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Portrait-Sketches from the History of Hungarian Neo-Kantian Legal Philosophical Thought

The mid-1980s signalled the revival of Hungarian legal philosophy. By this time the Soviet type Marxism has lost ground in legal philosophical literature. Further confirmation of the previously unquestionable paradigms have not put researchers' existence into risk any longer. For jurists concerned with legal theory, it was only a choice of values to decide which paradigm would be fundamental for them. One of the forms of finding new ways was provided by studies in Hungarian traditions of legal philosophy before the year of change, which were carried out by the concerned researchers still alive and the younger generations who view this kind of tradition as a neglected value and take responsibility for the rehabilitation of their predecessors' work.¹

A key precondition for us for being included in the European scientific life again is to know our traditions in legal philosophy and to apply all the research finds that our predecessors have accumulated. However, we also have to be

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¹ See from the literature on the subject: Loss—Szabadfalvi—Szabó—H. Szilágyi—Zödi: *Portrétvázlatok a magyar jogbölcseleti gondolkodás történetéből* [Sketches from History of Hungarian legal philosophy], Miskolc, 1995; Perecz, L.: A belátásos elmélettől a mező-elméletig. A magyar jogfilozófia fél évszázada: Pikler, Somló, Moór, Horváth [From the theory of discretion to the theory of law field. Half century of Hungarian legal philosophy: Pikler, Somló, Moór, Horváth], *Századvég*, (1998) 10, 73–94; Szabadfalvi, J.: *Moór Gyula. Egy XX. századi magyar jogfilozófus pályaképe* [Gyula Moór. A sketch of a 20th-century Hungarian legal philosopher], Budapest, 1994; *Jogbölcseleti hagyományok* [Traditions of legal philosophy], Debrecen, 1999; Bibó István és a szegedi iskola [István Bibó and school of Szeged], in: Iván Zoltán Dénes (ed.): *A szabadság kis körei*. Budapest, 1999; Transition and Tradition. Can Hungarian traditions of legal philosophy contribute to legal transition? *Rechtstheorie*, 33 (2002) 2–4, 167–185.; Some Reflections on the Anglo-Saxon Influence in the Hungarian Legal Philosophical Traditions, *Acta Juridica Hungarica*, 42 (2001) 1–2, 111–119.; Zsidai, Á.: A Tiszta Jogszociológia. (Bevezető tanulmány) [Pure legal sociology. An introduction], in: Horváth, B.: *Jogszociológia*, Budapest, 1995. 11–58.

careful about fragmented oeuvres and they are to be compared to the scientific level of the concerned period. If we realise that there is a lack of original ideas and the theories only belong to the second line, we have to express this. On the other hand, however, we should be proud of what is valuable even today.

We describe below five representatives of 20th century Hungarian Neo-Kantian legal philosophical thinking in a few words:

1.

Bódog [Felix] Somló² (1871–1920)

Bódog Somló is the most reputable representative of Hungarian legal philosophy of the turn of the 20th century whose oeuvre greatly contributed to the development of the Neo-Kantian legal philosophy, the dominant trend prevailing in Central Europe at the time, a development that eventually resulted in modernising the legal scholarship and theoretical thought in law in Hungary. Somló is a classic authority of social theorising in Hungary. His professional activity, relatively limited in time, spanning about a quarter of a century, can be divided into two phases.

His paper on *A jog értékmérői* [Value standards of law], published in 1910, marks the end of his first creative period. This first period of activity is characterised by the unconditioned acceptance and re-assertion of Herbert Spencer's doctrines, concomitant with personal adherence to his one-time professor Gyula [Julius] Pikler's theoretical approach based on natural science and psychology within the framework of a slightly materialist version of the philosophy of history. In co-operation and co-authoring with Pikler,³ Somló

² Bódog Somló's main works of legal philosophy: *Állami beavatkozás és individualizmus* [State intervention and individualism], Budapest, 1900; *Jogbölcséleti előadások* [Lectures in legal philosophy], Kolozsvár, 1906; *Masstäbe zur Bewertung des Rechts, Archiv für Rechts- und Wirtschaftsphilosophie*, 3 (1909–10) 508–522.; *A jog értékmérői* [Value standards of law], *Husadik Század*, 11 (1910) 1–14.; *Das Wertproblem*, in: *Zeitschrift für die Philosophie und philosophische Kritik*, (1912) 66–95.; *A szokásjog* [Customary law], in: *Farkas Lajos emlékkönyv*. Kolozsvár, 1914, 339–369.; *A helyes jog elméletéről* [On the theory of right-law theory], Kolozsvár, 1914; *Juristische Grundlehre*. [2. ed: 1927, and reprinted: Aalen, Scientia Verlag, 1973] Leipzig, 1917; *Jogbölcsészet* [Legal philosophy], Budapest, 1920; *Prima philosophia. Gedanken zu einer erster Philosophie*. Berlin, Leipzig, 1926; *Schriften zur Rechtsphilosophie*. Budapest, 1999.

³ Pikler, J.—Somló, F.: *Der Ursprung des Totemismus: Ein Beitrag zur materialistischen Geschichtstheorie*. Berlin, 1900.

focused his attention mainly on sociological problems taken from a naturalistic perspective. During this period Somló became—together with Ágost Pulszky and Gyula Pikler—the third outstanding figure determining the future of positivist philosophy of law in Hungary.

The second phase of Somló's scholarly career is defined by his Neo-Kantian turn, heralding maybe the most prosperous period that has ever existed in Hungarian legal philosophy which—represented mostly by his successor, Gyula Moór and, later, the renown legal sociologist Barna Horváth—lasted until World War Two, when the Soviet military occupation replaced local traditions with 'Soviet-type' Marxist theory as an all-substitutive panacea. Despite that for early Somló legal philosophy and legal sociology were equal instanding, his Neo-Kantian conceptualisation led to revision and separation of these inter-connected areas of legal inquiry. The outcome of this period founded and substantiated Somló's scholarly reputation in legal philosophy in Hungary and especially in German-speaking territories. Nowadays he is duly regarded as a classic authority of Neo-Kantian philosophising on law in Central Europe, among thinkers like Rudolf Stammler, Gustav Radbruch, Hans Kelsen and Alfred Verdross.

In his writings published around the turn of the century, he criticised the scholarly ideals established by his contemporaries, from the perspective of natural-science-inspired positivism and evolutionism. His positivist theoretical outlook was all the way through complemented by scholarly interest and personal involvement in public affairs. One of his major works characteristic of this period is the book-size treatise on *Állami beavatkozás és individualizmus* [State intervention and individualism] published in 1900. The greater role the state was to play and the formation of monopol capitalism both demanded reformulation and adaptation of the respective roles and institutions of law, state and politics. In 1906, in his *Jogbölcséleti előadások* [Lectures in legal philosophy], he already advanced—preserving, however, his early positivist ties—quite a number of considerations he later developed systematically in his magisterial work *Juristische Grundlehre*. A point of interest in Somló's work is that the first edition in 1917, published by Meiner in Leipzig, was promoted by Hans Kelsen. Due to favourable welcome and wide interest, the same publishing company published the work ten years later again, then in 1973 Scientia Verlag found Somló's main work worth having a third edition too.

