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A new chapter in the hungarian law enforcement

1. INTRODUCTION

Nowadays the penal law is living its Renaissance, the “legal blood-transfusion” we are experiencing in this area can be observed in almost every domain of the regulations regarding law enforcement and provision enforcement. We are talking about nothing less than a coordinational process spanning a legal domain with a great historical past, a change induced by international expectations and by the pressing demand of modern law enforcement. The effective, constitutional functioning of the institutions which are essential for the operation of a modern state must be promoted in this new century by our specific methods. The challenges of our participation in the European Union should also be taken into consideration, as well as the question of our consideration of the constitutional functioning of those institutions of the Hungarian Republic which beside disposing of a great traditional past are also essential for the working of a modern state.¹

The struggle against crime is doing its best to examine and reveal the causes in their complexity in order to eliminate them. From this point of view increasing attention is directed to the role of the sanction enforcement in the process of punitive challenge. Thus the effectiveness of every penalty or penal provision depends highly on the standards of the activities that law enforcement organizations provide. The law enforcement can follow no other route than the one followed by the development of our social life. The processes can be measured in historical eras so that the differences and the common progress be demonstrated and the following timely questions of this legal domain be formulated: what is Hungarian law enforcement going to be like, how much of it and what exactly needs to be reorganized, to what extent do our national interests and values count in this process, and what are the new challenges of the European Union?²

Further very important questions are: what kind of provisions are needed for crime-prevention, what theoretical bases we should build on, which provisions are the most effective

1 István LAJTÁR: Recenzió Vókó György „Büntetés-végrehajtási jog” című tankönyvéhez (Recension to György Vókó’s coursebook entitled “Code of Law Enforcement”), *Collega* professional weekly, 1st Volume, No. 3

2 György VÓKÓ: A büntetés-végrehajtás időszzerű kérdései (Current Issues of Law Enforcement), *Jura* – scientific paper of the University in Pécs, 7th Volume, No.1, p.94

and how can we provide the appropriate conditions for these. Among the numerous social and economic conditions should be included the organization of the punitive challenge in a way that is in agreement with scientific results, with the state of awareness of the population, with the possibilities and circumstances of an actual realization.

It is a well-known fact that the systems of the punitive administration of justice in the member-states of the European Union differ from each other to a great extent. The question of the role of law enforcement and its effectiveness should also be taken into consideration especially at times when the situation of crime is not reassuring at all. The content and the measure of realization of the legal harmonization is highly influenced by the situation of crime as well. As there is no punishment without penal-law and criminalization, there is no law enforcement without punitive challenge. For without law enforcement the whole process of punitive challenge would become something existing for its own sake. If the penal law can fulfill its role in society by punishing, then law enforcement can fulfill its role by actually asserting this penalty. This must be done in a way that is successful, effective and at the same time meets the requirements of constitutionality.³

The effectiveness of the punitive administration of justice is determined by interactions within the system. Thus the burden on all the organs interacting in the punitive administration of justice is determined on a wide scale by decisions taken by other organs in former stages of the proceedings. It is needed that new ways of approach are employed on the field of the organization. The law enforcement can be no other than human-centric. In the future greater attention must be paid to the relation and interaction between rights and obligations as well as to the clearing up of the contradictions existing in the question of the legal situation of the condemned.

The realization of the penal sanction depends on the right of Law Enforcement. So does the realization of the deprivation of civil rights which forms the content of forced provisions in the Code of Criminal Procedures, and the temporary, proportionate deprivation of other values and interests.⁴

Meeting the requirements resulting from constitutionalism in Hungary, along with the country's joining the international agreements had as a result the appearance in the domestic law of generally accepted international penal principles and orders, principles of legal procedures and of enforcement, as well as the reflection of these in the practice of law-adoption. Simultaneous tasks are the solution of harmonizational law-making problems arising from our international undertaking of obligations and the reform concerning the system of the punitive administration of justice. Legal harmonization is the result of careful consideration of national and historical features. Throughout this process, however, the inner requirements of the country should not be dispensed with either.

The demand of legality and humanity as well as the need for effectiveness highly improve the law enforcement worldwide. In the course of law enforcement activities constitutional principles and rules, international human rights expectations and demands must all be asserted. This can be served only by that law enforcement which is of high standards and which meets and helps practical demands.

