COMMENTARIES ON THE CODE OF CRIMES

EXPLANATORY NOTES

Crimes and criminals have pre-eminently engaged the attention of rulers and jurists since the early dawn of history. Some 4,000 years ago, King Hammurabi, through his "lex taliones" tried to solve this vexing problem with the application of the famous formula of "an eye for an eye and a tooth for a tooth".

The formula did not work, for crimes and criminals have increased in geometrical progression with the population of the world.

Since the "lex taliones" of Hammurabi up to the present, plenty of water has passed under the bridge. Scores of theories regarding the justification and purpose of penal laws have been expounded and put into practice; but so far, society as a whole, feels that it is not sufficiently protected against the perennial onslaught of criminals.

It is deemed unnecessary to discuss the merits or demerits of absolute, relative and mixed theories. It is better to expound, as briefly as possible, the characteristics of the leading schools of thought which now prevail in the juridical world, namely, the Classical School, the Positivist School and the Criminal Politic.

SCHOOLS OF THOUGHT IN PENAL SCIENCES

Briefly, the first school or the Classical School is eminently philosophical, juristic and dogmatic. It attaches more importance to the crime, or to the act, than to the criminal or to the actor itself. For this reason, penalty under this theory, should be inflicted in proportion to the magnitude of the damage or injury caused by the criminal.

On the other hand, the Positivist School is eminently realistic and experimental. It considers the crime, not as a mere juridical

entity or creation of the law, but rather as a social or natural phenomenon. This being the case, the man-criminal, or the delinquent, and not the crime or the act, should be the main concern of the criminal law, under the tenets of this school.

The classicist has chiefly in mind the attainment of retributive justice, through the infliction of punishment or penalty, which he considers as a payment due to society by whomsoever violetes the penal law.

The positivist, on the other hand, has as principal aim social defense or the defense of society. It is not concerned whether the offense is avenged, or whether the offender receives his due punishment. For the positivist, the whole question boils down to whether or not the offender is dangerous, or very likely, will be a menace to society. That is why, instead of the classical penalty of retribution, the positivist provides for social security.

The third school, the Criminal politic, is a happy medium between the above mentioned two opposing camps. It believes in short detentive penalty, without prejudice to imposing security measures upon criminals or socially dangerous persons.

The present Revised Penal Code of 1930 is patterned after the classical Spanish Code of 1870, following a school of thought conceived originally by Cesare Bonesana, better known as Marquis de Becarria in 1764, which was elevated to the highest degree of scientific perfection by that genial professor of Pissa, the eminent Dr. Francisco Carrara. The essence of this school is that crime is a pure and simple fiction of law. In other words, there is no crime unless there is some law defining and punishing it; that criminal responsibility exists; and finally, that penalty which is inflicted upon the perpetrators of a crime by way of retribution and moral coercion, must be proportionate to the harm or crime committed, not only quantitatively, but also qualitatively.

Footnote:

An example of quantitative and qualitative relation between crimes and penalties may be found in the penalties of Cadena Temporal and Reclusion Temporal. Under Article 91 of the Penal Code of 1870, the penalty of cadena temporal (graduated scale #1) and reclusion temporal (graduated scale #2) carry with it the same quantitative length of imprisonment; from 12 years and 1 day to 20 years.

But both penalties differ qualitatively in their execution or implementation, in that the convict in cadena temporal is subject not only to hard labor and an additional burden of carrying a chain hanging from his waist to the ankle, the convict in reclusion temporal is free from such instrument of torture, and subject only to easy or light labor.

When Professor Carrara bewildered the juridical world in 1850 with his scientific classification of penalties into graduated scales, and into different grades and periods, so that one particular kind of crime may only be punished with one specific set of penalties mathematically measured in terms of years, months and days. Very few thought then, perhaps not even the most subborn iconoclast, that there could be any better system than the classical school. Among the confirmed believers in the virtue of the Classical School were Spanish and Filipino jurists, who, for the last 70 years, had been laboring under the impression that pehalty, being retributive in nature, must be exactly proportionate to the harm done, and for that reason, must be prefixed, determined and specific.

But the scientific reputation which the classical school gained was soon shaken in 1918 with the publication of a book entitled "Crimes, its Causes and Remedies", written by an Italian Physician, Dr. Ceasare Lombroso, wherein, for the first time, the attention of the juridical world was arrested to the existence of a criminal type or delinquent man. The purpose here is not to make a lengthy exposition and analysis of Dr. Lombroso's book. Suffice it to say, that his ideas aroused the fertile minds of two other Italian masters, Professors Rafael Garofalo and Enrico Ferri, and eventually gave rise to the birth of a new, vigorous and realistic school of thought in criminal science, what is now known as the Positivist or experimental school. Thanks to the work of Lombroso on criminal types; to "Criminology" of Professor Garofalo, and to Enrico Ferri's Criminal Sociology", the juridical world has fallen

heir to a precious legacy in the matter of treatment and approach to the external problem of crime and criminals. Thanks to these three evangelists of the gospel of Positivism, the juridical world has finally realized that society cannot be defended against the continuous onslaught of criminals by the mechanical application of pre-fixed penalties, and the excessive use of abstract legal principles. What matters, in the fight against crime and criminals, is the study of the man-criminal himself, the selection of ways and means whereby a criminal would be deprived of an opportunity to commit crime, or if he has already committed any, that he may not be given a chance to repeat his anti-social activities.

Since the gospel of positivism is now widely spread over Europe and South America and its tenets have found expression in the Penal Codes of the majority of the countries in both Continents, the Code Commission felt that it would be recreant to its duties, should it fail to open its eyes to reality, and not to accept the benefit of the experience of Europe and South America. It is with this thought and in this spirit that our proposed Code of Crimes was conceived.

The Filipino jurist up to the year 1916 knew nothing more than the Spanish Penal Code of 1870, the commentaries of Viada and a body of Spanish and Philippine jurisprudence based on the old classical school.

However, in 1916, the late Rafael del Pan, a member of the First Code Commission created by the Philippine Legislature submitted under his authorship a "Codigo Correctional" which could very well be the forerunner of a modern penal code. The "Codigo" contained many Positivistic features, most striking of which is the proposed treatment of dangerous or incorrigible criminal with vasectomy. As expected, vasectomy and other nuances of correctional and social defense theories sounded too radical to the ears of the senators of the early sixteen, and for that reason del Pan's project was rejected.

Del Pan's attempt to introduce modern penal science in the Philippines was followed by the College of Law of the University of the Philippines when books on criminology entitled Essentials of Criminal Law and Criminology, Philippine Criminal Science, and Penal Sciences have been adopted and used as textbook from the year 1927 up to this day.

It can be said without any fear of contradiction that the teaching of penal science under the sponsorship of the University of the Philippines was responsible for the birth of the revised Penal Code of 1930 and the Code of Crimes of 1952.

RATIONALE OF THE CODE OF CRIMES

The Code of Crimes does not belong exclusively to either of the two opposing schools. It belongs to the third school, or to Criminal Politic, being the result of a compromise between the two fundamental and conflicting criteria.

The Code Commission still believes that free will should be the basis of criminal responsibility, instead of the dreadfulness of the offender, as vigorously maintained by the Positivists. For this reason, the proposed Code, like the present Classical Code, declares, in Articles 22 and 23, exempt from criminal liability those persons who are deprived of freedom, intelligence or intent. As a necessary consequence of the declaration, the proposed Code had to recognize in Article 24, as sufficient cause for diminishing or mitigating criminal responsibility, any circumstances which can or may hinder the exercise of the free will of the doer.

With regard to the concept of penalty, the Commission has adopted a happy medium between the criterion that penalty is a punishment or retribution for the wrong done, and the idea that it is a social defense.

The Code of Crimes, for this reason, represses, with either fine or deprivation of liberty in the form of confinement or imprisonment, the commission of crimes. The death sentence may also be inflicted in extreme cases, as a means of eliminating hopelessly dangerous persons.

To erase as much as possible all traces of punishment, the period of repression, which will take the place of the penalties of the present Code, has been greatly shortened. The longest period of imprisonment, which is heavy imprisonment, is from 9 to 15 years, while the shortest (restraint) is from 1 to 29 days.

As has been stated, the repression, be it restraint or imprisonment, is imposed for the sole purpose of satisfying the ends of justice, that is, for ethical reasons. Such repression surely will not protect the community from the nefarious and anti-social activities of certain types of criminals whom the Code classifies as "socially dangerous persons". For this type of offenders, the proposed Code reserves, in addition to the conventional repression, the security measures, which consist in the internment of the offender for an indefinite period, in some diagnostic center of labor establishment.

Under the provisions of Article 109 of the Code of Crimes, the above-described security measures may be imposed in two instances: firstly, upon any person who has been sentenced to medium imprisonment or longer (from 3 years up); and secondly, upon any offender even though sentenced to a shorter term, provided the Court finds in the offender, a "certain morbid disposition, congenital or acquired by habit, which by destroying or enervating the inhibitory control, favors the inclination to commit a crime." (Art. 107).

Under the provisions of the Code, the internment of socially dangerous persons shall not terminate until the courts, upon report of a competent board of psychiatrists and technicians in penology, shall be fully convinced that the internee is no longer socially dangerous.

It is believed that an indeterminate security measures imposed upon hardened or professional criminals will be far better safeguard to

society that the present pre-fixed penalties of our present classical code. With an indefinite internment in a labor establishment or diagnostic center, hardened and incorrigible criminals can not cause havoc to society. It is the considered opinion of the Commission that the security measures of the Code of Crimes, will reduce to the minimum the risk of the community from anti-social activities of professional and dangerous criminals.

Another innovation of decidedly Positivistic tendency is the provision of Article 17, in connection with Article 62 of the Code which confers upon the Court the power to repress, either with repression one degree lower, or the same repression intended for the consummated offense, any frustrated, or attempted crime, or proposal to commit an offense, bearing in mind the nature of the crime, the means and ways of the perpetration thereof, the intensity of the criminal intent, the extent of the resulting injury, and the personal antecedents of the actor.

The present criterion of the classical school of lowering always by one or two degrees the penalty for the frustrated, or attempted crime, without any regard to the personal antecedents of the doer, the nature of the offense, the intensity of criminal intent, etc. does not seem to be sound. Few, if ever, will be convinced that a hardened and professional criminal who has put into execution all means within his command to rob and murder his victim, but out of sheer luck of the victim the bullet missed him, should deserve less condemnation or less repressive measure than an occasional criminal who happens to consummate the same offense. The right and sensible criterion, therefore, is not to base necessarily upon the degree of the consumation of the offense or the harm done, the repression to be imposed upon a doer, but rather upon the circumstances already mentioned.

Another striking innovation in the Code of Crimes is the conversion of accessorship after the fact (encumbrimiento in Spanish) into the category of an independent and separate crime. Under our

Revised Penal Code, an accessory after the fact is one who helps in the flight of a murderer, or conceals the body or instrument of a crime, or knowingly hides or receives stolen property. The responsibility of an accessory after the fact is subordinated to that of the principal; so that, if the principal is acquitted or not prosecuted, the accessory after the fact, no matter how conclusive is the evidence against him, cannot be punished. The flaw in the Revised Penal Code is self-evident. Under the Code of Crimes, the hiding or receiving of stolen property is one type of crime against property and the abetting in the escape of a criminal, destroying the body or the instrument of the crime, or the wiping out of the traces of the same, is another kind of crime against the administration of justice. These crimes can be prosecuted independently, and without regard to the prosecution or conviction of the thief, in the case of stolen property, or of the criminal to whom help was given, in the latter cases.

The mechanism of application of penalty or repression has been greatly simplified. The principal repressions consist of deprivation of liberty and fine. Death penalty has been preserved, but it can only be imposed in extreme cases. With the limitations imposed by the Code, it can be safely stated that the death penalty has been practically abolished.

The deprivation of liberty is classified into: life imprisonment which at most lasts 25 years; heavy imprisonment, from 9 to 15 years; medium imprisonment, from 3 to 9 years; light imprisonment from 6 months to 3 years; confinement from 15 days to 6 months; and restraint from 1 to 29 days.

According to the provisions of Article 57, the repression prescribed by the Code of Crimes shall be imposed upon the principal of the crime. The presence of modifying circumstances in the commission of the crime will have the effect of imposing the repression either in the lower half, or in the upper half, depending upon whether circumstances are mitigating or aggravating. Thus, if the penalty prescribed for the crime

is heavy imprisonment (from 9 to 15 years), and there is one or two mitigating circumstances, the judge will have full power to impose any penalty ranging from 9 years and one day to 12 years; and conversely, if there is only one or two aggravating circumstances, the judge can impose anywhere between 12 years and one day to 15 years. If there are no modifying circumstances, or the existing ones offset each other, the court will be justified in imposing the penalty in the neighborhood of 12 years. Moreover, under Article 73 "every divisible repression shall be divided into the upper half and the lower half. Within either half, the Court shall impose that repression which in its sound discretion shall best accomplish the purposes of repression as enunciated in Article 34 of this Code, after considering the nature and number, if any of the mitigating or aggravating circumstances, and the actor's social and family environment, education, previous conduct, habits, economic condition and other personal factors."

It is thus seen that rather than mathematical sub-divisions and fractions which characterize the mechanism of the classical school, what the judge will need in the application of the Code would be profound knowledge of human nature and psychology.

The conditional sentence is another step forward in the Code. Under it, a judge has ample discretion to suspend a sentence of conviction when the accused is a first offender, and the term of the sentence does not exceed one year, provided the accused fully indemnifies the damage, if any, inflicted upon the victim. Should the convict observe good conduct during 5 years, if he does not commit any offense during said period, the sentence of conviction shall totally prescribe, otherwise it will be enforced.

Under the Code of Crimes, a fine shall have the same effect upon the rich and the poor. It will be truly democratic; unlike what happens under the Revised Penal Code, when a fine is painless, nay, insensible, as far as the moneyed class is concerned. A fine shall be imposed, not in terms of pesos, but in terms of days of earnings. An executive, for

instance, with an income of ₱300 a day, who is sentenced, side by side with a laborer earning ₱8 a day, to suffer 5 days of earning each, will suffer exactly the same pain or burden as the latter; for his ₱1,500 which is the equivalent of his 5 days earning has the same weight or value as the ₱40 laborer.

In line with the criterion that repression is more of sanction and social defense than a punishment, the Code has provided for predelictual security measures. Under the provision of Article 108, a person may be socially declared dangerous and then be subjected to security measures provided for, even if he has not been prosecuted for any specific crime when he shows any symptoms, evidences or manifestations of habitual rowdaism and ruffianism. With this provision, it is expected that many holdups, kidnappings and murders can be prevented. The police characters or "butangeros" in local parlance. Because of the absence of a provision regarding pre-deliatual security measures in the Revised Penal Code, our law enforcement agencies have been quite helpless to neutralize the anti-social activities of professional rowdies or "butangeros" unless they are caught "in fragranti".

The abovementioned provisions are the best answer to the persistent clamor of the community for preventive measures against the imminent and probable onslaught of professional gangsters. After all, an ounce of prevention is worth more than a pound of cure.

Another striking innovation of the Code of Crimes is the extra-territorial effect given to its provisions. Our Revised Penal Code conceived of criminal law as exceedingly provincial. With the exception of crimes committed on board our ships and men of war, while navigating on the high seas or on foreign territorial waters, and crimes committed by public officials abroad in connection with the performance of their official duties, or falsification and forgery of our securities and coins, the provisions of the present Revised Penal Code are effective only within the Philippine Republic. Under the Code of Crimes, any serious crime committed abroad by nationals or even by foreigners when the victim is a

national or the State, may be prosecuted here under certain conditions.

These are the salient features of the ground work of the Code of Crimes. The catalog of specific crimes has been greatly enriched so as to cover all conceivable forms of criminality and immorality. Suffice it to say that the Code is 3 times longer than the present one.

It would be too presumptuous of anyone to claim that an ideal or perfect code can be drafted. As has been said, the civilized world has been trying to produce for the last four thousand years some penal code which would deal a death blow to crime and criminals. But little or no progress at all has been achieved to obtain the desired goal.

The Code of Crimes would not serve the purpose of a miraculous penacea to all of our social and moral ills. But it tries to embody the most progressive principles of the penal science.

The bill of rights in our Constitution as well as in the Federal Constitution of the United States; and even the Magna Carta of human rights, the famous Declaration of the Rights of Man proclaimed by the French Revolution, are all wonderful but one-sided documents. The authors and framers of these immortal documents have only specialized in and endeavored to undertake the defense of the rights of men, the rights of individual persons; but none of them had given serious thought to b e defense of the rights of society. The Code of Crimes is an endeavor to fill this gap.

BOOK ONE

GENERAL PROVISIONS

PRELIMINARY TITLE

WHEN AND WHERE THIS CODE IS APPLICABLE

ARTICLE 1. Title of this act. - This act shall be known as the "Code of Crimes."

Comments:

The Code of Crimes is the second output of the Code Commission, the first being the Civil Code of the Philippines which was approved by Congress and the President as Republic Act No. 386. The Code Commission was created by the late President Manuel A. Roxas. It was composed of Dean Jorge Bocobo (deceased) as Chairman and Guillermo B. Guevara, Pedro Ylagan (deceased), Francisco R. Capistrano and Arturo M. Tolentino as members.

A printed copy of the project was submitted to Congress as early as October of 1950. But not until the 6th and the 7th Congress in 1972 was the Code of Crimes passed in the First Reading as House Bill No. 305 under the sponsorship of Rep. Caram. Sponsored by Congressman Manuel Zosa, it was finally approved in the form of consolidated H. B. Nos. 1200 and 1855.

Unfortunately, Congress was abolished before the Senate had the opportunity to stamp its concurrence to theproject. By Presidential Decree No. _____ however, the Code was converted into law to take effect on _____ in lieu of the Revised Penal Code.

ART. 2. Time when Code takes effect. - This Code shall take effect on the first day of January, 19 __.

ART. 3. Pre-existence of criminal law necessary. - No act or omission shall be considered a crime or misdemeanor, unless there is a pre-existing criminal law defining and repressing the same as an offense.

Comments:

This provision is a corrollary of the general principle of penal law to the effect that "ubi non set est lex nec prevaricatio, that is there is no crime if there is no law. The condition also accords with the maxim, Nullum crimen, nulla poena sine lege, by which the modern criminal law is inspired, and which was adopted as a reaction to the abuses of unlimited judicial arbitrariness."[1]

ART. 4. Non-retroactive effect of criminal law. - Criminal laws shall have no retroactive effect, except insofar as they may favor the accused, although on the effective date of such laws a final sentence may have been rendered and the convict may be serving the same.

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[1]Guevara, Penal Sciences & Philippine Criminal Law. 23 (1974).

Comments:

"The criminal law has not, and cannot have, retroactive effect except insofar as it favors the offender. The reason for this is that the criminal law is a measure for the future and not for the past. For this reason, a statute passed subsequent to the commission of a criminal act, which increases the penalty by which such act was punished at the time of its passage, cannot have a retroactive effect, that is, it cannot be enforced in such a criminal act. Therefore, whenever a stature dealing with crimes establishes more lenient or favorable conditions for the accused with regard to a certain offense, the statute becomes retroactive for that offense. And such a provision is applicable to all general laws such as the election law."[2]

ART. 5. General application of criminal law. - Criminal laws shall be obligatory upon all who live or sojourn in Philippine territory, subject to the principles of public international law and to treaty stipulations.

Criminal laws of the Philippines are also binding on all citizens or foreigners who are abroad, in the cases provided by law or by international usage and treaties.

Comments:

"Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in Philippine territory, subject to the principles of public international laws and to treaty stipulation."[3]

"Laws shall have no retroactive effect, unless the contrary is provided."[4]

"Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary."[5]

"The following persons enjoy absolute or relative immunity from the operation of the penal laws:"

IMMUNITY OF CHIEF OF STATE

(1) The President or Prime Minister - "The President or Prime Minister shall be immune from suit during his tenure."[6] In other words, both officials during their term of office cannot be sued civilly or prosecuted criminally for any offense, although they may be impeached. "Judgments in cases of impeachment shall be limited to removal from office and disqualifications to hold any office of honor, trust, or profit under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, in accordance with law."[7]

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[2] U.S. v. Bungaoil, 34 Phil. 835 (1916). See also U.S. v. Macasaet, 11 Phil. 447 (1908) and U.S. v. Cuna, 12 Phil. 241 (1908). See also People v. Parel, 44 Phil. 437 (1923); People v. Moran, 44 Phil. 387, 400 ( ); People v. Carballo, 62 Phil. 657 ( ).

