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Historical View Over the Institutions of Law Enforcement*

1. Introduction

Penalty is the same age as society and it mirrors its age, its characteristics, its dominant ideas, its devices used in the struggle against crime. Penalties and their enforcement have always suited the given social era. "Ever since humans have lived in communities of various sizes, they have had respect for each other. They have adjusted themselves to each other as this is what they have been expected to do. With the passing of time these expectations have become firmly established as normatives. Basically, these normatives refer to human behaviour and this is the reason why they are called behavioural normatives. Initially they only existed in peoples' consciousness. Each member of society was aware of the expectations of others and in case they did not behave accordingly, their behaviour was condemned, despised and in many cases they were even ostracised."[1]

Primitive societies' commonly taken responsibility which was based on revenge, as well as the destructive private wars of herds came to be followed in the antiquity and in the early

* Nowadays the international legal-literature – depending on which country or national legal system are we talking about – uses with totally different content the notion of law enforcement. For example the US legal system uses the expression of law enforcement for almost all the stages of imprisonment, starting from the arrest, police actions troughout the enforcement of penal sentences and the regulations concerning the prison rules too. In Canada for the imprisonment and its rules they use the notion of: execution of sentences. In Europe, and mainly in german legal system they use the notions of: detention law, correction law, correctional law, imprisonment law, enforcing the penalty of imprisonment and enforcement of penal sentences. The present article's author belives that according to the content of hungarian imprisonment rules the propper expression would be: correction law or imprisonment law. All above mentioned notions prove that the law enforcement is in a constant movement on a large scale. Being aware that by the European Union the law enforcement has to start his own harmonization too [see: György VÓKÓ: Európai Büntetés-végrehajtási jog, Dialóg Campus, Budapest, 2006.] this is the best time to find the prefect notion for the hungarian law enforcement. So the present article will use the above mentioned notions in accordance to the text content.

1 József FÖLDVÁRI: Magyar Büntetőjog – Általános Rész. Osiris, Budapest, 1997., p. 19.

middle ages by compensation, composition and by administration of justice that was built upon the "talio" principle.[2] To describe the millennia of slave-holder and feudal societies from the point of view of penal studies, most expressive would be to characterize them as the era of torture and capital punishment, the time of punishments humiliating body and soul. Thus, revenge had the significance of guarantee and retaliation from the side of the offended was inevitable. When state and law were established the new organisation of power built its punitive system upon nationality traditions. As a matter of fact, two periods can be distinguished: one is the era of revenge when, apart from a few events of public retaliation, most of the crimes were personal matters, the punishment being no other than satisfaction demanded by the offended. The other period is that of state punishment in which the right for penalty and law enforcement were exerted by the state.

Nowadays, however, in the center of penal law and criminal procedure as well as in the centre of the conception of law enforcement is the defence of and respect for the human, be that the perpetrator or the offended party. Nourishing from the long past and learning from its mistakes, today's modern code of law enforcement focuses its questions referring to the European harmonizational results around the efficiency of provisions taken for the prevention of crimes. The demand for legality and humanity, as well as the need for efficiency have been improving the code of law enforcement to a great extent all over the world.[3] In contrast with the revenge campaigns of ancient times, today's law enforcement has to assert constitutional principles and rights, and meet the requirements of international human rights. These can be fulfilled only by a high-standard law enforcement, one that meets and helps practical demands. This present-day, modern law enforcement is actually the collection of rules that determine the enforcement of penalties and provisions finally inflicted throughout a criminal procedure, namely: the activities of the legally authorized government institutions; the conditions and mode of the enforcement of penalties and provisions; the rights and obligations of the given government institution and those of the convict. To the conditions of the enforcement of penalties and provisions belong the institutions in the framework of which the punitive power of the law can be carried out. These are called the institutions for law enforcement.

2. The beginnings of law enforcement

One might believe that the penalty of imprisonment is a legal institution existing since ancient times, however, the deprivation of personal freedom – as an independent punitive mode – developed only in the modern age. For instance, we do not find the institution of law enforcement in Hammurapi's codex or in Moses' laws at all. In contrast to this, it can be found in the writings of ancient Greek wise men, at the Romans and in the Indian caste-system. The variety of punitive theories was not the result of an inner movement. From among the ancient Greeks Prothagoras based his conceptions on the social viewpoints of provisions of crimes. According to his teachings penalty is needed not because of the criminal act, but with the view that it keeps everyone from committing crimes in the future. The basis of Aristotle's theory for punishment was constituted by the principle of justice. According to this, the balance defined by the legally secured goods is disturbed by the crime, and should accordingly be restored by punishment. The timeliness of this Greek theory's main stream was given by its era's heading towards the public administration of justice. This also meant the moral

2 György VÓKÓ. Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 20.
3 VÓKÓ: Magyar büntetés-végrehajtási jog. p. 20.

establishment of governmental punishment that denied blood feud. The Greek – and Plato among them – did not separate morality and law.[4]

Slavery and imprisonment resulted in deportation, which was the combination of the two. The mixture of slave work and imprisonment was forced labour. Somewhat lighter deprivations of civil rights were expulsion, the designation of a place for living by force, and exile. The latter was a preferred way of punishment especially in the Greek cities. However, the prison as a term can be found already in the writings of classics like Plutarchos. In the case of the Romans, it appears in the notes of Ulpianus – written about the emperor Pius' orders – that there existed punishment before the sentence (preliminary imprisonment was considered a punishment as well) and punishment after the sentence. There is another view according to which the prison didn't only have the function of custody, but also became a general punitive mode in the imperial era.[5] In the Indian caste-system there existed the possibility to consider the changing of one's status as punishment and, moreover, there were orders regarding imprisonment already in Manu's code of law.

