The First Correctional Legislation and Codification Following the Regime Change in Hungary

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Abstract

It is almost a quarter of a century since the correctional legislation of 1993 came into effect. The importance of this regulation cannot be stressed enough since its focus was to facilitate Hungary's entry to the more up-to-date European norms. By analysing the social and legal circumstances of the era, the author presents the more important events of the codification, its provisions and long-term effects. The author concludes by stating that modern correctional philosophy has only had a brief impact on the legal evolution of the relevant fields.

Keywords: *Hungarian Prison Code; history; anniversary; reintegration; principle rules; experiences; European Prison Law.*

1. The Motivating Factors Behind the Modernization Efforts on the Brink of the Regime Change

The era following the regime change of 1989 saw an increased vividity both in social life and both in the field of sciences, and the restructuring of the public legal framework was beneficial for the legal sciences. The increasing popularity of the concept of having the national norms reshaped to more closely resemble European values was noticeable in the field of correctional law as well. One of the first warning signs became apparent during the first, euphoric days of the regime change, when acclaimed experts started to point out the importance of change. They argued that: „*…within the process of the renewal of Hungarian justice, jurisprudence has to undertake efforts to reveal the principal, theoretical and practical questions related to correctional law to the society*.[1] The reason behind urging the importance of the concept was that the role of correctional law within the framework formed by criminal proceedings law and the criminal code as a whole had increased by then, but despite this importance, the elaboration of this field was lagging behind the other branches. IT was a direct need that„*every aspect of rights and obligations pertaining to citizens of a given state and the alteration of these rights (including the ones that are altered due to incarceration) have to be regulated by law.*"[2]

In order to have this beneficial process started, a more scientific approach to correctional law coupled with a more extensive scope was required. The most significant study of the period in question was that of György Vókó, who took a stand beside the independent nature of correctional law and the inevitability of its development and advance as well. He determined that„*the principal characteristic of the legislation on corrections is to realize the tasks and goals of criminal sanctions, measures and other procedural coercive measures. It cannot be an arbitrary tool since it is destined to fulfil its functions according to legal provisons, constantly obeying the requirement of legality*."[3] The thoughts of Vókó resemble that of JESCHECK, who argued that „*while criminal policy without criminology is blind, crimonology without criminal policy is pointless*"[4] Further interpretation results in conclusions such as the the one according to which criminal policy without criminal procedure policy is blind, but without it, the rest becomes pointless. It is fortunate that later, the legislators managed to utilize this requirement as a standard to a great extent during codification.

The will to change and achieve positive effects was observable throughout Hungarian legislation, since more than a hundred acts were announced, many of which contained provisions related to the criminal code carrying the seed of the new criminal policy and philosophy. Foremost, the amendment of 1991 to the criminal code resulted in the simplication of the system of sanctions and the termination of death sentences (to protect human life), and as an alternative to punishments involving labour (strict correctional labour and correctional labour), and deprivation of liberty, community labour was introduced. As a result of decriminalization measures, shirking and prostitution were no longer condemned. Felonies were sanctioned in a significantly different way, as well as the mitigating and aggravating factors and circumstances. The adjudication of recidivism and exoneration became more favorable. As a main element of

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1 KABÓDI, CS – LŐRINCZ, J- VÓKÓ, GY., Szót kér a büntetés-végrehajtási jog. In: *Jogpolitika,* Nr.1, p. 19-21.

2 KABÓDI, CS – LŐRINCZ, J- VÓKÓ, GY., Szót kér a büntetés-végrehajtási jog. In: *Jogpolitika,* Nr.1, p. 19-21.

3 VÓKÓ, GY., A büntetésvégrehajtási jog továbbfejlesztésének, tudományos művelésének szükségességéről. *In: Jogtudományi Közlöny.* Nr. 7-8, 1990, p. 277-291.