Thus, it can be stated that law enforcement in Hungary has become more human, following current international conditions. The measure of deprivation and restriction of civil rights which constituted the basis of sanctions has gained composition in the law. Instead of

3 György VÓKÓ: A magyar büntetés-végrehajtási jog (The Hungarian Code of Law Enforcement), Ed. Dialóg-Campus, Budapest-Pécs, 2001

4 György VÓKÓ: A büntetés-végrehajtás időszzerű kérdései (Current Issues of Law Enforcement), Jura – scientific paper of the University in Pécs, 7th Volume, No.1, p.95

obligations greater role has been awarded to motivation, the circle of expressing opinions, of making independent decisions and choices has increased and an extensive security-system is also working.⁵

In the first years of the new millenium, however, such a rule is needed which serves the punitive, educational and handling aims better than the often modified law-decree which is in force at the moment. This law should build upon the still usable traditions and values of the Hungarian law enforcement and at the same time approaches and assimilates with modern European solutions, thus becoming the result of the developmental tendencies of the Hungarian law enforcement.

2. THE NEW CODEX OF LAW ENFORCEMENT

The new codex of law enforcement (Proposition, Bill) which is about the enforcement of penalties and provisions has become necessary due to the changing of the national organizations system and that of the legal environment. These were the reasons why the re-examination of the law-decree concerning the enforcement of penalties and provisions – 11th law-decree from 1979 – started. As a result of this re-examination – regarding the extent of the content of the law – the making of a new law is justified instead of the modification of the law-decree.

The above mentioned law-decree has gone through several modifications throughout the years, the most significant and innovative modification being the XXXII. law dating from 1993. This modification put forward the demands of constitutionality and made a further approach to the greatly improved European law-system as far as the detentions are concerned.

Along with these modifications this law-decree created appropriate legal bases for the enforcement of the law and that of the provisions throughout two decades. It ensured thus the continuous improvement of the right of law enforcement as well as the improvement of the system and practice of law enforcement. All this happened in agreement with the international principles as for example the minimum rules concerning the detention of the condemned, these rules being included by the Council of Europe in the 'European Penal Regulation'.

In the second half of the year 2003 the Government came out with the bill of its proposal for the regulation-principles of law enforcement and enforcement of provisions. This pointed out the most important guiding principles of the new regulations. In the second half of the year 2004 a departmental decision was taken that beside the creation of the new law enforcement code – which takes the place of the former law-decree – the re-creation of another law is needed, namely the CVII. law from 1995 concerning the law enforcement organization. Later, at the end of 2004 – considering the improvement of the inspectoral service – another departmental decision formed the conception that the new order of law enforcement must contain the regulations for the law enforcement service as well as the regulations for the supporter inspectoral service.

The guidelines for criminal politics were clearly outlined by the II. law from 2003 regarding the modifications of the penal rules and of some rules related to them, and also by the XIV. law from 2003 concerning the modifications of certain laws about supporters. The new law which is already being prepared, actually is about the Penal Code and it will be a determining change in the development of criminal politics in the following years.

The Bill comprises the tasks related to law enforcement into a complex system and contains the orders that need legal regulation, but are at the moment regulated on a lower level. At the

5 György VÓKÓ: A büntetés-végrehajtás időszerű kérdései (Current Issues of Law Enforcement), In: Jura – scientific paper of the University in Pécs, 7th Volume, No.1.

same time it enforces unambiguously the constitutional principle of the division of power-branches and defines the jurisdiction of the court and that of the prosecutor according to this principle. The basic rules of penalties and provisions, the form and order of the enforcement are raised to a legal level, and so are the rights and obligations of the person under punitive challenge as well as the rights and obligations of the organs that enforce law and provisions.