The Roman penal law – which adjusted itself to the brutalitiy of the system and to the manners of slavery – even if not approaching the level of civil law, had principles which were considered to be developed in earlier times. The penalties it contained became later the basic institutions of penal law. "In the antiquity and in the first half of the Middle Ages the well-known prisons were mainly serving not as means of law enforcement, but as places ensuring law enforcement, so that the suspect could be brought to court."[6]

The first decrees regarding cases of imprisonment are related to the name of Theodosius, who gave decrees in the year 435 and who was later followed by Justitianus in 529. The purpose of these decrees was to maintain prisons, to control their operation, but at the same time they took measures about surveillance and supervision. In 533 the 50 books by Digestas Pandectae came in force and from among these number 47 and 48 were the books of penal law. The 9th book of the Codex Iustinianus, which was published in 534, dealt with penal law as well. The rules regarding the passing of sentences were later put down by the imperial decrees in an ever growing circle and thus the principle of *nulla poena sine lege* – i.e. punishments are to be ordered exclusively by the law – came into force. This pinciple has been one of the most important priciples of penal law up to the present day.[7]

The punitive sytem of archaic law is not very diversified, nearly all the sanctions imposed on crimes were capital punishments. Another feature of the punitive system is the appearence of the talio principle in its specific forms, eg. the burning of the person who caused the fire. Imprisonment – as seen today – was not known in the antique Rome. The purpose of prison-like buildings (eg. Tullianum) was only the custody of the prisoners during criminal procedures. In those times it was not so much the idea of punishment that dominated the enforcement, but rather that of deterrence and prevention.[8]

In the classical era the following fundamental ideas of modern penal law developed: unintentional crime (assault causing death), premeditated crime and crimes committed because of sudden temper, complicity, attempt and relapse into crime. A number of new punitive modes developed as well. Among these were the different forms of exile such as expulsion, simple banishment and deportation, however the perpetrators of certain crimes were degraded to slaves and thus forced to do mine-work or communal labour (ad opera publica). As a matter of fact,

4 VÓKÓ: Magyar büntetés-végrehajtási jog. p. 31.
5 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 32.
6 József FÖLDVÁRI: A büntetés tana. KJK, Budapest, 1970., p. 113.
7 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 37.
8 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 38.

imprisonment in its formal sense remained foreign to Roman Law all the time. The leaders of the *opera publica* were not aiming at fulfilling the punitive task (retributive or preventive) but rather at making more and more profit by exploiting slave-work. This situation remained in the states of medieval times as well: the purpose of the prison was the custody of the prisoners waiting for their case to be judged.

As for the harmonization of prisons and law enforcement, it is worthy to talk about it starting from the era when modern prisons and civil law regarding law enforcement were already developed.

3. Law enforcement in the Middle Ages, or "the domination of fist law"

3.1. General regulation

In the decades of the Middle Ages the government authorities, the leading class that was in power was short of sources of information. There was hardly any opportunity for instructing people, for accustoming them to follow rules and keeping them from committing crimes. Thus, the administration of justice resorts to effective and obvious resources i.e. the publicity of law enforcement. The tortures suffered by the condemned throughout the long process of their execution is the example for the inevitable relationship that exists between crime and punishment. The prison, with its isolated world, did not serve this purpose. On the other hand, it is indisputable that the prison as an institution was constantly present in the history of Hungarian legal practice. Sporadically though but we often learn of their presence in the decrees and letters of judgement that were left to us by Andrew III, Sigismund from Luxemburg, Ladislaus Jagello, Max Habsburg. Its widespread presence before the 16th century is also proven by the record of "divine judgement" from Nagyvárad. The prison is known by the urban law starting from the 16th century, courts regularly impose the 'black hole' and the dungeon is considered an indispensable part of our castles.

Apart from all these and from the cruelty of the enforcement there existed faith in the religious morality regarding people's changeability. Trusting in people's betterment, at first the penal institution imposed penalties of educational nature (i.e. fasting, clerical education, smaller financial or light physical punishment), and only after these was capital punishment imposed.[9]

There are various terms used for imprisonment as a penalty in the Middle Ages. Beside the most frequently used dungeon, the condemned were often in captivity, locked in towers, castles, even cages, stocks and pillory. All these are the proof for the diversity of medieval Hungarian penalties. Terminologically the *dungeon* and the *jail* are difficult to be differentiated. Those who committed heinous crimes were locked in dungeon under the surveillance of the law-servant or the executioner. The jail was a means to punish lighter crimes, the short-period custody was usually applied in the town-hall under moral and humane circumstances with the surveillance of a guard. Smaller offenses, perpetrators of a higher rank, bourgeois people were punished this way. However, the dungeon was the classical feudal prison in Hungary.[10]

9 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 40.
10 Kinga BELIZNAY: Erdély. Szabadságvesztés a feudalizmus korában. In: Börtönügyi Szemle 1995/3. p. 75.

