

CONFERENCES - RAPPORTS

THE RECENT DEVELOPMENT OF TURKISH CRIMINAL PROCEDURE AND THE PRACTICE OF THE TURKISH JUDICIARY (*)

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I — A brief look at the Turkish Code of Criminal Procedure; II — The way of application of the Code; III — Recent social and political unrest in Turkey; IV — Need for modification of certain provisions of the Code; V — Recent modifications of the Code along the line of necessities; VI — Outlines of these modifications; VII — Reactions of the Judiciary to these modifications; VIII — Conclusion.

"L'ordinamento processuale penale non è frutto delle meditazioni dei filosofi, nè delle teorie di una scuola, nè del costume di un singolo popolo e neppure della politica d'un determinato Stato.

Esso rappresenta un'esigenza pratica del sentimento di giustizia, commune a tutti gli uomini civili, ed è il prodotto della necessità e dell'esperienza sociali, formatosi, svoltosi e perfezionatosi attraverso i secoli."

Vincenzo MANZINI

(Istituzioni di Diritto Processuale Penale; 1960, Padova, p. 3).

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I. A BRIEF LOOK AT THE TURKISH CODE OF CRIMINAL PROCEDURE

As quoted above Prof. Manzini is right in saying that the regulation of the criminal procedure is the fruit of neither the meditations of the philosophers nor the theories of one school, nor the usage of a single people and nor the policy of a given State. It represents practical existence of the sentiment of justice which is common to all civilized men and it is the product of the necessity and the social experience, formed, developed and perfected throughout the centuries. In trying to explain the recent development of Turkish criminal procedure, I shall rely on this point of view.

Before going into our specific topic, it would be not only useful but necessary to give some summary information about the nature of the Turkish Code of Criminal Procedure.

After proclamation of the Republic in 1923, a series of legal reforms have taken place in Turkey. By these reforms it was aimed to abolish the entire existing legal system which was an amalgamation of partly Islamic and partly continental law and establish a new laic legal system based upon modern continental legal concepts. In order to achieve this aim, there were two ways to follow. One was to prepare original new codes, the other was to adopt the codes which could be selected from various European countries. Since the available time was very short, to follow the first way was impossible. So, the second way was to be chosen. Of course, merely adopt the foreign codes would not serve the purpose, at the same time it was necessary to adapt them to the social conditions existing in the country. That is what has been done.

Among various main codes, Turkish penal code was adopted from the Italian penal code in 1926, the code of criminal procedure was also intended to be adopted from the Italian code of penal procedure, but after a while the commission which was charged to prepare the draft, has proposed to the Ministry of Justice to switch from Italian to German code of criminal procedure for the reasons that the German code was not as complicated

as the Italian code and was more expedient. The Ministry of Justice has approved this proposal.

The model German code was the Code of Criminal Procedure of 1877 including the amendment of 1926. The existing Turkish Criminal Procedure Code was the one which adopted in 1879 from the French Code of Criminal Procedure of 1808. This Turkish code had been modified many times and become very complicated and unsystematic.

The afore-said commission, after 17 months of work has finished the draft and submitted it to the Ministry of Justice. With slight alterations this draft, as the ministerial bill, has been presented to the Legislature and proclaimed as law in 1929.

The Turkish Code of Criminal Procedure of 1929 was not a mere translation of the German Code of Criminal Procedure of 1877. There were essential alterations. Time permits us only to give some examples of these alterations. First of all, it was necessary to adjust the Code to the existing Turkish judiciary organization. Some remedies of law have been added to the ones which existed in the German Code and some dropped out. The chamber of decision (*Beschlusskammer*) which is to decide upon the opening of the final investigation is replaced by the judge of decision. But this judge of decision has never been appointed, instead, by a provisional paragraph, the investigating judge had also the authority to decide upon the opening of the final investigation.

The Turkish Code of Criminal Procedure, up to now, has been amended 16 times. Some of these modifications are very important. In 1936, 116 articles of the Code were modified. In 1938 amendment the number of modified articles were 66. Another important amendment is made in 1973, the last ones in 1979 and 1981. Later we are going to dwell on the amendments starting from that of 1973.

Apart from these amendments, to provide a speedy trial for flagrant offenses, in 1936 is published a separate law.

As for characteristics of Turkish criminal procedure, I shall try to show them as concisely as possible.

In addition to the general judiciary we have special courts to try special offenses determined according either to the nature of the crime or the status of the defendant. Just to name them we can mention military courts, courts of martial law and the supreme court. These special courts more or less apply basically the same procedural principles, as the general courts do.