By differentiating pure and applied sciences (including normative sciences in the latter), he laid the foundations of Neo-Kantian philosophising in law, in which he proposed to investigate basically two issues: (1) determination of the preconditions of law (standing for a research aimed at the concept of law

within the framework of the basic doctrine of law), and (2) the search for just law or *richtiges Recht* (standing for the axiology of law). He turned to Neo-Kantian philosophising when he was seeking—to Rudolf Stammler’s influence—the potentialities of investigation into *richtiges Recht*, which he completed in his *Juristische Grundlehre* in 1917. Based upon theoretical traditions cultivated, among others, by John Austin’s *Province of Jurisprudence Determined* and Karl Bergbohm’s *Jurisprudenz und Rechtsphilosophie*, Somló’s *Juristische Grundlehre* offers the analysis of the concept and conceptual elements of law regardless of the contents, keeping the outlook of the contemporary predominant Neo-Kantian philosophy. The enthusiastic reception the German-language book encountered in the region urged him to continue his studies by laying the foundations of a legal axiology as well in a similarly methodical and comprehensive manner. When preparing for the job, he started the inquiry by formulating his own philosophical foundations in a complex ontological, epistemological and axiological perspective, but this came to be published only as posthumous fragments after his early death, in 1926.

2.

Gyula [Julius] Moór⁴ (1888–1950)

Gyula Moór, the most recognised figure of Hungarian legal philosophy between the two World Wars, was considered by one of his colleagues in the early 1920s

⁴ Gyula Moór’s main works of legal philosophy: Stammler „Helyes jogról szóló tana” [Stammler’s „right-law theory”], Budapest, 1911; *Macht, Recht, Moral. Ein Beitrag zur Bestimmung des Rechtsbegriffes*, Szeged, 1922; *Bevezetés a jogfilozófiába* [Introduction to philosophy of law], Budapest, 1923; *Das Logische im Recht*, *Internationale Zeitschrift für Theorie des Rechts*, (1927–1928) 3, 157–203.; *Zum ewigen Frieden. Grundriss einer Philosophie des Pazifismus und des Anarchismus*, Leipzig, 1930; *A jogi személyek elmélete* [Theory of legal entity], Budapest, 1931; *Reine Rechtslehre, Naturrecht und Rechtspositivismus*, in: *Gesellschaft, Staat und Recht. Festschrift gewidmet Hans Kelsen zum 50. Geburtstag*, Wien, 1931, 58–105.; *Creazione e applicazione del diritto*, *Rivista Internazionale di Filosofia del Diritto*, 14 (1934) 653–680.; *Das Problem des Naturrechts*, in: *Archiv für Rechts- und Sozialphilosophie*, 28 (1935) 3, 325–347.; *Szociológia és jogbölcselet* [Sociology and philosophy of law], Budapest, 1934; *Jogfilozófia* [Philosophy of law] (Budapest, 1936); *Was ist Rechtsphilosophie?*, *Archiv für Rechts- und Sozialphilosophie*, „Ungarn-Heft”, 37 (1943) 3–49.; *A szabad akarat problémája* [Problem of free will], Budapest, 1943; *A jogbölcselet problémái* [Problems of philosophy of law], Budapest, 1945; *Tegnap és holnap között* [Between yesterday and tomorrow], Budapest, 1947.

the founder of a 'new Hungarian legal philosophy'. The innovation of Moór's philosophy can best be captured in his 'comprehensive attitude', which was called by his critics, not without reason, an eclectic theory.

Being attached to Neo-Kantian philosophy of law, Moór was mainly influenced by Rudolf Stammler, with whom he became acquainted with at the university of Berlin and his one-time professor, the Hungarian Bódog Somló. Hans Kelsen's theory must also be mentioned as a permanent base of comparison to Somló's philosophy of law even if they often had divergent views. When forming his own philosophical system, Moór is characterised by a complex approach to the problems raised by his philosophical and legal philosophical antecedents that exerted influence on him. In his first comprehensive work *Bevezetés a jogfilozófiába* [Introduction to the philosophy of law] published in 1923 he mentions three independent fields of investigation: (1) definition of the concept of law (fundamental doctrine of law), (2) scientific investigation of general causality in law (sociology of law) (3) the question of correctness of law (value doctrine or legal axiology). In this basic work he worded the 'methodology of statutory law' as the fourth field of legal philosophy in a wider sense.

From the late 1920s on Moór wanted to elaborate his legal philosophical system on the basis of paradigms of 'Baden' or 'value doctrine school' represented by Wilhelm Windelband and Heinrich Rickert, seeking new paths in Neo-Kantian philosophy. Meanwhile Moór was seeking connection between the world of reality (Sein) and that of value (Sollen)—which as the central problem of Neo-Kantian legal philosophy—instead of strictly separating the two spheres as some thinkers did by stating an antagonism between them. Consequently, he interpreted law as phenomenon belonging to the realm of 'reality of values'. In the 1930s he thought he could mostly rely on Heinrich Rickert's philosophy, but then at the beginning of the 1940s he turned to Neo-Hegelian philosophical theses of Nicolai Hartmann. In the works published in the early 1940s he saw the opportunity to renew the philosophy of law in a 'new tendency of cultural philosophy', which was a sort of synthesis of Neo-Kantian and Neo-Hegelian philosophical thoughts. In consequence, he sees in law not only a system of statutes containing abstract regulations but also the realities of human activities in which the intellectual content of law becomes reality. It is regrettable that because of the war and the years of upheaval following it, he had no opportunity to elaborate his system of legal philosophy based on new philosophical ideas. The most everlasting and also the most cited

part of Moór's work is the investigation of the concept of law. It is the issue that brought his teacher's, Bódog Somló's most considerable influence. Among abundant theories of power and force, Moór carried out a sophisticated investigation of the concept of law by transferring the idea of social reality to the realm of law and thus he opened up new possibilities for the investigation of characteristic features of the regime behind law.

3.

*Barna Horváth*⁵ (1896–1973)

From the early 1930s, in the prevailing Neo-Kantian philosophy Barna Horváth created a new colour in the Hungarian traditions of legal philosophy. His career was first promoted by Gyula Moór in the 1920s and then became famous as professor of Szeged university. In his view of legal theory, which he preferred calling legal sociology or even '*pure legal sociology*' according to Hans Kelsen's terminology, his originality was mainly revealed in his so called synoptic attitude and the functionally related processional legal view. He has created something new by conforming two paradigms that were considered antagonistic in contemporary legal philosophy. (See about: *Rechtssoziologie, A jogelmélet vázlata* [Sketch of legal theory]) A parallel existence of Neo-Kantian (Lask, Rickert, Verdross, Kelsen, etc.) and pragmatic-empirical attitudes (Pound, American realism, psychologism, etc.) and their relation to each other was regarded as a breakthrough not only in Hungarian but also in European

⁵ Barna Horváth's main works of legal philosophy: *Die Idee der Gerechtigkeit, Zeitschrift für öffentliches Recht*, 7 (1928) 508–544.; *Természetjog és pozitivizmus* [Natural law and legal positivism], *Társadalomtudomány*, 8 (1928) 212–247.; *Gerechtigkeit und Wahrheit, Internationale Zeitschrift für Theorie des Rechts*, 4 (1929) 1–54.; *Die Gerechtigkeitslehre der Vorsokratiker*, in: *Studi Filosofico-Giuridici dedicati a Giorgio Del Vecchio*. Modena, 1930, 336–372.; *Hegel und das Recht, Zeitschrift für öffentliches Recht*, 12 (1932) 52–89.; *Bevezetés a jogtudományba* [Introduction to jurisprudence], Szeged, 1932; *Rechtssoziologie. Probleme des Gesellschaftslehre und der Geschichtslehre des Recht*. Berlin-Grunewald, 1934; *Sociologie juridique et Théorie Processuelle du droit, Archives de Philosophie du droit et de Sociologie Juridique*, 5 (1935) 181–242.; *A jogelmélet vázlata* [Sketch of legal theory], Szeged, 1937; *Der Sinn der Utopie, Zeitschrift für öffentliches Recht*, 20 (1940) 198–230.; *Der Rechtsstreit des Genius. I. Sokrates*, in: *Zeitschrift für öffentliches Recht*, 22 (1942) 126–162.; *Der Rechtsstreit des Genius. II. Johanna*, in: *Zeitschrift für öffentliches Recht*, 22 (1942). 295–342.; *Der Rechtsstreit des Genius, II. Johanna*, in: *Zeitschrift für öffentliches Recht*, 22 (1942). 395–460.; *Angol jogelmélet* [English legal theory], Budapest, 1943.

