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Audience with participants in the 20th World Congress of the International Association of Penal Law

This morning in the Vatican Apostolic Palace the Holy Father Francis received in audience the participants in the 20th World Congress of the International Association of Penal Law, taking place in Rome from 13 to 16 November 2019 on the theme: "Criminal Justice and Corporate Business".

The following is the Holy Father's address to the participants:

Address of the Holy Father

Distinguished ladies and gentlemen,

First of all I want to apologize for the delay. I am sorry, it was a scheduling error, two major appointments together. What happened was the opposite of what happened in the Book of Joshua_ there, the sun went backwards; here the clock, the sun, went ahead. Excuse me, and thank you for your patience.

I greet you cordially and, as in our previous meeting, I express my gratitude for your service to society and for your contribution to the development of justice respecting the dignity and rights of human beings. I would like to share with you some reflections on issues that also concern the Church in her mission of evangelization and service to justice and peace. I thank Professor Paola Severino for her words.

On the current state of criminal law

For several decades now, criminal law has incorporated – mainly from contributions from other disciplines – different areas of knowledge about certain problems related to the exercise of the sanctioning function. I referred to some of them in the previous meeting[1].

However, despite this epistemological openness, criminal law has not been able to protect itself from the threats that, in our day, impinge on democracies and the full force of the rule of law. On the other hand, criminal law often neglects the data relating to reality and in this way assumes the physiognomy of merely speculative knowledge.

Let us look at two important aspects of the current context.

1. *The idolatry of the market.* The fragile, vulnerable person finds himself “defenceless before the interests of a deified market, which become the only rule” (*Evangelii gaudium*, 56; see *Laudato si'*, 56). Today, some economic sectors exercise more power than the States themselves (cf. *Laudato si'*, 196): a reality that is even more evident in times of globalization of speculative capital. The principle of profit maximization, isolated from all other considerations, leads to a model of exclusion – automatic, no? – that violently inflicts on those who suffer its social and economic costs in the present, while condemning future generations to pay for its environmental costs.

The first thing jurists should ask themselves today is what they can do with their own knowledge to counter this phenomenon, which puts democratic institutions and the very development of humanity at risk. In real terms, the present challenge for every criminal lawyer is to contain punitive irrationality, which manifests itself, among other things, in mass imprisonment, crowding and torture in prisons, arbitrariness and abuse of the security forces, expansion of the scope of the penalty, the criminalisation of social protest, the abuse of preventive imprisonment and the repudiation of the most basic criminal and procedural guarantees.

2. *The risks of criminal idealism.* One of the major challenges of criminal science today is to overcome the idealistic vision that equates “should be” with reality. The imposition of a sanction cannot be morally justified by the alleged ability to strengthen confidence in the normative system and in the expectation that each individual will assume a role in society and behave according to what is expected of him.

Criminal law, also in its normativist currents, cannot be separated from the elementary data of reality, such as those which manifest the real functionality of the sanction. Every reduction of this reality, far from being a technical virtue, contributes to hiding the most authoritarian features of the exercise of power.

The social damage of economic crimes

One of the frequent omissions of criminal law, a consequence of selectivity in sanctioning, is the scarce attention – or lack therefore – to crimes committed by the most powerful, in particular the macro-delinquency of corporations. I am not exaggerating with these words. I appreciate that your Congress has taken this issue into consideration.

Global financial capital is the source of serious crimes not only against property but also against people and the environment. It is organized crime that is responsible, among other things, for the over-indebtedness of states and the plundering of the natural resources of our planet.

Criminal law must not remain unconnected with conduct in which, by taking advantage of asymmetrical situations, a dominant position is exploited to the detriment of collective welfare. This is the case, for example, when the prices of public debt securities are artificially reduced through speculation, without worrying that this will affect or aggravate the economic situation of entire nations (see *Oeconomicae et pecuniariae quaestiones. Considerations for an ethical discernment regarding some aspects of the current economic-financial system*, 17).

These are crimes that have the seriousness of crimes against humanity, when they lead to hunger, misery, forced migration and death from avoidable diseases, environmental disaster and ethnocide of indigenous peoples.

