

BOOK REVIEW

Vanda Lamm (ed.): *Transformation in Hungarian Law (1989–2006)* 2nd edition. Akadémiai Kiadó, Budapest, 2009. 230 pp.

Twenty years after the “refolution” (the constitutional revolution that was negotiated over the National Roundtable Talks), a collection of essays which were published in 2006 and were aiming at nothing less than providing an analytic and synthesizing overview of the preceding legal developments were republished—a fact that provides ample evidence for the endurance and validity of the analyses.

The peculiarity of the negotiated regimes changes, like that of Hungary’s lay in the fact that law was the very tool that enabled the political and economic transition, and, pragmatically speaking the transition itself consisted of the very process of substantially changing the legal system—a process that obviously did not end by amending the constitution and the most important laws that shaped the political (and economic) structure. In the past years, there is not a single area of the Hungarian legal system that would not have been subject to fundamental changes.

Hungary’s new legal order is based on Law No. 1989. XXXI. amending the 1949 Constitution. Although in the past two decades several hundred laws were passed amending and restructuring the Hungarian legal system in the spirit of this substantially new constitution, despite repeated political efforts and a number of drafts prepared and debated by legal academics, professionals, and politicians, no new constitution was adopted. This “old-and-new” Constitution, which still bears the name Law No. 1949. XX., provides the framework a constitutional democracy: the principles of rule of law, separation of powers, political pluralism, market economy, human rights, etc. Actually, it is proverbial that the only provision that remained intact from the initial 1949 text is the one which states that Budapest is the capitol of Hungary.

Nevertheless, the ‘constitutional revolution’ did not end with the comprehensive amendment of the constitution and other acts (such as the law on the freedom of assembly, association, electoral law, etc.). Over the coming years, in part under the influence of EU-law approximation and the tacit or explicit demands or expectations of international organizations—and thereby obligations set forth by international conventions (such as for example the European

Convention on Human Rights) the reshaping of the Hungarian legal system took the form of a continuous process, where even the constitution was amended several times.

Thanks to the extensive jurisprudence of the Constitutional Court (established in 1990), the new constitutional order had been solidified. Unsuccessful as the attempts to adopt a new constitution were, legislative efforts throughout the 1990's and the first half of the new millennia succeeded in the complete transformation of all other areas of the legal system. As mentioned above, practically all branches of went under a significant change, and in fact, some were reconstituted almost entirely differently.

The initial period of furiously paced and therefore somewhat hastily completed legislative work, was followed by a more consolidated period from around the mid-1990's, when the comprehensive work of redrafting the base-laws of the major branches of law began. This was also made necessitated by Hungary's accession to the European Union—the process of which was underway at the time. The areas affected were: the Civil Code, the Penal Code, the Labor Code, the Act on Criminal Procedure and the Act on Public Administrative Procedures. Beyond meeting the demands of harmonizing with EU law, the new codes attempted to synthesize preexisting legislation and carry out a substantive codification. While a comprehensive overview of the entire process would have been an insurmountable task, in this collection of essays the authors highlight the most important trends and developments that characterize their chosen fields of law.

The first essay in this volume, by András Bragyova, a member of the Constitutional Court, professor of constitutional law at the University of Miskolc and Scientific Advisor to the Institute of Legal Studies of the Hungarian Academy of Sciences, addresses the theoretical question of the extent to which these radical changes permeated the entirety of the legal system, and how changes in the law and the legal system have affected the continuity of the latter. The author argues that although the political changes acted as a catalyst for fundamental—even radical—changes in both the law and the legal system, this did not break the continuity of the legal system. The current Hungarian legal system is the same as its predecessor in terms of its continuity with it, whilst at the same time being fundamentally different from it in terms of its content. The fundamental feature of the legal system, its claim to validity as a legal system had not changed. This claim of validity (which consists of four fundamental claims: being indubitable, exclusionary, primary and unconditional) in contrast to the claim of authority rests upon itself. According to Judge Bragyova, a legal system's validity is identical to its continuity, that is: its norms stay equally valid even if they change. In other words, the continuity-

existence of the legal system is based on the permanence (constancy) of its validity claim. Now, the specificity of regime changing processes is that they have a past-denying aspect. These past-repealing legislations are fraught with the inherent contradiction that they deny the equality of the legal system's validity claim while wishing to uphold the continuity of the legal system. The author argues that past-denying legislations need special justifications and since they bound to come in conflict with the continuity of the legal system; they may only be accepted in "new" legal systems, which are built on breaking the continuity, but not in legal systems like those that went thorough the "refolution" and preserved the continuity of the legal system.

Of the essays investigating changes in specific areas of law, the first one, by *Attila Rácz*, professor of constitutional law at the Corvinus University, focuses on the remodeling of State organizations for legal protection. The reader is guided through the Round Table Negotiations and the various post-1989 stages of institutional reform that concern the newly established or reformed institutions, such as the Constitutional Court, and the ombdus-institutions, the Prosecution's Offices and the judiciary.