4 JESCHECK, H., Berichte und Mitteilungen der M.P. G. München, 1980, p. 9.

the criminal justice reform, the principle of the „minimal use of deprivation of liberty" became an observable concept."[5]

A significant professional milestone was that in 1990, the Hungarian Society of Corrections was established, which merged those who advocated advanced codification and modernization. Of course, this process directly influenced the regulations of correctional work. While the main goal was the creation of a new, independentact, the environment of the era only allowed for an amendment, which – following a 1,5-year long preparatory phase coupled with extensive professional talks – came to fruition. The ratio of votes within the National Assembly (minimal amount of abstaining representatives) highlighted the strong political consensus on the field. The road leading up to this event was devoid of greater issues, which is underpinned by the written correspondence between the Hungarian Society of Criminology and the Hungarian Ministry of Justice during Autumn 1991. Deputy State Secretary Károly Bárd argued: *„The principles of the amendment created in relation to the prison code was discussed by the Government during Summer 1991. The accepted bill – in harmony with the contents expressed in the letter of the Hungarian Society of Criminology – puts into view the re-regulation of prisoner rights, the court reviews of disciplinary measures and bestows the general right of seeking legal remedy against the resolutions of the judge responsible for corrections."*[6]

Since these principlesenjoyed a central role in the conceptual background of codification, we cannot avoid a closer analysis of them. However, first we have to recognize the fact that the by the beginning of the 1990 s, the field had reached an impasse from some aspect. They recognized – or rather saw reason – that the correctional codification would be preceded by partial reforms, which means that *„that the change of the political system would bring with it a completely new form of justice was but a mere illusion".*[7] There was another expectation born from the euphoria of the regime change that was also of no avail – namely the one that expected audacious solutions to be made on the field of corrections. While western countries believed that the former Socialist countries would be the forerunners behind the renewal of the Europan correctional systems, the options of the national experts of these countries were limited to picking between already existing western structures. In the words of Károly Bárd: *„…the codificators of the region (along with the subjects of the given regulations) are way too tired for experimenting."*[8]

Professionals of the era in question had to admit that the restructuring of the criminal code and the criminal procedure act was indispensable, but the creation of completely new legal devices was lightyears away.[9] The last case scenario was to reshape certain parts of the correctional legislation, hoping that the more extensive attempts at codification would finally result in the general restructuring of this field. What was wise, however, was that these partial reforms later fell in line with the already mentioned extensive reform and served as its foundations.

One of the principles of codification was to increase the standard of corrections, which was to be realized in three segments. The first was the strictness and punitive nature of justice, which is resembled by the number of incarcerated people at a given time. In this sense, the leeway of correctional law is pretty narrow, since due to its nature, its main task is to realize the „products" of other legal branches, meaning that it has no influence over the judicial phase of the prosecution. Despite this, prison programmes of high quality standard and the reduction of the harmful effects associated with prisons were designated as – likely exclusive – toolsto be used by the prison service during its fight against recidivism

Another important necessity was the increased adherence to the rule of law. This meant the „legalisation" of correctional issues, especially the definition of the status of prisoners and the assurance of the legal protection and remedies available to them. Thus, situating the prisoners within a pre-set system based on rights and obligations while emphasizing theirinalienable rights became a necessity. The provision of legal remedies against disciplinary measures through the introduction of their right to appeal was also an intention. This establishes a system similar to a contradictory procedure: upon the admission of evidence, the judge responsible for corrections holds a hearing, while the prosecutor and the legal representative can participate in the interview of the prisoner. The third principle foresaw the enhancement of the conditions of incarceration based on maintaining the subjects' connections to the external world and creating an open regime which even allows for labour to be conducted outside prison facilities. A significant event of the period in question was joining the European Convention on Human Rights in 1992, which institutionalized the protection of fundamental rights by creating the court dedicated to providing the highest level of protection of said rights, the European Court of Human Rights. During the preparatory phase, the drafts had also been scrutinized by the experts of the Council of Europe[10] who discussed its details, after which they stated that *„about 90% percent of the material satisfies the most sensitive of requirements and the remaining 10% mostly relates to technical, compositional deficiencies that are easy to eliminate. They added: it is unique that a country has international experts to inspect laws of such scope."*[11] As the result of the painstakingly meticulous preparatory phase, Act no. XXXII 1993 (hereinafter: amendment), came into effect on 15 April. It was not only a technical reform of Law Decree no. 11 of 1979, since several provisions were introduced to change certain parts that provide the foundations for a larger-scale future reform (scope of goals, tasks and tools, and the related new techniques).