The reconsideration and modernization of a law decree which is close to its jubilee of a quarter of a century is basically justified taking into consideration the development of social relations. The re-examination is important also on behalf of the state organizational system and the forwarding of certain tasks and modified jurisdictions. The law that is being made has got the character of a codex. It emphasizes from numerous laws the predictions regarding enforcement, but at the same time while the former law focused mainly on imprisonment, this current one treats the enforcement of provisions and secondary punishments in detail as well.⁶

Nowadays, the legislation and the application of the law, the punitive administration of justice and the law enforcement are all pervaded by the spirit of our joining the European Union. According to our most important principle it is the duty of a constitutional state to ensure its citizens human rights, safe life, the success of laws and the possibility of assertion of the objective truth. In order to protect the basic values of the European Union, the Council of Europe would emphasize prevention rather than penalty in case of infringement of lawful rights. For the task of the committee in Brussels is to control the keeping of common values as well as to recognize the factors that might endanger them. Brussels has just now come to the end of the work during the course of which they worked out the methodics of practicing the laws that are transferred to them.

The new regulation of law enforcement will be made necessary not only by legality and practical demands, but also by the regulations in the Law of Criminal Procedures and in the Penal Law itself, in general. The simplification of the legal aid proceedings, the establishment of common investigation-groups and the recognition of absolute conclusions of criminal cases will result in important changes.⁷

Imprisonment remains further on in the centre of the sanction-system as the most important penalty. The specialized literature as well as public opinion are concerned about it, especially the questions regarding the legal position of the condemned are the matters on issue. That is why the European Union expects that every member state have the obligations put down in laws.

The maintenance that follows the penalty must strengthen the purpose of social integration and create the objective conditions for its realization (assuring accommodation, restoring family relations, promoting employment). It is a great leap forward for instance that the law of taxes made in 2004 has held out the prospect of advantages for the employers who employ people sentenced to communal labour and standing under supporter surveillance. Year by year an increase can be seen in the number of those spending their sentence to communal labour, and those standing under supporter surveillance, a fact that expresses the approach to the European practice.

While making the rules for law enforcement the factors that need to be considered are the following: according the general living-conditions (eg. rules regarding public health and

6 Ferenc TARI: Előkészületek a büntetés-végrehajtásról szóló törvény megalkotására (előadásanyag), (Preparations for the creation of the law concerning law enforcement (course material), 21st Jurist Regional Meeting, Hungarian Jurist Association, Szeged, 14-15 October, 2004.

7 György VÓKÓ: Előkészületek a büntetés-végrehajtásról szóló törvény megalkotására (előadásanyag), (Preparations for the creation of the law concerning law enforcement (course material), 21st Jurist Regional Meeting, Hungarian Jurist Association, Szeged, 14-15 October, 2004.

employment) which divergent regulations are required and made possible by the legal relations of law enforcement. Based on such considerations, the new law enforcement codex depends in the first place not on the rules of the Penal Code, but on regulations containing other legal relations, the agreement of which with the law decree – the cause being the obsolescence of the Law Enforcement law-decree – has raised serious constitutional anxiety.

The Proposition re-codifies the legal documents of law enforcement along several junctions. The power of the Law Enforcement law-decree spreads at the moment over the enforcement of pre-trial detention, supplementary maintenance and imprisonment imposed on account of contravention, these being penalties and provisions according to the Penal Code and forced provisions concerning imprisonment determined in the Law of Criminal Procedures.

Within the power of the Proposition it was to decide whether the new law enforcement proposition should spread only over the sanctions related to the Penal Code and the Law of Criminal Procedures, over forced provisions and over enforcement of supplementary maintenance, or it should further on contain the regulations regarding imprisonment because of contravention and foreign security detentions. In connection with the imprisonment because of contravention, the Proposition takes into consideration that – according to the conception of the new contravention-rule that is being made – the imprisonment for contravention will be dispensed with as independent sanction and will only appear as custody instead of a fine.⁸

When answering this question what needs to be kept in sight is that beside the current saturation quotient of the law enforcement organizations, these should not be loaded with the enforcement of tasks that do not require the closed nature and security system that is characteristic for the law enforcement institutes which execute the carrying out of imprisonment penalties. Law enforcement institutes work with a saturation of almost 150 percent which highly endangers the success of penalty purposes.

Thus, it is justified that the power of the Proposition should spread exclusively over the legal institutions of the Penal Code and of the Law of Criminal Procedures, and over the enforcement of forced provisions which should be employed during international co-operations, respectively over the most restricted possible circle of the custodies replacing fines. The power of the Proposition does not spread over regulations of foreign security detentions, since in the future it will not be the task of the law enforcement institutes to carry these out.