3.2. Imprisonment in medieval Hungary

In Hungary imprisonment was mentioned already in Saint Stephen's code of law according to which those who eat meat on Friday have to spend one week fasting and locked up. Another reference is the provision appearing in the code of law by King Saint Ladislas I, which said: "those who kill someone with an unsheathed sword, should be thrown into dungeon". The quoted chapter of the decree is about safety custody before a judgement, yet another passage unambiguously refers to the prison as a means of punishment.[11] The 77th chapter in Kálmán Könyves's decree prescribed that "no servant of Hungarian nationality" or anyone else born in Hungary may be sold to a foreign country. There are opinions that this was the first prohibition referring to the expelling of Hungarian citizens.[12] However, already in the age of the Árpáds there appeared the designation of a place for living and internment. The fragment of the record known as *The Regestrum from Várad* proves with the help of nearly 400 legal cases that the prison was an existing institution. Thus, in the age of the Árpád's the prison (in addition to exile, expelling, internment and the loss of one's status) was an active part of the punitive system and by the 15th–16th century the *"eternal prison"* had also appeared. From the point of view of the Hungarian history of prisons the above mentioned provisions are of considerable importance. They represent evidence for the fact that dungeons already existed in the age of our first kings and, moreover, they were means known and used by the government authorities and in private administration of justice as well. Thus, basically, the prison as an institution is the same age as the Christian Hungarian state itself.[13]

As for the functions of imprisonment, in certain counties of Hungary the following could be distinguished: custody applied as a safety provision; punishment serving as a sanction in civil law; custody as a real imposed punishment, and deprivation of liberty carried out instead of a punitive sanction aiming at imprisonment. The custody during the time of proceedings lasted until the declaration of the sentence. The punitive ways applied as sanctions in the civil law had a role mainly in the establishment of the imprisonment for those in debt. The institutions of real imprisonment prevailed in the framework of jails, dungeons, prisons, captivity, and in that of being locked in a tower or in a castle. Example for the deprivation of liberty carried out instead of a punitive sanction aiming at imprisonment is the case of Elizabeth Báthory from the second half of the 16th century. Stocks, cages and pillories were punitive ways laying stress on humiliation. The cage for example was used in places where there were no dungeons or prisons suitable for keeping someone confined. Especially those people were locked in cages, who were drunk during the Sunday service, swore or were mischievous after eight o'clock in the evening. The stocks were made of thick hard wood equipped with iron mounting, the timble-work always being cut out cylindrically by pairs.[14] In the gaps they squeezed the convict's legs at the part between his knees and ankles. In such public stocks were put those, who shouted and swore in the pubs or in the streets during the night. A swearing nobleman only had to pay one forint as a punishment, while peasants were instantly locked into stocks. Finally, the pillory or in other words *the column of shame,* was placed in the central square of the town or village, the perpetrators of minor mistakes being stood next to or tied to it. Mainly those women were tied here who behaved in a lewd way.

11 Barna MEZEY: Középkori tömlöctől a modern büntetés-végrehajtási intézetekig. ELTE, Budapest, 2000., p. 11.

12 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 29.

13 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 29.

14 Kinga BELIZNAY: Erdély. Szabadságvesztés a feudalizmus korában. In: Börtönügyi Szemle 1995/3. p. 87.

The efficiency of the punishment was always influenced by the proportion of the possible disadvantages and the advantages likely to result from the crime. In the feudalism stealing a hen was a necessary act for a serf in order to support his family, and thus his behaviour counteracted the capital punishment that was held out in prospect. In erlier times, in the case of a slave deprived of everything but his life, except for capital punishment, there remained only one way to punish him i.e. physical punishment.

The Hungarian legal codes written under European influence were familiar with nearly all types of mutilation. Saint Stephen sentenced perjurers to the cutting of their hands, and slanderers to the cutting of their tongues. Thus in our early feudal law both the talio-principle and the mirror principle were present. When punishing a thief servant, the dominant purpose was that of stigmatization. After his first perpetration his nose was cut, whereas after the second act they cut his ears. Our rulers from the 14th and 15th century prohibited the cutting of the parts of the body. Stephen Werbőczy, who was master of judgements, the king's personal consultant, palatine, chancellor and, above all, the greatest Hungarian jurist of the 16th century, took steps against these cruelties. However neither the "Triple Book", nor the Decrees could stop this bloody practice. Mutilation gradually came to be an aggravating secondary punishment. Numerous judges ordered that the evil-doers be tormented before being broken on the wheel or before being executed, and before the enforcement of the penalty two pieces of strap had to be cut from their skin from head to toe.[15]

Corporal punishment was used as a disciplinary punishment throughout the process of enforcing the penalty of imprisonment, the latter constituting the main part of the punitive system. During the times of feudalism prisons used to serve safety purposes enabling captivity during the process of investigation. "The present-day penalty of imprisonment was unknown in the Middle Ages. Prisoners being under investigation were taken to cellars, towers of town-walls and castles, where they were put in chains and tortured to extremes throughout the process of investigation. It was only in the 14th century in certain Italian cities, that authorities first imposed longer periods of imprisonment as punishment."[16]

Medieval dungeons could not have any rules to be applied uniformly. Regulations in dungeons – if any – changed from estate to estate and castle to castle. Prisoners were mainly left to their guards' pleasure. The circumstances in the prisons were formed under the influence of three main factors: the place of imprisonment, the necessity for aggravation and the general judgement of society. The first pieces of information we have about prisons indicated castles as the places to enforce punishment. Beyond the known historical information (eg. Sigismund's captivity in Siklós or Salomon's captivity in Visegrád) we know about the existence of prisons in almost every castle of ours. The frequent imprisonment-penalties resulted in increased needs for space in prisons and legal authorities (counties, priviledged districts) tried to satisfy these by making a greater use of castles.

In Transylvania the Government made arrangements according to which in case there was no suitable dungeon owned by local authorities, "malefactors be taken to near castles".[17] What is still common in these prisons are the cellar- or hole-like places, stuffy, unhealthy conditions, lack of cleanness and the striving for the cheapest possible placing. Thus it is obvious that the imprisonment that manifested itself in plain custody sharply differed from the strictness of the feudal law enforcement. In practice this lead to further torment in dungeoning. At the time there was an attempt to raise the 'black hole' to the level of other punishments. With this purpose the circumstances in the prisons were worsened, prisoners were regularly threatened

15 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 25.