[5] SEREG, P., Törvény Európába. In: *Börtönügyi Szemle*, Nr. 1, 1994, p. 41-46.
[6] BÁRD, K., Az Igazságügyi Minisztérium válasza. In: *Börtönügyi Szemle.* vol. Nr. 1, 1992. p. 2.
[7] BÁRD, K., Az Igazságügyi Minisztérium válasza. In: *Börtönügyi Szemle.* vol. Nr. 1, 1992. p. 2.
[8] BÁRD, K., Az Igazságügyi Minisztérium válasza. In: *Börtönügyi Szemle.* vol. Nr. 1, 1992. p. 3.
[9] The Criminal Procedure Code came into effect in 1998, the Criminal Code came into effect in 2013 (!)
[10] Members: Norman BISHOP (Sweden), Kenneth NEALE (Great Britain), William RENTZMANN (Denmark)
[11] VINCZE, T., Az Európa Tanács szakértői Budapesten. In. *Börtönügyi Szemle,* Nr. 2, 1994, p. 3-10.

2. The Principles and Subjects of Codification

The changes influenced the correctional field in four different areas: the act modernized the fundamental concepts of correctional work; precisely determined the rules related to the rights of prisoners; expanded the scope of courts in relation to the legal remedies available to prisoners, and in certain cases modernized the internal system for executing sanctions involving incarceration (the so-called regime rules). Obviously, several technical changes closely related to the previously mentioned amendments to the Criminal Code were also implemented. In the following part of this essay, I will attempt to summarize the provisions that are considered the most important, doing so while focusing mostly on the accepted European norms. One important terminological change introduced by the amendment is the fact that the execution of incarceration received a goal. According to the new phrasing, the „goal of incarceration is to – through realizing the prison sentences issued in court verdicts – facilitate the convicts' reintegration into society and have them refrain from committing further felonies". Not only did the new device end the reign of correctional education as a fundamental tool, but it also put a lot more emphasis on the legal sanction put forth by the pertaining act. The efforts of the legislator to have the principles of resocialization and special prevention appear in the text of the draft is perceivable. Of course, stating the goal of incarceration was not meant to be an „anti-educational" move, but it did indeed emphasize a more legal approach which can be interpreted better rather than using general, education-related terminology.[12] Within the scope of the new terminology, another provision determines the approach to the new array of tools. The amendment determines as a task of the correctional field to maintain the self-respect and sense of responsibility of convicts and thus help them prepare for their post-release life. In order to achieve this goal, all available medical, educational, moral and spiritual sources have to be used and conditions should be set that enable for systematic labour. This "assortment" of tools and their use was called „correctional education" by the Hungarian Prison Service. The amendment defines correctional labour as an integral part of incarceration that is dedicated to maintaining the physical and mental state of the prisoners and to offer them an opportunity to gain experience and practice in a certain vocation, an initiative which serves general resocialization.