In Turkey the core of the judiciary is the "basic court". In every administrative district there is only one basic court which may have many chambers, civil and criminal. In each chamber, as a rule, sits only one judge. At the lower level there are justice of the peace courts. One or several chambers of the basic court may be formed as "heavy penalty court" which tries the defendants charged with the severely punished crimes, that is, by capital punishment or heavy imprisonment or more than ten years of imprisonment. In heavy penalty courts sit three judges, one of them is the president of the court.

Justice of the peace courts try the defendants charged with misdemeanors listed in a separate statute. All offenses which fall outside of the jurisdiction of heavy penalty and justice of peace courts are in the jurisdiction of the basic court.

To each basic court is connected an office of public prosecution and also an investigating judgeship.

We have two phases of proceedings up to the judgment. First phase is the pre-trial investigation which may be in two stages. The second phase is the trial.

In the pre-trial phase, as a rule, the public prosecutor has the monopoly to prepare the prosecution and set forth the criminal action. Whenever there is enough evidence to raise the suspicion of a criminal act the public prosecutor is under the obligation to open an investigation. The investigation made by the public prosecutor is called preparatory investigation. This is the first stage of the pre-trial investigation. If the public prosecutor is convinced that there is enough evidence to open the criminal action, he may choose one of the two ways, either he files a petition with the investigating judge to secure further investigation which is not permissible for the offenses falling in the jurisdiction of courts of

justice of the peace, or he files an accusation with the competent court to make start the trial. In either case it is deemed that the public or penal action is opened.

If the public prosecutor takes the case to the investigating judge instead of the court, then the investigating judge makes a preliminary investigation. After this preliminary investigation the case may go to the court to be tried or may be dismissed by the investigating judge.

In preparatory investigation, the public prosecutor may obtain necessary warrants for arrest or search and seizure from justice of the peace.

Being private, written and sporadic, that is, not following a definite order are the main characteristics of the pre-trial phase. The role of the defense counsel in this phase is rather very limited.

For some lighter offenses which are listed in the article 344 of the Code of Criminal Procedure, the injured persons may open a penal action by filing an accusation with the court and act as prosecutor. In such cases the persons injured by the offense may demand to be indemnified for their loss and damage because of the crime.

If the accusation is initiated by the public prosecutor, the persons injured by the offense may participate in the prosecution with claims of punishment of the defendant and indemnification of their loss and damage.

When the case is brought to the court the second phase of the proceedings, that is, trial, begins. By translation literally of the term used in the Code, the final investigation, ends up with the judgment. The final investigation comprises the stages of preparation of the trial, trial and rendering the judgment.

The main characteristics of the trial are, being public, oral and immediate. The acts in the final investigation, as opposed to the pre-trial investigation, should follow a pre-determined order.

In the final investigation defense counsel performs his role fully.

Beside this complete scheme of proceeding there are other short-cuts to reach the judgment. The most important of these is

the penal decree of justice of the peace. In this procedure, the final investigation is skipped and after the accusation by the public prosecutor the justice of the peace without hearing the defendant issues a penal decree which shows the amount of the punishment. If the defendant does not object to this decree within eight days the penal decree becomes a final penal sentence. In case of objection the trial takes place and the justice of the peace, regardless of the decree previously issued, gives a new sentence. The justice of the peace may convict a defendant by penal decree only for those punishments: 1) fine, 2) up to three months of light imprisonment, 3) interdiction of the practice of a certain profession or trade, 4) confiscation.

As for the remedies of law we have ordinarily two kinds: appeal and exception. Appeal is for the judgments of courts. The appellate court, more specifically, one of the criminal chambers of the court of appeals, decides on the legal errors, in other words, whether a rule of law is not applied or applied wrongly in the appealed judgment. If the court of first instance has made a legal error the court of appeals reverses the judgment. The court of first instance has the authority to insist on the correctness of its reversed judgment. In that case, if the decision of insistence is brought up before the appellate court, this time the general board of criminal chambers decides on the merit of the case. The court of first instance is obliged to comply with the decision of the general board.

Not every judgment is appealable. There are some exceptions listed in the Code which are the judgments concerning rather light penalties. On the contrary, there are some judgments which are automatically appealed, that is, without demand of the parties. These judgments are the ones which imply capital punishment or not less than fifteen years of imprisonment.

