11

Work in Liberty under Surveillance in Hungary

Károly Bárd

As is the case in the majority of European countries, crime has been on the increase in Hungary over the last few decades. The number of criminal acts registered by the police amounted to approximately 120,000 fifteen years ago and had risen to almost 190,000 by 1987. The statistics relating to offenders identified in the same period indicate a more moderate change (81,045 in 1975 and 97,645 in 1987), illustrating that in Hungary also the major problems facing crime control are rising crime rates and decreasing police efficiency in clearing up crimes and identifying their perpetrators.

As a result of diminishing clearance rates, the number of offenders convicted by the courts also shows a relatively slight increase (59,422 in 1975 and 66,337 in 1987), as does the number of individuals sentenced to imprisonment (25,358 in 1975 compared with 26,780 in 1987), while in relation to unconditional prison sentences the number of adults actually sent to prison has actually dropped, from 14,592 in 1975 to 14,500 in 1987.

These figures should not, however, lead to the conclusion that the overall degree of punitiveness of the Hungarian courts has lessened and that deprivation of liberty has lost its central position within the sanction system. On the contrary, repressive tendencies in the judicial sentencing practice of the Hungarian courts seem to have become even stronger. Undoubtedly, short-term prison sentences (imprisonment of up to six months) have decreased to a considerable extent over the last decade, from approximately 13,000 in 1978 to 8,716 in 1987. On the other hand, imprisonment of five years or more today constitutes 1.8 percent of all prison sentences, while ten years ago it represented only 0.8 percent.

Increasing severity and the dominance of imprisonment is also reflected in the growing number of inmates per one hundred thousand members of the total population, a particularly important indicator of the overall degree of punitiveness. Since 1980, the respective figures have been as follows: 157 (1980), 164 (1981), 185 (1982), and 212 (1987), revealing a clear trend of a

reduction in the chances of offenders' avoiding incarceration and an increase in the degree of punitiveness.

Part of the explanation certainly lies in growing crime rates and particularly in the rapid increase in the number of serious violent crimes and recidivism. The more serious of the two forms of criminal behavior under the present Hungarian penal law made up 27.8 percent of total criminality in 1980, while the respective proportion is over 34 percent today.[1]

On the basis of international comparison it is evident, however, that the harshness of the sentencing practice of the Hungarian courts cannot be explained solely by the spreading of more dangerous forms of criminality. Only comprehensive empirical research can reveal the causes and the part they play in shaping judicial sentencing patterns. One of the possible reasons could be the lack of proper alternatives to imprisonment. At first sight this assumption seems absurd, since it is well known that the criminal codes of the Eastern European region dispose of a number of sanctions in order to ensure proper tailoring of the sentence, the most well-known of them being the various sanctions of a social nature and those including work obligations. Unlike many other socialist penal laws, there are no measures of social pressure in the Hungarian Criminal Code, but even so, the catalogue of criminal sanctions not entailing the deprivation of liberty is quite impressive and includes three types of sanctions involving the obligation to do some sort of work. Why then do courts not make use of the available alternatives? What are the main barriers to the further reduction in the use of imprisonment? What prevented legislators and courts from implementing to a greater extent the Resolution of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which called upon Member States to examine their legislation with a view to removing legal obstacles to the utilization of alternatives to imprisonment and to the identification of new ones?

The search for the answer to these questions forms the topic of the present paper. Our purpose is to assist decision makers in other countries in identifying the preconditions that have to be present in order that noncustodial sanctions become credible alternatives to imprisonment. Therefore, the case study is necessarily critical and perhaps even one-sided. It focuses on describing both the legal and the organizational deficiencies as a result of which noncustodial sanctions involving work obligations have failed to become effective alternatives to imprisonment so far.

A Brief Survey of the Sanction System in Eastern European Countries

It is commonly assumed that the laws of the countries in Eastern Europe form one of the major legal families. Common basic principles of social

structure, as well as similarities in historical evolution, have had an impact on legal institutions, so that, in spite of growing differences, penal law in the various countries still shows numerous common traits.[2] Therefore, it seems appropriate to provide a brief overview of the main characteristics of the sanction system in Eastern European countries to improve understanding of the development, and the present regulation, of Hungarian penal law.