[3] Civil Code, Art. 14.

[4] Civil Code, Art. 4.

[5] Civil Code, Art. 7

[6] Const., Art. VII, sec. 7.

[7] Const., Art. XIII, sec. 4.

(2) Immunity from court or legal process

May the President or Prime Minister ignore legal or court summons for appearance or production of pertinent documents or objects on the pretense that Presidential immunity gives him freedom from obedience or submission to other coordinated governmental institutions?

This is a question which our young Republic never had to face but if American jurisprudence could have some persuasive value, we may cite the epoch-making decision of the Supreme Court of the United States in the notorious Watergate scandal of 1974."[8]

As will be remembered, the Senate investigating committee demanded through subpoena duces tecum from President Nixon for the presentation and production before it of the tape record of certain conversations between the President and some of his co-workers in the White House. Nixon turned down the demand, invoking executive privilege in spite of the court order to the contrary issued by District Judge Sirica.

Upon review of the case on certiorari, the court firmly rejected Nixon's argument that as head of the co-equal Executive Branch of the Government, he was entitled under the Constitution to determine finally the scope of his own privilege. On the contrary, the main theoretical plank of the court's opinion was to interpret the law, "can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a presidential veto."[9] Quoting directly from Chief Justice John Marshall's decision in Marbury v. Madison,[10] the court said, "It is emphatically the province and duty of the judicial department to say what the law is" with respect to the claim of privilege presented in this case.[11]

The President's claims of Executive privilege must give way to the needs of the courts to settle a criminal case. Neither the separation of the Executive and Judicial branches nor the need for confidentiality "can sustain and absolute, unqualified presidential privilege of immunity from judicial process under all circumstances."[12] The court found that President Nixon's claim of Executive privilege was too "broad" and "undifferentiated." It showed no danger to the nation if the tapes were turned over to Sirica for "in camara" inspection. "We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalised interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal[13] justice."

(3) Members of the National Assembly - "A member of the National Assembly shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its sessions, and in going to and returning from the same: but the National Assembly shall surrender the Member involved to the custody of the law within twenty-four hours otherwise such privilege shall cease upon its failure to do so. A Member shall not be questioned nor held liable in any other place for any speech or debate in the Assembly or in any committee thereof.[14]

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[8]U.S. v. Nixon, 418 U.S. 683, 41 L.ed.2d 1039, 94 S.Ct. 3090 (1974)
[9]Id. at 704.
[10]1 CRANCH 137, 2 L.Ed. 60 (1803).
[11]Id. at 177.
[12]Supra note 7 at 706.
[13]Id, at 713.
[14]Const. Art. VIII, sec. 9.

(4) Chiefs of Foreign States - "Those who in their official character may be within the limits of the national territory. The reason for this privilege is that a chief of a foreign state represents his country, and cannot, therefore, be subjected to the foreign law. This privilege adopted by international usage is extended to both kings andpresidents of republics."[15]

(5) Diplomatic representatives - "The reasons for their exemption are (1) a diplomatic agent is the representative of his country with respect to the government to which he is accredited; (2) a diplomatic agent requires freedom of action in the performance of his duties. Under the terms of the Vienna Convention of April 18, 1961[16] to which the Republic of the Philippines is one of the signatories, the following are the immunities, rights and privileges accorded by the receiving countries in favor of the sending States, to wit:[17]

(1) The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

(2) The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

(3) It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

(4) The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

(5) The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

(6) The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

(7) The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

(8) The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with sending State or the head of the mission.

(9) The archives and documents of the mission shall be inviolable at any time and wherever they may be.

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[15] Supra note 1 at 30.
[16] 4 P.T.S. 445 (1970).
[17] Vienna Convention on diplomatic Relations (1961), Arts. 20-36

(10) The receiving State shall accord full facilities for the performance of the functions of the mission.

(11) Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

(12) The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code and cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

(13) The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

(14) The diplomatic bag shall not be opened or detained.

(15) The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

(16) The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

(17) The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

(18) The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

(19) The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

(20) A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

(21) A diplomatic agent is not obliged to give evidence as a witness.

(22) No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b), and (c) of paragraph one and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

(23) The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

(24) A diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

(25) A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property.

(26) The receiving State shall exempt diplomatic agents from all personal services, from all public services of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

(27) The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the mission;

(b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

(28) The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

ART. 6. Territorial effect of this Code. - Except as provided in treaties and special laws, the provisions of this Code shall be applied not only within Philippine territory, including its air space, its territorial waters and maritime zone, but also outside of its territorial limits, particularly against anyone who:

(1) Being a public officer or employee, should commit an offense in the exercise or on the occasion of his functions; or

(2) Should perform a criminal act abroad which takes effect in the Philippines.

(3) Should commit a crime against a citizen of the Philippines or foreign craft.

(4) Should commit crimes against the law of nations.

This was taken from Article 2 of the Revised Penal Code.

Comments:

The scope of territorial water is still an unsettled question up to this time inspite of the protracted debates at the international meets.[18]

Two schools of thought were launched in the conferences. One is that the territorial water of a country is limited to 12 miles distance from its shoreline.[19] This theory is sponsored by the big powers like the United States and Russia.

The other theory is the Archipelago concept.[20] The advocates of this concept, composed mostly of small countries, would include the territorial water of a country within a quadrilateral line 12 miles above the northernmost shoreline and 12 miles down the southernmost coastline, 12 miles along the easternmost shoreline and 12 miles along the westernmost coastline.

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[18] The first session of the conference in New York on December 3-15, 1973; the second conference was held in Caracas in June of 1974. The next one was held in Geneva on March 17 to 11, 1975. The fourth conference was convened in New York on March, 1976.

[19] Third U.N. Conference on the Law of the Sea, Phil. Yearbook of International Law, 22 (1975).

[20] Ibid. 24-30.

The Philippines has evaporated the Archipelagic doctrine in 1973 Const. Art. 1 of said Constitution provides:

"The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, all other territories belonging to the Philippines by historic right or legal title, including the territorial, the space, the subsoil, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignity or jurisdiction. The waters around, between, and connecting all islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines."

The concept of the exclusive economic zone[21] is an assertion of the state of the right to extend its jurisdiction beyond the limits of its territorial sea to an over adjacent to its coasts up to 200 miles in which it will exercise sovereignity over the living and non living resources including the sea-bed and subsoil thereof. In Caracas, over 100 States supported the concept.

The Philippines has expressed approval of the adoption of the 200-mile economic zone to be measured from the baseline surrounding the archipelago.

At the moment, no final consensus has been arrived at these conferences.

ART. 7. Other offense deemed committed within Philippine territory. - The following shall be considered as having been committed within Philippine territory:

(1) Crimes committed by citizens of the Philippines or by foreigners on the high seas on board Philippine vessels.

(2) Those committed on board a Philippine warship in a port or in territorial waters of a foreign country. This provision applies to a case wherein the vessel is not a man-of-war, if the actor has not been tried in the country to which the port belongs.

(3) Those committed on board a foreign vessel in a Philippine port or territorial waters of the Philippines, if public order is disturbed, or if the author or offender is not a member of the crew; otherwise, the principle of reciprocity shall be observed.

(4) Those committed on board airplanes of Philippine registry, or if foreign registry, where the offended party is a citizen or resident of the Philippines; and

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[21] Ibid. 32, 33.

(5) Those committed in Philippine embassies and legations.

This article was taken from Article 5 of the Penal Code of Mexico.

ART. 8. Crime of a national committed abroad. - A citizen of the Philippines who prescribes death or life sentence, or an imprisonment for a period of not less than three years, shall be dealt with under said law, provided that he is in the territory of the Republic, and that he has not been tried abroad.

In the case contemplated in the preceding paragraph, when the crime has been committed to the prejudice of a foreign state or of an alien, no prosecution shall be initiated without the authority of the Secretary of Justice. Such authority shall not be issued if the offenders extradition has been granted to the government of the state in which the crime was committed.

Comments:

This was taken from Article 9 of the Italian Penal Code.

ART. 9. Crime of a foreigner committed abroad. - A foreigner who commits in foreign territory a crime to the prejudice of the Republic or any citizen thereof, for which the Philippine Law prescribes death or medium imprisonment or more, shall be subject to said law, provided:

(1) He is in the territory of the Republic;

(2) A complaint by the injured party has been filed; and

(3) The Secretary of Justice authorizes the prosecution.

Comments:

This article was taken from Article 10a of the Italian Penal Code.

ART. 10. Recognition of foreign judgment. - A foreign judgment pronounced in respect of a crime shall be recognized:

(1) In order to establish double jeopardy, recidivism or other effects of the judgment, or to declare that a certain crime is habitual, or that a tendency toward delinquency exists.

(2) When the sentence would, under Philippine law, entail a supplementary repression.

(3) When, under Philippine law, the person convicted or exempted under Art. 23, who is in the territory of the Republic, must be subjected to some security measure.

(4) When the foreign judgment carries an order to make restitution or compensation for injury, or has in any manner to be enforced in judicial proceedings in the territory of the Republic for the purpose of restitution or compensation for injury or for other civil purposes.

It is a requisite of recognition that the judgment must have been pronounced by the judicial authorities of a foreign state with which a treaty of extradition exists. If the latter does not exist, a foreign judgment may likewise be accorded recognition in the Republic, provided the Secretary of Justice makes a request to that effect. Such request is not necessary if recognition is for the purposes specified in number (4) hereof.

Comments:

This was taken from Article 12 of the Italian Penal Code.

ART. 11. Extradition. - Extradition is governed by the Philippine law of crimes, and international conventions, treaties and usages.

Extradition is not permitted when the fact upon which the demand for extradition is based constitutes a political offense, or is not deemed to be an offense by Philippine law and by the foreign law, subject to treaty stipulations in each case.

Extradition may also be granted or offered in the case of offense not contemplated in the international conventions.

The extradition of a citizen of the Philippines is not permitted unless it is expressly allowed in international conventions and treaties.

Comments:

This was taken from Article 13 of the Italian Penal Code.

The first extradition treaty entered into by the Republic of the Philippines after the grant of her independence on July 4, 1946 was concluded with Indonesia under date of February 10, 1976.[22]

Under the terms of said treaty, any person or subject found in the territory of either country (Philippines or Indonesia) who are being proceeded against or have been charged with, or convicted of, any of the following crimes to wit: murder, parricide, infanticide, and homicide; rape, indecent assault, unlawful sexual acts with or upon minors under the age specified by the penal laws of both Contracting Parties; abduction, kidnapping, mutilation, physical injuries, frustrated murder or frustrated homicide; illegal or arbitrary detention; slavery, servitude; robbery, theft; estafa, malversation, swindling, fraud, cheating, extortion, threats, coercion; bribery, corruption, graft, falsification, perjury, forgery, counterfeiting, smuggling, arson, destruction of property, hijacking, piracy, mutiny, crimes against the laws relating to narcotics and crimes against the laws relating to firearms, explosives, or incendiary devices provided that these crimes are punisable by the laws of both Contracting Parties by a possible penalty of death or deprivation of liberty for a period exceeding one year.

CHAPTER I - CRIMINAL LIABILITY

ART. 12. Crime or misdemeanor. - A crime or a misdemeanor is any act or omission repressed by criminal law.

Comments:

Under the classical school, any criminal act or offense is always presumed to be voluntary. Since the new Code adopted the classical definition of crime, a criminal act or offense must always be voluntary, the omission of the adjective notwithstanding.

ART. 13. Classification of offenses. - A crime is an offense for which the law provides the death sentence, or at least confinement as set forth in Art. 43, or a fine in a sum equivalent to not less than fifteen days' earnings.

Comments:

A misdemeanor is an infraction of law which the latter represses with restraint as defined in Art. 43, or a fine in a sum not exceeding the equivalent of fourteen days' earnings.

This is an article similar to article 20 of the Penal Code of Peru.

ART. 14. Psychological elements of a crime or misdemeanor. - A crime or misdemeanor is intentional or with malice aforethought when the injurious or dangerous result of the act or omission repressed by law was

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[22] Extradition Treaty Between the Republic of the Philippines and the Republic of Indonesia, Article II.

intended by the actor as a consequence of said act or omission. It is ultra-intentional or beyond the intent when the injurious or dangerous result arising from the act or omission is more serious than that intended by the actor. It is culpable or without criminal intent when the injurious or dangerous result was not intended by the agent, and takes place in consequence of negligence, recklessness or lack of skill. Non-observance of laws or lawful regulations, orders, or instructions at the time of the injury raises a disputable presumption of negligence.

Comments:

This article is based on Article 43 of the Italian Penal Code, Article 18 of the Uruguay Penal Code and Article 4 of the Revised Penal Code.

The composition of a crime or misdemeanor is:

(a) "Act or omission - The act must be a bodily movement tending to produce an effect in the external world, it being unnecessary that the effect be actually produced, as the possibility of its production is enough. Thus, an attempted crime, even if it does not bring about any change or result but could have done so as a rational or internal consequence is an act within the meaning of Article 3 of the Revised Penal Code. The act must be external; hence, it is said that it must produce or be capable of producing a change in the external world. Internal acts are outside the criminal law; the Code only refers to external acts. Consequently, a criminal thought, mere intention, however immoral it may be, would never constitute a crime."[23]

"Omission means inaction, non-performance of a positive act which one is, in duty bound to perform. It should be born in mind that we refer to voluntary or intentional omission. When the omission is involuntary and due to neglect or oversight (for example, when a linekeeper omits thru negligence a signal and causes a derailment), the cause does not come within the province of intentional crime, but is considered rather as one of culpable crime or reckless imprudence."[24]

(b) Wilfulness - "It is a necessary element of crime in spite of the suppression of the adjective, voluntary, in the definition of crime. If, in order to commit an intentional crime (delito doloso), it is necessary to act with deliberate intent, it must follow that the act necessarily is voluntary because there can be no deliberate intent where there is no freedom, intelligence, or intent.

"Wilfulness is a complex totum composed of three elements, namely, freedom, intelligence and intent. In the absence of any of these elements there would be neither wilfulness or voluntary act; and there being no voluntary act, there would be no crime or felony.[25]

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[23] December, February 1, 1901, 66 Jur. Crim. 83.
[24] Calon, Derecho Penal, 233.
[25] Codigo Penal, Reformado de 1870 Concordado y Comentado por el Dr. Viada Art. 1 pp. 15-16.

"A criminal act is always presumed as having been voluntarily committed unless evidence to the contrary appears, because of the moral presumption that freedom and intelligence are the normal conditions of man, and this moral presumption is also a legal one."[26]

"The presumption of a free act may be destroyed by evidence that there was force or threat. For this reason, a person acting under compulsion or force is exempt from criminal liability."[27]

"The presumption of an intelligent act may be destroyed by proof of insanity, infancy or excusable mistake."[28]

"The presumption of intentional act may be overcome by proof of accident[29] or upon sufficient proof of mistake of fact. Thus, one cannot be held criminally responsible[30] who, by reason of mistake as to the facts, does an act for which he would be exempted from criminal liability if the facts are as he conceived them to be, but would constitute a crime if he had known the true state of facts.

"A somnambulist is not an insane person, in the sense that he is deprived of intelligence, but a person without any will power, that is without free will, and hence, exempt from criminal liability."[31]

"As a general rule, malicious intention or malice is a necessary ingredient of a crime because of the maxim actus non facit reum, nisi mens sit rea; and by malice or malicious intent is meant that determination of the will to accomplish the evil or damage contemplated as the result of the act done."[32]

"There are, however, some offenses where criminal or malicious intent is not a necessary ingredient, i.e., when the doing of a prohibited act is made criminal on account of public policy and public interest. For instance, if a certain act prohibits and penalizes the granting of loans to any member of the Board of Directors of a state bank, it would be no defense for a director who makes a loan to himself to allege that he acted in good faith, that he was misled by rulings coming from the auditor, and finally, that no loss has been suffered by the bank. The doing of the prohibited act is, in itself, sufficient to constitute a crime.[33] This is what constitutes malum prohibitum, in contradistinction to malum in se, in which malice is a necessary ingredient.[34]

(c) Repression prescribed by law.

ART. 15. When an offense has ceased to be dangerous or criminal. - If a particular act is a crime or misdemeanor within the meaning of the three preceding articles at the moment when it is committed,

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[26] U.S. vs. Gloria, 3 Phil., 333 ( )
[27] Art. 12 pars. 5-6, Rev. Pen. Code; U.S. vs. Exaltacion, 3 Phil., ( ) 339; (1904) U.S. vs. Felipe, 5 Phil., 333 (1905).
[28] Art. 12, Pars. 1-3 Rev. Pen. Code; People vs. Bascos, 44 Phil., 204; ( ) U.S. vs. Peñalosa, (1902) 1 Phils., 109; U.S. vs. Catolico, 18 Phil., 504; U.S. vs. San Juan, 25 Phil., 513 ( ).
[29] Art. 12, par. 4 Rev. Pen. Code; U.S. vs. Tañedo, 15 Phils., 196. U.S. vs. 21 Phil. 476.
[30] U.S. vs. Ah Chiong, 15 Phil., 488; ( ) People vs. Bayambao, 52 Phil. 309 ( ).
[31] U.S. vs. Ojicta, 4 Phil., 309 ( ).
[32] Silvela, El Derecho Penal, Vol. 2 p. 111.
[33] People vs. Concepcion, 44 Phil., 126; see also People vs. Bayona, 61 Phil. 181 ( )
[34] U.S. vs. Sy Cong Bieng, 30 Phil., 577, and U.S. vs. Go Chico, 14 Phil.. 128 ( ).

but by the time it comes up for investigation or trial it has lost its dangerous or criminal character by reason of a change in the criminal law or by virtue of the mere fact of the alteration of the social or political situation, the act shall not render the person who committed it liable to the application of any repression prescribed in this Code.

If the agent is already serving a sentence, he shall be released at once.

Comments:

This was based on Article 8 of the Russian Penal Code.

Under the tenets of the positivist, school, dreadfulness or dangerousness is the sole justification of repressive measure or punishment. As a corrollary consequence, if by reason of change in the penal law or the social and political complex of the people, what was considered to be a repulsive and/or injurious act had ceased to be so, the repressive measure likewise losses its justification.

ART. 16. Scope of criminal liability. - Any person voluntarily committing an act, or incurring in omission, repressed by law, shall be criminally liable for such act or omission although the resulting injury or harm may be different from that which he intended. No one, however, shall be liable for any injury or harm which is the result of a pre-existing, simultaneous, or supervening event or circumstance that could not be reasonably foreseen, without prejudice to the actor's liability for the intended crime.

Refusal to prevent a result when there is a duty to avoid the same is tantamount to producing it.

Comments:

In cases of ultraintentional crime, i.e., "when the injurious or dangerous result arising from the act or omission is more serious than that intended by the actor", the rule for the application of the sanction or repression is as follows:

One cannot be held liable for a crime different from that which he proposed to commit when the injury suffered by the offended party is due to some cause or accident wholly extraneous to the fact constituting the crime, or is due to the inexcusable negligence or deliberate conduct of the aggrieved person.[35] For example, if A and B engaged in a fight, and B, because he is suffering from heart disease, dies during the fight. A cannot be held guilty of homicide for the death of B,

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[35] U.S. vs. Mendieta, 34 Phil., 242; see People vs. Rellin, 77 Phil. 1038 ( ); See also People vs. Palalon, 49 Phil. 177, ( )

for the reason that the death of the latter was not directly caused by the Act of A. Or if slight physical injuries are inflicted upon B, and the latter deliberately immerses his body in a contaminated cesspool, and as a consequence of his act his wounds become infected, A cannot be held liable for the crime of serious physical injuries.[36]

"The Spanish criminal jurisprudence has also uniformly held that a defendant is not criminally liable for the consequences of an erroneous or improper medical treatment, the gound being that a person is only accountable for his own acts and their natural or logical consequences, and not for those which bear no relation to the initial cause and are due to the carelessness, fault, or lack of skill of another whether it be the injured man himself or a third person.[37]

For the rules laid down in the two preceding paragraphs to be enforced, it is necessary that the intended and the resulting crime should be fall on different persons. Otherwise, that is if the victim in the intended and resulting crime is one and the same person, the general rule laid down in paragraph 1 of Article 4 of the Revised Penal Code shall prevail.