Exception is against the decisions of the judges, not those of the court. In the exception, the decision is being inspected from the standpoint of law and fact. If the decision is found incorrect, it is not reversed but replaced with the assumingly correct one.

There are other extra-ordinary remedies of law. These are against the final decisions of either courts or judges. We can

name them as follows: 1) Renewal of the trial, 2) Reversal of the decisions or judgments by the court of appeals on demand of the Chief Public Prosecutor's Office through the written order of the Ministry of Justice, 3) Upon the request of the Chief Public Prosecutor, amendment of the decision of the Court of Appeals by the same criminal chamber or General Board of Criminal Chambers that has given the decisions subjected to amendment, 4) Reversal of the decision of the criminal chamber of the Court of Appeals by the General Board of Criminal Chambers on the objection of the Chief Public Prosecutor.

The execution of the punishment is carried out by the public prosecutor office. In this matter, the Code of Criminal Procedure contains some provisions, the Penal Code also regulates some aspects of the execution of the punishment, but the most elaborate rules are in the "Act on the Execution of Punishments" which is issued in 1965 with number 647 and amended several times since then.

An act on juvenile courts is issued in 1979. According to this statute which will be in force after two years of its publication, juvenile courts are to be established in five years throughout the country. That means that for the time being, practically we have no juvenile courts.

II. THE WAY OF APPLICATION OF THE CODE OF CRIMINAL PROCEDURE

From the panoramic view of the Turkish criminal procedure we can have the impression that it is in accordance with the contemporary concepts of the continental criminal procedure. That means that it has been established a fair balance between the interest of the society and the safeguards of the individual. The Turkish Code of Criminal Procedure also implies that, a criminal case should be prepared by the public prosecutor office with the aid of police department, and some times if it is necessary by the complexity of the case, with the further investigation by the investigating judge; this preparation phase may take time, but

the rights of the defendant are secured by the judicial interventions. On the contrary, the phase of trial should be as brief as possible and continuous, at the same time oral and public. So that it has been intended to secure a judgment on fresh impressions originated from immediate observations of the evidence and keep the defendant from unduly prolonged exposure and stress.

In order to provide this kind of procedure, the case should be prepared properly and completely, so that in trial the only task to be carried out should be to elaborate on the presented evidence. One can easily assume that to fulfil these prerequisites necessitates adequate trained personnel and equipment. Otherwise, the task could not be done properly. If you do not prepare the case thoroughly before the trial, you will be obliged to complete it either in the preparation of the trial or in the trial itself.

In the days of the adoption of the Code of Criminal Procedure, the Turkish society was ill-equipped to apply it properly and still it is not able to provide adequate means for this purpose. That is the unpleasant reality. When poorly prepared cases come before the courts, they try to complete them in the trial phase. So, trials sometimes take years. To solve this problem, instead of equipping the police and rest of the administration of criminal justice which is not easy, even maybe impossible, governments have chosen the easy way, maybe seemingly feasible way, that is, to modify the code. But modifying the code did not help any.

The arrest of the suspect has been used for purposes other than the procedural aims. It has been used in lieu of punishment, to prevent vengeance, sometimes even secure a marriage. One cannot blame easily the judges who issue warrants of arrest for extra-legal purposes. Years ago, I have visited a former classmate of mine, then a justice of the peace. He was interrogating a suspect of rape on the request of the public prosecutor, to decide upon whether to arrest him. At the end, he has decided to arrest him. Afterwards, I told my friend the judge, that I could not see the point in arresting the suspect, there were no legal ground for arrest. His retort was like this: "You theorists cannot understand and appreciate the exigences of real life, you may be right legally, but if I'd let him go free, the family of the victim would kill him, by

arresting him I have urged his family to make arrangements for an immediate marriage, so I have acted not as a judge but as a match-maker. I prefer a match-maker's role to that of the arresting judge."

In my opinion, there is always a discernible distinction between the law in the text and the law in practice which is the real one. Regardless of the origine of a code, it takes the shape of the society where it is applied. So I believe that one cannot say that the Turkish Code of Criminal Procedure has the same indentity of the German Code of Criminal Procedure of 1877.

III. RECENT SOCIAL AND POLITICAL UNREST IN TURKEY

After the revolution of 27.5.1960 Turkey has had a new constitution in 1961. According to this constitution the regime of Turkish State was a parliamentary democracy. We have had every institution which existed in western democracies, a parliament with two houses, a constitutional court, independent courts, self-administered universities, trade-unions, freedom of the press etc. All the social and political activities which seem to be going on in western democracies for long decades, for some cases even for centuries, have flourished all of a sudden and perhaps gone too far for the existing social and economical conditions. Internal and external speculations on the detriment of the integrity of Turkey became apparent. The revolt of youth which began in 1968 almost everywhere in the world caught Turkey in a position ready to ignite.