16 Oszkár SZŐLŐSSY: A magyar börtönügy vázlata. Magyar Kir. Igazságügy-minisztérium. Budapest, 1920, p. 4.

17 Law passed by the Parliament, (Gyula)Fehérvár, 24 April – 21 May, 1643.

and physically tormented thus turning prisons into a specific and combined way of punishing. Prisoners crammed into dark and cellar-like dungeons were hardly fed, in case of illness medical treatment was not provided, airing was out of question and so were candle light or heating. Walks were allowed at celebrations or fairs with the purpose of deterring free citizens by letting them see public corporal punishment of ragged and staggering prisoners who were chased into the crowd. By the 18th century slave-work had spread as well. Prisoners were commanded to communal labour and thus imprisonment became a complicated sanction, an ever-changing combination of corporal punishment, locking up and forced labour.

The effect of social judgement resulted in the aggravation of the circumstances in prisons. While in the Antiquity political enemies were murdered or exiled, in the feudalism imprisonment was thought to be better. Soil castles all had their dungeons while castles made of stone or surrounded by a wall had their prisons. During the times of the absolutism such buildings were established as the lead chambers of the Tower Bastille or the Doge Palace. A new form of imprisonment was the galley slavery, which introduced the principle of a new, economically relevant consideration. The feudal society was the mass of small communities and autonomies separated from each other, having a life within narrow bounds and resting upon the pillars of particularism and feudal privileges. The existence of those hardly ever crossing the borders of their towns or villages was determined by their close environment. Beside all these, it must be emphasized that in case someone did not obey primary orders, suitable sanctions had to be carried out, eventually obtaining law enforcement by force. The blunt prestige of the authorities had to be restored, laws passed by them and their will be enforced, their power of disposal needed to be expressed. But, at the same time, the moral balance had to be restored as well, the sense of justice of the inhabitants or of those insulted needed to be satisfied. Thus the expectations of religious ethics – the basic pillar of feudalism – were met.[18]

The punitive ways were defined by the harsh reality of the Middle Ages, just as was the quality of enforcement. Beside a narrow set of social values there existed a rather single-coloured punitive scale. The judge could choose from among mutilation, corporal punishment, financial and humiliating penalties. Imprisonment occured as an exceptional phenomenon in the form of dungeons and jails. During the times of feudalism law enforcement was strongly influenced by the conservation of the institutions promoting communities which were developing from a clan-society into a class-society.[19]

The varying social judgement of law enforcement during the times of feudalism could not be altered by the prison-improving movement of the liberalism either. The hindrance of modernization of prison cases highly proved the fact that in every society there only developed sanctions which met the expectations of the given era and suited its approaches, economic possibilities and shared its set of values.

4. Law enforcement in the modern age

4.1. International view

During the formation of modern civilized society in western European cities imprisonment had its first appearence in the 16th–18th centuries. However, the development of prison cases started only at the end of the 18th and the beginning of the 19th century.

18 Barna MEZEY: Középkori tömlöctől a modern büntetés-végrehajtási intézetekig. ELTE, Budapest, 2000.
19 Barna MEZEY: Büntetés-végrehajtás a feudalizmusban. ELTE.

In the 17th century the enforcement of imprisonment had no developed system, there was no guarantee for the legality of keeping someone in prison. In the middle of the 16th century the authorities started to arrest dangerous vagabonds whose number had increased after the wars. The purpose was to get them used to a decent lifestyle. Later they realized that such safety measures were to be taken against criminals as well. Then they started to send the condemned to workhouses. It was in 1553 that a royal castle near London (Bridewell) first was turned into prison for criminals, prostitutes and work-shirkers.

Thus, in the modern age, not only those were sent to prison who did not pay taxes or were heretics. Vagabonds, prostitutes, lunatics with no maintenance and VD-patients (patiens suffering of veneral diseases) were too assembled here. This combination of institutions dealing with poverty cases, collection of taxes, public health and with law enforcement remained till the most modern times. Moreover, in the 17th century in the Netherlands children were kept here whose parents asked for the correction of their behaviour. The law enforcement locking criminals in the same institutions with all kinds of wrecks of society and leaving their fate to the prison-owner was a characteristic heritage of the feudal chaos.[20] Instead of this cistern of the feudal dungeons a new prison with punitive purposes needed to be established to serve as means for the modern punitive way i.e. imprisonment. 'The scientific approach of the task required the presentation and critical examination of the existing circumstances in prisons. This tiresome job was done by John Howard: his detailed and objective findings served as a basis for the reforms.[21] *Howard became the high sheriff in Bedford Shire in England which approximately equals a county head of justice. He visited the prisons in his county one by one and got to know the terrifying condition they were in. The main problem he saw in the fact that prison keepers did not get any salary thus the basis of their income being the maintenance inflicted on the prisoners. Those not being able to pay were left to languish in cold and hunger until they were sentenced to gallows, put in the pillory or deported.*