For instance, if the offender tries to commit parricide (by killing his own father), but by mistake kills a stranger, in other words he commits a simple homicide, the offender should be held liable for the resulting crime (homicide) but the penalty shall be imposed in its maximum period, according to the provisions of paragraph 2 of Article 49. As will be seen in this example the crime befalls on different persons.

But if, for instance, A, in attempting to strike B on the face with a knife with the sole purpose of inflicting a wound that would leave a permanent scar on his face, instead actually landed the blow at the base of the neck of the victim thereby causing the latter ultimate death, the accused cannot claim that he be sentenced for the intended crime (physical injuries) instead of the resulting crime (homicide) for the reason that in the opinion of the Supreme Court of Spain and subsequently followed by the Supreme Court of the Philippines, the rule contend in this Article is applicable only in cases where the crime befalls on different persons. (People vs. Albuquerque, 59 Phils. 150).

ART. 17. Consummated and attempted offenses. - Consummated and attempted offenses are subject to repression.

An offense is consummated when the offender has executed all the acts which produced the same. It is attempted when, for the purpose of committing an offense, the agent has commenced its execution, but did not or could not consummate it by reason of circumstances independent of his will.

In order to impose the proper repression for an attempted offense, the court shall bear in mind the dangerousness of the actor and the extent to which he has carried the execution of the offense.

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[36] U.S. vs. De Los Santos G. R. No. 13309, Dec. Sup. Ct. of Spain, May 13, 1882.

[37] Decision of April 2, 1903, Gazette of May 23rd, Viada, Vol. 5, p. 81, 5th Edition.

If the actor voluntarily desists from executing all the acts which would have produced the intended offense, he shall only be liable to repression for the acts performed when the latter of themselves constitute a different offense.

If after having executed all the acts which would have produced the intended offense, the actor voluntarily prevents its consummation, he shall be liable to the repressive measure prescribed for the attempted offense, reduced by one-half, unless the acts performed call for a more severe repression, in which case the latter shall be applied.

Comments:

The Code of Crimes has doneaway with the classification of frustrated crime of the Revised Penal Code. Under the new Code, crimes or offenses are either attempted or consummated and the degree of repression is measured not so much upon the extent of the injury caused but rather upon the dangerous trait or character of the offender.

ART. 18. When misdemeanors may be repressed. - Misdemeanors are subject to repression only when they have been consummated, except as to offenses against persons or property or public safety.

Comments:

This article was based on Article 7 of the Revised Penal Code, except that the phrase "public safety" has been added.

ART. 19. Conspiracy and proposal to commit crime. - Conspiracy and proposal to commit a crime are subject to repression when the crime intended is repressed with at least medium imprisonment.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.

There is a proposal when the person who has decided to commit a crime proposes its execution to some other person or persons.

Comments:

This article was based mainly on Article 8 of the Revised Penal Code. Under the latter, conspiracy and proposal to commit felony are not punishable, except when there is a specific provision in the said Code providing a penalty for conspiracy or proposal to commit a felony. Under the new Code, they are subject to repression "when the crime is repressed with at least medium imprisonment.

The Code of Crimes has done away with the classification of frustrated crime of the Revised Penal Code. Consequently, the concept of attempted crimes has been broadened to include

frustrated felonies under the Revised Penal Code. Under the new Code, crime or offenses are either attempted or consummated and the degree of repression is measured not so much upon the extent of the injury caused but rather upon the dangerous trait or character of the offender.

ART. 20. Special Criminal Laws in Relation to this Code. - The provisions of the preliminary title(except Arts. 1 and 2) as well as Title I, II, IV (Chapter 3), V, and VI, of Book One, of this Code shall apply to special criminal laws.

Judgments rendered under special criminal laws shall be adapted and adjusted to the system of repressions prescribed in Titles III and IV (except Chapter 3) of Book One of this Code, according to the nature and duration of the sentence imposed. Thus, if a convict is sentenced to four years' imprisonment, he is deemed to have been adjudged to suffer medium imprisonment with all its consequences such as the imposition of security measures under Art. 109.

In case of a fine imposed by an existing special criminal law, the court shall impose such amount of fine, within the limits fixed by the law, as may be required by the gravity of the act under the circumstances of each case, and as may be commensurate with the offender's ability to pay.

Articles 99, 100 and 101 herein shall also be observed in the enforcement of a fine imposed under any existing special criminal law.

Proclamations, decrees, and general orders or instructions issued or to be issued by the President in exercise of the constitutional power vested upon him in Art. VII, Sec. 10 Par. 2 of the constitution shall be fully observed, the provisions of this code notwithstanding.

The General provisions of the Penal Code of 1870 and the Revised Penal Code are not applicable to special penal laws. For instance, the rules regarding the applications of mitigating and aggravating circumstances or the different degree of consummation of an offense, attempted, frustrated crime, etc. can not be applied to special penal laws punishing for instance corrupt or anti-graft practices.

The Code of Crimes under this article takes a different view by extending each provisions not only to general but special laws.

ART. 21. Justifying circumstances. - The following do not incur any criminal liability:

(1) Anyone who acts in defense of his person, honor, or property, or of the person, honor, or property of another, preventing or repelling an unlawful aggression, provided both of the following circumstances are present.

First: That the person unlawfully attacked did not provoke the aggression by giving immediate and sufficient cause therefore: and

Second: That he had reasonable cause to believe and did believe that the means employed was necessary to prevent or repel the aggression.

The requisites of legitimate defense shall be prima facie presumed to concur with respect to anyone who at night repels another in the act of scaling or breaking through the inclosures, wall, doors or any other part of his dwelling or apartment or of its dependencies or immediately thereafter, whatever may be the injury caused to the intruder.

The presumption shall be conclusive in favor of any one who causes any injury to a stranger who has unlawfully entered into his home, or into the house where his family stays even if it is not his habitual place of abode, or into another's home which he has an obligation to defend, or into the place where his or another's property which he is bound to defend is located, provided that the act is committed at night and he has reasonable ground to believe that the intruder means to do harm.

Comments:

This article was taken from Arts. 15 (III), Mexico, and 34, No. 6, Argentina; American Law.

(2) Anyone who causes injury in order to ward off an imminent danger, which it is otherwise impossible to avoid, to a right pertaining to the actor, or to another, relative to life, corporal integrity, liberty, honor and property, provided the following circumstances concur:

First: That the injury caused is not greater than that which is sought to be avoided;

Second: That the danger is not imputable to the actor or to such other person; and

Third: That under the circumstances, the sacrifice of the right threatened cannot reasonable be demanded from the actor or such other person.

Comments:

This article was taken from Art. 34, Switzerland; Art. 8, No. 7, Spain - 1944.

(3) Any person who acts in due fulfillment of duty or in the lawful exercise of a right or office.

Comments:

This article was taken from Art. 11, par. 5a of the Revised Penal Code.

(4) Any public officer or employee who in the performance of his duty or office, shall cause damage or injury upon another by the use of arms or other means of physical coercion, when he is impelled to do so by the reasonable necessity of repelling violence or overcoming resistance.

This provision shall apply to any person who, being lawfully requested by a public official, affords him assistance.

Comments:

This article was taken from Art. 53a of the Code of Italy.

(5) Any person who acts in the due obedience of any order issued by his superior for some lawful purpose.

If an act constituting an offense is committed by order of a superior officer, the latter shall be responsible therefore.

The person who carries out the order shall also be answerable for the offense unless, owing to an error of fact, he considers that he is obeying a lawful order.

A person who carries out an unlawful order is not subject to repression when the law does not allow him any power to raise the

question of the legitimacy of the order.

Comments:

This artidle was taken from Art. 11, par. 6a of the Revised Penal Code and Art. 51, of the Code of Italy.

SECTION 2 - EXEMPTING CIRCUMSTANCES

ART. 22. Exemption from criminal liability. - The following are exempt from criminal liability and consequently not subject to repression for acts which, without the circumstances hereunder mentioned, would constitute a crime or misdemeanor:

(1) Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it, except in cases expressly provided by law.

Comments:

This article was taken from Art. 12, No. 4a of the Revised Penal Code.

(2) Any person who in the exercise of due diligence, acts under the influence of an erroneous appreciation of the facts which if true would relieve him from criminal liability.

Comments:

This article was taken from Art. 17a of the Penal Code of Switzerland.

(3) Any person who injures or places in jeopardy any property right with the consent of the party who can legally dispose thereof, provided no third person suffers damage or injury caused thereby.

Comments:

This article was taken from Article 50 of the Penal Code of Italy.

(4) Any person who acts under the compulsion of an irresistible and external physical force.

Comments:

This article was taken from Art. 12, No. 5a of the Revised Penal Code and Art. 15 of the Penal Code of Mexico.

(5) Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

Comments:

This article was taken from Art. 12, No. 6 of the Revised Penal Code.

(6) Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.

Comments:

This article was taken from Art. 12, No. 7 of the Revised Penal Code.

(7) Any person who, by the impulse of family relationship, or a great debt of gratitude, shall conceal or destroy the body or effects of the offense in order to prevent its discovery, or shall deliberately mislead the authorities in order to facilitate the escape of a person responsible for the offense, or shall deliberately fail to testify against the latter, provided that the following circumstances concur:

(a) That the actor is the spouse, or legitimate, or illegitimate or adoptive ascendant, descendant, brother or sister of, or for some proper reason is under a deep sense of obligation to, the person responsible for the offense;

(b) That the actor was not prompted by a base or ignoble motive; and

(c) That he has not employed any unlawful means.

ART. 23. Exemption, but with security measures. - The following are likewise exempt from criminal liability and consequently not subject to repression, but they shall undergo the applicable security measures provided for in Title IV of this Book:

(1) Anyone who is insane or a lunatic, if at the time of the alleged offense he did not have sufficient mental capacity to understand the nature of the particular act or acts constituting the offense and to know whether they were right or wrong. This condition may include any permanent mental disease amounting to insanity, produced by the frequent use of intoxicating beverages or narcotic or similar drugs.

(2) Anyone who is in a state of automatism, as a hypnotic spell, nightmare, or somnambulism, if at the time of the alleged offense

he was not sufficiently conscious of, or could not control, the particular act or acts complained of.

Comments:

This paragraph refers to somnambulists, or persons who are under hypnotic spell. This provision clarifies the status of somnambolism as a defense in criminal cases. It is clear now that somnambolism as a defense may not be embraced in a plea of insanity[38] but under the principles that a person in not criminally liable if his acts are not voluntary.

(3) Any minor under fifteen years of age; provided, however, that anyone inducing the minor to commit any offense shall be fully liable for which the minor is exempt.

Comment:

This article was taken from the American Penal Law.

SECTION 1 - CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

ART. 24. Mitigating circumstances. - The following are mitigating circumstances:

(1) Those mentioned in the preceding chapter, when not all the requisited necessary to relieve the actor from criminal liability in the respective cases are present.

Comments:

This article was taken from Art. 12, No. 5 of the Revised Penal Code, except the case of an intimate friend or one whom he properly owes great debt of gratitude.

This article was taken from Art. 13, No. 1a of the Revised Penal Code.

(2) That the offender is over 70 years of age.

Comments:

This article was taken from Art. 13, No. 2 of the Revised Penal Code.

(3) That the offender is a minor between the ages of 15 and 18 years when he commits any act subject to repression with heavy imprisonment or more and he is tried as in regular criminal cases, in accordance with Art. 142.

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[38] People v. Odecta, 4 Phil., 309 ( ).

(4) That the offender was prompted by patriotic, moral or altruistic motives of evident importance.

Comments:

This article was taken from Art. 9 No. 7 of the Penal Code of Spain of 1944.

(5) That the offender acted under the stress of need for support for himself or his family, provided:

First: No physical violence upon persons has been employed.

Second: The sum or property involved does not exceed the amount necessary for the actual and immediate necessities of himself or his family.

Third: The need was not due to the fault or idleness of the offender.

Comments:

This article was taken from Art. 36a, of the Code of Columbia; Art. 37a, of the Code of Cuba.

(6) That the offender acted under the influence of an erroneous appreciation of facts which if true would have mitigated the repression.

Comments:

This article was taken from Art. 19 of the Code of Switzerland.

(7) That the offender had no intention to commit so grave a wrong as that committed.

Comments:

This article was taken from Art. 13, No. 3 of the Revised Penal Code.

(8) That sufficient provocation or threat on the part of the offended party immediately preceded the act.

Comments:

This article was taken from Art. 13, No. 4 of the Revised Penal Code.

(9) That the act was committed in the immediate vindication of a grave wrong to the person committing the offense, or his spouse, or legitimate, illegitimate or adoptive ascendants, descendants, brothers,

or sisters of the full or half blood, or relatives by affinity within the same degree, or an intimate friend or one to whom he properly owes a great debt of gratitude.

Comments:

This article was taken from Art. 13, No. 5a of the Revised Penal Code.

(10) That the offender acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

Comments:

This article was taken from Art. 13 No. 6a of the Revised Penal Code.

(11) That the offender within a reasonable time voluntarily surrender to a person in authority or his agents.

Comments:

This article was taken from Art. 13, No. 7a of the Revised Penal Code.

(12) That the offender voluntarily confessed his guilt in open court prior to the presentation of important evidence for the prosecution.

Comments:

This article was taken from Art. 13, No. 7a of the Revised Penal Code.

(13) That the offender before the trial fully or appreciably repaired the injury or damage, or spontaneously and earnestly took measures to remove or lessen the injurious or dangerous consequences of the offense.

Comments:

This article was taken from Art. 62, No. 6 of the Code of Italy.

(14) That the offender prior to the commission of the crime had rendered distinguished service to the community, the Filipino people or mankind.

(15) That the offender was in a state of mind, by reason of physical or mental illness, or physical defect, which, without constituting a cause for exemption from criminal liability in accordance with Art. 23,

Nos. 1 and 2, evinces a lessening of the sense of right and wrong or a diminution of his will-power.

Comments:

This article was taken from Art. 13, No. 9a of the Revised Penal Code and Art. 65 of the Code of Spain of 1928.

(16) That a relatively long period of time not less than one-half of that prescribed for the prescription of the crime, has elapsed since the commission of the offense and the actor has observed good conduct in the meantime.

Comments:

This article was taken from Art. 63 of the Code of Switzerland.

(17) That the offender before the commission of the crime had observed an exemplary life, devoted to earnest and habitual work and compliance with duty.

Comments:

This article was taken from Art. 37-C of the Code of Cuba.

(18) That the offender committed the crime in the belief, although it might be erroneous, that he had a right to commit the act repressed.

Comments:

This article was taken from Art. 37-F of the Code of Cuba.

(19) That the act was committed upon the suggestion of any person who exercised a powerful moral influence, provided the act was not attended with an aggravating circumstance.

Comments:

This article was taken from Art. 37Ha, of the Code of Cuba.

(20) That the offender was carried away by a collective or tumultuous impulse, provided he was not a leader or promoter of the group and he was not acting with an aggravating circumstance.

Comments:

This article was taken from Art. 37-K of the Code of Cuba.

(21) In case of negligence, when the actor was fatigued on account of excessive work.

Comments:

This article was taken from Art. 37-L of the Code of Cuba.

(22) That the offender acted as the result of gross abuse of authority on the part of the victim.

Comments:

This article was taken from Art. 38-G of the Code of Cuba.

(23) And any other circumstance of a similar nature or analogous to any of those mentioned in the preceding numbers of this Article.

Comments:

This article was taken from Art. 13, No. 10a of the Revised Penal Code.

SECTION 2 - CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY

ART. 25. Aggravating circumstances. - The following are aggravating circumstances, provided they are not constitutive elements of the offense, or special aggravating circumstances:

(1) That advantage was taken by the offender of his public-position.

Comments:

This article was taken from Art. 14, No. 1 of the Revised Penal Code.

(2) That the offender was actuated by base or futile motives.

Comments:

This article was taken from Art. 61, No. 1 of the Code of Italy.

(3) That the offender committed the act in order to conceal another offense, or to obtain or secure for himself or others the product, benefit, advantage, or priceof, or impunity from another crime.

Comments:

This article was taken from Art. 61, No. 2 of the Code of Italy.

(4) That the crime was committed in contempt of or with insult to the public authorities.

Comments:

This article was taken from Art. 14, No. 2 of the Revised Penal Code.

(5) That the act was committed with insult to or in disregard of the respect due the offended party on account of his rank, age or sex.

Comments:

This article was taken from Art. 14, No. 3 of the Revised Penal Code.

(6) That the crime was committed in the dwelling or office of the offended party if the latter had not given provocation.

Comments:

This article was taken from Art. 14, No. 3 of the Revised Penal Code.

(7) That the act was committed with abuse of confidence or with ingratitude, or by flouting important and special duties, or consideration, toward the offended party.

Comments:

This article was taken from Art. 14, No. 3a of the Revised Penal Code and Art. 67, No. 6 of the Code of Spain of 1928.

(8) That the offense was committed in the office of the President or Prime Minister of the Philippines, or in his presence, or in the place where the National Assembly of the Philippines is holding its sessions, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship, or civic purposes, or in a cemetery or national shrine, or a patriotic monument.

Comments:

This article was taken from Art. 14, No. 5a of the Revised Penal Code.

(9) That the crime was committed on the occasion of a fire, storm, flood, earthquake, shipwreck, epidemic, air-raid, battle, pillage or other calamity or misfortune.

Comments:

This article was taken from Art. 14, No. 7a of the Revised Penal Code.

(10) That the accused is a recidivist.

A recidivist is one who, at the time of the pronouncement of sentence for one crime, has been previously convicted by final judgment of another crime of the same nature or kind.

(11) That the offender has been previously convicted of an offense for which the law provides an equal or greater repression, or two or more crimes for which lighter repressions are prescribed.

Comments:

This article was taken from Art. 14, No. 10 of the Revised Penal Code.

(12) That the act was committed in consideration of a price, reward or promise.

Comments:

This article was taken from Art. 14 No. 11 of the Revised Penal Code.

(13) That the crime was committed by means or with the aid of inundation, poison, fire, explosion, stranding of vessel or crashing of aircraft, or intentional damage thereto, derailment of a train or locomotive, injury to motor vehicles, destruction or interruption of wireless telegraph or telephone communications, or by the employment of germs or other deadly or dangerous organisms, or by any other method, device or artifice causing great ruin or devastation or general alarm.

Comments:

This article was taken from Art. 14, No. 12a of the Revised Penal Code and Art. 66, No. 6 of the Code of Spain of 1928.

(14) That the act was executed with evident premeditation in the preparation of the means for the commission of the crime.

Comments:

This article was taken from Art. 14, No. 13a of the Revised Penal Code.

(15) That craft, fraud, disguise or impersonation was employed.

Comments:

This article was taken from Art. 14, No. 14a of the Revised Penal Code.

(16) That the act was committed with treachery.

There is treachery when the offender commits any crime against persons, by means, methods, or forms in the execution thereof which tend directly and specially to insure its insult, with little or no risk to himself arising from the defense which the offended party might make.

Comments:

This article was taken from Art. 14, No. 16a of the Revised Penal Code.

(17) That means or methods were employed or circumstances brought about which added ignominy to the natural effects of the act.

Comments:

This article was taken from Art. 14, No. 17a of the Revised Penal Code.

(18) That the crime was committed after an unlawful entry.

There is unlawful entry when an entrance is effected by an unusual way.

Comments:

This article was taken from Art. 14, No. 18a of the Revised Penal Code.

(19) That as a means for the commission of a crime a wall, ceiling, roof, floor, door, window, or any other part of a building was broken or forced open.

Comments:

This article was taken from Art. 14, No. 19a of the Revised Penal Code.

(20) That the crime was committed with the aid of a person under fifteen years of age, or of unsound or feeble mind.

