
PROBATION IN SPAIN

The first precedent for "conditional liberation" found in Spanish law is contained in the Royal decree of 26th January 1889, which authorised the establishment of a penitentiary colony in the island of Mindoro (Philippines). This penitentiary colony was however never founded, but the decree mentioned that prisoners in the third quarter of their term, if their conduct warranted it, might be given "provisional liberty" in the interior of the island. The decree 23rd December 1889 reaffirmed this principle, which was developed in the system underlying the penitentiary colony of Ceuta, but the length of the period of "free circulation" (provisional liberty) was restricted to the place and country; moreover, the system was applied in a very defective way.

It was in 1901 by the decree of the 3rd June regulating the progressive system for adult offenders, and by the decree of the 17th June 1901 relative to the system applicable to delinquent minors, that public opinion and legislation turned seriously in the direction of favouring "conditional liberation."

Article 8 (e) of the former decree 3rd June 1901 stated :

“ The fourth quarter (i.e. the period of pardon and reward being the fourth part of the term of punishment) is equivalent to that of conditional liberation as existing in other countries and will function up to the promulgation of the law to be passed for its establishment.”

Article 20 of the second decree 17th June 1901 states :

“ In the fourth quarter of the term of confinement young delinquents can be authorised by the disciplinary tribunal of the school with the acquiescence of the Board of Prison Directors to work outside the school during the day under the supervision and protection of the Society of Patronages, but with the obligation to spend the night in the school.”

Finally, the Cortes approved the law of the 23rd July 1914 in establishing conditional liberty, and the law was completed by the law 28th December 1916, concerning condemned persons who were put under the jurisdiction of the Army and Navy.

Article 1 of the law of 1914 instituted conditional liberation in cases of those condemned to more than a year's confinement who have completed three-fourths of their term and whose conduct had been meritorious and if they would give a guarantee to live honest, peaceful and industrious lives. These conditions apply to terms of correctional imprisonment of from more than a year up to a life sentence.

Conditional liberation may be revoked in the case of the offender's bad conduct, or in case he commits another crime, and the probationer sent back to prison.

The organisation created to carry out this law is called “ Commissions of Conditional Liberation.” The commission which exists at the Ministry of Justice fulfils the duties of a central commission and is called the “ Commission Assesseur.” The others are called “ Provincial Commissions ” and sit in every capital of a province.

Procedure.—Each provincial commission meets quarterly to formulate its proposals, which are forwarded to the “ Commission Assesseur.” This commission takes the proposals into consideration and selects for submission to the Council of Ministers—actually the Council for Military Affairs—the names of those prisoners whose conduct and merits warrant their benefiting by conditional liberation. The Council of Ministers in its turn submits them to the King for his acceptance. The recommendations are

granted by a Royal decree and published in the *Gaceta de Madrid*, the official journal of the Government.

Once set at liberty, the probationer continues to be regarded as a condemned person until the expiration of his term; but if his conduct continues irreproachable until the end, "definitive" liberty is granted him. If, on the contrary, his conduct during the probationary period is unsatisfactory, the provincial commission concerned proposes to the commission *assesseur* the revocation of this measure, and if the Ministry agrees, the revocation is decreed and the necessary steps taken to return the probationer to prison.

The results are completely satisfactory. During the dozen years that the law has been in force, out of a total of 10,000 conditionally liberated, only 150 cases of revocation have occurred.

Minors.—The tribunal grants conditional liberty to children in danger of becoming offenders even though no offence has been committed. In these cases probation officers are designated to supervise the minors and their families during the time fixed for supervision. The probation officer reports the results of his enquiries to the *tribunal tuteur* for minors and the court may, if thought necessary, modify its decisions.

SUPPLEMENTARY INFORMATION

Carmen Isern Galceran, official delegate of the Spanish Government to the International Congress on Child Welfare at Rome, 1926, tells us that by numerous laws promulgated in favour of children at the beginning of the twentieth century, the following organisation was established, viz.

(a) The Superior Council for Child Welfare.

(b) Municipal and provincial "Juntas" for carrying out child-welfare work in the cities and provinces.

