

## I. HEAVY SENTENCES

The legal world now stands convinced that the sentences which are threatened by Law and imposed by the courts are, in many cases, disproportionately onerous and detrimental.

Characteristic examples:

- For 1 gr. cocaine, 10 years imprisonment
- For grabbing a woman's handbag, 6.5 years
- Maximum potential for sentencing of life imprisonment for financial offences against the State (Law 1608/1950).
- Maximum potential for sentencing of imprisonment of up to 5 years for offences such as slander, issue of an unsecured check etc.

There are certain reasonable fears that the increased severity of sentencing is a residue of conceded perceptions and fears on behalf of the law makers and judges..

The above increase in the severity of sentencing, in combination with the inordinate use and excessive duration of pretrial detention have caused stifling situations in the prisons, which are now operating as areas for the simple "storage" of people.

## II. PRETRIAL DETENTION

Pursuant to Greek Law, pre-trial detention is enforced, when, during investigation, serious evidence of the guilt of the defendant emerges AND ONLY if the defendant has unknown residence in country OR has proceeded to preparatory actions, in order to make easier his escape OR if in the past, had evaded Court sentence OR had been absconded OR was pronounced guilty for escape of detainee OR it is thought that, if he is released, he is very likely to commit additional crimes (282 Code of Penal Procedure).

In practice the justification for the abuse of custodial detention is repeatedly and typically given as arising out of the danger of new felonies being perpetrated in the future by the detainee.

Custodial detention based on the reasoning that, if the defendant is released, he is bound to commit additional crimes should belong to the past, and should not today deprive Greek or any other citizen who had the misfortune to be accused, of their freedom.

The investigator, the Prosecutor, and the members of Board of Judges, have not even the legal right to apply reasoning about the testified guilt of the defendant, during the case they are trying.

Consequently, they cannot apply similar reasoning in order to evaluate whether the defendant might perpetrate in the future additional unknown felonies.

The presumption of innocence which constitutes today, an achievement of the pan-European legal civilization, even according to the most unfavorable version for the defendant, permits, during pre-trial proceedings, guilt only to be considered in relation to the felony of which he is accused.

In no case should felonies of which he is not accused, has not perpetrated, and may not have occurred, be taken into account.

Whatever his background may be and whatever crime he may be accused of, they should not in any way presume his future penal conduct. This would be equivalent to detention without trial.

Custodial detention, enforced nowadays in the aforementioned way, has the effect of punishing someone for crimes he has not committed.

Measures for custodial detention, enforced in this way, arise out of the fear of the Judge or Prosecutor of adverse publicity or some other extra-judicial factor, and never because they are confident and sure in any particular case that further felonies will be perpetrated"

### III. ILLEGAL DISCHARGES

On the other hand, the illegal release of dangerous criminals, who are serving sentences in execution of irreversible Judgments, lead to destructive and irreparable results.

On 16/5/2008, Z.L., recently conditionally discharged from the prisons of Alikarnassos Crete, mortally stabbed for no serious reason, 21 year old student Manolis Choreftakis, who was unsuspectingly crossing a public street.

The offender was serving a sentence of life imprisonment, which by appeal had been reduced to 23 years (due to the acknowledgment of extenuating circumstances of post-adolescent age).

Throughout the duration of his imprisonment the offender had been punished many times for assaults on other prisoners and possession of clubs, knives etc.

During an uprising at the prison, he also participated in the burning, violation and pillage of the prison, manufacture of explosive devices etc.

His criminal record held numerous convictions and his criminal activity had begun at the age of 15 (manslaughter attempt).

It was ascertained, from the investigation that was conducted, that the perpetrator of the atrocious and unjustified murder ,was a serial criminal.

He had the uncontrollable urge to commit crimes, and, primarily, the urge to kill, an urge which was deeply rooted in him. He was a recidivist. The usual sentences imposed on him from time to time never had any psychological effect or reaction whatsoever on him.

He was an active and constant danger to both the legal order and society

The Court's omission to take all these elements into consideration, ordering the prison to release the prisoner conditionally, due to alleged "good behaviour", put in danger innocent peoples' life and constituted a severe violation of the right to life.

Paragraph 1 of article 2 of the European Convention on Human Rights (ECHR) requires that States abstain from any and all illegal and intentional deprivations of life and to take any and all measures necessary so as to protect the right of life of any and all persons residing within their territory (Osman v. UK, 28 October 1998, Tanribilir v. Turkey 16/11/2000, L.C.B. v. UK 9/6/98).

A State's aforementioned positive obligation arises whenever it is deemed that the authorities had knowledge of or were deemed to have knowledge of the fact that a person's life was in danger from criminal acts of a third DANGEROUS person (public dangerous persons who are free) and neglected to take the measures necessary to prevent the said danger within the framework of their competency (Osman, Paul and Andrey Edwards v. UK, no 46477/94, Bromiley v. UK no 33747/96, 23/11/99).

Justice appears to have two faces:

'To be impermissibly harsh on the weak and dangerously tolerant in other cases, where it should not be'.