Protection of the environment by criminal law

It is true that the criminal response comes when the crime has been committed, that it does not repair damage or prevent repetition, and that it rarely has dissuasive effects. It is also true that, because of its structural selectivity, the sanctioning function usually affects the most vulnerable sectors. I am also aware that there is a punitivist current that claims to resolve the most varied social problems through the penal system.

Instead, an elementary sense of justice would require that certain conduct, for which corporations are usually responsible, does not go unpunished. In particular, all those that can be considered as “ecocide”: the massive contamination of air, land and water resources, the large-scale destruction of flora and fauna, and any action capable of producing an ecological disaster or destroying an ecosystem. We must introduce – we are thinking about it – in the Catechism of the Catholic Church the sin against ecology, the ecological sin against the common home, because it is a duty.

In this sense, recently, the Synod Fathers for the Pan-Amazon Region proposed to define ecological sin as action or omission against God, against one’s neighbour, the community and the environment. It is a sin against future generations and is manifested in acts and habits of pollution and destruction of the harmony of the environment, in transgressions against the principles of interdependence and in the breaking of networks of solidarity between creatures (cf. *Catechism of the Catholic Church*, 340-344)[2].

As has been pointed out in your work, “ecocide” is to be understood as the loss, damage or destruction of the ecosystems of a given territory, so that its utilization by inhabitants has been or can be seen as severely compromised. This is a fifth category of crimes against peace, which should be recognised as such by the international community.

On this occasion, and through you, I would like to appeal to all the leaders and actors in this area to contribute their efforts to ensuring adequate legal protection for our common home.

On some abuses of the power to sanction

To conclude this part, I would like to refer to some of the problems that have worsened in the years since our previous meeting.

1. *Misuse of pre-trial detention.* I was concerned about the arbitrary use of pre-trial detention. Unfortunately, the situation has worsened in several countries and regions, where the number of unconvicted prisoners already far exceeds 50% of the prison population. This phenomenon contributes to the deterioration of detention conditions and is the cause of the illicit use of police and military forces for these purposes[3]. Preventive detention, when imposed without exceptional circumstances or for an excessive period of time, violates the principle that every defendant must be treated as innocent until a final sentence establishes his guilt.

2. *The involuntary incentive to violence.* Reforms of the institution of legitimate defence have been implemented in several countries and this has been claimed to justify crimes committed by agents of the security forces as legitimate forms of the fulfilment of duty[4]. It is important for the legal community to defend traditional criteria to prevent punitive demagoguery from degenerating into incentives to violence or a disproportionate use of force. They are inadmissible conduct in the rule of law and, in general, accompany racist prejudices and contempt for marginalized social groups.

3. *The culture of rejection and hatred.* The throwaway culture, combined with other psycho-social phenomena widespread in welfare societies, is showing a serious tendency to degenerate into a culture of hatred. There are unfortunately not isolated episodes, certainly in need of a complex analysis, in which the social hardships of both young people and adults find their way. It is no coincidence that sometimes emblems and actions typical of Nazism reappear. I confess to you that when I hear some speeches, some head of the order or of the government, Hitler’s speeches in 1934 or 1936. Today. They are actions typical [of Nazism] which, with its persecution of Jews, gypsies, people of homosexual orientation, is the quintessential negative model of the culture of rejection and hatred. This is what was done in that time and today these things are being reborn. It is necessary to be vigilant, both in the civil and ecclesial spheres, in order to avoid any possible compromise which

is assumed to be involuntary – with these degenerations.

4. *Lawfare*. It periodically emerges that false accusations are made against political leaders, made jointly by the media, opponents and colonized judicial bodies[5]. In this way, with the instruments of *lawfare*, the ever necessary fight against corruption is exploited in order to combat unwelcome governments, reduce social rights[6] and promote a sense of anti-politics which benefits those who aspire to exercise authoritarian power.

And at the same time, it is curious that the use of tax havens, a device that serves to hide all sorts of crimes, is not perceived as a fact of corruption and organized crime[7]. Similarly, widespread phenomena of appropriation of public funds go unnoticed or are minimized as if they were mere conflicts of interest. I invite everyone to reflect on this.