The next section, authored by *András Sajó*, member of the Hungarian Academy of Sciences, Research Professor at the Institute of Legal Studies of the Hungarian Academy of Sciences and Professor at the Central European University focuses on legislation and jurisprudence concerning free speech—an issue of central importance to the political transition and the functioning of constitutional democracies. The essay, which provides a thorough overview of the Constitutional Court's case law, is part of a larger project: the scrutiny of the sustainability of liberalism after 1989 in Hungarian law. The author, who since then had been elected as member of the European Court of Human Rights refutes the claim that liberalism necessarily fails as both as a political ideology and a social model and consequently loses its imposed appeal in a clan-based pre-modern society, like the Hungarian. Judge Sajó shows the weak, but nevertheless long roots of liberalism in Hungary—a society which he sees an essentially modern "liberal" society with traditionalist values and patterns of behavior. He also argues that despite illiberal tendencies, as a small state Hungary simply needs to accommodate liberal demands of its European environment. The analysis shows that the implementation of liberalism has not been a linear process, but a set of parallel, only partly interrelated developments, where liberal ideology did not preclude illiberal solutions. Although the analysis of free speech jurisprudence serves as a litmus test for social patterns and attitudes and the test case for the sustainability of liberalism in law, the author adds that free speech (despite being vital for the whole society) is predominantly an elite concern, thus the endorsement of liberal traditions

in this field is not a conclusive evidence to the successful of liberalism in other institutions, public consciousness and behavioral patterns.

The next essay, by *István Balázs*, professor of administrative law at the University of Debrecen, focuses on the readjustment of public administration since the 1980'ies. The political changes also brought a thorough overhaul of the public administrative system as well, with regards to its tasks, competence and organizational structure. There is no area of public administration that has remained untouched by radical change since 1989–1990. The analysis, dealing with this issue emphasizes, that similarly to other Eastern European and East-Central European states in general, the Hungarian process was directed at the approximation of the Western-European model of public administration. The author provides a detailed assessment of the development of the legal framework of local governments, central, regional and local administrative organs, police administration, state audit institutions, the structure of the government, the processes of deregulation, decentralization, along administrative procedure, and the legal, financial and human resources status of the 800,000 state employees¹ and the financial and legal status of the approximately 3100 local governments.

The longest and most detailed section of the book focuses on the area of economic law, a field that where transformation actually preceded the political transition, as the 1988 law on economic enterprises was adopted two years before the first free elections in 1990. *Tamás Sárközy*, professor of constitutional law at the Corvinus University and Scientific Advisor to the Institute of Legal Studies of the Hungarian Academy of Sciences chronicles the development of Hungarian property, economic and business law (including separate assessments on corporate law, the law of foreign investments, the law of bankruptcy, cooperatives, privatization, consumer protection and pricing law, intellectual property, copyright and trade protection law.) The analysis includes financial law (securities, security exchanges, banking and insurance laws along accounting law, labor law, insurance, social security and welfare law. The chapter is divided into three sections. The first part deals with the development of economic civil law in general. The second part scrutinizes (i) company and business law, (ii) privatization law as special division of law unique to the transition process, (iii) banking, securities, securities exchanges and insurance laws, (iv) cooperative and agriculture law, (v) bankruptcy law. The third part focuses on developments regarding the developments of the Civil Code. Despite the fact that in the past five years a significant redrafting of company took place and a brand new Civil Code has been prepared and

¹ Hungary has a population of approximately 10 million people.

submitted to the Parliament, the analysis stops at 2004, because, according to the author, accession to the European Union opens a new phase in the field – as EU economic law has direct effect in Hungary.

The last two sections, by *Ferenc Nagy*, professor of criminal law at the University of Szeged, and *Réka Végvári*, Research Fellow at the Institute of Legal Studies of the Hungarian Academy of Sciences focus on the considerable changes the political and economic transition induced on substantive and procedural criminal law. In order to meet the demands of a constitutional democracy and obligations set forth in international human rights documents, the Criminal Code was amended more than fifty times since 1989 and in 1998 a new Criminal Procedure Code was adopted–restructuring the system of coercive measures (most of all the rules on arrest, pretrial detention, house arrest, and restraining orders) and redrawing preexisting rules on evidence and remedies. Also, a number of new offenses and sanctions (including a range of alternative sanctions) were introduced along the complete reform of political and–partly due to privatization and the transition to market economy–economic criminal law. Further new institutions include bail, witness protection and a form of plea bargain.

The case of criminal law and the Criminal Code (or, likewise, civil law and the Civil Code) show a pattern similar to the constitution and the constitutional framework: severe, structural amendments indeed produce a substantively new (field of) law, which can fulfill its new role to sustain liberal constitutional democracy, even if the official title still revokes “old”, pre-transition, and pre-constitutional memories.²

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² The Constitution is Law No. 1949. XX, the Civil Code is Law No. 1959. IV., and the Criminal Code is Law No. 1978. IV, originally adopted in 1949, 1959 and 1978 respectively.