The particular importance of thos provision stems from the fact that it now precisely sets the place and role of correctional labour during incarceration, ending a long discussion on the topic of „profitable, „socially useful" and „meaningful" labour. It is obvious that the goal of prisoner labouir is not monetary gain, but to achieve these ends. The social benefit is the opportunity itself to participate in labour, and to join vocational and other trainings which facilitate the achievement of the pre-set goals set by the pertaining legislation. The new provisions are much more related to the aspect taken by international norms on incarceration. Thus, the regulation fell in line with the European rules and the two vital parts (the use of criminal sanctions and the facilitation of social reintegration following release) also provide the breadth within which the rules of execution can be applied. The scope of cooperating agencies and bodies also expanded with the appearance of prison missions and several social organizations dedicated to facilitating post-release social reintegration. I consider particularly important that the legislators of the era focused heavily on modern European fundamentals which are known today as the principles of incarceration.[13] One of such fundamental principles is normalisation. The fact that deprivation of liberty is the harshest of punishments since it deprives the free men from their most important right, freedom (with the use of state coercive measures) is a principle that had become a generally accepted criminal-philosophical principle with a relative delay. This principle serves as the foundation for the approach according to which the goal of incarceration is the deprivation of liberty in itself, nothing else. In order to have this concept appear in practice with meaningful content, a more abstract way of phrasing is required: during incarceration, the sanctions imposed upon a convict cannot be more severe and exhaustive than what is set in the legally binding verdict of the court. This prerequisite can only be met it we ensure that the conditions of incarceration resemble the conditions available outside the prisons. What has to be ensured, however, is that the goal of incarceration cannot be harmed, and normalization cannot become pointless since its „limits" are set by law. Another important aspect is the fact that each country approaches the question of having prison environments resembling the environment of free life differently. In other words, this endeavour isheavily influenced by the support provided to their respective prison services. From this aspect, the solutions and opportunities of the European countries vastly differ, mainly due to their diverging history. What is certain, however, is that the efforts to have internal environments resemble the conditions of external life can never be as limited as to give way to inhuman or degrading treatment. In the end, normalization serves the purpose of having the prisoners situated in an environment which helps them develop personal and social skills that allow for an independent, law-abiding way of life. This goal is realized with the contribution of correctional probation officers. The success of social reinsertion depends greatly on whether the treatments dedicated to each convict are truly personalized or not. In order to achieve the intended goals by the end of one's imprisonment, it is paramount that each and every inmate receives treatment which is dedicated to their individual personality and needs.[14] Personalization is a gradual procedure which appears as soon as a court decision is made, since the judge responsible for a given case also determines the sentence severity as a first step. Following this, the convicts are evaluated and classified within the prisons based on personal

[12] Amendment § 38

[13] PALLO., Karakteres elvek és értékek napjaink büntetés-végrehajtási jogában. In: *Belügyi Szemle*, Nr. 10, 2017. p. 123-137.

[14] PALLO., Charakteristische Prinzipien und Wert in unserem heutingen Strafvollzugstrecht. In: HOMOKI, M (Hrsg.) Ünnepi kötet Dr. Nagy Ferenc egyetemi tanár 70.születésnapjára Szegedi Tudományegyetem Állam- és JogtudományiKar, Szeged, 2018, p. 789-800.