Student movements have begun with some seemingly innocent claims, such as less crowded classrooms, cheaper books and the like. After a short while the slogans got a political hue and the movement has been polarized in left and right.

All sorts of legal and illegal youth organizations became active in demonstrations. Every such organization and its militants were acting in the belief that it was their sacred duty to change the political system of the country and save the people from American imperialism, from capitalism, from fascism, from atheism,

from Russian imperialism, from communism and what not. The youth activities did not stay at the stage of demonstrations, they went on to reach kidnapping, killing, bombing and robbing. In spite of the martial law which was declared in various parts of the country the government was helpless in restoring law and order. In 12 March, 1971 the members of the government were forced to resign by the armed forces and under the surveillance of the armed forces has been formed a new civilian government and the constitution has been modified.

Terrorist have been caught and tried by courts of martial law and punished. Only two or three of them have been hanged. The law and order has been restored. But it did not last very long.

After parliamentary elections a new government has been formed. In the same year that is 1974, the government had to be involved in a military operation in Cyprus. In 1975 we began to return to the same situation of 1970 with a difference that this time it was more violent. Violence was escalating day by day, towards 1980 it reached the "twenty death per day" scale. The country was at the brink of a civil war. Universities were virtually under the occupation of militant forces of different wings. Mayhem and murder in the university buildings were daily events. Not only students, university professors too were among the victims of violence. Quite a few of them have lost their lives this way. My colleague Prof. Ümit Doğanay who has completed his doctoral studies with Prof. Jescheck here in Freiburg in the mid of fifties has been shot death in his car in front of his house when he was about to drive to the university in the morning.

Life throughout the country, in urban and rural areas, was unbearable. People were, at every moment, face to face with death. The governments could not cope with this tragic situation. At any time a civil war could break out. At last, on 12 September of 1980 the armed forces intervened again. This time they did not only oust the government as in 1971, but at the same time dissolved the parliament also. The new military administration with relentless operations has curbed the terrorist activities in a great scale. The normal daily life has come back.

Thousands of suspects of terrorism are being tried in courts of martial law. Along with these terrorist activities ordinary crime rate also went up.

IV. NEED FOR AMENDMENT OF CERTAIN PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE

Need for amendments was deriving from various situations. First of all, as mentioned before, the Constitution of 1961, was modified in 1971 and thereafter. With these modifications the rights of the detainee were restricted. Accordingly, the Code of Criminal Procedure should have been adjusted to the new constitutional rules. Of course, the most urgent and basic reason was to alleviate the burden both on courts and correctional institutions. In fact, dockets of the courts were overflowed with cases and the prisons were so overcrowded that because of the lack of space even to provide enough air to breathe for inmates was not easy. Amendments should aim two goals: curtail the procedure to obtain the judgment in shortest possible time and prevent as much as possible the influx into prisons.

V. MODIFICATIONS IN THE CODE ALONG THE LINE OF NECESSITIES

The first step towards these goals has been taken in 1973. With an act numbered 1696, the Code of Criminal Procedure is adjusted to the new constitutional rules which will be explained a little later and modified in order to provide some possibilities for judges to render judgments in a short period of time. Besides, to suspects and defendants are opened some new ways to prevent, for a number of petty offenses, opening of criminal action against them by paying the amount of fine prescribed for those offenses. These modifications have been furthered in 1979 and 1981. In the next paragraph we are going to try to present the technical aspects of these modifications.

VI. OUTLINES OF THESE MODIFICATIONS

Because of the limitation of time and unnecessary for the scope of this lecture, we are not going to touch upon everyone and every detail of the mentioned modifications. On the contrary, we shall take the fundamental or meaningful points and try to show their evolution in the process of adjustment to the newly emerged conditions. In this way, I believe, the listener will get an idea about the trend of the development of Turkish criminal procedure.

1. Prolongation of detention. According to the article 30 of the Constitution of 1961, detention of a suspect, in other words, apprehension without a warrant of judge, is possible only for the flagrant offenses and/or in cases where the delay would be detrimental. The detained person must be brought to the nearest court at last in twenty four hours in addition to the time necessary for transportation.