Comments:

This article was taken from Art. 14, No. 20a of the Revised Penal Code and Art. 65, No. 13 of the Code of Spain of 1928.

(21) That the offense was committed by the use of a motor vehicle, airplane, speed-boat, or other fast means of conveyance.

Comments:

This article was taken from Art. 14, No. 20a of the Revised Penal Code.

(22) That the crime was committed by means of the press, radio, moving picture, television or other methods which facilitated publicly.

Comments:

This article was taken from Art. 10, No. 4 of the Code of Spain of 1944.

(23) That the offender had led a depraved life, or is known to be a trouble-maker, or a habitual bearer of forbidden arms without license.

Comments:

This article was taken from Art. 67 No. 1 of the Code of Spain of 1928.

(24) That the offense, at the time of its commission, was of the kind prevailing in the locality.

Comments:

As an aftermath of the Second World War, carnapping with special emphasis on jeep used by the fighting forces of the United States, sprang in the proportion of an epidemic.

Hence, the rationale of this aggravating circumstance.

SECTION 3 - ALTERNATIVE CIRCUMSTANCES

ART. 26. Relationship. - Relationship may either mitigate or aggravate the responsibility of the actor, depending upon the crime and the time and circumstances of the commission of the same, when the offended party is the spouse, legitimate, illegitimate, or adopted ascendant, descendant, brother or sister, or relative by affinity in the same degree of the offender.

Comments:

This article was taken from Art. 15a of the Revised Penal Code.

ART. 27. Intoxication. - Voluntary intoxication of the offender for the purpose of committing a crime or misdemeanor shall be an aggravating circumstance. In any other case, intoxication, whether habitual or temporary when it weakens the exercise of the will-power, without, however, depriving the offender of the sense of right and wrong, shall lessen the repression.

Comments:

This article was taken from Art. 15 of the Revised Penal Code.

Intoxication - This was partly taken from Art. 15 of the Revised Penal Code. Under the new Code intoxication is aggravating only if it is for the purpose of committing a crime or misdemeanor. Under Art. 15 of the Revised Penal Code, there are two situations when intoxication becomes aggravating:

(1) if it is intentional;

(2) if it is habitual.

In other cases, intoxication is mitigating when it weakens the exercise of the will power, without, however, depriving the offender of the sense of right or wrong.

SECTION 4 - PROVISIONS COMMON TO THE THREE PRECEDING SECTIONS

ART. 28. Inseparable modifying circumstances. - When two aggravating circumstances are inseparable, or when one is included in another, they shall be considered as only one aggravating circumstance.

ART. 29. Two or more conditions or states in the same number. - Whenever two or more conditions or states mentioned in one and the same number of articles 24 and 25 concur in the commission of a crime, the court shall consider them as only one modifying circumstance.

TITLE II

PERSONS CRIMINALLY LIABLE

ART. 30. Nature of criminal responsibility. - Criminal responsibility for an offense is personal. However, when a crime is committed by the president, manager, directors, agents, members or shareholders of an association or juridical person with the means or facilities of the same, and on behalf, or for the benefit thereof, such parties shall be criminally liable as principals. When the president, manager or directors are not responsible as principals, they may, nevertheless, be held liable for criminal negligence in a proper case. After the final judgment of conviction, the court upon petition of the prosecuting attorney in the same proceedings, and after due hearing, may, when the public interest so requires, order the suspension or dissolution

of the association or juridical person.

Comments:

This article was taken from Arts. 44 and 92, of the Code of Spain of 1928.

In all offenses or crimes there are always two parties, namely; the active subject, and the passive subject, that is, the victimizer and the victim.

Corporations or juridical persons cannot be prosecuted for common offenses.

Because of the highly personal or individual nature of the criminal responsibility, criminal jurisprudence has established the principle that only natural persons can be made the subject of common offense, except when special penal laws expressly enjoin that the president, manager, director, or person in charge of such corporation, shall be liable on behalf of the latter.[1] The criminal jurisprudence limiting to natural persons the criminal responsibility for common offense is based on the theory that the act of the corporation is not the act of an individual person. It is the act of some, among the many, members composing the organization. It would be sheer injustice to make all stockholders or members of a corporation criminally responsible for the corporate act of a firm, unless there is a clear and conclusive evidence that each and everyone of them have concocted and conspired together to commit the criminal act.

The doctrine should not be understood to mean that a corporation can be used as a shield or immunity for its manager or directors to commit crime or fraud under the cloak of a corporate act. If it appears from the evidence that a manager or a small group of directors of a corporations, personally or collectively have committed crime or fraud, such manager or directors can be prosecuted and convicted, even though the act has been committed under cloak of corporate franchise.[2]

ART. 31. Who are criminally liable. - The following are criminally liable for crimes:

(1) Principals and

(2) Accomplices

Comments:

This article was taken from Art. 16a of the Revised Penal Code.

Under the revised Penal Code, accessory after the fact was another form of criminal participation in the offense. The Code of Crimes has done away with this third form of criminal participation. Instead, the new code has converted it into a separate and independent crime against property or against the

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[1] People v. Tan Boong Kong, 54, Phil. 605; Velasco v. CA., 90 Phil., 688, Decision of the Sup. Ct. of Spain, Jan. 18, 1909. See also West Coast Insurance Co. v. Hurd, 27, Phil. 401.

[2] People v. Campos, 40 O. G., Sup. 12, p. 7.

administration of justice. Under the old code if a subject had helped the escape or a murderer, or had varied or destroyed the corpus delict; or had knowingly or habitually received or purchased a stolen good, such subject shall be guilty of the crime against administration of justice or (ART. 463, 464 inf) or against property, (ART. 675 inf).

Moreover the acquittal or non-prosecution of the principal murderer or thief, unlike the provisions of the new Code of Crimes shall not be a bar for their prosecution or conviction an accessory after the fact.

ART. 32. Principals. - The following are considered principals:

(1) Those who take a direct part in the execution of the act;

(2) Those who directly force or induce to commit the same; and

(3) Those who cooperated in the execution of the offense by another act without which it would not have been committed.

Comments:

This article was taken from Art. 17a of the Revised Penal Code.

(a) Principals by direct participation are those who take a direct part in the commission of the act; that is, those who, after having conceived a criminal intent or harbored a common criminal design, get together and take part in the execution of the crime through acts which directly tend to the same end.

The criminal responsibility of the principals to a crime may be collective, quasi-collective, or individual.

Collective criminal responsibility.

An instance of collective responsibility: In a homicide, which the offenders previously agreed to commit, not only the one who inflicts the fatal wound is considered a principal, but also the one who holds down the victim and the one who lies in wait at the door to prevent any help being rendered. The acts of each and every one of the offenders in this case are all directed to the same end, that is, to the killing of their victim.[3] Criminal responsibility in such a case is collective.

General rule in case there had been conspiracy.

In a crime committed by the joint act of two or more persons through conspiracy or connivance, the act of each conspirator done in furtherance of the conspiracy is, in contemplation of law, the act of all.[4]

In order that there may be common design it is not necessary that, in conspiring for the perpetration of the crime, they should fix in detail all the means by which they are going to execute the crime. It is enough if there is a general plan for obtaining the intended result by whatever means may be deemed adequate from time to time. Generally, it is not

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[3] U.S. v. Reogilon, 22 Phil., 127; U.S. v. Zalsos et al., 40 Phil., 96; Art. 27, par. 1, Revised Penal Code.

[4] U.S. v. Remigio, 37 Phil., 599; People v. Cabrera et al., 43 Phil. 64. Tanjali Gazali, 546 SCRA 130; Puno; 56 SCRA 659; Cortez; 57 SCRA, 308.

material that the plan which was carried out differs widely from the original plan; nor will it be required to show the existence of any previous plan if, from the evidence, it clearly appears that there had been negotiations to the same end.[5]

The rule previously laid down does not mean, however, that a conspirator should necessarily be liable for the acts of another conspirator even though such acts differ radically and substantially from that which they intended to commit.

Quasi-collective Criminal Responsibility

Between the collective criminal responsibility and the individual responsibility, however, there appears to be a middle way which may be termed quasi-collective responsibility.

Even though there had been no previous conspiracy between the defendants to commit a particular wrong or crime, the responsibility of the doers will not be altogether individual if it can be proven that at the time of the attack the doers were animated by one and the same purpose to accomplish the harm done or more. In other words, there would be quasi-collective responsibility if it could be proven that there had been between the doers a spontaneous and intentional or material cooperation to do the harm thereby caused; in which case, such doers would be criminally liable either as principals or accessories, according to the nature of their material participation in the crime.

Individual criminal responsibility

In the absence of a conspiracy or a previous plan to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and each participants is liable only for the act actually committed by himself.[6]

ART. 33. Accomplice. - An accomplice is any person who, not being included in the preceding article, cooperates in the execution of the offense by a previous or simultaneous act.

Comments:

This article was taken from Art. 18 of the Revised Penal Code.

TITLE III

REPRESSIONS IN GENERAL

CHAPTER 1 - GENERAL PROVISIONS

ART. 34. Purposes of repression. - The repressions prescribed in this Code are applied for social defense, to forestall social danger, to rehabilitate, cure or educate the person concerned, and to warn such

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[5] Underhill's Crim. Evidence, 794, par. 490; People v. Carbonel et al., 24 O. G. 2657.

[6] U.S. v. Magcamot et al., 13 Phil., 386; ( ) U.S. v. Abiog et al., 37 Phil., 137 ( ).

other members of society as may be possible transgressors of criminal law.

Comments:

Under this article the Code Commission once more tried to make a happy blend used by the positivist as a shield against the dangerous member of the society with the intimidation or warning which the Classics offer to possible transgessors of of public order.

ART. 35. Effect of pardon by the offended party. - A pardon by the offended party does not extinguish criminal responsibility except as otherwise provided in this Code; but civil liability to the injured party is terminated by his waiver.

ART. 36. Measures which are not considered repressions. - The following shall not be considered as repressions:

(1) Preventive detention or imprisonment of an accused person while awaiting trial or final disposition of his case;

(2) Suspension from public office or employment during the trial or previous to the institution of criminal proceedings;

(3) Fines and other corrective measures which in the exercise of his administrative or disciplinary powers, a public official may impose; and

(4) Deprivation of rights and the reparations which the civil law may prescribe.

Comments:

This article was taken from art. 24a of the Revised Penal Code.

Aside from the above, security and precautionary measure described in Title IV of this code, are not deemed to be punishment nor repression.

CHAPTER 2 - KINDS OF REPRESSIONS IN GENERAL

ART. 37. Classification of repressions. - The repressions which may be imposed according to this Code for crimes and misdemeanors are classified into principal and accessory.

Comments:

This article was taken from Art. 25a of the Revised Penal Code.

ART. 38. Principal repressions for crimes. - The following are the principal repressions prescribed for crimes:

(1) Life imprisonment;

(2) Heavy imprisonment;

(3) Medium imprisonment;

(4) Light imprisonment;

(5) Confinement;

(6) Restraint;

(7) Fine in a sum which is the equivalent of not less than fifteen days' nor more than six months' earnings.

ART. 39. The death sentence. - The death sentence may be imposed in accordance with Article 72.

ART. 40. Principal repressions for misdemeanors. - The principal repressions for misdemeanors are:

(1) Restraint; and

(2) Fine not exceeding a sum which is the equivalent of fourteen days' earnings.

ART. 41. Accessory repressions. - The following are accessory repressions:

(1) Security measures;

(2) Civil interdiction;

(3) Disqualification;

(4) Deportation;

(5) Civil liability;

(6) Forfeiture of the instruments and proceeds of the offense;

(7) Payment of costs; and

(8) Public censure or warning

By operation of law accessory repressions go with the principal imposed in the sentence. However, security measures and their effects shall be governed by Title IV of this Book.

Comments:

Paragraph No. 7 was taken from Art. 25, par. 2a of the Revised Penal Code.

Paragraph No. 8 was taken from Art. 71 of the Revised Penal Code.

ART. 42. Fine, how computed. - A fine shall be imposed in a sum equivalent to one or more days' earnings from property, employment, profession, business, industry or any other source. When the offender has no income, his earnings shall be deemed those which would accrue to him if he were employed according to his condition and aptitude.

In cases not specifically provided for, a fine shall not be less than the equivalent of the earnings of the offender for one day nor more than that of his earnings for six months. If the offender acted with greed, the court shall not be bound by such maximum and may impose as much as the equivalent of nine month's earnings.

Comments:

Art. 20a of the Code of Peru; Art. 48a of Switzerland.

CHAPTER 3 - DURATION AND EFFECT OF REPRESSIONS

ART. 43. Term of the various repressions. - The following shall be the duration of the various repressions:

Life imprisonment - Any person sentenced to life imprisonment shall be released after undergoing the repression for 25 years, unless by reason of his misconduct or some other cause the imprisonment is continued by order of the President of the Philippines.

Heavy imprisonment - The repression of heavy imprisonment shall be from 9 years and 1 day to 15 years.

Medium imprisonment - shall last from 3 years and 1 day to 9 years.

Light imprisonment - shall be from 6 months and 1 day to 3 years.

Confinement - Shall last from one month to 6 months.

Restraint - shall last from 1 day to 29 days.

Comments:

Paragraph No. 2 was taken from Art. 27 of the Revised Penal Code, but the period of thirty years is reduced to 25 years. Like the Revised Penal Code, the Code does not specifically state the duration of life penalties, if the convict can not be released.

Paragraph No. 3. This was based on the second par. of Art. 27.

ART. 44. Computation of repression. - If the offender be in prison the duration of the repression consisting of deprivation of liberty shall be computed from the day on which the judgment of conviction shall have become final, without prejudice to the provisions of the following article.

If the offender be not in prison, the duration of such repression shall be computed from the day on which the offender is committed by the court to the prison officials. The duration of the other repressions shall be computed only from the date when the accused commences to comply with the sentence.

ART. 45. Credit for preventive imprisonment. - An offender who has undergo preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, for the entire period of his preventive imprisonment. However, if he should try to escape and he is recaptured or reappears and gives bail, he shall forfeit the right to be thus credited.

When the accused has served preventive imprisonment for a period equal to or longer than the maximum period of repression prescribed by law for the offense charged, he shall be released, without prejudice to the final determination of his case.

SECTION 2 - EFFECT OF THE VARIOUS ACCESSORY REPRESSION

ART. 46. Civil interdiction. - Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority or guardianship, either as to the person or property of any child or ward, of the right to manage his property or the conjugal partnership, and of the right to dispose of his property and of the conjugal partnership, or by any act or any conveyance inter vivos. In case of treason, civil interdiction shall also include the permanent forfeiture of the right to acquire or lease public lands and other natural resources belonging to the State, or to operate any public utility.

Comments:

The first sentence of this article was taken from Art. 34a of the Revised Penal Code. But the second sentence is a new provision.

ART. 47. Disqualification. - Disqualification shall produce the following effect:

(1) The forfeiture of the public office and employment which the offender may hold, even if conferred by popular suffrage.

(2) The forfeiture of the right to vote in any election for any public office or to be elected to such office.

(3) Disqualification from holding any public office or employment, or the exercise of any profession which requires a previous authority by the government.

(4) The suspension during the term of the sentence; of all right to periodical retirement pay or other periodical pension for any public office or employment formerly held. However, any pension payable in a lump sum, earned before the commission of the offense, shall be paid to those persons who are entitled by law to be supported by the offender.

ART. 48. Disqualification from holding public office. - Any person convicted of any of the offenses defined in Title IV of Book Two shall, in addition to the repression prescribed in each case, suffer the accessory repression of disqualification from holding any public office or employment for a period not exceeding fifteen years from the date of his release.

ART. 49. Disqualification from exercising profession. - Any person convicted of any offense constituting an abuse, misconduct or gross negligence in connection with his profession which requires a previous authority by the government shall suffer the accessory repression of disqualification from exercising said profession for a period not exceeding fifteen years from the date of his release.

ART. 50. Deportation. - Deportation from Philippine territory shall be imposed upon any alien who has been sentenced to imprisonment for more than one year, and shall be executed from the

date the imprisonment shall have been served.

Comments:

This article was taken from Art. 55 of the Code of Switzerland.

ART. 51. The effect of pardon upon accessory repressions. - An absolute pardon shall likewise remit the accessory repressions, exept civil liability and forfeiture of the instruments and proceeds of the offense.

Comment:

This article was taken from Art. 36a of the Revised Penal Code.

ART. 52. Costs and damages. - Costs shall include fees and charges fixed in the Rules of Court.

Damages arising from the liability shall be governed by the civil law.

SECTION 3 - REPRESSIONS WITH ACCESSORY ONES

ART. 53. Effect of commutation of death sentence. - When a death sentence is commuted to imprisonment, articles 54 and 55 shall apply, as the case may be.

ART. 54. Life and heavy imprisonments. - Life and heavy imprisonments shall carry with them civil interdiction and disqualification during the period of the sentence.

ART. 55. Medium and light imprisonment. - Medium and light imprisonments shall carry with them disqualification for the period of the sentence.

ART. 56. Forfeiture of the instruments and proceeds of the crime. - Every repression imposed for any crime or misdemeanor shall carry with it the forfeiture of the instruments and proceeds of the offense, unless they are the property of a third person not liable for the offense. Instruments and other things which can serve only for the commission of an offense, as well as arms and other things used in the killing of a human being may be destroyed.

Comment:

This article was taken from Art. 41 of the Code of Mexico.

CHAPTER 4 - APPLICATION OF REPRESSIONS

ART. 57. Repressions to be imposed upon principals in general. - The repression prescribed by law for the commission of an offense shall be imposed upon the principal.

Whenever the law prescribes a repression for a crime or misdemeanor, it shall be understood as applicable to the consummated offense, unless it is otherwise provided.

Comment:

This article was taken from Art. 46 of the Revised Penal Code.

ART. 58. In what cases the death sentence shall not be imposed. - The death sentence shall not be imposed:

(1) When the guilty person is 65 years of age or over, or is under 21 years of age.

(2) By the Supreme Court, unless two-thirds of all members have voted therefore.

Comments:

This was mainly based on Art. 47. Changes were introduced in this Code. The maximum age of seventy years was reduced to 65 years. On the other hand, the minimum age is prescribed under the new Code. This is not found in the Revised Penal Code.

Paragraph 2 requires only 2/3 of all members of the Supreme Court in order that the death penalty may be imposed. Under the Revised Penal Code, the requirement was the unanimous vote of members, not otherwise disqualified.

ART. 59. Repression for complex crimes. - When a single act constitute two or more crimes, or when one is a necessary means for committing the other, only one repression shall be imposed, which shall be that prescribed for the more serious offense. Should such repression be divisible, it shall be imposed in its upper half.

Comments:

Under the punitive system established by the classical school, to which our Penal Code belongs, a person committing multiple crimes may meet either one penalty only, or several, depending on whether the type of multiple crimes committed is ideal or material.

Plural crimes of the ideal type, which entail only one penalty, are divided into three groups, namely:

First Group: The so-called complex crimes penalized under ART. 48 of the Penal Code.

The complex crime penalized under Art. 48 of the Penal Code takes place:

(a) When two or more offenses are caused or produced by one single act: for instance, a person who throws a hand-grenade and causes thereby several victims, one killed and several injured is guilty of the complex crime of murder with physical injuries[1] or a person who shoots to death a Provincial Governor who is in the actual performance of his office is responsible for the crime of assault upon a person in authority with murder.[2]

(b) When two crimes have been committed, but one is a necessary means to commit the other. For instance, a person who forges the signature of a payee in a Government warrant in order to cash such warrant, is guilty of the complex crime of estafa through falsification of a public document[3]; or, where an accused forcibly abducts and afterward rapes the victim, is guilty of the complex crime of abduction with rape.[4]

In the first case, the crime of falsification was necessary means to commit the estafa; while in the second, the abduction was a means to commit rape.

It must be taken into account that for the multiple or plural crime to be considered as a complex crime under the provisions of Art. 48 of the Penal Code, it must clearly appear that the offender has availed himself of one crime for the purpose of committing the other. In other words, it must clearly appear that one of the crimes is the end while the other is the means to attain the former; otherwise, a material plurality of crime is obtained, and as such, must be treated and penalized independently one from the other in accordance with the provisions of Art. 70 of the Penal Code.