A considerable novelty of the Proposition is that it terminates the 'divided' regulations concerning the organization of the Supporter Inspectoral Service. It also terminates the 'divided' regulations regarding the Law Enforcement Organization, which carries out the majority of the law and provision enforcement tasks. Besides these the Proposition includes the basic organizational regulations as well.

In the age of the informational society such questions have arisen (protection of personal data, the right to informational self-determination), which could not be regulated at the time of the making of the Law Enforcement law-decree. By today, based mainly on the documents of the Council of Europe and on the practice of the European Court for Human Rights, the components of the relation between state and its citizens have been revalued on the domain of law enforcement. Thus the dimensions of the citizens' rights and the guaranteed protection of those have been revalued as well.

As a result of the principle of constitutional legal security, when thoroughly re-examining the law enforcement, the Proposition raises to a legal level the orders that require legal regulation but are at the moment regulated on a lower level. It also gives orders about other questions concerning regulations of the order of law enforcement.

8 MOTIVATION to the Bill about the enforcement of law and provisions

When regulating the enforcement of imprisonment, the starting point of the Proposal is the attitude of the Penal Codificational Committee which has been created for the preparation of the new Penal Code. According to this, the law enforcement organization is not allowed free hand to include the condemned into so called "régimes". Thus the order of imprisonment enforcement is to be carried out further on according to the stages defined in the Penal Code. At the same time it aims at the modernization of the imprisonment enforcement system that a new system has been introduced, which makes possible the promotion of progressive enforcement within the classing of the condemned and the individualization of the condemned. Compared to traditional classings this new system promotes more effectively the reintegration of the condemned.

The Proposition – in compliance with the suggestions of the Council of Europe – contains the orders regarding certain special groups of condemned people. By defining special rules, a further differentiation of the imprisonment enforcement is possible, the principle of individualization or personalized enforcement can be asserted to a greater extent. Regarding imprisonment, the Proposition contains a separate regulation in the regard of underaged and soldier convicts and, beside these, now also in the regards of convicts considered special from a sanitary point of view, convicts with no Hungarian citizenship and mothers.⁹

As far as supplementary punishments are concerned, the starting point of the Proposition is the fact, that the background of their enforcement and their becoming effective is not well-arranged. At the same time, the Proposition brings to agreement the regulations regarding enforcement of forced medical treatments – concerning especially the rights of the sick people – with the regulations of the CLIV. law from 1997 regarding public health. Furthermore, it terminates the existence of penal provisions as such regarding the forced treatment of alcoholics, but it still contains regulations about the treatment of the alcoholics being under the penalty of imprisonment.

The Proposition gives orders about the rules of confiscation as well and completes these with rules regarding the public use of the confiscated goods. For the time being the orders concerning the public use of confiscated goods are defined in the XIII. law from 2000.

A constitutional state cannot exist without an administration of justice which keeps in sight the human rights, and there is no administration of justice without humanely working police, Prosecution, Court and Law Enforcement. Our common aim is to meet the constitutional requirements of the European Union.¹⁰

Along the preparation of the draft of the new law which required enormous work, an extremely detailed, precise codex has been made which aims at completeness and which will help the activity of all employers and followers of the law to a great extent.

3. CONCLUSIONS

The new regulations of law enforcement are made necessary by legality and practical demands but also by the Law of Criminal Procedures and the Penal Law. The answer given to crime has to respect the social function of the Penal Law and of the Code of Law Enforcement; it has to adjust itself to the traditional values of these and to the conditions required by constitutionality.

⁹ MOTIVATION to the Bill about the enforcement of law and provisions

¹⁰ György VÓKÓ: Előkészületek a büntetés-végrehajtásról szóló törvény megalkotására (előadásanyag), [Preparations for the creation of the law concerning law enforcement (course material)], 21st Jurist Regional Meeting, Hungarian Jurist Association, Szeged, 14-15 October, 2004.

Thus the points of view of a special prevention can be carried out through individualization exclusively among the borders that adjust themselves to the gravity of the crime committed.

As for the future, it has become clear that imprisonment and restriction of freedom are indispensable for the sake of the protection of the society, the individual and the state. Effective crime-chasing is at the same time the duty of the state. Thus it is the duty of the state to ensure the constitutional ie. legal working including the assuring of financial conditions.