The first, and perhaps basic, general trait of criminal law in Eastern European countries is its pragmatism and utilitarianism[3]: the institutions of criminal law (both substantive and procedural) are expected to be useful. This principle stems from the optimistic approach shared by criminal policymakers in these countries as regards the outcome of the fight against crime. As for the system of sanctions, the pragmatic approach explains the emphasis placed on the efficiency expected of criminal sanctions. At the level of legislation, efficiency is the primary criterion when deciding on whether a given sanction should be introduced or not. At the sentencing level, efficiency means the priority given to prevention (primarily to individual prevention) over the other functions of punishment.

Utilitarianism and efficiency call for a flexible reaction to crime. Therefore the system of sanctions is subjected to relatively frequent changes. The striving for flexibility is also reflected in the fact that legislators in the region tend to abandon the traditional differentiation between punishment and penal measures. Besides, the formal distinction between principal and supplementary punishment (if upheld at all) is of limited significance in many countries, since provisions on sentencing usually empower courts to replace principal forms of punishment by supplementary ones.[4]

The high number of sanctions not entailing deprivation of liberty is a further common trait of the sanction system in the Eastern European region. Among noncustodial sanctions, it is certainly reformation through work duty that is most frequently associated with Eastern European criminal law.[5]

The origins of this type of sanction go back to Soviet law in the period following the revolution,[6] and, as indicated in decree number 3 of 20 July 1918 on the court, it was intended to serve as an alternative to short-term imprisonment from the very beginning.[7]

With the exception of Yugoslavia, all Eastern European countries have adopted this type of sanction. Even if it is known under various names, the central elements, namely, work duty and a strong emphasis on reform, are similar in all such legislation. Basically, reformative work in terms of such legislation means that the offender is placed under the supervision of a work collective or a trustworthy individual who should exert a beneficial impact on him or her. In addition, the carrying out of work is required, and a certain percentage of the offender's salary is deducted. At the ideological level, reformative work is justified by the presumed individual preventive value of education through work. It is also assumed that reformative work is

particularly suited to the conditions of socialist societies, where, as a result of the lack of extensive unemployment, economic pressure does not represent sufficient motivation to work.[8]

As to the legal technicalities, the differences in the various legislations are considerable. In Hungary and in Romania, for instance, reformative work is an independent, separate sanction, while in the German Democratic Republic, the obligation to remain at a designated workplace is part of the duties imposed upon the offender sentenced to "conviction on probation." The differences are even greater if one compares the frequency with which reformative work is used, as well as the obligations the offender is expected to fulfill in addition to work duty, in the various countries.

At one extreme, we encounter the Romanian solution. No statistical data are available from this country, but it is reported that reformative work is widely used as an alternative to imprisonment.[9] The scope of application of reformative work is relatively broad under Romanian law: With the exception of a few criminal offenses, it may be used as a substitute for imprisonment in those cases where the maximum prison term prescribed by the law for the given crime does not exceed ten years, provided that in the particular case the court would not impose a prison sentence of more than five years.[10] In addition to the duty to work, numerous constraints are imposed upon the convict, and he is placed under tight social control. From 15 to 50 percent of his salary is retained by the state, the term of punishment is not taken into consideration when fixing the amount of his pension, he may leave the locality of the workplace only with the permission of the militia, and so on.

In contrast to Romania, reformatory work in Czechoslovakia, Poland, and Hungary involves, in practice, the sole obligation of paying a certain amount of one's salary, while in the latter two countries, in particular, reformative work is used relatively rarely by the courts.

Work in Liberty under Hungarian Law

Brief Survey of the Sanction System with Special Attention on Alternatives to Imprisonment under Hungarian Criminal Law

Hungarian penal law was first systematically and comprehensively codified in the second half of the nineteenth century. The code of 1878 was a product of the classical school of criminal law, thus its sanction system contained only punishments (capital punishment, imprisonment, and fines as the principal forms) and no penal measures. It was in the twentieth century, under the impact of the modern school of criminal law, that penal measures serving aims other than retribution were introduced. Penal measures for preventing deviant juveniles and children from committing further offenses

were introduced in 1908. This was the same year in which the institution of the suspended sentence found its way into Hungarian law. In 1913 an act on publicly dangerous vagrants and work-shy individuals was enacted, and workhouses were set up. In this way, the institution of security measures was introduced into Hungarian penal law. From 1928 onward, professional and habitual criminals could be sent to the so-called "severe work-house." No maximum term was set for this type of punishment, and convicts could thus, in theory, remain in the severe workhouse for life.