There had been some confusion or misunderstanding in the application of the provisions of Art. 48 of the Penal Code. Many prosecutors and judges of the Court of First Instance seem to have labored under the impression that the members of the subversive organisation known as "Hukbong Mapagpalaya ng Bayan" can be prosecuted and convicted in one complaint, not only for the crime of rebellion, but also for all the other grave crimes, such as arson, murder or innocent civilians, robbery and rape, committed by the organization. The government prosecutors, in their desire to exact the maximum punishment for the Huks, have invariably charged them with the so-called "complex crime of rebellion with murder, arson, rape, etc."

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[1]People vs. Guillen, 47 O. G. 3433, 1951.
[2]U.S. vs. Baluyot, 40 Phil., 385.
[3]People vs. Geyrozaga, 53 Phil. 278.
[4]People vs. De Guzman, 51 Phil. 105.

The co-mingling of the crimes of rebellion and other heinous acts committed by the members of the HMB cannot be alleged in one complaint without violating the specific provisions of Rule 113, Sec. 2 (e), of the Rules of Court, and the provisions of Arts. 48 and 70 of the Penal Code. The slaying of civilians, the rape of an innocent lass or the burning of homes are not in themselves necessary means to consummate rebellion or vice-versa. The multiple crime of rebellion, arson, murder, robbery or rape, having been conceived and executed by different persons, on different occasions and places, and inflicted upon different victims, must be dealt with independently and charged only against whomsoever appear to be personally and individually guilty thereof. Neither can such mingling of rebellion and other grave acts be considered as continued crime or one single offense,[5] for the reason that it lacks the unity of criminal resolution and oneness of unlawful purpose, so indispensable in the concursus delictorum, whether it be a complex crime or continued crime.

We quote hereunder the authoritative opinion or the Supreme Court of Spain on the instant subject:

"Delitos complejos. - Habiendo sido ejecutadso los dos hechos con fecha distinta, por modo diverso y en lugar no comun a los dos, no puede afirmarse que constituyan un solo delito. (s. 4 Jun. 927). Constando que las acometidas que acasionaron las dos muertes correspondieron a distintas determinaciones de la voluntad existe pluralidad de delitos. (S. 11 May, 927). Si cada uno de los actos delictivos se consumo en momentos separados y en diversas fechas recayendo sobre distintas personas, falta la unidad de acto necesaria al delito unico. (S. 4 Feb. 927)."

La repeticion de actos criminales ejecutados por una o varias personas en un mismo instante o en momentos sucesivos deben penarse como un solo delito cuando, respondan a una unidad de resolucion y representen una unidad de lesion juridica, debiendo entenderse que existe aquella siempre que los hechos se desprenda una unidad de conducta exteriorizada con unidad de ocasion, porque existiendo homogeneidad en el proposito y en el bien lesionado los diferentes hechos punibles forman un todo juridico integrado por diversas acciones ejecutivas de la misma voluntad criminosa, que realiza con especial continuidad el fin delictivo propuesto. (S. 6 Jun. 934.)"[6]

In one of the leading cases decided by the Supreme Court,[7] it was held that the perpetration of heinous common offenses such as rape, murder, arson, etc. in connection with the commission of the crime of rebellion cannot be considered as complex crime of rebellion with rape, murder or arson, the reason given being that such common offenses are absorbed or inherent in the crime of rebellion. In arriving at this conclusion, the Supreme Court relied very much on its previous ruling laid down in the case of People vs. Prieto,[8] holding that -

> "The execution of some of the guerrilla suspects mentioned in these counts and infliction of physical injuries on others are not offenses separate from treason. Under the Philippine treason law and under the United States constitution

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[5] Leyes Penales de España by Medina and Marañon, pp. 146-147.
[6] People vs. Hernandez, et al., 52 O. G. 5506, (1956).
[7] 45 O. G. 3329
[8] People vs. Geronimo, G. R. No. 8936, October 23, 1956.

defining treason, after which the former was patterned, there must concur both adherence to the enemy and giving him aid and comfort. One without the other does not make treason.

"In the nature of things, the giving of aid and comfort, can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. (Cramer vs. U.S., ante.) This deed of physical activity may be, and often is, in itself a criminal offense under another penal statue or provision. xx xx."

We believe that both rulings (in re Prieto and Hernandez) cannot resist rational and scientific analysis.

Surely the physical activity or deed performed by a traitor who sells his country to the enemy should and must refer to acts constituting the normative element of the crime of treason, which is to levy war or to give aid and comfort to the enemy. An informer or spy who breaks into the office of the chief of staff of the resistance army in the stillness of the night and takes away vital military secrets and later on gives the same to the enemy must have collaborated and furnished some aid and comfort which were accomplished through the exertion of some physical effort or some kind of action. Such physical acts performed satisfy all the requirements of the normative elements of treason. But when the traitor, besides stealing military secrets and furnishing them to the enemy, goes out of his way and kills or murders a fellow countryman, the latter act is not and cannot be considered absorbed or inherent in the crime of treason, for it is the outcome of a criminal will and criminal resolution (to commit murder) altogether different from that of selling his country to the enemy (treason). The same line of reasoning can be followed in connection with the ruling of the Supreme Court in People vs. Hernandez. As we pointed out in discussing the theory of material plurality of crimes (Art. 70, infra) a rebel who, besides taking up arms against the constituted authorities for the purpose of overthrowing the government, resorts to arson, rape, murder and other predatory acts, should be prosecuted and punished, in addition to rebellion, for as many common offenses as can be alleged and proved against him.

It is fortunate indeed that the Supreme Court in its latest decision[9] on this important subject has qualified the pronouncement in the Hernandez case, in the sense that a rebel who, for some independent or personal motives, commits murder or other common offenses in addition to rebellion, may be prosecuted and convicted for such common offenses. In other words, the Supreme Court is still of the opinion, notwithstanding the ruling in People vs. Geronimo, that if the killing or arson has been perpetrated in the course or on the occasion of a fight against the forces of the government, such killing and arson are inherent or absorbed in the crime of rebellion. The latter doctrine is, in our opinion, still repugnant to the sound scientific principle on the matter of punishment of multiple crimes, but is decidedly an improvement over the doctrine in the Hernandez case. For a further discussion on the subject see Art. 70, infra.

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[9]U.S. v. Ferrer, 34 Phil. 277.

SECOND GROUP: WHEN THE LAW SPECIFICALLY FIXES ONE SINGLE PENALTY FOR TWO OR MORE OFFENSES COMMITTED

For instance: kidnapping with serious physical injuries, punishable with reclusion perpetua to death under par. 3, Art. 267 of the Rev. Penal Code; robbery with homicide as defined and penalized with life imprisonment to death under par. 1, Art. 294; frustrated robbery with homicide, punishable with reclusion temporal in its maximum period to reclusion perpetua under Art. 297.

THIRD GROUP: IN CASES OF CONTINUED CRIMES

In case of continued crime, which in appearance consists of several crimes but in reality, it is a sole or single crime in the mind of the perpetrator. For instance, a bill collector of a commercial firm misappropriates for his personal use several amounts collected by him from different persons at different times. There is here but one crime, because the different and successive misappropriations are but the different moments during which one criminal resolution arises and a single fraud develops. Should the different misappropriations be disconnected from one another and each of them be prompted by a different intention, there would be the so-called real plurality of crimes, calling for as many penalties as the misappropriations committed; but since the intention is only one and hence, the malice is likewise one only, there is but one crime because the different and successive misappropriations are merely different and successive portions of a single misappropriation which is the result of one single malicious intent.[10]

Likewise, a robber who robs a house and takes therefrom two chickens belonging to two different persons, commits only one crime, for the reason that there is unity of thought in the criminal purpose of the culprit, and this unity of thought and action cannot be altered by the circumstances that the things stolen belong to two different persons.[11]

This article is similar to Art. 48 of the Revised Penal Code, which in its turn was inspired by the punitive system established by the classical shcool. The Code Commission deemed it wise to adopt the rule of the classical school in the imposition of repression in multiple crimes, and for this reason Art. 59 of the Code of Crimes are patterned after Art. 48 of the Revised Penal Code while Art. 78 of the Code of Crimes is the counter part of Art. 70 of the Revised Penal Code.

Under the punitive system of the classical school, the administration of punishment or repression is of 2 types; ideal or material. It is ideal when only one repression or punishment is imposed, as in the case of complex crime described under the article we are commenting upon, and it is material when more than one punishment or repression has to be imposed as happened in plural crimes described in Art. 78 infra.

ART. 60. Repression upon principals when the crime committed is different from that intended. - When the crime committed is different from that which the offender intended, the provisions of paragraph 1 of article 16 shall be observed.

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[10]People v. De Leon, 49 Phil. 437.
[11]U.S. vs. Gustillo, 19 Phil. 201.

ART. 61. Repression for crime through negligence. - When the nature of the crime is such that it may be committed through negligence, the crime so committed shall be repressed with the repression lower by one or two categories than that prescribed for the intentional crime, in the order named in Art. 78, No. 2.

Comment:

This article was taken from Art. 365a of the Revised Penal Code.

ART. 62. Repression upon principal of attempted crime, conspirators and proponent of a crime. - A repression ranging from that immediately lower in category to that prescribed by law for the consummated offense shall be imposed upon the principal of an attempted crime, or upon the conspirators, or upon the proponent of a crime as specified in Article 19, bearing in mind the nature of the offense, the means and the ways of the perpetration thereof, the intensity of the criminal intent, the extent of the resulting injury, and the personal antecedents of the actor.

Comments:

Under the provisions of this article, which is of eminently positivistic tendency, even though the subject of the repression is an attempted crime only the repression fixed by law, however, covers a range immediately lower in category to that prescribed by law for the consummated offense shall be imposed upon the principal of an attempted crime, or upon the conspirators, or upon the proponent of a crime as specified in Art. 19, bearing in mind the nature of the offenses, the means and the ways of the perpetration thereof, the intensity of the criminal intent, the extent of the resulting injury, and the personal antecedents of the actor.

ART. 63. Repression upon accomplice of consummated crime. - A repression ranging from that immediately lower in category to that prescribed by law for the consummated offense shall be imposed upon the accomplice of a consummated crime bearing in mind the nature of the offense, the means and ways of the perpetration thereof, the extent of the resulting injury, and the personal antecedents of the actor.

ART. 64. Repression upon accomplice of attempted crime, conspiracy and proposal. - The accomplice of an attempted crime shall be sentenced to the repression immediately lower in category than that

prescribed by law for the principal of the consummated offense.

ART. 65. Exception to the rules established in articles 62 to 64. - The provisions contained in articles 62, 63 and 64 shall not be applicable to cases for which the law expressly prescribes the repression for an attempted crime or to be imposed upon an accomplice.

Comment

This article was taken from Art. 60a of the Revised Penal Code.

ART. 66. Effect mitigating or aggravating circumstances. - Mitigating or aggravating circumstances shall be taken into account for the purpose of diminishing or increasing the repression in conformity with the following rules:

(1) An aggravating circumstance which in itself constitutes a crime especially repressed by law or which is included by the law in defining a crime and prescribing the repression therefor shall not be taken into account for the purpose of increasing the repression.

Comment

This paragraph was taken from Art. 62, No. 1 of the Revised Penal Code.

(2) The same rule shall apply with respect to any aggravating circumstance inherent in the crime to such a degree that it must of necessity accompany the commission thereof.

Comment

This paragraph was taken from Art. 62, No. 2 of the Revised Penal Code.

(3) Aggravating or mitigating circumstance which arise from the moral traits of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals and accomplices as to whom such circumstances are present.

Comment

This paragraph was taken from Art. 62, No. 2a of the Revised Penal Code.

(4) The circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to

aggravate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein.

Comment

This paragraph was taken from Art. 62, No. 4a of the Revised Penal Code.

ART. 67. Habitual criminal. - A habitual criminal is one who, after having been sentenced to imprisonment for terms together exceeding three years, for three separate intentional crimes of the same character, committed within a period of six years, receives a further sentence for another intentional crime of the same character, within six years subsequent to the latest of the previous crime.

In computing the period of six years first specified in the preceding paragraph, the time during which the convicted person was serving imprisonment, or was subjected to detentive security measures, shall not be counted.

Comment

Paragraph 2 was taken from Art. 102, of the Code of Italy.

ART. 68. Professionalism in crimes. - A person who, having been declared and sentenced as a habitual criminal, receives another sentence for another intentional crime, shall be considered a professional criminal whenever, bearing in mind the nature of the crimes, the conduct and manner of life of the guilty party, and the circumstance specified in article 107 of this Code, it is found that he has been and is living, wholly or partly, on the proceeds of his crimes.

Comment

This article was taken from Art. 105a of the Code of Italy.

ART. 69. Effect of habituality and professionalism in crimes. - Any person declared a habitual criminal shall undergo, in addition to the repression fixed by law for the crime last committed, another repression of six years imprisonment, and in case of professionalism in crimes, another repression of ten years imprisonment. Both shall be subjected, moreover, to the security measures provided in Title IV of this Book.

Comment

This article was taken from Art. 109a of the Code of Italy.

ART. 70. Habitual contravener. - A person who, after having been sentenced to restraint in respect of three misdemeanors of the same character, receives a sentence for another misdemeanor, which is likewise of the same character, shall be declared a habitual contravener if the court, taking into account the nature of the offenses, the time at which they were committed, the conduct and manner of life of the guilty party, and other circumstances specified in Article 107, is of the opinion that the guilty individual is dangerous to society.

A habitual contravener, in addition to the repression fixed by law for the last misdemeanor committed, shall suffer detentive security measures prescribed in Title IV of this Book.

Comment

This article was taken from Art. 104 of the Code of Italy.

ART. 71. Rules for the imposition of death sentence or life imprisonment. - In all cases in which the law prescribes death alone or life imprisonment alone, it shall be imposed by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.

In all cases in which the law prescribes either death or life imprisonment, according to the circumstances, the following rules shall be observed:

(1) When in the commission of the crime there is present at least one aggravating circumstance, and no mitigating circumstance, the death sentence shall be imposed.

(2) When there is neither a mitigating nor an aggravating circumstance, life imprisonment shall be imposed.

(3) When the commission of the act is attended by at least one mitigating circumstance and no aggravating circumstance, life imprisonment shall be imposed.

(4) When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration their number and importance, for the purpose of applying the preceding rules, according to the result of such compensation.

ART. 72. Conditions precedent to death sentence. - Regardless of the number and nature of aggravating circumstances or even when the law prescribes death alone, the death sentence shall be imposed only if the court, after observing the provisions of Article 73, finds that the offender is unusually dangerous to society and not likely to reform. Otherwise, life imprisonment shall be imposed.

ART. 73. Application of divisible repression. - Every divisible repression shall be divided into the upper half and the lower half. Within either half, the Court shall impose that repression which in its sound discretion shall best accomplish the purposes of repression as enunciated in Article 34 of this Code, after considering the nature and number, if any, of the mitigating or aggravating circumstances, and the actor's social and family environment, education, previous conduct, habits, economic condition and other personal factors.

ART. 74. Liberal application of provisions on mitigating circumstances. - The provisions of Article 24 concerning mitigating circumstances shall be applied liberally in favor of the offender.

ART. 75. Error and aggravating circumstances. - In the case of an error as to the victim of an offense, the condition or other personal circumstances of the victim, or the relation between the latter and the guilty party, shall not be considered as an aggravating circumstance.

Comment

This article was taken from Art. 60, of the Code of Italy.

ART. 76. Repression to be imposed upon a minor. - When the offender is a minor between 15 to 18 years of age and he is tried as in a regular criminal case in accordance with Article 142, the repression next lower in the order of severity than that prescribed by law shall be applied.

ART. 77. Repression when justification or exemption is incomplete. - The repression next lower in the order of severity as laid down in Rule No. 2 of Article 73 shall be imposed if there is incomplete justification or exemption by the lack of one or more of the conditions required therefor, in the respective cases mentioned in articles 21 and 22 provided that the majority of such conditions are present, including, in a proper case, the basic element of justification or exemption. The courts shall impose the repression for such period as may be deemed just, in view of the number and nature of the conditions of justification or exemption present.

Comment

This article was taken from Art. 69a of the Revised Penal Code.

ART. 78. Successive service of sentences. - When the culprit has to serve two or more repressions, he shall serve them simultaneously if the nature of the repressions so permits; otherwise, the following rules shall be observed:

(1) In the service of the repressions, the order of their respective severity shall be followed so that except when there is a death sentence, they may be undergone successively.

(2) For the purposes of the next preceding paragraph, the order of severity of the various repressions shall be the following:

First, death;

Second, life imprisonment;

Third, heavy imprisonment;

Fourth, medium imprisonment;

Fifth, light imprisonment;

Sixth, confinement;

Seventh, restraint; and

Eight, fine.

Comments

Paragraph No. 1 was taken from Art. 70a of the Revised Penal Code.

Paragraph No. 2 was taken from Art. 70a of the Revised Penal Code.

The execution of two or more penalties imposed upon one and the same person gives rise to three different systems of penalty, namely: (1) the material accumulation system, (2) the juridical accumulation system, and (3) the absorption system.

THE MATERIAL ACCUMULATION SYSTEM - The material accumulation system takes place when all the penalties corresponding to the different violations of law, or crimes charged, have to be imposed upon and served by the culprit without any limitation whatsoever.

According to the provisions of Art. 70 of the Penal Code, paragraphs, 1, 2 and 3, a person sentenced to two or more penalties must serve them all simultaneously if possible; or if the nature of the penalties will so permit. But if this is not possible, the most severe penalty shall be executed first in accordance with the table or scale of precedence established in the third paragraph of Art. 70, namely: death first; then reclusion perpetua, reclusion temporal, etc.

THE JURIDICAL ACCUMULATION SYSTEM - This takes place when the court, following the provisions of paragraphs 4, 5 and 6 of Art. 70, cuts short the several penalties imposed upon one and the same culprit to not more than threefold of the most severe punishment, and in no case shall exceed 40 years.

Supposing an accused has been prosecuted and convicted in 27 different cases of estafa with falsification of public document to serve 17 years imprisonment in each of three cases and ten years in each of the 24 other cases. But applying the juridical accumulation system, the culprit will not serve the total duration of the accumulated penalties, which would be 291 years. Such penalty will be cut short to the maximum of 40 years only.

THE ABSORPTION SYSTEM - This is the system of penalty described in Art. 48, ante. It applies to complex crimes, continued crimes and the specific cases where the law fixes only one penalty for several violations of law.

As will be noticed, the court would not impose the different penalties fixed by law to the different crimes committed, but only one, namely: the most severe penalty, in its maximum degree. The theory here is that minor or lesser penalties are absorbed by the graver or serious one. Hence, the nomenclature, "Absorption System."

Paragraph 2 of Article 70 of the Revised Penal Code is applicable to both cases: namely, whether the accused is charged with several violations of law in one and the same proceeding, or whether he is charged with different violations of law in several and distinct proceedings, the ruling of the Supreme Court in the case of Celis vs. Warden of Bilibid, 18 Phil. 363, notwithstanding. The reason is that the Philippine Code of Criminal Procedure does not only fail to provide for the prosecution of several offenses in one complaint, but on the contrary, it specifically provides in Section 12, Rule 106, R. C., that each information must not charge more than one crime. Hence, it seems quite obvious that the former view of the Supreme Court in the case of Celis vs. Warden of Bilibid supra, to the effect that the second paragraph of Article 70 refers only to offenses prosecuted in the same proceeding, is not tenable.

The doctrines, therefore, laid down by the Supreme Court in the cases of United States vs. Carrington, 6 Phil. 20, and United States vs. Galaraga, G.R. No. 17197, August 23, 1921 (unpublished), are reaffirmed and maintained as the final opinion of the court on the subject. They are more in keeping with the ends of penalty and with the spirit of the provisions of this paragraph, which, by the way, was an innovation introduced in the Spanish Penal Code of 1870. It may be remembered in this connection that previous legislation, adopting the theory of absolute accumulation of crimes and penalties, established no limitation whatever and, accordingly, all the penalties for all the violations were imposed even if they reached far beyond the natural span of human life.