After Beccaria's appearence capital punishment was forced back into a narrower circle and penalties of mutilation came to an end. Those committing major crimes were more often deported to plantations overseas instead of being executed. All these met the requirements of the increasing need for workforce of the developing manufacturing industry. This was when forced labour and imprisonment came to the front. The prisons served rather punitive purposes than purposes of other laws. The first prison built for this purpose in Europe was the Rasp Huis in Amsterdam. In this prison, which was established in 1595, there was a spinhouse (Spinnhaus) for women where serious forced labour was employed. In comparison with other European prisons a main feature of Dutch prisons was cleanness and tidyness. The Dutch payed great attention to sanitary suitability, they considered employment to be an important question. The same was the situation under the reign of Queen Maria Theresa in Belgium, in the prison (maison de force) established in 1773 Geneva. This was the first modern prison where – during the day – the condemned worked in common rooms under strict supervision, while at night they slept separately in sleeping-cells and they were already grouped in certain cathegories.[22] The specific prisons of the French, the 'hopitaux généraux', was again the place where insolvent debtors, tramps, prostitutes, lunatics and severe VD-patients were locked up together with criminals waiting for their sentence. There were often rebellions which were followed by brutal suppression. In contrast with this, in the German

20 Barna MEZEY: Középkori tömlöctől a modern büntetés-végrehajtási intézetekig. ELTE, Budapest, 2000., p. 16.

21 János SZÉKELY: "Rács mögött" A szabadságvesztés-büntetés történeti áttekintése – tanulmány. In: Börtönügyi Szemle 1999/5. p. 21.

22 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 54.

trade cities it was only later that the prisons – where only those criminals were kept who were waiting for their sentence (in small numbers and under terrible circumstances) – were used for locking up lunatics, beggars and tramps. It was Hamburg that first ordered the locking up of beggars and tramps proudly saying that beggary had disappeared from the streets while the maintenance costs for the prisons had fallen as prisoners able to work were forced to production. Howerver, the administration of prisons had run into debt within ten years, by the year 1801. With the appearence of modern English machines and French ideas it was clear that such kinds of prisons had become outdated not only from a humanitarian and penal point of view, but also from the point of view of employment policy.

The certain penal codes only included main lines for orders, detailed regulations were left to internal instructions. Obviously this resulted in a legally unstable imprisonment. Having no legal regulations concerning detailed questions of enforcement it was impossible to talk about basic principles either. Directors of the first prisons were given free hand in the development of prison-regime the result being several specific types of prisons to compensate the disadvantages of a common system. A few types of this system were for example: solitary confinement in cells, the silent (Auburnian) system, combined system (the one from Geneva and the Obermayer version), the gradual systems, the Maltese system, the ticket-system, the system from Corfu, the elmira system etc.[23] In these systems of law enforcement great importance was attached to the employment of the condemned in useful productive work, their moral betterment and their learning to work were considered to be key-questions. Education was introduced into their practice.

In Switzerland, in 1895 the so called punitive work establishment was organized in Witzwili. The condemned doing agricultural work were allowed to move freely on the establishment not having to endure the damaging and oppressive effects of a locked prison. This was considered to be the reason for its successfullness. In contrast with this, in Russia imprisonment became a way of punishing starting from the 16th century. From the 18th century political enemies of the tsarist system were kept prisoners in the fortresses in Petropavlovszkaja and Slisszelburg. By the end of the century the number of political prisons had highly increased. In 1775 workhouses and forcing houses were introduced. Even those could be interned here who had not done anything against the law. For example landowners or farmers sent their pheasants and workers here. Those braking the order of the prison received corporal punishment usually enforced by the supervisor with a whip. The critics of the feudalist punitive system attacked the brutality of the punitive processes, they claimed for penalties in proportion with the crime committed. By emphasizing the inhumanity of punitive ways they demanded the development of law enforcement system that had purposes of betterment. In the whole of Europe there started a relentless criticism of the absolute theories based on Aristotelian principles and religious ideologies. Voltaire's, Montesquieu's and Rousseau's views concerning law enforcement were summarized by Beccaria and Filangieri. Thus, theories concerning penalties parted from speculative philosophy and became an independent branch of science.[24]

4.2. Hungarian law enforcement in the modern ages

In the 17th century a few types of prisons developed in Hungary as well. Landowners had prisons next to the ruling chair in the castle, in the estate building or in the cellar of the castle.

23 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 27.
24 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 31.

At the service of county authorities castles served as prisons. The cities developed their 'carcer' in the townhall or its cellar or even in the executioner's house.[25]

The first time imprisonment appeared in the collection of Hungarian laws was in the 12th paragraph passed in 1723 under the reign of Károly III as penalty to be imposed on those committing incest. The sources of penal law were the statutes from counties and towns, the arbitrary practice of ruling chairs and occasional laws. With the gradual spreading of imprisonment county prisons, dungeons of towns having municipal rights and of estates having the power of life and death served as places for its enforcement up to the middle of the 19th century. The thought of establishing a punishment house on a national level first occured in 1763 in the Governing Council obviously under the influence of the well-tried institution from the Netherlands.

