

Editorial

Pope Francis and European Criminal Policy – on 23th October, 2014, H. H. Pope Francis – who not many weeks before had sent a message to the World Congress of the International Association of Penal Law in Rio de Janeiro – has received in a private audience in the Hall of Popes in Vatican City of delegation of the Great World Associations on Criminal Justice. This delegation was composed by delegates of the International Association of Penal Law (IAPL/AIDP, founded in 1924) – including a representation of its Young Penalists Committee –, of the International Society of Criminology (ISC/SIC, founded in 1938), of the International Society of Social Defence (ISSD/SIDS, founded in 1947), of the International Penal and Penitentiary Foundation (FIPP/IPPF, founded in 1951), of the World Society of Victimology (WSV, founded in 1979) and of the Latin American Association of Criminal Law and Criminology (founded in 2011).

The speech of the Pope was of historical importance. On the basis of the “*primatus principii pro homine*”, he has firmly condemned the death penalty and life imprisonment – “A life sentence is just a death penalty in disguise” – as well as the abuse of pre-trial detention, the torture and other “cruel, inhuman and degrading punishments”. “The deplorable conditions of detention which are observed in various parts of the planet, are often genuinely inhuman and degrading deficiencies, often the result of the penal system, at other times due to the lack of infrastructure and of planning, while in more than a few cases they represent the arbitrary and unscrupulous exercise of power over people deprived of freedom”.

Pope Francis has also addressed some words to those who make the law and to those who work with it in the whole world, and not only in our continent; He has taken some standpoints mainly on the basis of the past and very recent experience of Latin America’s reality, such as the dramatic phenomenon of the “so-called extra-judicial or extra-legal executions”, that “are performed in a systematic way not only by States in the international community, but also by entities not recognized as such”. The Pope underlined that “although among the 60 countries that sanction the death penalty, 35 have not applied it in the last 10 years, the death penalty is applied illegally and in varying degrees throughout the planet”.

But the words of the Pope could also have an extraordinary impact in Europe if put into practice by the national Parliaments and even by the European legislator as well through European criminal policy. The death penalty has luckily completely disappeared in the countries of the EU and of the Council of Europe and it is expressly rejected in the European Convention on Human Rights and in the Charta of Fundamental Rights of the EU, as well as in a lot of national Constitutions of the EU-Member States. But on the other hand, life imprisonment still exists in many Member States of the EU. Pope Francis has also stigmatized the tendency of Parliaments nowadays – unfortunately widespread also in our European countries – towards “penal populism” and the “tendency to deliberately create

enemies [...]. The mechanisms that form these images are the same as those that allowed the spread of racist ideas in their time”, said the Pope.

Criminal policy – according to Pope Francis – must be inspired by “the guiding principle of *cautela in poenam*”: “There is a risk of failing to preserve even the proportionality of punishment, which historically reflects the scale of values protected by the State. There has been an abatement of the *ultima ratio* concept of criminal law as the last resort to punishment, limited to the most serious cases against the individual and collective interests most worthy of protection. The debate over replacing prison with alternative punitive sanctions has also abated. In this context, the mission of the jurists cannot be other than that of limiting and containing these tendencies” (in Europe and all over the world).

But the speech of the Pope also warns against “certain forms of criminality, perpetrated by private citizens, [which] gravely harm human dignity and the common good. Many of these forms of criminality could never be committed without the complicity, active or passive, of public authorities”. First of all the Pope condemns enslaving people and human trafficking, recognized as crimes against humanity both by international law and by many national laws. The Pope also highlighted corruption as another of the worst crimes that threatens our societies. “The scandalous concentration of global wealth is made possible by the connivance of public leaders with the powers that be. Corruption is in and of itself a death process: when a life is ended, there is corruption. [...] Corruption has become natural, to the point of becoming a personal and social statement tied to customs, common practice in commercial and financial transactions, in public contracting, in every negotiation that involves agents of the State. [...] Criminal punishment is selective. It is like a net that catches only the little fish, while it leaves the big fish free in the ocean. The forms of corruption that most need to be addressed are those which cause severe social harm – such as, for example, serious fraud against the public administration or dishonest administrative practices – shown by any type of obstruction of justice intended to gain impunity for one’s own misdeeds or for those of third parties”.

In conclusion, affirms Pope Francis, “in the application of punishment, caution must be the underlying principle of criminal law systems, and the full operative force of the *pro homine* principle must guarantee that States are not allowed, juridically or in fact, to subordinate respect for the dignity of the human person to any other purpose, even should it serve some sort of social utility. Respect for human dignity must serve not only to limit arbitrariness and the excesses of the agents of the State, but acts as a guiding criterion for the prosecution and punishment of those actions which represent the most serious attacks against the dignity and integrity of the human person”. Let us hope that such a conclusion may be assumed as a guideline for a European criminal policy in the coming years.

The Editors