It is now established, once and for all, that the maximum duration of the sentence of a convict charged with different offenses, whether in the same proceeding or in several others, shall not be more than threefold the length of the time corresponding to the most severe of the penalties imposed upon him, and in no case shall such maximum period exceed 40 years.[12]

As to the different cases and examples of complex crimes, continued crimes and multiple crimes, see commentaries on Article 48, ante, and particularly the cases of Hernandez, Geronimo, Prieto and De Leon, cited in Art. 48.

ART. 79. Repression for multiple offenses. - Notwithstanding the provisions of No. 2 of the preceding article, the maximum duration of the offender's sentences in case of multiple offenses, shall not be more than three-fold the period corresponding to the most severe of the repressions imposed upon him. No other repression shall be imposed after the sum total of those imposed has equalled the maximum period aforesaid.

Such maximum period shall in no case exceed twenty-five years.

In applying the provisions of this rule the duration of the service of life imprisonment shall be 25 years, without prejudice to the provisions of the second paragraph of Article 43 concerning the continuance of the imprisonment.

Comment

This article was taken from Art. 70a of the Revised Penal Code.

ART. 80. Lower or higher repressions. - In cases wherein the law prescribes a repression lower or higher in the order of severity than another given repression, the order established in Art. 78, No. 2, shall

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[12] People vs. Geralde, 50 Phil. 823; People vs. Lagoy et al., G.R. No. L-5112. May 14, 1954; People vs. Umali et al., G.R. No. L-5803, Nov. 29, 1954.

be observed, except when the principal repression is a fine.

Comment

This article was taken from Art. 71a of the Revised Penal Code.

ART. 81. Preference in the payment of the civil liabilities. - The priority in the enforcement of civil liabilities of a person found guilty of two or more offenses shall be in accordance with the relative gravity of the repressions imposed, the liability attached to the most serious repression to be first satisfied. However, this priority may be modified or adjusted in the discretion of the court.

ART. 82. Preference as to pecuniary liabilities. - In case the offender has no property sufficient to cover civil liability and other pecuniary obligations, the following order shall be observed:

(1) Civil liability;

(2) Fine; and

(3) Costs

Comments

This article was taken from Art. 38a of the Revised Penal Code and Art. 35, of the Code of Mexico, Art. 30 of the Code of Argentina.

CHAPTER 5 - EXECUTION OF PRINCIPAL REPRESSIONS

ART. 83. Suspension of the execution and service of repressions in case of insanity. - When the offender shall become insane after the final sentence, the execution thereof shall be suspended only as to the death sentence or imprisonment, and he shall be placed in a psychopathic hospital for treatment. He shall not be allowed to leave the hospital without an order of the court, on recommendation of the director of the institution.

If at any time the offender should recover his reason, his sentence shall be executed, unless the repression shall have prescribed in accordance with law. However, in every case the opinion of a psychiatrist shall be sought as to the advisability and manner of executing the sentence.

The provisions of this article shall also be observed if the insanity should occur while the offender is serving his sentence.

Comment

This article was taken from Art. 79a of the Revised Penal Code.

ART. 84. When and how the death sentence shall be executed. - The death sentence shall be executed before any other and shall consist in putting the person under sentence to death by electrocution. The death sentence shall be executed under the supervision of the Director of Prisons. So far as possible, measures shall be taken to lessen the sufferings of the persons under sentence before and at the moment of the electrocution.

If the person under sentence so desire, he shall be anaesthetized at the time of the electrocution.

Comment

This article was taken from Art. 81a of the Revised Penal Code.

ART. 85. Notification and execution of the sentence and assistance to the culprit. - The court shall designate a working day for the execution, but not the hour thereof; and such designation shall not be communicated to the offender before sunrise of said day, and the execution shall not take place until after the expiration of at least eight hours following the notification, but before sunset of the same day. During the interval between the notification and the execution, the culprit shall, in so far as possible, be given such assistance as he may freely request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as to make a will and confer with members of his family, friends, and persons in charge of his descendants and of the management of his property or business. His religious beliefs shall be scrupulously respected.

Comment

This article was taken from Art. 82a of the Revised Penal Code.

ART. 86. Suspension of the death sentence upon a woman. - The death sentence shall not be executed upon a woman within one year following the date of the final sentence, or while she is pregnant. In the latter case, the execution shall not take place before six months after child-birth not within the year just mentioned.

Comment

This article was taken from Art. 83 of the Revised Penal Code.

ART. 87. Suspension of death sentence upon discovery of evidence. - If by reason of newly discovered evidence or by retraction of the witnesses who shall have testified against the convict, or an account of a new development after the sentence of death, it should appear reasonable, in the judgment of the court, to doubt the commission or gravity of the crime or the guilt of the person who has been convicted, the execution of the death sentence shall be suspended by the court. The facts shall be reported by the court to the President of the Philippines, for such action under his pardoning power as he may wish to take, but the convict shall remain in prison pending further orders from the Chief Executive.

Comment

This article was taken from Art. 91 No. 2a of the Code of Nicaragua.

ART. 88. Final decision in capital cases. - The Supreme Court shall decide cases wherein the death penalty has been imposed within 18 months from the date of the submission thereof. Should the Supreme Court fail to do so, the last paragraph of Article 155 shall apply.

Comments

This provision echoes the constitutional mandate that "the maximum period within which a case or matter shall be decide or resolved from the date of its submission, shall be eighteen months." (Art. X, Sec. 11.)

ART. 89. Place of execution and persons who may witness the same. - The execution shall take place in the national prison in a space closed to the public view and shall be witnessed, if the prisoner so freely request, by the priest or minister assisting the offender and by his lawyers, and by his relatives and friends not exceeding ten, by

the Physician and the necessary prison personnel, and by such other persons as the Director of Prisons may authorize. The culprit shall wear his ordinary clothes and not a prisoner's uniform.

Comments

This article was taken from Art. 84a of the Revised Penal Code and Art. 53a of the Code of Bolivia.

ART. 90. Failure of execution. - If due to any fortuitous event, the execution should fail to cause death, it shall not be repeated, and the sentence of death shall by operation of law commuted to life imprisonment. Any pronouncement to the contrary in any judgement shall be void.

ART. 91. The corpse of the person executed and its burial. - Unless claimed by his family, the corpse of the culprit shall be turned over to the institution of learning or scientific research applying for it, preferably a government organization, for the purpose of study, provided that such institution shall take charge of the proper burial of the remains. Otherwise, the Director of Prisons shall order the burial at government expense, granting permission to relatives and friends of the culprit to be present.

Comment

This article was taken from Art. 85a of the Revised Penal Code.

ART. 92. Prison inmates must be compartmentalized. - Detentive repressions shall be served in special establishments, labor centers or sections for each of the following classes:

(1) Habitual and professional criminals;

(2) Persons sentenced to reduced repressions in consequence of physical or mental infirmity, or by reason of intoxication, illness, or physical defect;

(3) Habitual drunkards and persons addicted to the use of narcotic drugs.

The persons above mentioned shall also be subjected if necessary, to curative treatment.

If the same individual suffers from two or more defects, the judge shall decide in which of the special establishment or sections the repression is to be undergone. The decision may be modified during the service of the repression.

Females shall undergo detentive repression in establishments or sections separate from those destined for males.

Comment

This article was taken from Art. 141 of the Code of Italy.

ART. 93. Compulsory labor. - Without prejudice to the provisions of Article 96, in all cases there shall be compulsory labor during the day and confinement during the night.

Comment

This article was taken from Art. 16 of the Code of Peru.

ART. 94. Boards of labor assignment. - To attain the purpose of rehabilitation, there shall be created one national board of labor assignment and another board of labor assignment for each province or city which shall determine the kind of work or labor that shall be assigned to each prisoner, according to his condition and aptitude.

The National Board of Labor Assignment shall be composed of the Director of Prisons, who shall be chairman, a representative of the Department of Education, and a representative of the Social Welfare Commission.

The Provincial Board of Labor Assignment shall be composed of the Judge of the Court of First Instance, who shall be chairman, the City Warden, and the City Health Officer.

ART. 95. Imprisonment imposed upon minors. - Until they shall have attained eighteen years of age, minors who are sentenced to detentive repression shall live in establishments separate from those destined for adults or in a separate section of a regular prison; and during the hours not set aside for work, they shall be given instruction, including moral regeneration.

When they shall have attained the age of eighteen years and the repression to be served is more than three years, they shall be transferred to establishments intended for adults.

Comment

This article was taken from Art. 141 of the Code of Italy.

ART. 96. Division of prison term into three periods. - Except in cases of incorrigible, habitual, professional, and socially dangerous delinquents, the service of light imprisonment and confinement shall be divided into three equal periods, thus:

The first period shall be served inside the institution provided for the purpose, with compulsory work.

In the second period the offender may be allowed to pursue any trade or calling outside the prison in the daytime with the obligation to return and stay inside the prison in the night time. He may also be allowed half a day once a week to attend a religious ceremony or service outside the prison.

In the third period, the offender shall enjoy liberty under supervision of the Director of Prisons.

No offender may enjoy the privilege of any subsequent period unless he has faithfully complied with all the rules and regulations of the prison and his behavior during the preceding period is such as to give clear evidence of his moral rehabilitation.

The violation of any of the conditions or regulations committed by the offender while enjoying the privileges of the second or third period shall cause his return to the status and condition of the next preceding period for the rest of the sentence.

ART. 97. Where restraint is served. - The repression of restraint shall be served in the municipal or city jail, or partly or wholly in the house of the offender himself, under the surveillance of an officer of the law, if the court so provides in its decision, taking into account the state of health of the offender or other justifiable reasons.

Comment

This article was taken from Art. 88a of the Revised Penal Code.

ART. 99. Enforcement of fine. - Without prejudice to the provisions of Art. 82, the repression of fine shall be complied with by the payment of the amount imposed within the period fixed by the court in accordance with the following rules:

(1) The provisions of the Civil Code and special laws concerning concurrence and preference of credits shall be observed.

(2) Liability for fines shall be extinguished upon the death of the offender.

(3) When the culprit owns immovable property or an agricultural, industrial or commercial establishment, and the immediate enforcement of the fine would, in the opinion of the court, cause him extraordinary damages or irreparable loss, the court may permit the offender to satisfy the fine by reasonable installments, provided payment is guaranteed by the retention of his salary, a pledge, mortgage, bond, or other security.

Upon nonpayment of any installment due, the court may declare the permission cancelled and may order the sale of the property or business of the offender for the payment of the unpaid amount.

(4) If the person sentenced to pay a fine owns no property, or has no means of livelihood other than a salary or a wage, the court may, if the collection of the fine is in keeping with the rules of concurrence and preference of the civil law, order the retention of such portion of said salary or wage as it may, in its discretion, consider reasonable, taking into account all the personal circumstances of the offender, until the complete satisfaction of the fine.

(5) All officials, employers, employees, cashiers, or other persons charged with the duty of paying the salary or wages of the offender to whom the court has issued the necessary order for retention shall be under obligation to carry out said order as well as to report to the court any change in the salary or wages of the offender, and shall be subsidiarily responsible with their own property for unexcusable

failure to comply with the order of the court. This subsidiary responsibility shall, after due hearing, be enforced by the court upon motion of the prosecution.

(6) In case the person fined works on his own account or in the practice of any calling, trade, or other occupation, the offender shall be bound to deliver from time to time such portion of the proceeds of his labor as the court may determine, submitting all supporting papers.

(7) If upon his release from prison, the offender has not fully paid the fine imposed, he shall settle the balance in any of the forms or methods prescribed for those who must satisfy the fine when at liberty.

(8) If the person fined who is at liberty has no earnings or refuses to pay the fine, or any installment thereof, said fine shall be converted into restraint or confinement, and he shall be required to labor on public works of the national government, province, city or municipality, or perform any other suitable service for the Government at the prevailing rate of daily compensation, provided that the subsidiary imprisonment for nonpayment of the fine shall not exceed three months even though such fine may be more than the equivalent of 90 days' earnings.

Comments

Par. No. 3 was taken from Art. 179, No. 1 of the Code of Spain of 1928.

Par. No. 4 was taken from Art. 179, No. 2a of the Code of Spain of 1928.

Par. No. 5 was taken from Art. 179, No. 3a of the Code of Spain of 1928.

Par. No. 6 was taken from Art. 179, No. 4a of the Code of Spain of 1928.

Par. No. 7 was taken from Art. 179, No. 6 of the Code of Spain of 1928.

Par. No. 8 was taken from Art. 179, No. 7a of the Code of Spain of 1928 and Art. 21a of the Code of Uruguay.

ART. 99. Redemption of subsidiary imprisonment. - On petition of the offender, the subsidiary imprisonment for an unpaid fine may be rendered by labor at the rate of one day of labor for one day imprisonment.

Comments

This article was taken from Art. 49a, No. 1 of the Code of Switzerland; Art. 24a of the Code of Uruguay.

ART. 100. Extinguishment of subsidiary imprisonment. - The offender at any time may cause the subsidiary imprisonment to be extinguished by paying the fine but with a deduction of the portion corresponding to the subsidiary imprisonment already served.

ART. 101. Remuneration of culprits for work performed for the Government. - Whether in or out of prison, culprits shall be paid compensation for work done for the Government at the rate prevailing in the community. His compensation shall be applied thus: one-third for the civil liability; one-third for his maintenance in prison, fine and costs of the proceedings; and one-third for the support of his family and as savings for himself. If he has already satisfied the civil liability, fine and costs, then all his compensation shall be for his family and himself, except an equitable portion not exceeding one-third, for his maintenance in prison.

ART. 102. Council of aid, its duties and functions. - A Council of Aid consisting of the District Engineer, District Health Officer and a social worker shall be appointed by every Court of First Instance, with the following duties:

(1) To afford assistance to released prisoners, helping them, if necessary, to obtain suitable and permanent work.

(2) To afford every possible aid to the families of prisoners.

The expenses of the Council shall be defrayed by the Government out of the Fine Fund.

Comment

This article was taken from Art. 149a of the Code of Italy.

ART. 103. Fine Fund. - There shall be created in every province and chartered city a Fine Fund consisting of all money collected by the court by way of fine or forfeiture. Such fund shall be kept apart and separate from the general funds of the Government, and shall be used exclusively for the purposes of the Council of Aid.

Comment

This article was taken from Art. 150 of the Code of Italy.

TITLE IV

SECURITY MEASURES

CHAPTER 1 - GENERAL PROVISIONS

ART. 104. Subjection to security measures: express provisions of law. - No one may be subjected to security measures except in the manner and in cases provided by law.

Comments

This article was taken from Art. 199a of the Code of Italy.

Security measure is an offshot of a reformatory movement better known as social defense theory in the field of criminal justice whereby social defense, instead of punishment and retribution became the principal weapon to fight crimes and criminals.

ART. 105. Nature and types of security measures. - Security measures provided for in this Code shall not be deemed to be penalty or retribution for the commission of an offense but they are being imposed in exercise of the police power of the state for the attainment and promotion of public weal, welfare and safety.

Comments

Security measures are of four types, to wit: (1) precautionary; (2) defensive; (3) curative and (4) educative.

The Code Commission takes advantage of this opportunity to allay the fear of the guardians of our civil liberties to the effect that preventive or detentive security measure provided for in Art. 105 may eventually end in the imprisonment of a citizen without due process of law. In the first place, as premise under the definition of Art. 106 of the Code, Security Measures are neither a punishment, repression or retribution but only an administrative or shall we say an exercise of the Police Power of the State designed for the promotion of public weal, welfare and safety.

In the exercise of the Police Power of the State, special laws had been passed by the Philippine Commission and the Legislature providing for the detention of lepers in leper camps and colonies, the confinement of vagrants, lunatics, alcoholics of persons suffering from communicable disease. The Constitutionality of these laws have not been assailed. No lawyer at the present time will dare contend that these laws violate the constitutional guarantee against deprivation of liberty without due process.

The four types of security measures mentioned in the second paragraph of Art. 105 are of the same nature as the measures provided for in the special laws abovementioned. They are not repressions nor punishment. Hence, contrary to the contention which is based on fascinating generalities taken from American authors, they do not violate the constitutional guarantee against deprivation of liberty without due process of law. The juridically progressive European and South American countries which have adopted the positivist theory, among them Italy, France, Germany, Russia, Cuba, Peru, Spain, Portugal, German, Switzerland, Continental US and in Asia, China and Japan also came under the fold of positivism, whose modern Code of Crimes contain provisions on security measures, do not consider these violative of the constitutional guarantee against deprivation of liberty without due process.

For a better understanding of the distinction between security and repressive or punitive measures, it would be pertinent to take into account that the former is an administrative action taken by the government to refrain from carrying about his evil desire; while repression or penalty is administered upon subjects who have already violated some penal or repressive law.

Among the latest country to come to the fold of social defense and security measure system is Spain.

The Spanish law on dreadfulness and social rehabilitation follows the pattern of our Code of Crimes. It divides the administrative or criminal jurisprudence into 2 parts namely: preventive and repressive or punitive.

The preventive procedure is practically a copy of the Title IV of Book I of the Code of Crimes while the punitive is identical to our Book II.

Like the security measure of our proposed Code of Crimes, its counterpart in Ley de Peligrosidad y Rehabilitacion Social de 4 de Agosto, 1970 of Spain as in many laws in Italy and South American Countries, the provisions regarding the predelictual detentive security measure drew up questions on constitutionality. The prevailing judicial opinion is to the effect that the imposition of predelictual detentive security measure is not a punishment nor a penalty, and therefore, its imposition can not be considered as a deprivation or denial of due process of law.

ART. 106. Socially dangerous person, defined. - A person is socially dangerous when he shows a certain morbid predisposition, congenital or acquired by habit, which by destroying or enervating the inhibitory controls, favors the inclination to commit a crime.

Such predisposition may be deduced from any one or more of the following facts or condiitions:

(1) The nature, means, object, time, place and other circumstances of the act.

(2) The gravity of the injury or of the danger caused to the person injured by the offense.

(3) The extent and seriousness of the alarm or apprehension occasioned by the offense.

(4) The intensity of the criminal intent or the degree of negligence.

(5) The motives in the commission of the offense and the character of the offender.

(6) The criminal antecedents and in general, the mode of life of the offender prior to the offense.

(7) His conduct contemporary with or subsequent to the offense.

(8) Bearing or concealing about his person unlicensed firearms or other deadly weapons.

(9) The individual, domestic and social conditions of the offender, or

(10) Other analogous circumstances.

ART. 107. Precautionary security measures. - A person may also be judicially declared socially dangerous, and be subjected to the applicable measures prescribed in article 114, even if he has not been prosecuted for another specific crime, when upon petition and proper showing made by the police or the fiscal, the court of first instance is satisfied that the subject is a known pickpocket, thief, burglar, holdupper either by his own confession of his police records; or the subject being an able-bodied person is not engaged in any lawful means of livelihood and who lies in wait or loiters around along public streets, highways or backyards for no apparent licit purpose at all; or that the subject is a habitual ruffian or rowdy.

There is habitual rowdyism or ruffianism when a person publicly and habitually, through words, threats, attitudes, use of arms or any similar conduct or means tries to intimidate others or to impose his will on them.

Comment

This article was taken from Art. 48a of the Code of Cuba.

ART. 108. Defensive security measures. - Defensive security measures as described in Article 114, No. 1, shall be imposed upon:

(1) Persons who have been sentenced to medium imprisonment or longer, who are thereby, in contemplation of law, considered socially dangerous;

(2) Offenders whom the court considers socially dangerous as defined in Article 107, even though the offense committed entails less than medium imprisonment.

Comments

This article was taken from Art. 48-A of the Code of Cuba.

The imposition of defensive security measure is mandatory when the principal repression is heavy imprisonment or more, for the reason that the new code presumes that persons who have been sentenced to medium imprisonment or more are socially dangerous.

Under the provisions of the last paragraph of this article, the court likewise may impose detentive security measure upon persons undergoing less than medium imprisonment, if the evidence present to the court prove that the subject is socially dangerous.