In the Hungarian history of prison cases preceeding the formation of modern civilized society the government once made an attempt to establish a central prison: in 1772 a correction house (Domus Correctoria) was opened in the former castle of Count Ferenc Esterházy. The institution that was later transferred to Tallós (1785) and to the casemates of the castle in Szeged became the home of numerous enlightened ambitions. Humane accomodation, decent catering and corrective training were the things the government tried to employ. However, the effort did not last too long as it was proved that the enlightened prison cases constituted a considerable financial burden.Thus the legal harmonization between prison cases and law enforcement in Hungary are considered to have begun with the criminal laws passed by Maria Theresa and Joseph II.[26] The Constitutio Criminalis Theresiana in Maria Theresa's Code of penal law defined two types of imprisonment penalties: penalties to be spent either in bridewell or in prison. But there also existed the institution characteristic for the Enlightenment, i.e the workhouse. Increasing the severity of a sentence was still possible by employing other penalties as caning and flogging. Depending on the sentence the penalty had to be spent in irons or without. The whole mentality of the legal code was determined by two main piers: capital punishment and torturing. Due to this the Theresiana was soon repealed. After only two decades it was replaced by Joseph II's Sanctio Criminalis Josephin. He abrogated capital punishment and allowed its adoption only in case of summary proceedings. As for the duration of the penalty it could last from one month to 1000 years. The basis of the rather complicated time constituted the degree of wickedness experienced in case of crimes. In their structure Josephinist criminal laws tried to meet the requirements of enlightened, modern expectations, in case of the regulation of differentiating there occured features enabling the distinction of civil prison: visitors, the stopping of bed, food-restriction. Still, there was no getting rid of the feudal demand which could only consider the prison as a place for corporal punishment and accordingly claimed for the aggravation of the dungeons. In Hungary the Sanctio Josephina was immediately repealed after the death of the emperor. The parliament formed the *Deputatio Juridica* the task of which being to work out the draft of the new code of penal law. The result of this is the draft of the penal codex passed in 1795. Until the revolution in 1848 no other new national institution was established except for the already existing ones in Szempc and in Tallós. So it happened, that the basis of the Hungarian national law enforcement institutions was established by the Austrian dictatorial government during the times of the neoabsolutism. This was only succeeded by the Hungarian campaign for prison-improvement in the first half of the century, and by the preparations of the parts of penal motions which referred to prison cases.

In the 1930s and '40s one of the key questions of the fight for social improvement in Hungary was the reform of the administration of justice. Following the attempts made on the

25 Kinga BELIZNAY: Erdély. Szabadságvesztés a feudalizmus korában. In: Börtönügyi Szemle 1995/3. p. 75.
26 Barna MEZEY: Középkori tömlöctől a modern büntetés-végrehajtási intézetekig. ELTE, Budapest, 2000., p. 16.

basis of the VIII. law passed in 1827, Ferenc Deák initiated a new penal reform in the parliament between 1832–1836. Even though his initiatives were not successful, they called attention to those 20 000 people on whom imprisonment had been carried out during that time under terrible circumstances.[27] Disorder went together with looseness, corruption and with the abuse of power. Prisoners had to arrange food for themselves. Guards often cooperated with counterfeiters and thieves. Women prisoners were defenceless against men, especially against guards. The 387th paragraph of the motion passed in 1843 contains the basic rules of law enforcement. These include, among others, orders that refer to the financial and medical support of the condemned, the tasks, wages and legal status of the staff carrying out the sentences, as well as rules referring to the institutions of law enforcement and their administration. The motion scheduled the building of municipial bridewells and prisons (in counties and towns), and that of district or national prisons. Those being under investigation or having been sentenced to captivity would have been sent to bridewell; the ones having got a sentence shorter than half a year would have gone to county prisons, while the ones with a sentence of half a year or longer would have been locked into district prisons. As a result prisons with a private system were built in the counties of Bihar, Komárom, Nógrád and Tolna.

The dictatorial government that was introduced after the suppression of the revolution in 1848–49 regarded the Hungarian public administration and the administration of justice as Austrian home affairs. This age was characterized by Austrian administration based on Austrian rules, Austrian legislation and Austrian officials, an Austrian model for administration of justice and Austrian prison regulations. The Austrian *Strafgesetz* from 1852 and its accompanying orders realized the most direct legal harmonization: Austrian penal laws came into force in Hungary.[28] Between 1854–1858 six national prisons were opened in Hungary (in Illava, in Vác, in Munkács, in Mária-Nosztra and in Nagyenyed). The great reform operations remained to be done by the second liberal generation of the settlement. The development of the civil law and order and that of the civil state-apparatus was very quick. However, previously in 1861 the Conference of Seneschals restored the power of the penal laws existing before 1848 and prohibited the differentiation between classes as well as the employment of corporal punishment. Based on the XXXIII. law passed in 1871 the legal authorities gave their prisons and their equipment up to the newly organized courts and later to the royal prosecutors. Thus, the actual development of the Hungarian central system of law enforcement can be reckoned from these times. In the same year (1871) corporal punishments were repealed. Based on the decree No. 696 from the year 1874 the Ministry of Justice became the controller of the system of law enforcement. After the preparation of this lengthy and complicated reform the 5th law passed in 1878 accepted the Penal Code which is kept in evidence by literature as the *'Csemegi Kódex'*. This codex brought about crucial changes in the structure of imprisonment as a penalty. Instead of private systems it introduced the gradual system that had already been accepted in Europe. It defined various types of imprisonment (bagnios, bridewells, prisons, state prisons, custody) and founded several new institutions (solitary confinement, prisons, mediatory and correctional institutions). A main characteristic of Csemegi's theory is that it establishes and explains the punitive system, its goals and the principles of imposing sentences. Beside the already existing prisons new prisons are built by the end of the century: the prison in Szeged (1881), the prison in Sopron (1884), The National Collective Prison in Budapest (1896) and several county court prisons.

By the turn of the century 9 national prisons, 65 court and 313 district court prisons were working in Hungary. The average number of prisoners was around 13 000 and there was space

27 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 32.