legal thinking. The consideration of these two influential paradigms is not by chance. While between the two World Wars Neo-Kantian paradigm is to be considered evident in Middle Europe, pragmatism appeared as a new idea mainly in the Hungarian public view of legal philosophy. Barna Horváth's susceptibility to empirism can be attributed to two reasons. On one hand, he as practising lawyer realised contradictions in norms and reality, which was neglected by Neo-Kantian philosophy. On the other hand, during his journey to England in the late 1920s, Anglo-Saxon legal culture made a great impact on him. After coming home from England, Horváth reported in a number of papers on the achievements of both American and English jurisprudence. The experiences and impressions he gained in England urged him to complete the history of English legal philosophy. (See about: *Angol jogelmélet* [English legal theory].)

The synoptic method elaborated by Horváth is an original interpretation of one of the fundamental questions of Neo-Kantian legal philosophy, namely the connection between value and reality. The most significant representatives of 'contemporary' Hungarian philosophy of law, including Moór, Somló and Horváth, all concerned themselves with finding a solution to this problem. Horváth's starting point was the essence of legal activity, and considered law as a pattern of thoughts in a judge's mind, which is nothing else in this way but a 'reflexive theoretical product'. The procedure by a lawyer becomes synoptic through his applying a legal case to a legal norm, and at the same time, *vica versa*, relating a legal norm to a legal case. The lawyer, therefore, relates normative matters of fact to real matters of fact. In order to do this job, the lawyer needs a knowledge of facts selected according to legal rules, and also a knowledge of laws selected according to matters of fact. While a practising lawyer focuses his attention mainly on a legal case, a theoretical lawyer concentrates on statutes of law, but both consider the legal case and the law at the same time.

According to Horváth's processional legal attitude, closely related to his synoptic method, law cannot simply be regarded as norm but as an abstract behavioural pattern and relating actual behaviour, or in other words, a connection between norm and behaviour, which is the procedure itself. Procedure is the 'genus proximum' of law. That is to say, a continuous relation (of synoptic structure) of a legal case to the legal norm will create a procedural process. In Horváth's opinion, law as the most developed social procedure establishes the most advanced stage of procedures by establishing the most developed procedural institution.

Barna Horváth's role lies in the fact that traditional German-Austrian ties of the 20th century Neo-Kantian Hungarian legal philosophical thoughts were 'tailored' by him through transferring Anglo-Saxon theories of jurisprudence and created new perspectives for further development in Hungarian legal theory. Regretfully, the Second World War and the following political changes forced him to emigrate in 1949 and there he did not have the opportunity to continue developing his theory.

4.

József Szabó⁶ (1909–1992)

József Szabó graduated from the faculty of law at the University of Szeged and he was a student of Gyula Moór, an outstanding legal philosopher of Neo-Kantian philosophy in the inter-war period. Szabó was a prominent representative of the gifted and promising generation, who achieved brilliant careers during the Second World War, and who were involved in the intellectual and scientific renewal of the country after the war. After graduation he became acquainted with Barna Horváth, founder of school and an exceptional personality of Hungarian legal philosophy. Horváth's personality and his legal philosophical approach representing the influence of Anglo-Saxon jurisprudence and legal culture gave rise to Szabó's enthusiasm. It was the period in the Hungarian legal philosophical thinking when, besides the achievements of Austrian, German and French legal philosophy, those of English and American jurisprudence were also considered. Apart from this, Alfred Verdross, professor of international law and legal philosophy at the university of Vienna greatly influenced him, and they became friends for life. Szabó's papers were frequently published in the *Österreichische Zeitschrift für öffentliches Recht*, a journal edited by Verdross

As a result of Barna Horváth's aim to establish a school, the 'school of Szeged' was founded, and it included, besides Szabó, István Bibó, who later abandoned legal philosophy, and also Tibor Vas, who became Marxist in the 1950s and renounced the mentality of the school. Szabó's legal philosophical

⁶ József Szabó's main works of legal philosophy: *A jog alapjai* [Bases of law], Budapest, 1938; *A jogász gondolkodás bölcselete* [Theory of lawyer's thinking], Szeged, 1941; *Hol az igazság? A bírói lélektan problémái* [Where the justice? Problems of judge's psychology], *Társadalomtudomány*, 22 (1942) 1, 1–55.; *Wahrheit, Wert und Symbol im Rechte*, *Archiv für Rechts- und Sozialphilosophie*, "Ungarn-Heft", 37 (1943) 101–121.; *Der Rechtsbegriff in einer neutralistischen Beleuchtung*, *Österreichische Zeitschrift für öffentliches Recht*, 1 (1948) 3, 291–331.

thinking bears the strongest marks of the master's irradant influence. He began to elaborate his independent legal philosophical doctrine in the late 1930s. He was also deeply involved in issues on constitutional and international laws.

In his writings on legal philosophy—*A jog alapjai* [Bases of law] in 1938, *A jogászai gondolkodás bölcselete* [Theory of lawyer's thinking] in 1941, *Hol az igazság?* [Where the justice?] in 1942, *Wahrheit, Wert und Symbol im Rechte* in 1943, and *Der Rechtsbegriff in einer neurealistischen Beleuchtung* in 1948—Szabó attempts to discredit the Neo-Kantian model by using the outcomes of criticism, according to David Hume, and the American legal realism. Szabó, in his works published in the early 1940s, attempted to create a 'neo-realistic' approach to the concept of law. Applying the method common in Anglo-Saxon professional literature, he modelled the essence of legal thinking with describing legal cases. With this kind of approach, he seemed to discover a number of similar features between English and Hungarian 'traditional' legal attitudes. Citing the ideas of Jerome Frank, Edward Robinson and Thurman Arnold, the most outstanding personalities of American legal realism, Szabó abandoned belief in legal security, which was, in his opinion, revived by a faulty logical philosophy of law. In his theory he also used Frank's doctrine of 'fact-sceptics' and 'rule-sceptics'. Szabó claimed that in law enforcement it is not merely the legal norms one is to consider when looking for justice, since the statement of facts is as important a precondition for a righteous judgement as the interpretation of the corresponding law. He believed that legal decisions are influenced by 'psychological circumstances'.

When reading Szabó's works, one can clearly perceive the ideas of American legal realism. At that time, in the early 1940s, this kind of theory was considered rather exceptional in the Hungarian literature of legal philosophy. The influence exerted by the classical representatives of legal realism is undeniable. When appreciating Szabó's work one can suggest that, in a similar way to the evaluation of Horváth's work, he also gave particular pragmatic explanations to the classical Neo-Kantian problems. Doing so, he created the possibility for a prolific interrelation of two legal cultures, and abolished the previous one-sided Austrian and German orientation in the Hungarian legal philosophical thinking. This is considered very important even if we sometimes come across rather eclectic explanations. Neither the master nor his student is an exception to this. Regretfully, however, Szabó was not able to work out further systematic explanations to his theory of legal philosophy called 'neo-realistic'.