ART. 109. Curative security measures. - The following persons may also be declared socially dangerous, and be subject to curative security measures as described in Article 114, Nos. 2 and 3:

(1) Those afflicted with permanent, temporary or intermittent insanity which affects the normal exercise of the mental faculties in such a way as to produce danger to other persons;

(2) Those who are habitual drunkards;

(3) Those who are opium or drug addicts;

(4) Those who are suffering from some venereal disease.

A person is a habitual drunkard or an opium or drug addict when he has been seen in any of these conditions or acts at least on three different occasions, at intervals of not less than one week.

Comments:

This kind of security measure resulting in the restriction of movement of the subject is not a punishment nor imprisonment without due process of law. It is an administrative measure adopted by the State in the exercise of a police power to promote public welfare, health, peace and order.

ART. 110. Application of non-detentive security measures. - The application of non-detentive security measures is governed by Chapter 2 of this Title.

ART. 111. Educative security measures. - Children under eighteen years of age who may come within the jurisdiction of the juvenile court, in accordance with Chapter 3 of Title IV of this Book, shall be subject to educative security measures.

Comment

This article was taken from the American Law.

CHAPTER 2 - KINDS AND EXECUTION OF SECURITY MEASURES

ART. 112. Kinds of security measures. - Security measures are divided into detentive and non-detentive.

Comment

This article was taken from Article 215a of the Code of Italy.

ART. 113. Detentive security measures. - Detentive security measures are:

(1) Compulsory residence and work in an agricultural settlement or labor establishment;

(2) Confinement in a diagnostic center for medical treatment and custody;

(3) Confinement in a lunatic asylum;

(4) Confinement in a reformatory.

Detentive security measures shall be executed immediately after the service of the principal repression, if any, and shall last until the court has pronounced that the subject is no longer socially dangerous.

Comment

This article was taken from Art. 215a of the Code of Italy.

ART. 114. Non-detentive security measures. - Non-detentive security measures are:

(1) Liberty under surveillance;

(2) Obligation to take up a useful trade, vocation, occupation or calling;

(3) Prohibition from residing in one or more localities or in one or more provinces;

(4) Prohibition from frequenting bars, saloons or other places where alcoholic beverages are sold, dispensed, or consumed;

(5) Deportation of a foreigner from the Republic;

(6) Dissolution or suspension of an association or juridical person;

(7) Temporary or permanent closing of establishments which are used as a place or means for the commission of the crime;

(8) Prohibition on the offender from residing again in the place wherein the crime was committed or wherein the victim or his family resides;

(9) Bond for good behavior.

Comment

This article was taken from Art. 215a of the Code of Italy.

ART. 115. Re-examination of danger. - After the lapse of one year's service of any security measure, the court may from time to time re-examine the condition of the person subject thereto in order to determine whether he is still dangerous to society. Provided, however, that in case of habitual criminals no re-examination shall be made till after four years service of any security measures; and in case of professionalism in crimes, till after six years.

Comment

This article was taken from Art. 208a of the Code of Italy.

ART. 116. Persons tried for several acts. - When a person has committed simultaneously, or at different times, more than one act in respect of which two or more security measures of the same kind are applicable only one single security measure shall be ordered.

If the security measures are not of the same kind, the court shall assess as a whole the danger from the individual and shall apply one or more of the security measures prescribed by law.

Comment

This article was taken from Art. 209 of the Code of Italy.

ART. 117. Effect of the extinction of criminal liability upon security measures. - The extinction of the criminal liability, except by the service of the sentence, prevents the application of the security measures or stops their execution.

In case of a pardon affecting the death sentence or life imprisonment, the person pardoned shall enjoy liberty under security surveillance for a period of not less than five nor more than fifteen years, unless it is otherwise provided in the pardon.

Comment

This article was taken from Art. 210a of the Code of Italy.

ART. 118. Execution of non-detentive security measures. - Non-detentive security measures attached to a non-detentive repression shall be executed after the sentence of conviction has become final.

The execution of non-detentive security measures, attached to detentive repression, may take place simultaneously with or after the execution of the latter, in the discretion of the court.

The court may, in ordering the release of the subject, from a detentive security measure, apply a non-detentive security measure or measures which it may deem suitable.

Comment

Pars. 1-2 was taken from Art. 211a of the Code of Italy.

ART. 119. Transformation of detentive security measures. - If a person subject to a detentive security measure is overtaken by a mental infirmity, the court shall order that he be confined in a hospital or similar institution for treatment and custody.

When the infirmity has ceased, the court, after ascertaining that the person is still dangerous to society, shall order that he be returned to the original place of detention.

Comment

This article was taken from Art. 212a of the Code of Italy.

ART. 120. Establishments for execution of the detentive security measures. - Detentive security measures shall be carried out in the establishments intended for the purpose.

Females shall be assigned to an establishment or sections thereof separate from those intended for males.

Work shall be paid for. The remuneration shall be applied in accordance with Art. 101.

Comment

This article was taken from Art. 213a of the Code of Italy.

ART. 121. Non-observance of detentive security measures. - If a person subject to a detentive security measure should voluntarily evade the execution thereof, the security measure imposed by the court shall recommence from the day on which execution is resumed, and no re-examination provided in Art. 116 shall be made till after the lapse of one year therefrom.

This provision shall not apply to insane persons confined for treatment and custody.

Comment

This article was taken from Art. 214a of the Code of Italy.

ART. 122. Assignment to an agricultural settlement or labor establishment. - The following shall be assigned to an agricultural settlement or labor establishment:

(1) Persons who have been pronounced habitual delinquents;

(2) Persons who, having been pronounced habitual delinquents and being no longer subject to security measures, commit a new crime, with criminal intent, which is a further manifestation of habitual delinquency.

Comment

This article was taken from Art. 216a of the Code of Italy.

ART. 123. Assignment of an establishment for treatment and custody. - A person sentenced for a crime, committed with criminal intent, to a repression reduced by reason of mental illness or mental defect under Article 24, No. 15, or by reason of intoxication in accordance with

Article 27, shall be confined in an establishment for treatment and custody for a period of not less than one year, when the minimum repression fixed by law is not less than five year's imprisonment.

If in respect of the crime committed the law prescribes the death sentence or life imprisonment, or heavy imprisonment, the security measures shall be ordered for a period of not less than two years.

If the offense is any other, for which the law prescribes light imprisonment, detention in an establishment for treatment and custody shall be ordered for a period of not less than six months; the court may, however, order liberty under surveillance instead of detention. This substitution shall not take place in cases of persons sentenced to a reduced repression owning to habitual intoxication with alcohol or narcotics.

When detention in an establishment for treatment and custody is ordered, no other detention security measure shall be applied.

Comment

This article was taken from Art. 219a of the Code of Italy.

ART. 124. Execution of the detention order. - The order of detention of an offender in an establishment for treatment and custody shall be executed after the repression restrictive of personal liberty has been undergone.

The court may, nevertheless, having regard to the special conditions of mental infirmity of the convicted person, direct that the detention take place before the execution of the repression restrictive of personal liberty has begun or has been completed.

The measure shall be revoked when the reasons which determined it have ceased to exist, but not before the expiration of the minimum periods fixed in the preceding article.

The culprit, when discharged from the establishment for treatment and custody, shall be subjected to the execution of the principal repression.

Comment

This article was taken from Art. 220a of the Code of Italy.

ART. 125. Habitual drunkards and narcotic addicts. - When no other detentive security measure has to be ordered, persons sentenced to a term of imprisonment for crimes committed in a state of drunkenness, when the same is habitual, or for crimes committed under the influence of narcotic drugs to the sue of which they are addicted, shall be detained in an establishment for treatment and custody.

However, in the case of crimes, in respect of which imprisonment for a period of less than three years has been imposed, liberty under surveillance may be ordered instead of detention in an establishment for treatment and custody.

Detention shall be effected in special divisions and shall be for the minimum duration of six months.

Comment

This article was taken from Art. 221a of the Code of Italy.

ART. 126. Detention in a psychopathic hospital. - In the event of acquittal on the ground of insanity or automatism as provided in article 23, Nos. 1 and 2, an order shall always be made for the confinement of the person charged in a psychopathic hospital or similar institution.

The duration of detention in a psychopathic hospital or similar institution for persons referred to herein shall be as provided in Article 124, according to the nature of the crime charged.

Comment

This article was taken from Art. 222a of the Code of Italy.

ART. 127. Liberty under surveillance. - Guidance over a person enjoying liberty under surveillance is entrusted to the Office of the Social Welfare Commission.

A person in a state of liberty under surveillance shall be bound to report and give account of his activities to the proper authorities

at stated periods as the court may prescribe. He shall be subjected by the court to such rules as may be suitable for preventing opportunities for a new offense.

These rules may be subsequently modified or limited by the court.

Surveillance must be exercised in such a way that the readaption of the individual to social life by means of work shall be enhanced.

Liberty under surveillance shall last for not less than one year, nor more than five years, except in the cases provided for in Article 118, 2nd paragraph.

Comment

This article was taken from Art. 228 of the Code of Italy.

ART. 128. Cases in which liberty under surveillance shall be ordered. - Liberty under surveillance shall be deemed attached to a conditional pardon, unless the terms of the pardon provide other wise.

ART. 129. Violations of conditions imposed. - When a person in a state of liberty under surveillance violates any of the conditions imposed, the court may order the assignment of the offender to an agricultural settlement or labor establishment.

Comment

This article was taken from Art. 231a of the Code of Italy.

ART. 130. Prohibition against residence in one or more localities or provinces. - Any person guilty of a crime against public order, persons or chastity, may be subjected to the prohibition from residence in one or more localities or provinces designated by the court.

The prohibition shall last for not less than one year or more than five years.

Comment

This article was taken from Art. 233a of the Code of Italy.

ART. 131. Prohibition against frequenting bars, saloons, etc. - The probition against frequenting bars, saloons, and other places where alcoholic beverages are sold or consumed shall last for not less than one year nor more than five years.

Comment

This article was taken from Art. 234a of the Code of Italy.

ART. 132. Accused person's bond for good behavior. - Any accused person may, after due hearing, be ordered to give a bond for good behavior. He shall deposit the required cash with the Clerk of Court, or present a sufficient bond or security by a surety company or by two sureties who shall undertake that such person shall not commit the act or offense sought to be prevented, and that should the act or offense be committed, they shall pay the amount determined by the court.

The court shall fix the duration of the bond or security.

Should the person ordered fail to give the bond or security as required, he shall be detained for a period not exceeding six months.

Comment

This article was taken from Art. 35a of the Revised Penal Code.

ART. 133. Bond for good behavior when there is no prosecution. - Upon verified petition by a person filed with the justice of the peace or municipal court, stating that another person is threatening to do harm or injury to him or his property or honor, or to the person, property or honor of any member of his household, or to cause injury to the community, and that the affiant is moved only by a desire to secure the protection of the law and not by anger or malice, and asking that the respondent give a bond or security for good behavior, said court shall have power, after due hearing, to require said bond or security as well as the effect of failure to give the bond or security, shall be as provided in the next preceding article.

Comment

This article was taken from the American Law.

ART. 134. Compliance with or violation of the terms of the bond. - If, during the term of the bond, the person who is subjected to the same does not commit the crime or misdemeanor he has threatened to commit, the return of the money deposited shall be forfeited, or the bond or security executed shall be enforced.

Comment

This article was taken from Art. 35 of the Revised Penal Code.

CHAPTER 3 - PROTECTION OF MINORS

ART. 135. Definitions. - When used in this chapter, unless the:

(a) "Child" means a person less than eighteen years of age.

(b) "Adult" means a person eighteen years of age or older.

ART. 136. Assignment. - Until separate juvenile courts are organized, the Secretary of Justice shall assign, wholly or partly, a judge of the Court of First Instance in each province or city to perform the duties and functions of the juvenile court.

Comment

This article was taken from the American Law.

ART. 137. Jurisdiction; children, minors. - Except as otherwise provided, the juvenile court shall have exclusive jurisdiction in proceedings:

(1) Concerning any child living within the province or city;

(a) Whose parent or other person legally responsible for the care and support of such child neglects or refuses when able so to do, to provide proper or necessary support, including education as required by law, or medical or surgical or other care necessary for his well-being; or who is abandoned by his parent or other custodian, or who is otherwise without proper care, custody, or support;

(b) Whose occupation, behavior, environment or associations are injurious to his welfare;

(c) Who deserts his home or who is habitually disobedient or beyond the control of his parent or other custodian;

(d) Who, being required by law to attend school, wilfully violates rules thereof or absents himself therefrom;

(e) Who violates any law or municipal ordinance.

(2) Concerning any minor eighteen years of age or older, living within the province or city, who is charged with having violated any law or municipal ordinance prior to having become eighteen years of age,

without prejudice to the provisions of Article 141.

(3) To determine the custody or guardianship of the person of any child living within the province or city and who comes within the purview of the provisions of this Chapter.

(4) To entrust a mental defective or mentally disordered child to some institution or agency.

The court of any province or city shall have jurisdiction in any of the cases mentioned in this article if the child or minor or his parent, guardian or custodian is at the time present within the province or city.

Nothing contained in this Chapter shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of cases pending in such other courts. Such other courts, however, may certify said questions to the juvenile court for hearing and determination or recommendation.

Comment

This article was taken from the American Law.

ART. 138. Transfer from other courts. - If during the pendency of a prosecution for a crime or misdemeanor against any person in any other court, it shall be ascertained that the person was under the age of eighteen years at the time of committing the alleged offense, it shall be the duty of such court forthwith to transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile court. The court making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile court or to that court itself, or release such child to the custody of some suitable person to be brought before the court at a time designated.

Comment

This article was taken from the American Law.

ART. 139. Retention of jurisdiction. - When jurisdiction shall have been obtained by the court in the case of any child, jurisdiction of such person as well as of any offenses by him committed may be retained or

resumed by the court until he becomes twenty-one years of age.

Comment

This article was taken from the American law.

ART. 140. Transfer to other courts. - If a child fifteen years of age or over is charged with an act which would be a crime if committed by an adult, the court after full investigation may, in cases falling within Article 24, No. 3, retain jurisdiction or certify such child for proper criminal proceedings to the court which would have jurisdiction of such offense if committed by an adult; but no child under fifteen years of age shall be so certified.

Comment

This article was taken from the American law.

ART. 141. Jurisdiction, adults. - The court shall have original jurisdiction in all cases of adults charged with any violation of law, such as Articles 621, 624, 223, 224 and 261, which causes or encourages a child to come within the purview of No. 1 of Article 137.

The court shall have jurisdiction in any of the cases mentioned in this article if either the adult charged or the minor concerned has residence or is at the time present within the province or city. Where the offense charged amounts to a crime, the jurisdiction shall be concurrent with that of the ordinary court; otherwise, it shall be exclusive. In every case, appropriate security measures may be taken by the ordinary and juvenile courts. Liberty under surveillance shall include supervision of the adult offender's conduct with a view to his compliance with his obligations toward the minor.

Comment

This article was taken from the American law.

ART. 142. Report; investigation; petition. - Whenever any person reports to the court that a child is within the purview of the provisions of this Chapter, the court shall make a preliminary inquiry to determine whether the interests of the public or of the child require that further action be taken. Thereupon the court may make such informal adjustment as

is practicable without a petition, or may authorize a petition to be filed by any person. The proceeding shall be entitled "In the Matter of the Protection of _____ a child under eighteen years of age."

The petition shall be verified and may be upon information and belief. It shall set forth plainly (1) the facts which bring the child within the purveiw of the provisions of this Chapter; (2) the name, age and residence of the child; (3) the names and residences of his parents; (4) the name and residence of his legal guardian if there be one; (5) of the person or persons having custody or control of the child and (6) of the nearest known relative if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner, the petition shall so state.

Comment

This article was taken from the American Law.

ART. 143. Summons; notice; custody of child. - After a petition shall have been filed and after such further investigation as the court may direct, unless the parties herein after named shall voluntarily appear, the court shall issue a summons reciting briefly the substance of the petition and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at the time and place stated. If the person so summoned shall be other than a parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge is necessary.

If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may order, by endorsement upon the summons, that the officer serving the same shall at once take the child into custody.

Comment

This article was taken from the American Law.

ART. 144. Detention and release of children. - Whenever a child is taken into custody, unless it is impracticable or inadvisable or has been otherwise ordered by the court, he shall be released to the custody of a parent, guardian or custodian, upon the written promise of such parent or custodian to bring the child to the court at the time fixed. If not so released such child shall be taken immediately to the court or to the place of detention designated by the court. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent or other person appointed by the court, or be detained in such place as shall be designated by the court, subject to further order.

Nothing in this Chapter shall be construed as forbidding any peace officer from immediately taking into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his welfare. In every case the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this Chapter.

No child shall be confined in any police station, prison, jail or lockup, or be transported or detained in association with criminals, vicious or dissolute persons; except that a child fifteen years of age or older may, with the consent of the judge or director be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults.

Comment

This article was taken from the American Law.

ART. 145. Hearing. - All cases of children shall be heard separately from the trial of cases against adults. The hearings shall be conducted in an informal manner, and may be adjourned from time to time. Stenographic notes or other transcript of the hearings shall be required only if the court so orders. The general public shall be excluded and only such persons admitted as have a direct interest in the case.

Comment

This article was taken from the American Law.

ART. 146. Decree. - If the court shall find that the child is within the purview of the provisions of this Chapter, it shall so decree and may by order duly entered proceed as follows:

(1) Place the child on probation or under supervision in his own home or in the custody of a suitable person elsewhere, upon such condition as the court shall determine; or

(2) Entrust the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in private homes. In entrusting a child to a private institution or agency the court shall select one that is approved by the Commissioner of Public Welfare; or

(3) Order such other care and treatment as the court may deem to be for the best interests of the child.

The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

No adjudication by the court upon the status of any child shall operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with crime or convicted in any court, except as provided in article 141. The disposition of a child or any evidence given in the court shall not operate to disqualify the child for admission to any public school, college or university, or in any future civil service application or appointment.

Whenever the court shall entrust a child to any institution or agency it shall tranamit with the order a summary of its information concerning the child, and such institution or child as the court may at any time require.

Comment

This article was taken from the American Law.

ART. 147. Protection of religious affiliations. - In placing a child under the guardianship or custody of an individual or of a private agency or institution, the court shall whenever practicable

select a person or an agency or institution governed by persons of the same religious faith of the child is not ascertainable, then of the faith of the parents; in case of a difference in the religious faith of the parents, then of the religious faith of the father.

Comment

This article was taken from the American Law.

ART. 148. Special laws on the protection of minors. - The organization of juvenile courts, the appointment of social workers and other officers and employees, further matters of procedure in juvenile and adult cases, the custody of children and all other matters concerning the protection of minors which are not herein provided for, shall be regulated by special laws.

Comment

This article was taken from the American Law.

TITLE V

EXTINCTION OF CRIMINAL LIABILITY

CHAPTER 1 - HOW CRIMINAL LIABILITY IS EXTINGUISHED

ART. 149. How criminal liability is extinguished. - Criminal liability is extinguished by:

(1) The death of the offender

(2) Amnesty

(3) Absolute pardon

(4) Prescription of the offense

(5) Prescription of the repression

(6) Pardon from the aggrieved party, in cases expressly provided by law.

(7) Marriage in cases of seduction, abduction and other cases provided by law.

Comment

This article was taken from Art. 89a of the Revised Penal Code.

ART. 150. Civil liability arising from the offense. - Civil liability shall not be affected by any of the events mentioned in the next preceding article.

ART. 151. Prescription of offenses. - Crimes for which death or life imprisonment is provided shall prescribe after twenty-five years.

Crimes repressed with heavy imprisonment shall prescribe after twenty years.

Crimes repressed with medium imprisonment shall prescribe after fifteen years.

Crimes repressed with light imprisonment shall prescribe after ten years.

Crimes repressed with confinement shall prescribe after five years.

Crimes repressed only with a fine in a sum ranging from the equivalent of 15 to 30 days' earnings shall prescribe after one year; if the fine is more, after two years.

Misdemeanors shall prescribe after six months.

When the crime is complex, the repression for the gravest crime shall be the basis of the application of the rules contained in the first four paragraphs of this Article.

Comment

This article was taken from Art. 90 of the Revised Penal Code.