28 Barna MEZEY: Középkori tömlöctől a modern büntetés-végrehajtási intézetekig. ELTE, Budapest, 2000., p. 34.

for 17 000 convicts. This network was completed by special institutions like The National Judicial Observer and Psychiartric Institution, National Hospital for Prisoners, National Museum of Prison Cases, Criminal Anthropological Laboratory, The Tauffer Library of Prison Cases. Thus, a comprehensive development of the Hungarian prison cases basically took place after the Csemegi Codex came to power. The law concerning legal procedures passed in 1896 contained a detailed description of the internal order and trial procedures of prisons. The reception in a prison happened on the royal prosecutor's order that was usually based on a judicial decision and on the judicial announcement regarding the sentence. However, those arrested or brought in by police authorities or by the gendarmerie and those transported from other prisons had to be admitted temporarily. The "after-prison" care in Hungary was established in 1874 by the foundation of The Relief Organization for Prisoners in Budapest the purpose being to make it easier for the condemned to return to social life. They created the criminal sheet with information about the sentence and this was sent to the National Criminal Register.[29]

The modern Hungarian history of law enforcement is not very long, it only covers 150 years. This does not mean that this period did not have plenty of interesting events, reforms and changes of paradigm. On the contrary, the stagnation or improvement of prison cases was sometimes left behind and sometimes preceded the general social progress.

5. Law enforcement from the turn of the century (1900) to the change of the regime

5.1. Reform endeavours

At the end of the 19th and the beginning of the 20th century the trust put in the criminal system renewed on the basis of the principle of legality was undermined by crisis phenomena. The conflicts between the classic reform and the criminal tendencies regarding the perpetrator and his criminal act left their mark on the development of criminal theories. Laws concerning imprisonment were passed one after the other (1881 in Belgium, 1900 in Norway, 1903 in Switzerland) making the length of imprisonment undetermined and dependent on the betterment of perpetrators who in most cases were slackers, drunkards, beggars and tramps. The same kind of laws were passed against subsequent offenders in 1902 in Norway and in 1908 in England. During the turn of the century not only the theory but also the practice of the Csemegi Codex was judged by practitioners and suggestions were made regarding the modification of the punitive system. In Europe Hungary was among the first who introduced the law enforcement system against young aged criminals. The XXI. law passed in 1913 crated the safety rules to be employed in the case of dangerous tramp slackers. This was the workhouse into which the convicts were sent after having spent their sentence in prison. The world war chronologically hindered and retarded every improvement, the institutions of law enforcement had considerably decomposed. On the basis of the exceptional law applied during the war – the L. law passed in 1914 – some of the prisoners were sent to work in public institutions or for private individuals. The sentences of those capable for military service were postponed or interrupted during the war. There were no civil servants or staff in the institutions of law enforcement and suitable equipment, food, heating and lighting were also

29 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 60.

missing. During the democratic revolution that broke out in 1918 The National Council set free all political prisoners and those convicts who did not seem to represent danger to public security. With the announcement of the Hungarian Soviet Republic the administration of justice was totally transformed. The X. law passed in 1928 introduced the institution of aggravated workhouse as a uniform provision instead of imprisonment. The shortest period imposable was 3 years but the upper limit was not defined by law. The convicts could only be discharged from aggravated detention on probation. This institution worked until 1950, no such separate institutions were established until its termination, as all these were working within bridewells and prisons. The high number of imprisonment cases induced the government to reduce the severity of penalties. Thus was introduced the institution of imprisonment suspendable on probation.

5.2. Law enforcement in the interwar period

In the interwar period Hungarian penal law was characterized by three main features: the legal conclusions drawn after the events of the Forgotten Revolution and of the Hungarian Soviet Republic; the legal formulation of the reforms of the 20th century penal law; militarization and the legal bearings of wartime tensions. All these brought about serious changes in the penal law and in the code and practice of law enforcement.[30]

In the interwar period in Hungary the enforcement of sentences in prisons, bagnios, bridewells, national prisons, workhouses, aggravated workhouses was carried out in 6 national institutions: The National Collector Prison from Budapest, The National Prison and Mediatory Institution from Vác, The National Prison and Aggravated Workhouse for Men from Sopron, The National Prison from Harta,The National Prison and Aggravated Workhouse for Women from Márianosztra and The Local Prison and National Prison from Szeged. There were also 23 court prisons, 90 district courts and two workhouses working. In this period law enforcement was controlled not by rules but by lower level ministerial decrees and orders. The International Committee of Criminal Law and Prison Cases established in the 1920s minimal requirements concerning humane and social treatment of prisoners. These requirements had to be kept by all civilized countries. Both the states taking part in the committee – Hungary among them – and the League of Nations accepted the international document which was published under the title *Basic Principles concerning the Treatment of Prisoners* and which summarized the most important demands of prison cases of that time.[31]

5.3. Soviet law enforcement in Hungary

After the end of the second world war the first thing to be done was the consistent liquidation of fascist remains. Among the first measures taken by the National Goverment was the restoration of law and order and the creation of the legal conditions when calling someone to account. Thus on January 25 the decree No. 81/1945 ME was passed, a decree about calling to account war-criminals and criminals against people. Beyond bridewells and prisons, internation and forced labour were introduced. Work camps were founded for the enforcement of penal sentences that were imposed for a definite period of time or even for life. Internation

30 Barna MEZEY: Új határok között. Büntetés-végrehajtás a két világháború közötti Magyarországon. In: Börtönügyi Szemle 2000/5. p. 95.

31 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 47.

as a forced measure taken by public administration fell within the competence of the police.