During the after-war years he was involved in reorganising the legal faculty of the university in Szeged. After the ‘decisive year’ (1949) like the reputation of many of his contemporaries, his reputation was also ruined. After his long imprisonment, with a short interruption after the revolution in 1956, Szabó lived in intellectual exile for a number of decades. Some of his papers and reviews were published only abroad. Only the last years of his life, after his restitution, brought him the opportunity to be involved in the professional public life of the country for a brief period.

5.

*István Bibó*⁷ (1911–1979)

István Bibó graduated as a student of Barna Horváth—a representative figure of Hungarian Neo-Kantian legal philosophy—from the faculty of law at the University of Szeged. Bibó was a prominent representative of the generation, who had a successful career during World War Two and the subsequent period, and he was involved in the intellectual and scientific renewal of the country after the war.

Bibó, as a law student and then as a member of the ‘school of Szeged’ established by his one-time professor, was concerned with legal philosophy and issues of international law. In the early 1930s he visited, on several occasions, the university of Vienna where he listened to lectures delivered by Alfred Verdross, Adolf Merkl and Felix Kaufmann, and later he, as student of the Institut des Hautes Études Internationales in Geneva, became acquainted with Hans Kelsen, Paul Guggenheim, Maurice Bourquin and Guglielmo Ferrero. Subsequent to his study trip in Switzerland, he translated, with the approval of the author, Kelsen’s work titled *Reine Rechtslehre* into Hungarian.⁸

With the aim of working out his own system of legal philosophy, he published his work under the title *Kényszer, jog, szabadság* [Compulsion, law, liberty] in 1935. He started to elaborate his own theory with thoroughness and moderation contrary to his age. From the starting point of the Neo-Kantian

⁷ István Bibó’s main works of legal philosophy: *Kényszer, jog, szabadság* [Compulsion, law, liberty], Szeged, 1935; Le dogme du „bellum justum” et la théorie de l’infaillibilité juridique. Essai critique sur la théorie pure du droit, *Revue Internationale de la Théorie du Droit*, 10 (1936) 1, 14–27.; Rechtskraft, rechtliche Unfehlbarkeit, Souveränität, *Zeitschrift für öffentliches Recht*, 17 (1937) 5, 623–638.

⁸ Kelsen, H.: *Tiszta Jogtan* [Pure theory of law], trans. István Bibó, Budapest, 1988

paradigm, Bibó examined the functional link between constraint, liberty and law, and completed this with Henry Bergson's thoughts on spontaneity as well as with Nicolai Hartmann's theses on ontology and ethics. One of the cornerstones of his theory was his independent criticism of Kelsen's doctrine and that of Barna Horváth's legal attitude. Nevertheless, Bibó considered his master's 'synoptic' method suitable for solving the essential Neo-Kantian problem, the contradiction between 'Sein' and 'Sollen', in which the law of spontaneity plays a major role. Besides this, he borrows his one-time professor's idea of objectivism, which he uses as a key concept in his doctrine.

Bibó claims that there exists a certain balance of the elements of constraint and freedom in the experimental material of law. As a result of the old legal philosophical debate on constraint, Bibó claims that the essence of law is to be found in constraint, either physical or intellectual. In his argument, it is the degree of objectivity that makes the legal sanction different from sanctions of other social norms. An essential thesis of his, saying that law is considered as one of the most objective constraints, is based on this approach. The other key paradigm of his legal philosophy declares that law is to be viewed as the most essential tool of ensuring human freedom, since the area left free from constraint is 'the realm of the most objective freedom'. According to his comprehensive definition, law provides the most objective constraint parallel with the most objective freedom. Completing his frequently cited thesis on the Janus-faced law, Bibó argued that the real power of law is ensured by this dual tension, and this fact makes law different from all other social rules.

In the second half of the 1930s Bibó attempted to describe certain issues of legal philosophy. His problem-raising appeared as criticism of Kelsen's theory, which exerted an effect of revelation at that time. Among his works written in that period, *Le dogme du 'bellum justum' et la théorie de l'infailibilité juridique*, an essay published in 1936, and his paper titled *Rechtskraft, rechtliche Unfehlbarkeit, Souveränität*, which was published in 1937, are worth mentioning. In this latter work he attempted to find new paths in elaborating his legal philosophy by extending and making radical changes in his one-time professor's synoptic doctrine.

Regrettably, from the early 1940s Bibó abandoned legal philosophy and became more and more deeply involved in issues of political sciences and historical philosophy. In 1946, owing to his oeuvre in legal philosophy, he was selected member of the Hungarian Academy of Science, but at that time he had already detached himself from the philosophy of law. His university career was finally disrupted after the 'decisive year' (1949). Neither the following period

of his intellectual exile, nor his long imprisonment after the revolution in 1956 could prevent him, a former legal philosopher, from being concerned with legal issues.

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Current Issues in Criminalistics

(*Criminalistics as Both as a Branch of Science and as a University Subject*)

1. Defining the notions of Criminalistics in international terms

It appears that the differences between the continental and Anglo-Saxon legal systems also extend to Criminalistics, a field based mainly on natural sciences. Géza Katona showed not long ago that “criminalistics never took hold in the United Kingdom as a scientific concept. The concept of forensic science was partly identified with continental criminal technology. The literature of the field used the terms ‘forensic’ and ‘scientific’ interchangeably.

The kinds of skills used in the course of investigating and solving crimes were not considered to be a part of ‘forensic science’. Until very recently British literature of the field understood the scientific examination or investigation of crimes in terms of natural scientific methods.”¹

In addition to the classic fields of forensic biology, chemistry, ballistics and photography, we can add the recently-arrived fields of forensic computer technology (including, for example, the computerised examination of the human voice and intonation), anthropology (with emphasis on archaeological references), analysis of evidence, forensic nursing, engineering failure, fire science and the investigation of explosions, all of which are the legal responsibility of the experts.²

In the United States the use of the phrase ‘forensic science’ has been in use for many decades. Under the heading of ‘forensic science’³ we typically find

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¹ Katona, G.: *A kriminalisztika és a bűnügyi tudományok (Criminalistics and Forensic Science)*. Budapest, 2002. 39.

² In terms of teaching Criminalistics in higher education, the study of Forensic Science in Law courses and Criminal Justice courses at most British universities is continuously supplemented by research findings—which are often international. Katona: *op. cit.* 55.

³ “One of the anomalies of the American legal system is that it does not draw a clear distinction between the expert evidence used in criminal and civil trials. The ‘Federal Rules of Evidence’ apply equally to both legal areas while also leaving the subject and method

the kinds of scientific knowledge used for the investigation, examination and assessment of physical evidence. Its main branches are criminalistics and forensic medicine.⁴

These days ever more volumes are being published under the heading of *Criminalistics*. The trend began in the 1960s and comes close to the continental terms.⁵ A fine example of this is *Lab Manual* which was published in 2001. Its subtitle still uses the old terminology—*An introduction to forensic science*, its main title, however, is *Criminalistics*.⁶

There are also special branches of criminalistics to be found that are perhaps useful and which can be considered methodologically. Into such a category we can put personality profiling, molecular genetics and biology, and safety management.⁷

Looking at the continental countries, in France (and in Belgium⁸) the study of areas of criminal investigation is connected to texts such as *Police Scientifique* (scientific policing) and, after Locard, *Manuel de technique policiere* (policing techniques),⁹ although nowadays parallel use is also made

of the expert's statement open. Hence the 'Federal Justice Centre' which as a branch of government acts as a publisher of legal literature for the purposes of informing and expanding the knowledge of judges and justice system officers." Katona: *ibid.* 40.