ART. 152. Computation of prescription of offenses. - The period of prescription of offenses shall commence to run from the date on which the offense is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information. It shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall neither commence nor run;

(1) While the offender is absent from the Philippines, except when the crime is cognizable in an international tribunal.

(2) While the offended party or his heirs in case of murder or homicide are acting under grave duress through the acts of the offender.

(3) During war-time, if the civil courts are not functioning.

Comment

This article was taken from Art. 91 of the Revised Penal Code.

ART. 153. Prescription of the death sentence, and of repressions. - The death sentence and life and heavy imprisonment shall prescribe after twenty-five years.

Other repressions imposed by final sentence shall prescribe as follows:

(1) Medium imprisonment, after fifteen years;

(2) Light imprisonment, after ten years;

(3) Confinement, after five years; and

(4) Restraint, after six months.

A fine of less than the equivalent of 30 days earnings shall prescribe after one year; other fines, after two years.

The death sentence and all repressions imposed by any trial court shall, by operation of law, lapse and be vacated upon the failure of the Court of Appeals, or of the Supreme Court, to decide the case within one year following the submission thereof, unless the accused petitions the court that judgment be rendered upon the case notwithstanding the expiration of the period of one year. The lapse and inefficacy of the death sentence or any repression, herein ordained, shall not affect the proceedings in respect of the civil liability, which may be proved by a preponderance of evidence.

ART. 154. Computation of the prescription of the death sentence and of repressions. - The period of the prescription of the death sentence, and of repressions shall commence to run from the date when the culprit evades the execution of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, or should commit another crime before the expiration of the period of prescription.

Comment

This article was taken from Art. 93 of the Revised Penal Code.

CHAPTER 2 - SUSPENSION AND LESSENING OF REPRESSION

ART. 155. Conditional suspension of repression. - In pronouncing a sentence of imprisonment for a period not exceeding eighteen months, or a fine not exceeding the equivalent of fifteen days' earnings, the judge may order the suspension of the execution, in whole or in part, of the sentence for a term of three years in case of a crime, or one year in case of a misdemeanor.

ART. 156. When conditional suspension of repression is allowed. - Conditional suspension of repression is allowed only if the court is satisfied that the guilty person is not likely to commit a further offense.

Conditional suspension of repression shall not be granted:

(1) To anyone who has been previously convicted of a crime, or to a habitual delinquent.

(2) When security measure must be added because the offender is dangerous to society.

Conditional suspension of repression cannot be granted in more than one case.

Comment

This article was taken from Art. 164a of the Code of Italy.

ART. 157. Obligations of the offender. - Conditional suspension of repression shall not be granted until after the settlement of all pecuniary liabilities, except the fine. The publication of the sentence by way of reparation for the inquiry shall not be suspended. The court in passing sentence shall fix the time for the settlement of the pecuniary liabilities and the publication of the sentence.

Comment

This article was taken from Art. 165a of the Code of Italy.

ART. 158. The effect of suspension. - Conditional suspension of repression does not extend to accessory repressions, except forfeiture and security measures.

Comment

This article was taken from Art. 164a of the Code of Italy.

ART. 159. Extinction of the liability. - If, within the period fixed under Art. 156, the convicted person does not commit any crime or misdemeanor, and fulfills the obligations imposed on him, the liability for the offense is extinguished.

In such case the execution of the repression shall not take place and the execution of the accessory repression shall cease.

Comment

This article was taken from Art. 167a of the Code of Italy.

ART. 160. Revocation of the suspension. - Conditional suspension of repression is revoked by operation of law and the sentence shall be executed as though it had never been suspended when, within the period fixed under Art. 156, the person sentenced:

(1) Commits any crime or misdemeanor or violates any of the obligations imposed on him;

(2) Receives another sentence for a crime committed previous to the suspension. Should the person convicted receive another sentence for a misdemeanor of the same nature, committed previously, the judge may revoke the order conditionally suspending the repression.

Comment

This article was taken from Art. 168a of the Code of Italy.

ART. 161. Special time allowance for loyalty. - A deduction of one-third of the period of his sentence shall be granted to any prisoner who, having evaded the service of his sentence on the occasion of a fire, storm, flood or similar calamity, gives himself up to the authorities within five days following the termination of the calamity.

A time allowance of at least one-half of the period of his sentence shall be granted to any prisoner who renders signal service to

the Government in case of a jailbreak, fire, storm, flood or similar event.

Comment

This article was taken from Art. 98 of the Revised Penal Code.

ART. 162. Time allowance for good conduct. - The Director of Prisons shall grant time allowance for good conduct, according to rules promulgated by the President of the Republic, on recommendation of the Secretary of Justice.

CHAPTER 3 - REHABILITATION

ART. 163. Declaration of rehabilitation. - Any offender may file with the trial court an application for declaration of rehabilitation. The following circumstances are indispensable for such a petition:

(a) That the sentence has been executed or that the offender has served the whole sentence except such portion thereof as may have been condoned or remitted by the Executive, or such period as was not served in a conditional suspension of sentence;

(b) That the offender has satisfied the civil liabilities incurred on the occasion or by reason of the offense;

(c) That the offender is not a recidivist; and

(d) That the offender subsequent to the execution or service of the sentence, or to his release, shall have observed a peaceful and honorable life for at least a period equal to that of the sentence imposed.

Comment

This article was taken from Art. 179 of the Code of Italy.

ART. 164. Only one declaration granted. - He who, having obtained a declaration or rehabilitation, commits another offense, shall not be entitled to a new declaration.

Comment

This article was taken from Art. 180 of the Code of Italy.

ART. 165. Effect of rehabilitation. - The declaration of rehabilitation shall cancel all police record and shall wipe out all criminal antecedents of the conviction. Under no circumstances can such record and antecedents be certified to as existing.

TITLE VI

CIVIL LIABILITY

CHAPTER 1 - PERSONS CIVILLY LIABLE FOR CRIMES

ART. 166. Criminal liability carries with it civil liability. - Every person criminally liable for a crime or misdemeanor is also civilly liable. However, exemption from criminal liability does not extinguish civil liability in cases expressly provided in this Code, in the Civil Code, and other laws, and in the Rules of Court.

Comment

This article was taken from Art. 100 of the Revised Penal Code.

CLASSES OR TYPES OF INJURIES - As a general rule, an offense causes two classes of injuries: a social injury produced by the disturbance and alarm which are the outcome of the offense; and a personal injury, caused to the victim of the crime who may suffer damage, either in his person, in his property, in his honor, in his chastity, or in his freedom, etc. The social injury is sought to be repaired thru the imposition of the corresponding penalty the personal injury, thru indemnity, which is civil in nature.

PROCEDURAL LAW IMPLEMENTING ART. 100 OF THE REVISED PENAL CODE - Rule 107 of the Rules of Court provides that:

(a) When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately;

(b) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action;

(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;

(d) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In the other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damages suffered.

CIVIL AND CRIMINAL LIABILITIES: WHEN THEY DO NOT CO-EXIST - Does civil liability exist at all if the defendant has been found not guilty of the act out of which the civil liability arises? This question was answered in the negative by the United States Supreme Court for the following reasons:

1. By the positive legislation of the Philippine Codes, civil and criminal, a distinction is drawn between a civil liability which results from the mered negligence of the defendant and liability for the civil consequences of a crime by which another has sustained loss or injury.

2. The plain inference from this article is that civil liability springs out of and is dependant upon facts which, if true, would constitute a crime or misdemeanor.

3. The Rules of Court plainly contemplate that the civil liability of the defendant shall be ascertained and declared in the criminal proceedings.

For this reason, a civil action for damages against the defendant on the ground that he burned a certain building, does not lie after said defendant has been acquitted in a criminal case for arson based on the same facts upon which the civil complaint was based.[1]

And the reason for this is because in this jurisdiction, once the criminal action is instituted, the civil action is deemed to have been brought unless the person injured or prejudiced has waived the same or made express reservation for bringing the same after the termination of the criminal action, should he have a right thereto.[2]

EXCEPTION TO THE RULE - But may civil liability arising from the perpetration of illegal act be enforced without previously instituting criminal action or better still, without a prior legal determination of the defendant's guilt? This important question was answered in the affirmative by the Supreme Court of the Philippines in the case of National City Bank of New York vs. Cu Unjieng et al., G. R. 41927, December 18, 1937.

A civil action - said the Supreme Court in the abovementioned case may be validly instituted, without the necessity of first instituting the criminal action, not only for the restitution of what has been taken or otherwise illegally appropriated, but also for the reparation of any damage caused, and the indemnity for losses by reason of the commission of the criminal act, the provisions of Art. 100 which prescribe that "every person criminally liable for felony is also civilly liable" notwithstanding. Art. 100 of the Revised Penal Code does not give inference that in no case may one be declared civilly liable without first being declared liable criminally in a criminal prosecution. Such an inference would clearly nullify the provisions of Arts. 110, 111, 114, and 116 of the law of Criminal Procedure of Spain which is a supplementary law to General Orders No. 58. Such legal provisions expressly permit the institution of a civil action to demand civil responsibility arising from a crime before the criminal prosecution, without any other limitation than that once the criminal action is instituted, the civil action must be suspended, if the same has already been begun.[3]

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[1] Almeida et al. vs. Abaroa, 8 Phil. 178; 40 Phil. 1056.

[2] Francisco vs. Onrubia, 46 Phil. 327.

[3] See also Alba vs. Acuña, 53 Phil. 380; Rakes vs. Atlantic Gulf & Pacific Company, 7 Phil. 359; Wise & Co. vs. Larion, 45 Phil. 314; Francisco vs. Onrubia, 46 Phil. 327; People vs. Moreno, 60 Phil. 712.

The criminal action is extinguished by the death of the guilty party; but in such cases the civil action subsists against his heirs or successors in interest, being enforceable civilly only.[4]

DAMAGES CAUSED THROUGH CRIMINAL NEGLIGENCE; DISTINGUISHED FROM CIVIL NEGLIGENCE - Damages caused by criminal fault or negligence cannot likewise be recovered after the acquittal of the defendant in a criminal action, in spite of the provisions of Art. 1902 of the Civil Code. Said Article presupposes, in the first place, the existence of a fault or negligence upon which the action is based; and second, it refers to a fault or negligence is punishable by law, it ceases to be the quasi-crime or negligence having purely civil effects, and becomes a crime or misdemeanor according to the gravity of the penalty imposed by law, and in that case it does not come within the provisions of Art. 1902 of the Civil Code.[5]

DECISION IN CRIMINAL CASE; WHEN IT IS A BAR, AND WHEN NOT, IN CIVIL ACTION - As a general rule, an employer may maintain a civil action against his employee to recover money misappropriated by the latter, without the prior institution of a criminal proceeding. Nevertheless, if a criminal prosecution based on the same misappropriation is in fact instituted against the employee and he is acquitted, such acquittal operates as a bar to any subsequent civil action.[6]

Hence, it may be laid down as a rule that civil liability arising from the criminal act wholly depends upon the fact that there be criminal liability previously established by a competent court. For this reason, if a person supposedly injured by a criminal act institutes separately both actions, civil and criminal, the former must be suspended until the latter is definitely decided.

Exception to the Rule - This rule, however, has its exception to wit: when in the criminal case the prejudicial question is raised.

PREJUDICIAL QUESTION DEFINED - The prejudicial question is understood to be that which must precede the criminal action or that which requires decision before final judgment is rendered in the principal action with which said question is closely connected. Not all previous questions are prejudicial, although all prejudicial questions are necessarily previous.

The Compilation of the Laws of Criminal Procedure of Spain as amended in 1880 did not contain any provisions concerning criminal prosecution. Wherefore, in order to decide said questions, in case they are raised before the court of these Islands, it will be necessary to see the Law of Criminal Procedure of 1882, which repealed the former procedural laws and was the only law in force in Spain when the Penal Law was made applicable to these Islands. This Procedural Law of 1882 is therefore clothed with the character of supplementary law containing respectable doctrines, inasmuch as there is no law in this country on said prejudicial question.[7]

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[4] Art. 115 of Criminal Procedure of Spain

[5] Francisco vs. Onrubia, 46 Phil. 327

[6] Wise & Co. vs. Larion, 46 Phil. 314. See Alba vs. Acuña, 53 Phil. 380; Orbeta vs. Sotto et al., 58 Phil. 505.

[7] Berbari vs. Concepcion et al., 40 Phil. 837

The prejudicial question may be illustrated by the following example: A prosecuted a newspaperman, B, for libel because the latter published an article in which it was said that A was the keeper of a gambling house. Subsequent to the filing of the information for libel, A was criminally prosecuted for keeping a gambling house. The criminal case against A is a real prejudicial question in the case for libel against B, because the acquittal of B depends upon the circumstance of whether or not A was really keeping a gambling house, and the decision in the criminal case against A thus becomes of paramount importance.

But in another case where A was sued by B in a civil action for the recovery of a certain sum of money, and subsequently A instituted a criminal action against B for another sum of money involved in that claim in the civil action, said civil action brought by A against B until after the valid action instituted by B against A is definitely decided.[8]

PRELIMINARY ATTACHMENT OF THE PROPERTY OF AN ACCUSED - In U.S. vs. Namit, 38 Phil. 926, and in People vs. Moreno, 60 Phil. 674, the Supreme Court held that the preliminary attachment of the property of an accused in a criminal case cannot be granted either under Art. 589 of the Spanish Law of Criminal Procedure or under Sections 424 and 442 of the old Code of Civil Procedure, the reason being that the remedy of attachment available under Spanish system of criminal procedure was abrogated by G.O. No. 58 (the old Code of Criminal Procedure) and was not perpetuated by the reservation contained in Section 107 of the said Code.

After the enactment of the Rules of Court, particularly Rule 124, Sec. 6 thereof, a new situation was developed. Under the provisions of said section, Courts of First Instance may employ "all auxiliary writs, processes and other means to carry into effect" their jurisdiction. If, as per provisions of Section 1, Rule 107 Rules of Court, "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted, unless the offended party expressly waives the civil action or reserves his right to institute it separately," the granting of the auxiliary writ of preliminary attachment of the property of an accused should not be denied, otherwise, the denial would smack of unjust discrimination against that party who had chosen to enforce his civil redress in a criminal case. We see no reason why the victim of a robbery, for example, may obtain a writ of attachment of his stolen property if he maintains a separate civil action for the recovery of said property, while if he consolidates his actions in one criminal case, the remedy is not available. In fact, the Supreme Court during the Japanese occupation, by a vote of 3 to 1, abandoned the ruling in the Namit and Moreno cases, and granted preliminary attachment in an estafa case.[9]

ART. 167. Rules regarding civil liability in certain cases. - The exemption from criminal liability established in No. 2 of Article 21, and Nos. 2, 4 and 5, of Article 22 and Article 23 of this Code does not

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[8] Berbari vs. Concepcion et al., 40 Phil. 837.
[9] Eraña et al. vs. Vera and Panzani, 74 Phil. 272.

include exemption from civil liability, which shall be enforced subject to the following rules:

First, in article 23 the civil liability for acts committed by an insane person or by one in a state of automatism or by a child under fifteen years of age shall devolve upon those having such person under their legal authority or control and live in their company unless it appears that there was no fault or negligence on their part.

Whoever satisfies the civil liability under the next preceding paragraph shall be reimbursed from the property of the person under his legal authority or control.

Should there be no person having such insane person, or one in a state of automastism, or child under his legal authority or control, or if such person be insolvent or free from fault or negligence, said insane person, or one in a state of automatism, or child shall answer with his own property, excepting property exempt from execution.

Second. In cases falling under No. 2 of Article 21, the persons for whose benefit the injury has been avoided shall be civilly liable in proportion to the benefit which each may have received.

Third. In cases falling under Nos. 4 and 5 of Article 22, the persons using the physical force or causing the fear shall be civilly liable, or, if there be no such persons, those doing the act shall be liable, saving always that part of their property exempt from execution.

Fourth. In cases falling under No. 2 of Article 21, the person acting erroneously shall be civilly liable, even though he did not act with negligence.

Comment

This article was taken from Art. 101 of the Revised Penal Code.

ART. 163. Subsidiary civil liability. - Hotel keepers, employers, teachers, and natural and juridical persons engaged in any kind of industry or business shall be subject to subsidiary civil

liability for offenses committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties or assigned tasks, without prejudice to the primary responsibility for quasi-delicts provided by the civil law. But the plaintiff can not recover damages twice for the same act or omission of the defendant.

CHAPTER 2 - EXTENT OF CIVIL LIABILITY

ART. 169. Extent of civil liability. - The civil liability established in the next preceding Chapter consists of:

(1) Restitution; and

(2) Damages as determined by the civil law.

ART. 170. Restitution - how made. - The restitution of the thing itself must be made whenever possible with liability for any deterioration or diminution of value in every case, even if caused by a fortuitous event.

The thing itself shall be restored, even though it may be found in the possession of a third person who has acquired it through the means recognized by law, without prejudice to his action against the person who may be liable to him.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements whereby an action for its recovery is barred.

Comment

Pars. 2 & 3 were taken from Art. 105 of the Revised Penal Code.

ART. 171. Partial reparation of damage by means of publication of the sentence of conviction. - In addition to the damages as determined by the civil law, every offense entails on the guilty party the obligation, at the instance of the injured party, to publish in a newpaper of general circulation, at his own expense, the sentence of conviction, when the publication constites a means of making partial reparation for moral damage caused by the offense.

In case of acquittal of the accused, the judgment may be published in a newspaper of general circulation, on petition of the person acquitted, and in the discretion of the court. The expenses of publication shall be borne by the complaint, and shall constitute a legal lien as provided in Article 175.

Comment

This article was taken from Art. 186 of the Code of Italy.

ART. 172. Cost of maintenance of convicted person. - The convicted person is under obligation to refund to the government the cost of his maintenance in establishments for detentive repression, and is responsible for this obligation in accordance with the following articles.

This obligation is extinguished upon the death of the convicted person.

ART. 173. Legal lien in favor of the state. - The State has a legal lien on the real and personal property of the accused as security for the payment of:

(a) The pecuniary repressions and any other sum due to the State;

(b) The cost of the proceedings;

(c) The cost for the maintenance of the convicted person in the establishment for repressions;

(d) The expenses borne by a public hospital or health institution for the treatment and care of the injured party during the period of the disability.

Comment

This article was taken from Art. 188 of the Code of Italy.

ART. 174. Legal lien in favor of the injured party. - The injured party likewise has a legal lien on the property of the accused for the security of the payment of civil liability, including costs of the suit, in a proper case.

The legal lien is without prejudice to the right of the complaining party to secure a writ of preliminary attachment.

Comment

This article was taken from Art. 189 of the Code of Italy.

ART. 175. Annotation necessary. - The legal liens mentioned in Articles 174 and 175 shall enjoy the highest preference, next to the taxes, duties and fees due on the real and personal property, provided that they are annotated in the Registry of Property, and that they shall affect only such real property as may be specifically referred to in the annotation.

Such liens shall be operative on the date of their annotation, without prejudice to the provisions of Article 82.

With respect to property as to which there is no annotation, the order of preference established by law with respect to free or unencumbered property shall govern.

ART. 176. Subsidiary liability of employers as regards fines. - Natural and juridical persons, engaged in any kind of business or industry, when a conviction is pronounced against any person having their representation, or being in a subordinate relationship towards them, and if the offense consists of a breach of the obligations inherent in the position or employment of the offender to the prejudice of a third person, are liable to make payment of a sum equivalent to the amount of the fine imposed, but unpaid, in the event of the insolvency of the convicted person or his failure to satisfy the fine. The employer may subsequently demand from the offender the reimbursement of the amount thus paid.

Comment

This article was taken from Art. 196 of the Code of Italy.

ART. 177. Transmission of civil liability. - The obligation to satisfy the civil liability is a charge upon the estate of the offender in case of death.

Comment

This article was taken from Art. 108 of the Revised Penal Code.

ART. 178. Solidary liability of principals and accomplices. - All principals and accomplices of an offense are solidary responsible for the civil liability.

ART. 179. Obligation to make restitution in certain cases. - Any person who in good faith has participated gratuitously in the proceeds of an offense shall be subsidiary bound to make payment to the extent of the benefits received.