Before the amendment of 1973 by the act of No. 1696, the article 128 of the Code of Criminal Procedure was regulating the duration of detention by saying that "If the detainee is not released immediately he must be brought before a justice of the peace without unjust or unnecessary delay. He is to be examined by the justice of the peace no later than the next day".

The provisions about the matter in the Constitution and the Code of Criminal Procedure were not identical, but not too far apart.

In 1971 by the act of No. 1488 the Constitution is modified. After this modification the provision in the article 30, concerning our subject has read as follows: "The detained person must be brought to the nearest court at last in forty eight hours in addition to the time necessary for transportation. In cases where the offense is committed by several person in the way described by law this limitation of time extends to seven days".

Among the modifications made by the act of No. 1696 in 1973, in the Code of Criminal Procedure, there is one which adjusts the duration of detention to the new rule of the Constitution. By

this modification the rule of the Code of Criminal Procedure about the duration of detention has become like this: "If the detainee is not released immediately he must be brought to the nearest justice of the peace without unjust or unnecessary delay at last in forty eight hours in addition to the time necessary for transportation. If this provision can not be applied in crimes committed by three or more persons in participation, on account of the number of suspects or the special situation of suspects or evidence or the quality of crime, the detainee must be brought to the justice of the peace at the end of the inquiry but not later than seven days. However, police may not hold the suspect under custody more than forty eight hours without a written order of the public prosecutor. This written order may be issued by the justice of the peace or the investigating judge in cases where the delay is detrimental".

By this amendment accordance between the Constitution and the Code of Criminal Procedure has been established. But the need for prolongation of detention had not been ceased. Seven days of police custody without a warrant of arrest did not meet the needed time for police investigation in cases where there are tens of suspects. After ten days of the amendment of the Code of Criminal Procedure in 1973, the Constitution is amended again by the act of No. 1699. With this amendment of the Constitution the maximum duration of detention has been extended to fifteen days.

In 1981, by the act of No. 2369 the Code of Criminal Procedure has been modified and the maximum duration of detention in accordance with the Constitution is extended to fifteen days.

The same rules apply to the persons for whom a warrant of arrest is issued in their absence until they are brought before the court.

After the military intervention of 12 September 1980, police operations resulting in cases with hundreds of suspects have called for more time than fifteen days to interrogate the suspects and prepare the file to submit to judge and obtain a warrant of arrest from him. This time with an act of No. 2337, in 1980, the maxi-

imum duration of detention for cases which are within the jurisdiction of martial law courts, has been limited by ninety days, but very recently this time limit has been reduced to forty five days by another act.

2. Bringing witnesses by police force. Before the amendment of 1973, courts and investigating judges had the authority to issue a writ to the police to bring the witnesses by force under the conditions that a) the accused person should be under arrest, b) delaying would cause some harms and c) the witness should be outside the area of the court's jurisdiction. Otherwise witnesses should be called by summons (article 45).

In order to speed the proceedings up, by the 1973 amendment courts and investigating judges have been authorized to order the police to bring the witnesses by force with the only condition that the accused should be under arrest. The other conditions are put aside.

To bring the witnesses by police force in every case where the accused is under arrest was not a fair deal for the witness, in this way, the witness was becoming somewhat a defendant. Bringing the witness by police force should be justified with enough reasons. In order to correct this situation, in 1981 by the act of No. 2369 the article is amended to the effect that to bring the witness by police force, in addition to the condition of arrest of the accused, the case must be urgent and the reasons and facts as justification must be included in the writ.

3. Skipping of the preliminary investigation. Before the amendment of 1973, in cases falling into the jurisdiction of heavy penalty courts, as a rule, the preliminary investigation by investigating judge was obligatory. Again, in order to curtail the proceedings as much as possible, by the act of No. 1696, in these cases also the public prosecutors have been empowered with the authority of discretion in going directly to the court or to the investigating judge.

4. Enlargement of the possibility of trial in the absence of the accused. The rule is that the trial must proceed in the presence of the accused. But there are some situations where to apply

strictly this rule is not necessary. For instance, if the accused does not want to attend the trial and to reach a sound judgment his presence does not make any difference, there would not be any point in insisting on his presence at the trial. In the Code of Criminal Procedure the rules about this matter were put in this way of thinking. Previous to the amendment of 1973, the accused could be excused from attending the trial upon his request, provided that the offense of the subject of trial should not be one of heavy penalty and the accused should already has been interrogated by a judge.