⁴ Katona: *ibid.* 41.

⁵ As for the teaching of Criminalistics in the United States, the maintenance of independent research institutions by several universities (e.g. Florida International University) or research faculties of 'criminal' forensics within the framework of organised departments (John Jay University, NY; George Washington University, Washington D.C.) has caused a shift in the organisation of research into forensic science, while the results are made use of in the taught courses.

Multi-disciplinary courses are common, e.g. Forensic Science and Criminalistics, Chemistry with Forensic Science and Toxicology, or Analytics and Forensic Science. The complex tuition of courses indicates the bringing together of 'criminal' justice or criminalistics with law. Katona: *ibid.* 55–57.

⁶ Meloan, C. E.—James, R. E.—Saferstein, R.: *Criminalistics an Introduction to Forensic Science*. New Jersey, 2001. A similar process can be also seen in the works of several other authors, for example in the case of O'Hara. In two of his basic works signs of both strands appear, see O'Hara, C.—Osterburg, J. W.: *An Introduction to Criminalistics*. New York, 1960. and O'Hara, C.—O'Hara, G.: *Fundamentals of Criminal Investigation*. 6th edition, Springfield. 1994.

⁷ Forensic Nursing and Fire Studies are to be found in the USA as well as in the UK.

⁸ See Goddefroy, E.: *Manuel élémentaire de police technique*. Brussels, 1931.; Louwage, F. E.: *Technique et tactique de la police criminelle*. Ninove, 1948.

⁹ Locard, E.: *Manuel de technique policière*. Paris, 1923.; Gayet, J.: *Manuel de police scientifique*. Paris, 1965.

of the term 'criminalistics'.¹⁰ In 2001 the University of Paris published *Manuel de criminalistique moderne* (Manual of modern criminalistics), the subtitle of which is *la science et la recherche de la preuve*¹¹ (Science and the research of proof).¹²

In German-speaking areas and in Eastern Europe criminalistics has always been accommodated and accepted as a term. In Germany it is chiefly the scientific institutions of the police force that carry out criminalistic research, according above all to the directions and research goals of the Federal Criminal Office (BKA) in Wiesbaden.¹³

2. Innovations in criminal technology and criminal tactics

Under this heading I will be discussing innovations that we would wish to consider in university courses in Criminalistics and in textbooks on the subject. We cannot afford to ignore these innovations, all of which should appear in any up-to-date university course in Criminalistics, if only as part of a lecture.

Criminal technology and criminal tactics comprise the following, listed briefly below, without the kind of detail it is the job of the textbook to supply: the growing use of spectroscopic procedures, particularly in the case of voice identification with the use of a spectrogram (the computerised examination of

¹⁰ See Ceccaldi, P. F.: *La criminalistique. "Que sais-je?"* Paris, 1962.; Chevet, G.—Marand, Ph.: *Cours de criminalistique* Préfecture de police. Paris, 1981.; Fombonne, J.: *La criminalistique*. Paris, 1996.

¹¹ Buquet, A.: *Manuel de criminalistique moderne (La science et la recherche de la preuve)*. Paris, 2001.

¹² The title refers to the important fact that there is a very close link between proof and criminalistics, and in my view it refers not only to proof in criminal procedures but to proof as it occurs in all branches of law and all areas of legal practice, e.g. state administration law, employment law, civil law.

¹³ The explanation for this is that the only German university offering courses in Criminalistics is Ulm. Before German reunification Criminalistics could be studied at several universities in East Germany, notably at Humboldt, but the courses were discontinued following reunification in keeping with the structure mentioned above. I note here that the library of the Max Planck Institut für Ausländer und Internationalen Strafrecht in Freiburg im Breisgau has one of the most extensive criminalistics collections in the world, all of which are accessible to researchers of the subject. The University of Lausanne is one of the bases of the tuition of criminal sciences in Switzerland. The university's "Institute of Police Science and Criminology" conducts a wide range of criminalistic research. A volume outlining 'police science' also appeared at the beginning of the last century in Italy. For more details, see Ottolenghi, S.: *Polizia scientifica*. Rome, 1910.

the human voice and intonation); the spread of DNA testing; the widespread availability of genetic identification; the appearance and development of computerised techniques for identifying individuals; the use of mathematics-based Bayes analysis in identification tests; the growth of crime analysis methods for mapping evidence, crimes and data; the appearance of specific profiling techniques; identification based on computer script and computer printers; judicial fire science, including the investigation and examination of explosions.

3. Possible areas of further development for Criminalistics textbooks

It is the task of the textbook writer to introduce, describe and expound the areas of innovation listed above. In the face of this constantly updating field it is apparent that current textbooks—which are mostly general university Criminalistics textbooks of techniques and tactics, such as the *Textbook and Atlas of Criminalistics*¹⁴—need to be broadened in scope to include a concise overview of the most important crimes (the most common and most significant), together with a criminal-methodological description. I believe the following should be considered: crimes against life, especially homicide; crimes against property, including burglary and theft; robbery; sex crimes, especially violent ones; the category of ‘special investigations’ which includes the areas of finance; computers (including identification based on computer script; arson and explosions; organised crime; crimes in connection with terrorism.

4. The role of the laboratory in the teaching of Criminalistics

There are several arguments to support the view that Criminalistics is the ‘odd man out’ in Law departments in Hungarian universities. Firstly, it is not a branch of law but belongs decidedly among the factual sciences, not having either legal codices nor detailed laws, but at most a legal framework largely because of legislation for criminal procedure. Secondly, it is based mainly on natural sciences, whereas law is steeped in principles of sociology. Finally, it is a practical area of science, one in which knowledge that has been acquired can soon be ‘cashed in’; such a step is duly expected, as only then can the required

¹⁴ Tremmel, F.—Fenyvesi, Cs.: *Kriminalisztika tankönyv és atlasz (A Textbook and Atlas of Criminalistics)*. 2002. The ‘atlas’ part of this successful and useful guide needs to be updated to include actual examples and illustrations of the crime methods listed.

results and success be achieved. The Department of Criminal Procedures of the Faculty of Law of the University of Pécs has set up a laboratory of criminalistics in conjunction with Baranya County Police Department in order to legitimise and activate this last argument. Here—as can be seen from the Latin origins of its name—criminalistic work and practice can be dealt with and are dealt with on a regular basis. In an ideal situation each student would himself carry out at least the most basic criminalistic—mainly technical—tasks (e.g. investigating, developing and securing prints; analysing and recording matter remains; carrying out basic identification tests; criminal photography; computerised photofits, etc.) in addition to seeing a demonstration.

Further reforms are required before such an ideal situation can be attained, for the moment we will have to breathe life into the key moments of contact teaching by using auxiliary materials as well as pictures, objects and video recordings in connection with all the branches of Criminalistics.