Well-known judges advocated the establishment of children's courts. In 1909 Montero Rios formulated proposals which resulted in the passing of the law 25th November 1918, instituting Spanish juvenile courts. This law has recently been altered and embodied in the Royal decree of the 15th July 1925. The first article of this decree imposes the condition that the province before instituting a juvenile court shall have a sufficient number of auxiliary welfare institutions to ensure the efficient working of the court.

There are thirteen juvenile courts in existence to-day (May 1926). The law is based on the Belgian law, though there are essential differences. For instance, there is no special children's judge appointed to preside, nor is it essential that the judge should be a

member of the magistracy. The court is called a guardianship court and deals with children of a maximum age of sixteen years. Great importance is attached to the study of the medical, psychological and pedagogical make-up of each child in order to ascertain the treatment suited to each, and each school of reform has a section for the observation of the cases and reports on them are made with the help of a doctor and a teacher.

The court sits in private and lawyers do not intervene.

The constitution of the court is as follows: There is a president appointed by the Minister of Justice, and two "Vocales" appointed by the "Juntas" of the Child Welfare Association, and a secretary, who is the only paid member. Their decisions are not regarded as "sentences," but as provisional agreements which may be revoked and which may extend up to the majority of the minor (twenty-three years).

The president interviews the offenders in his own office and the child is regarded as unfortunate rather than culpable.

If the family of the "unfortunate" is suitable, he is placed on probation in his family under a probation officer. Where the familial environment is unsatisfactory, the young offender may be confided to the care of another family (though this is rarely done) or to an educational institution. If he is abnormal, he may be sent to an appropriate institution, and if perverted, to a school of reform. The tribunal may deprive parents or guardians of their parental or tutelary rights (*patria potestad*, or *puissance paternelle*) in unworthy cases under Art. 112. The court deals only with cases of a juridical character. Cases of poverty are dealt with by private charities or the "juntas."

The court deals with adults who abandon minors confided to their care and with cases of vagabondage and mendicity.

Bilbao has the first Spanish juvenile court, and in its report we learn that of 185 minors dealt with, only 8 proved failures.

For the complete success of the protection of welfare work amongst minors the following institutions are still needed in Spain:

- (1) Homes of semi-liberty for those leaving reformatories.
- (2) Maternal refuges for girl-mothers.
- (3) Family homes for those in moral danger.
- (4) Official guardianship for illegitimates.
- (5) Schools of social service to prepare workers in the social field.

Marie Carbonell, Professor of Pedagogics and a judge in a Spanish juvenile court, tells us in the "B.I.P.E." (30th April 1925) that the law dated 12th August 1904 and completed 24th January 1908 set up a higher council for the protection of children at Madrid, which is aided by 50 provincial committees and some hundreds of local committees. Later a tax of 5 per cent. levied on public performances and exhibitions brought the necessary financial support. The work of the council and the committees embraces every side of child welfare, including tribunals for children and schools of reform. Juvenile courts were instituted by law in 1919. Seven important

cities already have juvenile courts and another seven are coming into being.

The authoress says: "Without being presumptuous, we are assured that our law, if we consider the spirit underlying it, constitutes an advance when we compare it with other laws of the same character, whilst the juvenile court organisation compares favourably with that of the most advanced countries."

The tribunals are not really courts; there are no prosecuting or defending lawyers, no solicitors nor registrars. None of these could defend the child in a more paternal fashion than the children's judge, who is there, not to prosecute children, but the enemies of children. The judge is usually chosen from the council and committees of child welfare. The fundamental principle is: "The child is to be educated or re-educated, not punished." Results are highly satisfactory under re-education and the salutary influence of a well-instructed probation service.

The court has auxiliary services:

- (1) Homes for observation.
- (2) Reform schools.
- (3) Probation (*liberté surveillée*).
- (4) Family homes.

The first is for studying the child and probation puts the findings to the test.

Probation officers (*délégués*) discharge their duties not as police agents, but as friends.

Informed Spanish opinion regards the Belgian system of juvenile court administration with high appreciation, and Belgian influence is strongly in evidence in a recent publication describing the juvenile court of Barcelona.