From the point of view of the human-centric punitive administration of justice, besides the conditions and forms of sanctioning the procedures and law enforcement are important as well. It cannot be tolerated that contraventions should remain without any consequence, or that enforcement should not take place. The protective areas and limits of freedom stirred up by the criminal act need to be consolidated again quickly and publicly especially for the sake of effectiveness.

The innovation needs to cover all the systems of organizations and has to contain further modernization of the law enforcement organizations and the modernization of the Code of Law Enforcement. Getting to know the whole system might be that certain basis starting from which its working can be examined. Thus answers can be found to certain questions, namely, whether it is effective as a whole or rather in its details and where does the system need to be improved.¹¹

The penalties based on the community should be enforced in such a way that they be comprehensible for the perpetrator and they promote his individual and social improvement from the point of view of his integration into society.

In our age, in contrast to the exclusivity of certain theories, it is needed to work out a uniting theory which mirrors the versatility of punitive purposes and becomes more differentiated in answering questions of our era.

In conclusion, it would be proper to quote the words of József Lőrincz according to whom "it would be reasonable regarding the future to encourage a more vigorous improvement of the science of law enforcement. Knowing the reality of the law enforcement, the most important characteristic of this science would be that it would allow thoughts sprouted in the hot-house of other sciences' writing-tables, and reform-institutions burst into leaf in foreign countries' hot-houses take root in the domestic soil after a careful selection and naturalization. The isolation that was characteristic of the last century, and that made prisons become mystical institutions for the public opinion, needs to be removed. Just like the cloisters of the Tibetan lamas that have by now – the period of the opening – become a favorite hunting-ground for the clever reporters and movie-makers. It would be nice to guide the ship of the Hungarian law enforcement to calm European waters, so that the words of Krohne, one of the great classics of the issues of imprisonment, become true, namely that the issue of imprisonment as a profession engaged in humans should be the art of both science and practice."

When analyzing the code of law enforcement, the picture we get is always about a given point of time and the following day may bring up new practical questions, a new scientific result or a new point of view in the law making and it is important that we take these into consideration at once just as we do the whole system of inherence. We are not talking about a closed question, but a continuous task.. We are working with the aim of improvement and with the aim of a more modern and effective legal organizational system having in view the Hungarian and European law enforcement and the Code of Law Enforcement that promotes the above mentioned.

11 György VÓKÓ: A büntetés-végrehajtás időszerű kérdései (Current Issues of Law Enforcement), Jura – scientific paper of the University in Pécs, 7th Volume, No.1, p.101, 2001

ZUSAMMENFASSUNG

Es wird zur Zeit in Ungarn ein neues Gesetz über die Strafvollziehung und die Vollstreckung von Maßnahmen erstellt. Diese Studie präsentiert diesen Gesetzentwurf.

Die Erschaffung des neuen Gesetzes war wegen der Entwicklung der Gesellschaftsverhältnisse, der Veränderung des staatlichen Institutionssystems und der Umgebung der Rechtsnorm notwendig.

Der Gesetzentwurf fasst die Aufgaben der Strafvollziehung in ein komplexes System, enthält Bestimmungen die zur Zeit auf niedrigerer Ebene geregelt sind, die aber eine Regelung auf Gesetzesebene benötigen.

Der Entwurf beinhaltet die grundlegenden Regelungen der Sanktionen, die Ordnung und die Art der Vollstreckung, die Rechte und die Pflichte jener Personen, die unter der Geltung der strafrechtlichen Verantwortlichmachung stehen, sowie jene Organe, die Strafen erteilen und Maßnahmen treffen können.

In den ersten Jahren des neuen Jahrtausends ist in Ungarn ein Gesetz nötig, welches den Straf-, Erziehungs- und Verwaltungszielen besser entspricht, als die zur Zeit geltenden, mehrmals veränderten Gesetzesverordnungen, und welches sich auf die heutzutage anwendbaren Traditionen und Werte der ungarischen Strafvollstreckung aufbaut, aber sich ebenso den modernen europäischen Lösungen nähert. Dieses Gesetz wird tatsächlich die Frucht der Entwicklungstendenz der ungarischen Strafvollziehung bedeuten