aspects (age, criminological characteristics, reintegrational considerations, health etc.) and identify reintegrational needs. The reintegration plan is a last step that is created with the cooperation of the prisoner. The execution (or, if required, modification) of this plan is dedicated to increase the subjects' capability of participating in a life of freedom in order to determine the most suitable reintegrational programs for each individual. The principle of openness means that prisoners are allowed to maintain a more extensive contact with society. The precondition for this endeavour is to have legal institutions in place that allow for short-term leaves. The greatest novelty introduced by the amendment was without a doubt the Reduced Severity Regime. The other component of openness is the vast array of possibilities available within prisons to serve the purpose informing the inmates about the events taking place outside. As a sign of due professional precaution, this opening towards the external world could work if the process itself is gradual and well thought-out. The amendment dedicated a separate section to provide an exhaustive summary of the rights and obligations of those deprived of their liberty and did so in a much more precise manner than before. It contains the legal obligations set by relevant provisions, the general rights attributed to the inmates and even the ones that are limited and / or suspended for the duration of their incarceration. This new approach is perceivable in the case of obligations as well. However, several limitations serving the role of counterweights are imposed on the side of the authorities as well. For example, the convicts are required to spend the duration of their sentencewithin a place designated by the prison service. This obligation of course also includes the specified prison institution and the cell – or living area – within it. Other provisions, on the other hand, set the related duties of the prison service. Such a duty is to accommodate prisoners in an institution closest to their residence or the appearance of rules pertaining to the due and decent accomodation of inmates. The amendment is the first device to contain the rights of convicts divided into groups based on obvious criteria. The appearance of the rights that are bestowed upon convicts as human beings and citizens is a concept that is fundamental to the regulation, which means that these rights (e.g. right to life or human dignity) cannot by any means become damaged during incarceration. The act further divides the rights originating from the citizenship of the convicts into sugroups, determining the rights that are suspended (freedom of choosing location, the right to strike), the rights that are modified (right to work) and the rights that characterise the relation between the convicts and the agency responsible for the execution of sanctions (e.g. alimentation and maintaining contacts). The purpose of the legislator, namely to find an equilibrium between protecting the order and security of incarceration and ensuring the convicts' rights guaranteed by law, is perceivable. The principal intention was to unconditionally ensure that each of these elements work jointly, an effort which was served well by the exhaustive recital of the rights and the detailed list of the relevant limitations. Another important principle that was stated by the amendment was that the obligations and rights resulting from citizenship are suspended and limited as it is dictated by the verdict, or the relevant legislation.[15] A s a principal motivating factor behind the regulation, a few words have to be said about the effort aimed at breaking away with the paternalistic approach. The concept of this effort is that while prisons may facilitate social reinsertion; it is the prisoners themselves who carry with them the potential for the successful realization of this goal. Professionally adequate solutions can only be provided if the system encourages participation in dedicated programs, but never forces it. The introduction of semi-open incarceration, which became known as the Reduced Severity Regimewithin the framework of Hungarian correctional legislation, is a revolutionary step. This device uses progressive principles to gradually ease closed-institution conditions to make prison environments more resembling to the conditions of free life.[16] Another important step that shows the increasing popularity of the changing approach is that it allowed for the use of evening outsnot exceeding 24 hours in order to help the convicts maintain their family relations. The inviting bonus of permitted leave was also included among the rewards. The picture of a „humanitarian" prison service was further strenghtened by other options such as allowing visiting sick relatives or attending their funeral.

3. The Significance of the Amendment and its General Historical Consequences

As a summary, it can be stated that the harmonisation of law of 1993 expressed a clean-cut intention of adapting the European penal philosophy to the national one. As an important result, the spirit of the correctional rules of 1987 emerged and the array of fundamental principles was widened by the values of normalization and openness. I also consider it important to point out that the goal of incarceration appears in the point of the sanction itself, as a tool.[17] However, the lack of an independent act on corrections – as it was originally intended – kept overshadowing the following years. The handicap resulted from the fact that this „semi-codification" did not make it possible to abolish the inherited professional and systematic deficiencies and it was also incapable of efficiently handling the newly emerging contradictions. It is without doubt, however, that the amendment did indeed reduce the rigidity of the prison system, strenghtened the fundamental correctional relations and also allowed for a calculable system that limits arbitrariness. Despite all these advances, the Hungarian correctional legislation remained a „patchwork" regulation in the following era, one that was based on the unstable foundation of an immature and not so well thought-out legislation often full of compromises.[18] The coming into effect of the amendment was without a doubt a great improvement, and it urged for the restructuring of the earlier prison model in order to create a system of effects that

[15] Amendment, § 32.
[16] CSÓTI, A – LŐRINCZ, J., Múlt és jövő. In: *Börtönügyi Szemle*, Nr.3, 1997, p. 27-38.
[17] This is a very important statement, since in the regulation of 2013, the sanction itself appears as a goal.
[18] PALLO, J-FORGÁCS, J., Vonzások és választások. In: *Belügyi Szemle,* Nr. 11, 2015, p. 77-95.