Call for Responsibility

I would like to extend an invitation to all of you who are experts in criminal law and who, in your various roles, are called upon to perform functions relating to the application of criminal law. Bearing in mind that the fundamental aim of criminal law is to protect the most important legal assets for the community, every task and every role in this area always has a public resonance, an impact on the community. This requires and implies at the same time a more serious responsibility for the operator of justice, at whatever level he is, from the judge, to the clerk of the court, to the agent of the public forces.

Every person called upon to perform a task in this area must constantly bear in mind, on the one hand, respect for the law, the provisions of which must be observed with care and a duty of conscience appropriate to the seriousness of the consequences. On the other hand, it must be remembered that the law alone can never achieve the aims of the penal function; it must also be applied for the effective benefit of the persons concerned. This adaptation of the law to the concrete situation of cases and persons is an exercise that is as essential as it is difficult. In order for the criminal judicial function not to become a cynical and impersonal mechanism, we need people who are balanced and prepared, but above all passionate – passionate – about justice, aware of the serious duty and the great responsibility they bear. Only in this way will the law – all law, not only criminal law – not be an end in itself, but at the service of the persons involved, whether they be the perpetrators of the crimes or those who have been offended. At the same time, by acting as an instrument of substantive justice and not just formal justice, criminal law will be able to perform the task of real and effective protection of the essential legal goods of the community.

And we must head, certainly, *towards restorative criminal justice*

In every crime there is an injured party and there are two damaged links: that of the person responsible for the crime with his victim, and that of the perpetrator with society. I have pointed out that there is an asymmetry between punishment and crime[8] and that one evil does not justify the imposition of another evil as a response. It is a question of bringing justice to the victim, not of executing the aggressor.

In the Christian view of the world, the model of justice finds perfect incarnation in the life of Jesus, who, after having been treated with contempt and even violence that led to His death, in the final instance, in His resurrection, brings a message of peace, forgiveness and reconciliation. These are values that are difficult to achieve but necessary for the good life of all. And I return to Professor Severino's words on prisons: prisons must always have a window, that is, a horizon. Looking towards reintegration and one must, in this sense, think deeply about the way of managing a prison, the way of sowing the hope of reintegration and thinking if the penalty is capable of leading this person ... and also the accompaniment of this. And seriously rethinking the life sentence.

Our societies are called to advance towards a model of justice based on dialogue, on encounter, so that wherever possible, the bonds damaged by the crime may be restored and the damage repaired. I do not think it is a utopia, but it is certainly a great challenge. A challenge that we must all face if we are to deal with the problems of our civil coexistence in a rational, peaceful and democratic manner.

Dear friends, I thank you for three things: for your dual patience in waiting an hour and the other patience of listening to this long address, and again for this meeting. Thank you. And I assure you that I will continue to be close to you in this arduous work at the service of man in the field of justice. There is no doubt that, for those of you who are called to live the Christian vocation of your own Baptism, this is a privileged field of evangelical inspiration of the world. All of you, even those among you who are not Christians, need the help of God, the source of all reason and justice. I invoke for each of you, through the intercession of the Virgin Mother, the light and power of the Holy Spirit. I bless you from the heart and, please, I ask you to pray for me. Thank you.

[1] Cfr *Address to the delegation of the International Association of Penal Law*, 23 October 2014.

[2] Cfr *Final Document of the Synod of Bishops for the Pan-Amazon Region: New Paths for the Church and for Integral Ecology*, 26 October 2019, 82.

[3] Cfr *Address to the delegation of the International Association of Penal Law*, 23 October 2014.

[4] Cfr *Address of the Holy Father Francis to the Delegation of the International Commission against the Death Penalty*, 17 December 2018.

[5] Cfr *Homily*, 17 May 2018. *L'Osservatore Romano* (17 May 2018).

[6] Cfr *Address to the Summit of Pan-American Leaders on Social Rights and Franciscan Doctrine*, 4 June 2019.

[7] *Oeconomicae et pecuniariae quaestiones. Considerations for an ethical discernment regarding some aspects of the current economic and financial system*, 30.

[8] Cfr *Letter to participants in the 19th International Congress of the International Association of Penal Law and the Third Congress of the Latin American Association for Penal Law and Criminology*, 30 May 2014.
