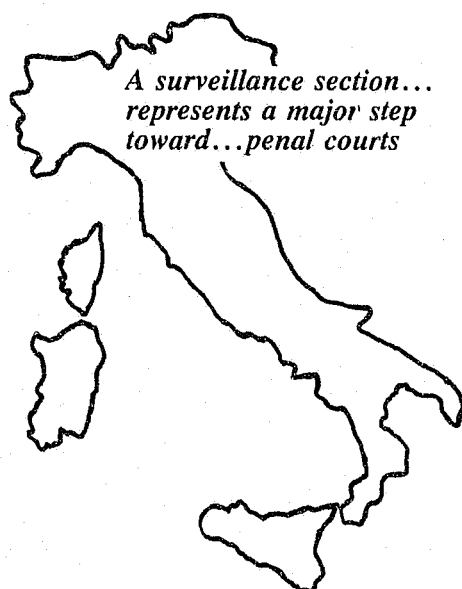
In the court of first instance, there is a chamber for sentence implementation. The object of judicial decisions is to resolve any disputes between convicts and the penal administration.

The tribunal can make rulings only when a violation of rights—by action or by omission—can be proven, in which case the court orders that the violation be suspended or reversed. Thus the judicial authority does not exercise administration powers but merely enforces human rights and resolves interhuman conflicts. The right of appeal exists only where the law has been misapplied and the court of appeals has jurisdiction.

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Italy

A 1975 Italian law provided for each district court of appeals to have a surveillance section consisting of an appeals judge and a trial judge as well as two penal specialists. The section does not act as a penal court but does collectively decide matters of conditional release, admission to parole, and reduction of sentence. It represents a major step toward introduction of penal courts.



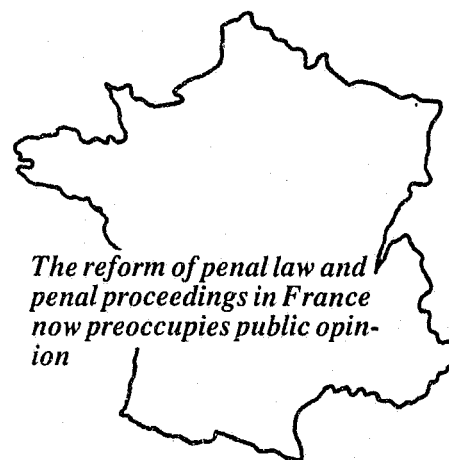
France

In France, a project to establish a penal court has been ongoing for several years. In 1978, a pilot study of the Penal Code provided for a court of sentence implementation without discussing its actual composition.

The press put forward the prospect of creating a sentence review court but no pilot study was published. However, in August 1983, the French Government began a project to introduce the sentence review court into the penal procedure. It will consist of three magistrates, including a judge of sentence review.

The court will have jurisdiction in matters of parole. A decision will be made by the court after hearing the public prosecutor, the inmate and his attorney, and possibly a civil attorney. The public minister and the convict may appeal this decision. In this case, the Chamber of Appeals of the Court of Appeals will make the final decision.

The reform of penal law and penal proceedings in France now preoccupies public opinion, and the press has publicized some positive functions of this new court. For instance, the institution of a sentence review judge could help to put an end to the ambiguity concerning parole whereby, in the more serious matters, the decision rests with the Ministry of Justice or its staff and, in the less serious cases, the decision rests with the sentence review judge.



The tendency toward introduction of penal courts is clearly evolving in Europe, deeply rooted in modern penal law and representing a progressive step in penal policy.