better serve social reinsertion. In other words, or rather from another apsect, prison service was intended to become a service that is based on the voluntary cooperation of convicts while also alleviating the negative stereotypes that are society associated with the service itself. The further decisions aimed at achieving certain European norms continued to support this endeavour. The adaptation of the European Prison Rules of 1987 was a crucial step. This system of norms appears as a comprehensive whole of rules and does not force the member states to carry out impossible tasks. Its basic goal is to provide guidelines which efficiently help correctional modernization and improvement in member states and offer support in solving questions not yet implemented into domestic (national) legislation. From the aspect of correctional legislation, several ministerial decrees that regulate certain key areas of sentence execution enjoy great significance but since they were issued with significant delays, their execution was somewhat lax. However, following coming into effect, these regulations provided ample guidance in several sub-areas for those performing work related to the area in question. The most characteristic regulations were introduced in Ministry of Justice Decree no. 6/1996 (VII. 12.) on incarceration and pre-trial detention.

Summarizing the effects of the amendment it can be determined that during the first years of the regime change, reform initiatives raised hopes that beside the necessary legal modernization, they were also capable of initiating fundamental changes in the objective and subjective conditions of the operation of the Hungarian prison system. It was not long before it had become apparent that the economic status of the country did not make this possible. On the contrary, the resources were even more limited than before. The sough-after extensive correctional reform thus was canceled again, condemning the prison situation as a secondary issue. In my opinion this is another evidence to the widespread false pretense, according to which corrections is unimportant, since it is capable of fulfilling its basic functions mechanically.[19] This approach induced a professional-ethical crisis, which – as a returning phenomenon – resulted in an increased vividity and effervescence. I believe that this is another correctional consequence: advances require professional crises that release potential energies which feed from the deepest abyss of the profession. For example, a particularly vigorous clash emerged on the field of inmate labour, the relations between the social environment and the prison service were re-evaluated in a novel way, and there was an increased vividity in the investigations of the informal structure and the internal, sociological movements of prison society. For me, all this means the „synthesis of prison issues, namely correctional legislation", since it depicts all the areas which are focused on the individual deprived from his or her liberty. In my opinion, there are only a few fields of science where the knowledge material is dynamically and constantly changing and where everyday events make its "curriculum" vivid and living. Correctional law in a modern sense is just like that, in a sterile way, because as it feeds on reality, it directly syphons the legal, economical and penological principles of criminality as a social phenomenon. Taking into account the above I conclude that due to its undoubted interdisciplinary characteristics, correctional law is about to be one of future's determining branches of science, which will finally move it from the category which is often deemed undeserving or *„secondary"*.By looking further than the direct professional effects of the amendment, it is also apparent that it also had the indirect effect of starting a theoretical effervescence which had not been seen for a long time. I could also say that the correctional field has experienced its very own *„Sturm und Drang"* era where after a period of longing came the constructive storm. This is evidenced by the fact that the amendment provided a lot more quality answers than open questions and resulted in a harmony which is far greater than the residual disharmony.[20] A direct result of these elementsis that in the last quarter of the century, the interpretation related to the amendment has never been derailed and remains in correctional law as the enduring mark of an ideal, advanced concept. As an advocate of the scientific development of correctional law I believe that overlooking this 25-year anniversary would be a mistake, if not a sin. I sincerely hope that with my essay I could also nod on behalf of times past towards those who – with their knowledge and dedication – realized a legislation that embodies the essence of the correctional hopes and intellectuality of the post-regime-change prison situation.

[19] PALLO., Új horizontok a büntetés-végrehajtási jogban. In: HACK, P (Hrsg.) Kodifikációs Kölcsönhatások. Tanulmányok Király Tibor tiszteletére. ELTE Eötvös Kiadó, Budapest. 2016, p. 231-248.

[20] PALLO., Era of Change in the Hungarian Prison Law. In: Usaglasavanje Pravne Regulative Sa Pravnim Tekovinama (Acquis Communautaire) Europske Unije. Banja-Luka, 2018b, p. 135-152.