In face of the fact that the increasing mobility of suspects and their involvement in various crimes in various parts of the country, to apply the rule of presence of the accused in trial has constituted a very serious obstacle in rendering judgments. So, with the amendment of 1973, the restrictions concerning this rule have been loosened. In heavy penalty cases also the accused is permitted not to attend the trial provided that he is questioned by the court or by another delegated court elsewhere.

Moreover, if the accused is under arrest or serving another punishment outside the area of jurisdiction of the court, the court may decide to delegate the court of the place where the accused is to interrogate him and not to call him to the trial even if he does not want to be excused of being present at the trial (article 226). This provision seems to us as a restriction of defense for the accused. Nevertheless, the lack of facilities of transportation and necessary fund justifies this rule in practice.

5. Restriction the scope of jurisdiction of heavy penalty courts. The jurisdiction of heavy penalty courts was covering the crimes punishable by capital punishment, heavy imprisonment and more than five years of imprisonment. To lessen the burden of these courts formed of three judges, article 421 of the Code of Criminal Procedure is modified in 1973 and the limit of imprisonment is raised to more than ten years. Thus, the time of three judges is economized by transferring the crimes punishable ten or less than ten years of imprisonment to the basic courts of one judge.

6. Enlargement of the scope of penal decree issued by the justice of the peace and acceleration of its procedure. Until the

amendment of 1973, according to the article 386 of the Code of Criminal Procedure, upon the request of the public prosecutor, the justice of the peace, without trial, might issue a penal decree for misdemeanors which rest within the jurisdiction of justice of the peace courts. Only the punishment of a light fine or light imprisonment up to three months and suspension of a certain profession or trade might be adjudicated by this penal decree. If the defendant does not accept this punishment and makes an objection within eight days, the justice of the peace opens trial and passes a new judgment regardless of the previous one.

With the 1973 amendment, the punishment of confiscation has been added to those existed ones, and the authority to issue a penal decree is extended from one of these punishment to several or all of them at once. In the case of objection, trial is opened only for the cases involving light imprisonment, for the rest of the kinds of punishment the objection is to be examined without hearing by the judge of the higher court.

In 1981, by the act of No. 2369 the afore-mentioned provisions are modified again. This time, the condition of kind of offense, that is, being misdemeanor, is abrogated and for felonies also to issue penal decree has been made possible. In addition to that the heavy fine is included in the punishments of penal decree.

7. Avoidance of the penal action by prepayment of the fine. In the article 119 of the Turkish Penal Code the prepayment of the light fine was regulated as a cause of dismissal of the penal action for misdemeanors. The above limit of the fine was set as 50 Turkish lira which meant next to nothing.

In 1973, the act amending the Code of Criminal Procedure has brought new provisions in this subject. According to these provisions, a person who is accused with an offense punishable only by fine is entitled to avoid the penal action by paying the amount of the lower limit of the fine in ten days. If not, the penal action will be open, and if the accused is to be punished the fine will be augmented by half. If the penal action was opened without notifying the accused of the right of prepayment, before his interrogation at the court the accused by paying the amount of lower limit of the fine together with the court expenses can set

aside the action. In this procedure, to avoid the penal action there is no limit for the fine.

The prepayment has been developed by the act of No. 2370 in 1981. This time, this act has regulated the subject in the article 119 of the Penal Code instead of the Code of Criminal Procedure. According to the latest provisions, avoidance of the penal action is possible not only for the offenses punishable by fine but also for misdemeanors punishable by light imprisonment not more than one month. The light imprisonment will be changed into fine according to the rules of the Act on the Execution of Punishments. The procedure almost is the same as in the previous act.

VII. REACTIONS OF THE JUDICIARY TO THESE MODIFICATIONS

The judiciary mostly has welcomed these modifications because of their relative effect of lessening the burden of proceedings. In some cases defense counsels are complaining of the rules which result in trials without the presence of the accused.

According to our personal observations, prepayment of the fine changed from the light imprisonment does not satisfy some judges. They do not believe in the effectiveness of the fine for some offenses, especially in high rate of inflation periods.

VIII. CONCLUSION

We have seen that under the pressure of multiplicity and meta-morphosis of the crime, the mechanism of criminal justice had to recourse to some new ways of solving the problems. These new ways may not seem always satisfactory. Especially if they are of the nature of threatening the human rights as in the case of prolongation of detention. But it is inevitable to experiment new ways in order to cope with the problems emerging from the rapid change of the society without endangering the delicate balance between the security of society and the freedom of individual. This experimentation seems to be going on, perhaps forever.