5. The ‘Pécs Criminal Workshop’ and its planned literature for teaching and research

In addition to updating the aforementioned textbook and atlas of Criminalistics as well as the laboratory, over the next ten years we plan to publish the following materials as teaching resources: lexicon of Criminalistics;¹⁵ bibliography of Criminalistics;¹⁶ Criminalistics case studies;¹⁷ annual periodical containing

¹⁵ There are some works of this type already in print, e.g. Gross, H.: *An Encyclopaedia of Criminalistics*, 1990.; Hamacher, H. W.—Herold, H.—Schreiber, M.—Stümper, A.—Vorbeck, A.: *Kriminalistik Lexicon*. 1986.; Modly, D.: *Pirucni kriminalisticki leksikon*. Sarajevo, 1998.; Siegel, J.—Saukko, P. J.—Knupfer, G. C.: *Encyclopedia of Forensic Sciences*. (Vol. 1–3), San-Diego–San Francisco–New York–Boston–London–Sydney–Tokyo, 2000., and Modly, D.—Korajlic, N.: *Kriminalisticki Rjecnik*. Tescanj, 2002.

¹⁶ The last work of this type published in Hungary was edited by the Criminalistics Working Group of the Institute of Legal and Administrative Sciences of the HAI (*Állam- és Jogtudományi Intézet Kriminalisztikai Munkaközössége*) in 1956 and was en-titled “A Bibliography of Hungarian Literature on Criminalistics” (*A magyar nyelvű kriminalisztikai szakirodalom bibliográfiája*).

¹⁷ To the best of my knowledge such a publication—broad in scope, systematically compiled, based on scientific criminalistics results—does not exist in the realm of university teaching resources.

articles by the staff of the Pécs Criminal Workshop, on the subject of Criminalistics, amongst other things.¹⁸

The need is for the last one is the greatest, given that the number of new publications on Criminalistics has declined in recent years. As far as I am aware titles such as *RTF Figyelő* (*RTF Observer*), *Magyar Rendészet* (*Hungarian Security*) and *Technikai Közlemény* (*Technical Bulletin*), all of which covered the area in question, have unfortunately ceased to be published. Submitted articles to *Belügyi Szemle* (*Home Affairs Review*) meanwhile hardly ever deal with Criminalistics; in the rare cases that the subject is covered the questions of tactics and methods are typically focussed on, not techniques.

Unfortunately even such a famous scientific workshop as the National Criminological Institute (*Országos Kriminológiai Intézet*) has removed the word *Criminalistic* from its title; researchers and publications have to align themselves to the profile that is left in its place.

Closing thoughts

The change in attitude towards the teaching of Criminalistics at universities which can be found among more and more heads of department appears encouraging. In keeping with international tendencies and, as our research findings of two years ago showed, Criminalistics is the kind of factual science which is not exclusively the domain of investigators, in other words it is not 'policing science' for police officers. In fact because of its methodology it is an area of science that is relevant in the teaching of all branches of law that deal with proof, and as such it should be included in the structure of the taught curriculum of all law students, future legislators and legal practitioners.

The common responsibility of all tutors dealing with Criminalistics now and in the future is also clear: to write updateable teaching materials and resources that reflect modern attitudes.

¹⁸ The series began with the two commemorative yearbooks published in 2001 and 2002.

MIKLÓS HOLLÁN*

Trilateral Conference on More Harmonized Criminal Law in the European Union**

The trilateral (Austrian-Finnish-Hungarian) seminar devoted to the topic “*Towards more harmonised criminal law in the European Union*” took place in Budapest from 1st to 3rd September 2003. The seminar was organized by the Hungarian National Group of the International Association of Penal Law (IAPL)¹ and by the Institute for Legal Studies of the Hungarian Academy of Sciences. The predecessors of such events, held at every third year in Helsinki and in Budapest in turn, were founded upon the bilateral agreement between the Finnish and the Hungarian Academy of Sciences. The co-operation, however, was never limited to academician researchers, but from the beginning representatives of other institutions (e.g. universities, courts) also participated at the seminars.² The sixth seminar was completed to a trilateral one, because besides the Finnish and Hungarian scholars, it was attended by two university lecturers from Estonia as well.³ The successive seminars remained in the framework of the bilateral co-operation,⁴ but in 2003 besides Finnish colleagues Austrian scholars were also invited to the ninth seminar. The choice has fallen naturally on Austria, considering the traditional connections between the (criminal) lawyers of the two country reach back as far as the Austro-Hungarian Monarchy, but flourish recently as well.

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¹ Official web site: www.penal.org

² See, Fehér, L.: Hungarian-Finnish seminary in Budapest on criminal law. *Acta Juridica*, Vol. 23 (1981) Nos. 1–2. 225–230.

³ See, Mohácsi, P.: Finn-magyar-észti büntetőjogi szeminárium (Finnish-Hungarian-Estonian Seminar on Criminal Law). *Állam és Jogtudomány*, Vol. 36 (1994) Nos. 1–2. 180–192.

⁴ See, e.g., Hollán, M.: Eight Finnish-Hungarian Seminar on Criminal Law. *Acta Juridica Hungarica*, Vol. 41 (2000) Nos. 3–4, 167–170.

The Austrian delegation was composed by Professor *Manfred Burgstaller*, Professor *Helmut Fuchs* and Honorary Professor *Fritz Zeder* from the University of Vienna. Professor *Raimo Lahti*, Professor *Kimmo Nuotio*, Researcher *Sakari Melander* and Researcher *Ohisalo Jussi* attended the seminar from University of Helsinki. The Hungarian side was represented by Professor *Imre A. Wiener*, Professor *Lenke Fehér*, Researcher *Katalin Ligeti*, Researcher *Réka Végyvári* and Researcher *Miklós Hollán* from the Institute for Legal Studies of the Hungarian Academy of Sciences on the one hand, and Associate Professor *Balázs Gellér* and Adjunct Professor *Norbert Kis* attended the seminar from the University of Győr on the other.

The patron of the seminar *Péter Bárándy* (Minister of Justice, Hungary) gave the *opening reception*. In his speech he commemorated the most important stages of the co-operation between Hungarian and Finnish lawyers on the one hand, and the long-standing connections between Austrian and Hungarian colleagues on the other. He expressed his special thanks to *Professor Lahti* and *Professor Wiener* for their ongoing engagement and support in setting up and making flourish the Finnish–Hungarian co-operation. With regard to the Austrian–Hungarian co-operation after the Second World War he emphasised the importance of the bilateral university exchange programs. In this respect Minister *Bárándy* referred to the inevitable role of *Professor Tibor Király* and *Associate Professor Kálmán Györgyi* (from Eötvös Loránd University of Sciences, Budapest, hereinafter: ELTE) for organising and directing the scientific relationships between the two countries from the Hungarian side. He also emphasised the significant role of *Professor Manfred Burgstaller* who was given by the title of *Doctor Honoris Causa* appreciating his merits by the ELTE in 1998. He was pleased to note that the younger generation of Austrian and Hungarian criminal lawyers continues this fruitful co-operation.⁵ He referred especially to the bilateral seminar in 2001 organised by the Austrian National Group of the IAPL, and to the international colloquium held in Budapest in

⁵ On Young Penalist in general see, Ligeti, K.: Young Penalist in the Association. In: *Csemegi Károly emlékkönyv* “Association Internationale de Droit Penal XVI^E Congress Internationale de Droit Pénal, Budapest, 5–11 Septembre 1999, Actes du Congress” (ed.: Imre A. Wiener). MTA Jogtudományi Intézet, Budapest, 127–130. On the Hungarian Young Penalist see Hollán, M.: A Fiatal Büntetőjogászok Fórumának első tudományos tanácskozása. Visegrád, 2000. április 14–16. (The First Seminar of Young Penalist, Visegrád, 14–16 April 2000). *Magyar Jog*, Vol. 47 (2000) No. 11. 669–675.

