

*REPORT OF THE DISCUSSION ON "DÉFENSE SOCIALE NOUVELLE"*

The theoretical trend in civil law which is generally known under the term "defense sociale nouvelle" is attracting the increasing attention of lawyers not only in other countries, but in Poland as well. One manifestation of this growing interest was the discussion that took place in Warsaw on 28th April, 1965, on the principles and aims of that doctrine, which is so representative of Western doctrine, and West-European doctrine in particular. This discussion was arranged by the Polish Group of AIDP. Those invited to the meeting included both jurists and practising criminal lawyers. The chairman was Professor I. Andrejew (Warsaw University) who at the same time is Chairman of the Polish Group of the AIDP.

In his opening speech, Professor Andrejew said the main aim of the meeting was to explain the most important basic principles of the new trend, and also to find out what those present at the meeting thought about these principles. Professor Andrejew reminded his hearers that the advocates of "defense sociale nouvelle" made no secret of the fact that they made great use of the work done by the sociological school in civil law. Probably this is at least partly responsible for the markedly critical attitude of socialist doctrine towards a trend openly based on a school firmly dis-

approved of by the Marxists. Our legal publications (although this refers, it is true, to somewhat older ones), are likewise very critical. On the other hand, the supporters of the trend discussed here have somewhat changed their views of late, which may lead to a revision of former views.

In the discussion which took place after the opening speech by Professor Andrejew, nearly all the speakers pointed out the greater or lesser agreement between some of the "défense sociale nouvelle" trends, and trends occurring in Polish criminal law. This was brought out especially by Professor Lernell, Professor Cieślak, and Judge Kubec, who illustrated it by referring to the following points:

- a. the meaning of punishment—the supporters of the new trend do not think that punishment should be purely retaliatory in character;
- b. the basis of criminal responsibility, that is, the question of "free will"—the "defense sociale nouvelle" takes an intermediate position, accepting neither determinism nor indeterminism in their extreme forms;
- c. investigation of the offender's personality, owing to which the punishment may be fitted to the individual case, and, in addition, which facilitates the judge's decision of the case itself;
- d. short-term imprisonment—representatives of the "defense sociale nouvelle" are definitely against this;
- e. the role of the judge—there is a trend to emphasize the judge's role, both in the preparation of the case and in the actual proceedings;
- f. the criminal responsibility of juveniles and adolescents.

One of the debaters, Professor J. Sawicki, said he was decidedly opposed to the suggestion that there was any marked identity between the "defense sociale nouvelle" and Polish criminal law in certain matters. He thought that it was only possible to appraise a theory if one examined it as a whole, but not if one contented oneself with analysing the various solutions it proposed.

Professor Sawicki declared that the "defense sociale nouvelle" trend was based on "déjurisation" of the law. This could not fail to bring to mind a phrase which was used in Hitlerite times—"weakening the backbone of the criminal law." The aim of this was supposed to be, and in actual fact was, to infringe the rights of the individual. The same could be said of the proposed "déjurisation." The danger of infringing the rule of law becomes all the more clear when one realises that if one places the accent on the "protection of society," one thereby transfers the emphasis from the offence to the offender, for only the offender can constitute a danger to public order. Hence it is desirable that a dossier should be made for each offender, and that he should not be cut off too decidedly from safety measures that are non-remedial in character. The viewpoint taken by Ancel and his followers, who compromises with the neo-classicists on a number of points, cannot by any means undermine the above conclusions. Their viewpoint is overwhelmingly dictated by France's present political situation, and by the ancient liberal traditions in that country.

These considerations do not mean, stressed Professor Sawicki in conclusion, that discussion with the advocates of "defense sociale nouvelle" is ruled out.

The other speakers argued against the views expressed by Professor Sawicki. They pointed out that the postulate of "déjurisation" of the law does not at all mean a trend to weaken the law. Quite the contrary—here it is a question of enriching the criminal law with other social sciences. Then it was recalled that Ancel himself in his time had given explanations on the use of safety measures. In reply to a kind of "interpellation" by a representative of Poland, he had stressed that these measures can

be applied only by a body representing the court, and only in the case where an offender has committed a deed made illegal by a statute. Thus the objections made in this respect are not justified.

The discussion was summed up by Professor Andrejew, who said that two diametrically different viewpoints could be observed on the tendency under discussion. But apart from these differences, all the speakers had been in favour of making contact in one form or another with the aforesaid trend (documentation and the compiling of bibliographies, or personal contacts). Professor Andrejew then drew attention to the fundamental difference between the two starting-points: in the socialist countries, the law tries to combat crime by placing a definite emphasis on social change, whereas "defense sociale nouvelle" gives pride of place to reform of the individual offender. It is therefore, obviously a mistake to identify the tendencies represented by "defense sociale nouvelle" with the conceptions that occur in the socialist doctrine of criminal law. This is also understood by representatives of the "defense sociale nouvelle." Ancel himself opposed attempts of this kind made by J. Bellon.

In conclusion, the chairman said that although the propositions of "defense sociale nouvelle" were on many points similar to the conceptions of socialist jurisprudence, nevertheless many of the postulates put forward by the advocates of "defense sociale nouvelle" were open to doubt. But this of course was no drawback at all to the establishment of contacts with the representatives of that trend.

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