B. Huber

Developments of Criminal Law in Europe: an Overview

I. Introductory Remarks

The following survey is based upon the regular surveys on *Developments in Criminal Law in Europe* (carried through by the penal law research group at the Max Planck Institute for Foreign and International Criminal Law in Freiburg/Fr). It covers 21 national reports on legislation, reform projects, court cases and literature in the field of substantive criminal law, subsidiary criminal law, criminal procedure, prison law, human rights and international law of most of the eastern and western European states. At a time when knowledge of and information on criminal laws in the EC countries began to become an ever greater necessity, the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany has embarked on this regular publication in order to facilitate the search for information in the criminal law field. The first collection of reports was published in 1985, covering developments up to 1984, the second compilation appeared in 1988 describing events between 1984 to 1986, and a third review of developments was presented in 1990 dealing with the period of 1986 to 1988. A fourth survey is on the way.

This overview is meant to be used in connection with the main work. The references indicate the author(s) of the national reports and the pages where a more detailed description of the event as well as bibliographical data of the sources (legislation, reform reports/materials, court cases, and literature) can be found.

In view of the volume of materials being produced by legislators, courts, reform organs and academic writers in Europe it seems sensible to draw the reader's attention to the most important events in the criminal law development during the period under review and to guide his/her interest towards some reform trends, common to several of the countries. It is generally the material contained in the individual reports, which forms the basis of the following exposition. Facts which stem from additional sources or sources which have emerged at a later date, are occasionally referred to. The selection of key topics which has been concentrated upon in this text is understandably subjective, even if this choice is influenced – alongside comparability – by the importance which reporters place upon the results in their own country. The observations made here do not pursue the intention of presenting a legally comparative analysis or indeed drawing comprehensive conclusions with regard to crime.

1. Dr. B. Huber is Senior Research Fellow, Max Planck Institut für Ausländisches und Internationales Strafrecht, Freiburg i. Breisgau, Germany. See A. Eser and B. Huber, eds., *Strafrechtsentwicklung in Europa 3* (Freiburg 1990).
policy. The time scale of two or at most three years recorded in the national reports does not provide sufficient basis for such an ambitious undertaking. Nevertheless, legally comparative evaluations can be achieved in specific cases.

II. General Situation with Regard to Criminal Policy

The most important penal changes in recent times have without a doubt taken place in Eastern Europe, where the systems which previously prevailed and also the legal regimes have been changed if not completely replaced as a result of political events. These changes admittedly occurred at a time when work on the national reports presented in this text had already made substantial progress and in fact had to some extent already been concluded. The diverse changes still being in a state of flux, could therefore only be accommodated quite sporadically or in their early stages. More precise portrayal must be reserved for the next reports. It seems nevertheless to make sense to take stock of the situation in the interim period.

Signs of new departures can clearly be seen during the period under review in Poland and the Soviet Union where established repressive foundations have slowly been shattered and constitutional concepts have begun to gain ground. The draconian repressive criminal policy of the 1980s reached its peak in Poland for example between 1986 and 1988. The criminal law reform commission set up in 1987 was instructed to modernize criminal policy, to rationalize public prosecution and both to humanize and revise the fundamental principles of criminal law. These goals were to be achieved by means of comprehensive proposals relative to changes in the three largest areas of criminal justice, namely the Penal Code, the rules of criminal procedure and the law relating to imprisonment. Admittedly until now merely minor corrections to the substance of the criminal provisions have found expression in Criminal Law Amendment Acts and all comprehensive reform is still to come.

Changes to the entire criminal justice administration (substantive and procedural law and the law governing the judicial system and imprisonment) is planned in the USSR in order to remove the repression which until now has characterized Soviet law, to introduce institutional guarantees, and to enforce legal certainty. The principles upon which these reforms are to be built were published at the end of 1988 as official proposals for the basis of criminal law legislation for the USSR. The fact that a massive campaign against increasing criminality within the country must be led simultaneously, makes any movement towards reform difficult, in that the objective of creating a more humane criminal law may be difficult to reconcile with the population's needs for security. Even more apparent was the need for legal