2002 under the auspices of the Young Penalist Section of the Hungarian National Group.⁶

In his *message of greetings Helmut Epp* (Secretary General of IAPL) commemorated the importance of the Hungarian National Group in the scientific life of the Association by organizing various seminars and conferences, especially the XIth and XVIth International Congresses of Penal Law held in Budapest respectively in 1974 and 1999. He also conveyed to us the best regards of the President of the Association, Professor *Cherif M. Bassiouni*. The Secretary General took advantage of the opportunity and commented substantive issues of European criminal law. He argued that taking into account the sensitivity of criminal law influenced by national traditions it was wise to keep this area within the third pillar. He also pointed out to the constitutional problems posed by the framework decision on European arrest warrant agreed upon prematurely only to prove that the Council was able to react in a speedy manner to security challenges.

In recognition of his laudable activity for having organized the Finnish-Hungarian Seminars during more than two decades *Professor Raimo Lahti* was awarded with an honorary diploma by the Hungarian National Group of the IAPL.

The seminar was divided into five sessions, each of them contained two or three presentations which will be summarized in the following.

I. Session

1. The first session was devoted to the topic of the criminal liability of legal persons and that of the heads of business. In his lecture *Prof. Lahti* made a distinction between the *criminal liability of legal persons and the criminal liability within legal persons*. He analysed various international instruments adopted under the auspices of the United Nations (UN), the Council of Europe (COE), and last but not least the European Union (hereinafter: EU). He highlighted the fact that although criminal liability of legal persons had already been introduced in 1995 into the Finnish Penal Code (Chapter 9), the application of these provisions has been limited to ten cases approximately. Professor *Lahti* outlined the special provisions on criminal liability of heads of business had been included in the Finnish Penal Code since 1995. In the beginning this form

⁶ The material of the second seminar was published in: *Young Penalist Conference on Corruption and Related Offences in International Business Relations* (ed.: Katalin Ligeti). "Közlemények/No 18./ Working Papers" MTA Jogtudományi Intézet, Budapest, 2003.

of liability has been limited only to labour and environmental offences, but from 1 January 2004 a more general provision on this subject will come into force in the reformed general part of the revised Finnish Penal Code.

2. In his lecture Professor *Manfred Burgstaller* summarized the current discussions in Austria on *liability of legal persons for criminal offences*. In accordance with European continental tradition only natural persons are presently subject to criminal liability in Austria. The Austrian criminal law in its current form is, therefore, clearly not in accordance with the global and European instruments, which oblige states to ensure that legal persons can be held accountable for specified criminal offences. Professor *Burgstaller* pointed out that the controversies have not only referred to the details of corporate liability, but also, and even primarily, to the basic issue which area of law the direct liability of legal persons for criminal offences should actually be located in. Several proponents wanted to implement corporate liability for criminal offences into the body of Austrian administrative penal law. There are, however, convincing objections against solving the related matter within administrative law, *e.g.* according to decisions of the Austrian Constitutional Court only judges are allowed to impose sanctions above a certain level of severity. Therefore the criminal law approach is preferred by the prevailing view of Austrian experts. He pointed out that according to the final draft of the new Austrian legislation the liability of legal persons should not be integrated in the Penal Code and the Criminal Procedure Act, but should be framed in a separate statute. Professor *Burgstaller* also analyzed several details of the legislation, *e.g.* the types of criminal offences, the inclusion of unincorporated associations, the exclusion of corporations with governmental functions, the connection of the legal entity to the offence and the applicable sanctions (organizational fine, ban to carry out determined business activities etc.).

3. The presentation of Professor *Imre A. Wiener* concerned the *negligence and omission of heads of businesses*. He pointed out that criminal liability of heads of business had been introduced into the Hungarian Criminal Code by Act CXXI of 2001 with reference to the Convention on the protection of the European Communities' financial interests (Article 3) and to the Convention on the fight against corruption (Article 6). He pointed out that criminal liability of heads of businesses differs in several respects from traditional criminal liability known to Hungarian law. According to the offence description *actus reus* of the criminal liability of heads of businesses comprises the following elements: the fraud or active corruption of the employee committed acting on

behalf of the business organization, omission by the head of business (breached of duty element) and the relevance of the omission. The *means rea* of the criminal liability of heads of businesses is either intentional or negligent. Professor Wiener outlined the common elements equally applicable both for the protection of the financial interests of the European Communities and for the fight against corruption, but he also paid attention to the considerable differences in the way criminal liability occurs in connection with the two offences. While fraud related to the administration of the European communities' financial interests could and must be controlled by the higher-ranking managers, because it is not the entire activity which is secret, but only the falseness of documents presented. Opposite to fraud, however, corruption is a hidden and concealed behaviour, the detection of which is rather difficult even for the law enforcement bodies. In the opinion of Professor Wiener it is unreasonable and unrealistic to set up a control mechanism to prevent active bribery, therefore criminal liability of higher-ranking managers should not have been established for omitting to set up such a system.

II. Session

4. Professor *Kimmo Nuotio* gave his lecture with the title "*Third Pillar of the European Union—and Beyond.*" He referred to the relatively recent but increasing interest of the EU in criminal-law related issues not only to enhance the intensity of legal co-operation between the Member States, but also to harmonize the contents of substantial criminal law. He noticed, however, that the sphere of direct harmonization of criminal legislation is restricted to some specific fields of transnational or cross-border criminality. Therefore the divergences of the domestic systems of law should not be underestimated. Professor *Nuotio* pointed out that institutional side of harmonization (e.g. European Public Prosecutor's Office in the Corpus Juris proposal) is also related to the more general issues of the identity and structures of the EU, and often they would not be realizable without renegotiating the Treaty framework. Professor *Nuotio* examined the criminal policy assumptions behind common European proposals and also the possibilities of different approaches in different geographical parts of the European Union in the future.

5. Honorary Professor *Helmut Zeder*'s presentation dealt with two recent developments accompanying the approximation of penal law in the EU: strengthening the *ne bis idem principle* on the one hand, and the introduction

of the *European arrest warrant* on the other. With regard to the *ne bis idem* principle he referred, *inter alia*, to the debate whether the same fact or the same offence should be an obstacle of the second prosecution. He also analyzed the exceptions to the international validity of the *ne bis in idem* principle, provided e.g. in Article 55 of the Schengen Convention. Honorary Professor Zeder also dealt with various aspect and details of the European arrest warrant, e.g. the relevant offences and the problems related to grounds for mandatory and optional non-execution.

6. In her lecture Researcher *Katalin Ligeti* undertook to give an overview of the major developments in the law of *mutual legal assistance in the European Union*. She focused to the fact that within an area of freedom, security and justice (as proclaimed by Title IV of the TEU) traditional requirements and grounds of refusal to mutual legal assistance should be cut down. Researcher *Ligeti* also pointed out that the simplification and acceleration of the procedure, which enjoys absolute priority in the European Union, does not only increases the efficiency of mutual legal assistance, but also serves the interest of the individual affected by mutual legal assistance. She also make us acquainted with the intricacies of the new forms of mutual legal assistance in the European Union connected with new telecommunication possibilities, like videoconference or the interception of telecommunication. She emphasized that the scope of mutual legal assistance has been considerably expanded in the European Union. Besides judicial authorities, which were the traditional actors of mutual assistance in criminal matters, police authorities and administrative bodies become to play an important role. She pointed out that the latest instruments on mutual legal assistance included a growing number of provisions on police and administrative cooperation. She put the question whether this development was an evasion of the rule of law or a mere emergence of a transprocedural approach.