Starting from 1947 the judicial government had the view that law enforcement was not to be loss-making for the state. The employement of prisoners was included in the planned economy. In 1948 the Economic Management of the Ministry of Justice was founded which worked out and enforced the detailed economic plans of prisoner employment. In the same year took place the nationalization of the companies employing prisoners. It was also ordered that these companies be separated from prisons and that prisons were to provide them a sufficient number of prisoner-workers.[32] During these times there was no change in the organization of the public prosecutors' department until the year 1953. The former operative control done by law enforcement restricted itself to formal matters, then was almost completely suspended for a few years.[33] After the II. law passed in 1950 was put into force the distorted law enforcement brought an unprecedented number of prisoners into jail. Thus there was a demand for the enlargement of the system. In comparison with former enforcement systems there no longer existed gradualness and nor did mediatory institutions. Workhouses and aggravated workhouses were no longer included in the sentences imposed, and there was no solitary confinement either. Distortions caused by personality cult could be strongly perceptible. The institutions of law enforcement came under the hand of the State Security Authorities. Not only staff carrying out legal duties were denied to enter here but also those who worked in the fields of law enforcement were forbidden to enter (unless as prisoners). The institutions followed secret orders. Political prisoners were not set free after having spent their sentence. Their internation was often longer than the sentence itself.[34] Prisoners were encouraged to greater work-performance by the method of day-remission. This meant that in case of a performance that exceeded 100% one day was remitted after every 5% or 2% in case of mining. Keeping in touch with relatives and participation at cultural programmes were also dependent on work performance. In the following years what counted in case of staff employed in law enforcement was not qualification or professional skills but political reliability. At police stations there was an inscription used as a motto saying : *Don't just guard them, but hate the prisoner.* This lead on many occasions to brutal, inhumane treatment. In 1952 the enforcement of imprisonment was taken out from under the competence of the Ministry of Justice and was placed under the authority of the Home Office. For the central direction of prisons the National Headquarter of Law Enforcement was organized while prisoner employment was controlled by the Directory of Operations of Public Interest.

The regulations concerning law enforcement passed in 1955 established the uniform enforcement system. Among its goals were education and the omission of corporal punishment and it also indicated the prisoners' duties. In the few days following 23 October, 1956 political prisoners were released as well as thousands of pheasants not being able to deliver the quota of their agricultural produce. This is when coal mines serving as places for law enforcement were shut down definitively and so were industrial enterprises serving the same purpose. Three years later there finally took place the legal examination of unregulated or not properly regulated law enforcements. This is how secondary penalties, corrective trainings and fines were introduced. In the following years there was a gradual regulation of the domain of law enforcement (law V/1961), a separation of prisons and workplaces for law enforcement. Prison cases were placed back under the authority of the Ministry of Justice (1963), then there started the legal regulation of

32 János SZÉKELY: "Rács mögött" A szabadságvesztés-büntetés történeti áttekintése – tanulmány. In: Börtönügyi Szemle 1999/5. p. 21.

33 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004., p. 49.

34 János SZÉKELY: "Rács mögött" A szabadságvesztés-büntetés történeti áttekintése – tanulmány. In: Börtönügyi Szemle 1999/5. p. 21.

the enforcement of certain penalties. The theoretical activities had a stimulating effect on the codifying work that was started in the '60s and this mirrored the increased interest shown towards the questions of content of law enforcement. The first steps on the road of placing the punitive system on new bases were taken by law decree no.20 passed in 1966. The already existing two stages of imprisonment were completed by another stage. In agreement with the idea of the four existing types of criminals the following were established: aggravated prison; prison; aggravated workplace for law enforcement; workplace for law enforcement. The increasing number of crimes resulted in impatience the result of which was a new law decree of the Penal Code passed in 1971 (law decree no.28) which restored imprisonment for a life and ordered aggravation against subsequent offenders. There was a change in the names of the stages of imprisonment as well. Thus there was bagnio, prison, aggravated prison and bridewell. In the year 1974 a considerable change from the point of view of law enforcement was brought about by the introduction of forced medical treatment for alcoholics and one year later the appearence of the law decree no.20/1975 concerning after-prison care. The latter established a differentiated system of after-prison care. As a result codifying work based on former scientific research the new Penal Code came into being in 1978. It reduced the stages of imprisonment from four to three there being left only the bagnio, the prison and the bridewell. Its characteristic was that it had a wide range of judicial provisions, it laid stress on sentences of liberty constriction, on corrective training, on fines, on the suspension of imprisonment and it employed a wide scale of possibilities concerning placing someone on probation. The Penal Code that had undergone various modifications brought about some changes like the introduction of the group for educational and curing purposes, the determination and regulation of confiscation of property, the employment of aggravated corrective training as a major sentence, the regulation of the enforcement of protective surveillance, imposition of secondary penalties, forced medical treatment and examination of provisions concerning personal freedom.

By the end of the 1980s there could be felt the effect of the current of thoughts of the European constitutional states. There started operations regarding the restriction of the punitive power of the state. Probably the most significant change in this period constituted the law XVI/1989, according to which capital punishment could no longer be a means of political settlement. In 1990 the Constitutional Court declared capital punishment to be anti-constitutional and abolished all regulations related to it.[35] The laws of amnesty that followed the change of the regime had a positive effect on the formation of prisoner population. The circumstances in prisons, the employment and educational conditions could be improved with the reduction of the number of prisoners. The legal amnesty laws in the years 1989 and 1990 had as result the release of nearly 3 000 prisoners.

6. Conclusions

With its restricted size this essay cannot undertake to present with a deserved thoroughness the history of law enforcement from the beginnings to this day. It only can outline those few significant events that fundamentally determined the direction in which Hungarian law enforcement improved.

Starting with the initial penalties of self-judgement, through terrifying brutalities of the Middle Ages and up to the enlightened ambitions of the Modern Age, I intended to present those positive traditions which helped in maintaining the operation of the system and which raised

35 György VÓKÓ: Magyar büntetés-végrehajtási jog. Dialóg-Campus, Budapest-Pécs, 2004.