III. Session

7. Professor *Helmut Fuchs*'s presentation dealt with the *economic criminal law in the EU*. He posed and analysed the question whether and to what extent economy should be regulated by market or by (criminal) law. He offered two explanations for the necessity of control of economy through criminal law: law as a means of the protection of the weaker or as a means of establishing equality of competition. Both approaches could be relevant in the EU, because

this is an economic community based on free trade in order to promote prosperity of the citizens. He outlined and analysed the main fields in the EU where economy controlled by criminal law, namely by anti-trust laws, by environmental offences, and by the prohibition of insider dealing. Professor Fuchs also pointed out the deficiencies of EU rules, namely the lack of democratic legitimisation and judicial control, the vague offence descriptions and the strong dependence of criminal provisions on administrative law. With reference to the proposal of Professor *Tiedemann* on the so called “*Europa-Delikte*”, he also outlined those fields of economic criminal law which in the near future should have been regulated by European law, e.g. insolvency law (bankruptcy offences).

8. Professor *Lenke Fehér* presented her lecture on a *comprehensive European policy against trafficking in human beings*. In the very beginning of her presentation she made us acquainted with the fact that one hundred and twenty thousands women and children a year were lured from the countries of Central Europe to the European Union. She identified trafficking in human beings as a grave and multiplied violation of human rights, which renders huge profit for the offenders, who at the same time face only low risk. She pointed out to the fact that besides UN instruments, there are considerable European efforts to combat this phenomenon. She stressed in this respect not only the Council Framework Decision of 19 July 2002, but also the Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002). She also referred to the fact that Council of Europe will start drafting of a European Convention on this issue in 2003. The presentation of Professor *Fehér* thoroughly highlighted various definitions of trafficking in human beings in the relevant international instruments, and provided a brief insight into the Hungarian situation in this respect.

9. Associate Professor *Balázs Gellér* scrutinized the results and prospects of *fighting terrorism with criminal law in the EU*. He analyzed the various approaches conceptualizing terrorism in the most important international conventions adopted by UN bodies. He focused especially to the problem inherent in the approach of the International Convention for the Suppression of the Financing of Terrorism which refers to other international instruments, e.g. to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970). He also analyzed the intricacies of the Council of Europe solutions, especially the political offence exception in the light of the Convention on the Suppression of Terrorism (adopted in 1977 and amended in 2003). Associate Professor *Gellér* paid also considerable attention to the provisions of the Council

Framework Decision on Combating Terrorism (13th June 2002). Besides the intricacies of the above mentioned international instruments he also dealt with the question whether torturing terrorist in order to save the life of the abducted victims is in line with fundamental human rights, enshrined e.g. in Article 3 of European Convention on Human Rights and Fundamental Freedoms.

IV. Session

10. The presentation of Adjunct Professor *Nobert Kis* dealt with the *principle of culpability in European criminal law systems*. Adjunct Professor *Kis* pointed out that the European harmonization and comparison of criminal law have paid very little attention on the principle of culpability, which is not a necessarily corollary of the requirements of individual responsibility. He argued that we have to rethink the concept of culpability on which the European instruments of harmonization have been and will be founded. He stressed that the principle of culpability had been facing a deep regression in certain fields of criminal law. a) Certain European countries (France and Belgium) apply an objective and abstract assessment of negligence in the judicial practice, without applying to individualized conditions of liability. b) The objective approach is also relatively widespread in the case law of recklessness according to which it is sufficient to prove it that the risk of damage would have been obvious to any reasonable person in the defendant's position. He explained these facts by a recent judicial approach focusing primarily on the prevention rather than retribution. c) European criminal justice systems, as he mentioned, apply purely objective standards (so called strict liability) for some harm in almost identical groups of crimes, e.g. with regard to regulatory offences.

11. Researcher *Sakari Melander* chose framework decisions, instruments described in Article 34 of the Treaty of European Union, as an example to illustrate the *implementation of EU instruments on criminal law in Finland*. He pointed out that with regard to EU-connected criminal law issues the role of the domestic law drafters has been changed: After taking part of the law drafting process in the EU Council Working Committees, they should also implement the adopted framework decisions into national law. He emphasised that since framework decisions leave open the method by which the result described in them is achieved, their implementation process in the Member States is very important. Ultimately Researcher *Melander* illustrated the above mentioned thesis with examples from the implementation provisions of the

council framework decisions in Finland with regard to substantive criminal law issues.

12. In her presentation, Researcher *Réka Végvári* analysed the *implementation of EU instruments concerning the fight against corruption in Hungary*. She outlined the main criminal law conventions in this field adopted under the auspices of various international organisations, including the EU. Researcher *Végvári* pointed out that the concept of criminal corruption expanded considerably in the last two decades at the international level. The notion comprises not only the offence of bribery, but also trading in influence. According to the international conventions not only bribery with regard to domestic public officials should be penalised, but national criminal law provisions should also cover cases committed by or involving foreign and international officials. She emphasised that considerable number of international instruments, *inter alia* the new council framework decision adopted on 22 July 2003, concern the penalisation of corruption in the private sector. She concluded that these extensions of criminal liability are necessary to provide protection for proper functioning and integrity of these social values in the context of increasing international cooperation and economic integration. Finally Researcher *Végvári* analysed the implementation of the relevant international treaties in Hungary, referring both to the developments and weaknesses of the Hungarian criminal law in this field.

V. Session

13. In his presentation Researcher *Ohisalo Jussi* examined how in fact the Finnish public administration (namely the Ministry of Agriculture and Forestry) had controlled agricultural *subsidies from the Community budget*. He scrutinised whether the demands for increased use of criminal law sanctions emanating from the European level (from the Commission) had mirrored in the day-to-day work of the officials in the Ministry and the related administrative bodies. Researcher *Ohisalo* introduced us the result of a brief empirical study comprised of interviews of a small number of relevant officials. He concluded that the different objectives behind the agricultural subsidy schemes (development of certain underdeveloped regions or the regulation of the harvested field) affect how stringent control and scrutiny is possible and preferable. He emphasised that one should not merely look at the matter as furthering the legitimate goal of protecting the Community budget, but also take into consideration what

happens in practice. Therefore the strategies should also be adapted to some degree to the characteristics of the various systems in the Member States. This is a formidable challenge, he concluded, especially on the eve of enlargement.

14. Researcher *Miklós Hollán* held the last presentation on the topic of *confiscation in the European Union*. At the beginning he made a distinction between fragmental provisions on confiscation in various conventions on particular wrongful behaviours on the one hand, and instruments adopted solely on the deprivation of instruments and proceeds of crime on the other. He emphasised that the second form of international instruments on confiscation has been adopted firstly at the European level, namely the COE Convention on Confiscation of the Proceeds from Crime (1990). The EU Joint Action and Framework Decision on confiscation of instruments and the proceeds from crime followed this approach, but contain stricter obligations than their COE counterpart. The presentation also examined whether the various EU provisions on confiscation form not a mere “mass”, but a system of rules. Researcher *Miklós Hollán* concluded that only nucleuses of the intentional system building are present in the EU provisions on confiscation. Finally he scrutinised the limits of domestic jurisdiction set by European law in the light of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the decisions of the European Commission and Court of Human Rights (Cases of *Salabiaku*, *Welch* and *Phillips*).

Remarks of Professor Wiener, followed by the acknowledgements and comments of the participants, closed the final session of the seminar. It was announced that written forms of the presentations would be published in the near future.

Considering the atmosphere and the spirit of the sessions it is certain that the co-operation among Austrian, Finnish and Hungarian criminal lawyers will be remained at least as fruitful as recently.