The only alternative to noncustodial sanctions before World War II was fines. The scope of application of fines was enlarged in 1928, and courts were called upon by the legislature to consider the offender's means when fixing the amount to be paid.

After World War II, a new general part of the Penal Code was constructed, characterized by the efforts to simplify the sanction system as well as to enhance its flexibility. The strict distinction between principal and supplementary sanctions was brought to an end. The most remarkable innovation of the new general part was, however, the introduction of reformatory-educative labor, clearly intended to replace imprisonment.

The first comprehensive Penal Code after World War II was Act V of 1961. In the area of sanctions, the only remarkable change concerned the return to the former strict separation of principal and supplementary punishment.

Following several amendments in the sixties and the seventies, Parliament enacted a new penal code in 1978 that brought about considerable changes in the system of sanctions. Legislators were concerned with the search for genuine substitutes for imprisonment; the day-fine system was introduced, the rules on reformatory-educative labor were modified, and the number of criminal offenses for which, besides imprisonment, noncustodial sanctions could be imposed was raised to a considerable extent. The replacement of imprisonment with sanctions not entailing deprivation of liberty was envisaged by the provision permitting the courts to impose, under certain conditions, a supplementary form of punishment or a penal measure as the only sanction.

As part of the campaign against work-shy individuals who represent a danger to the public, a previously unknown sanction, so-called "severe reformatory-educative labor," was introduced into Hungarian law in 1984. Through the latest amendment to the Penal Code, a new form of implementing reformatory-educative labor, which comes very close to community service, was introduced in 1987.

Reformatory-Educative Labor—Its Rise and Fall

Following the Soviet model, reformatory-educative labor was introduced into Hungarian penal law in 1950. Perhaps the introduction was premature—at

least certain contradictions and ambiguities in the provisions relating to it seemed to indicate that the drafters had but a vague idea about what the new sanction actually entailed. Reformatory-educative labor was declared to be a penal measure and not a punishment. According to the argument in favor of this solution, the exclusive objective of the new sanction was education in contrast to punishment, which was intended to serve additional functions. On the other hand, the preconditions under which reformatory-educative labor could be imposed clearly showed that it was actually a type of punishment. Reformatory-educative labor could be imposed in relation to offenses punishable with up to five years' imprisonment, provided that the offender's social position and the circumstances under which the offense had been committed indicated that the objectives of punishment could be attained without depriving the offender of his or her freedom.

Besides the uncertainty as to the legal nature of reformatory-educative labor, other factors impeded its extensive use, primarily the Supreme Court's decision that it could be used only in respect of offenders employed at state firms or institutions. Not only did this decision violate the principle of equal treatment before the law, it also limited the scope of application of reformatory-educative labor to a considerable extent by excluding a broad strata of offenders.

It is therefore hardly surprising that the practical significance of reformatory-educative labor fell short of the legislators' ambitious expectations and failed to make any substantial impact on the number of prison sentences imposed, the proportion of its application ranging from 4.5 to 10.0 percent of all sanctions imposed in the fifties.[11]

The drafters of the first comprehensive postwar Penal Code (1961) seemed to identify the consequences of these legislative deficiencies and made an attempt to remove the barriers to the more frequent use of reformative-educative labor. In the code of 1961, reformatory-educative labor was accurately defined as a principal form of punishment, and the scope of its application was extended. According to the motivation behind the Penal Code, reformatory-educative labor was a sanction that could be used theoretically with any offender. Thus the decree on the implementation of the Penal Code set up the possibility of enforcing reformatory-educative labor in cooperatives and at a new workplace designed by the court (in terms of the previous law, the sanction had to be implemented at the offender's actual place of employment).

In the first years following the enactment of the Penal Code of 1961, reformative-educative labor seemed to meet the drafters' ambitious expectations, the proportion of its use out of the total of all sanctions imposed reaching 15 percent. In the second half of the sixties, however, a crisis in the institution became evident when the number of cases where reformatory-

educative labor was imposed represented but a negligible fraction of all sentences imposed by the courts. This fact indicated that legislators had failed in removing the barriers to the wide use of reformatory-educative labor. Even if the motivation behind the law declared that reformatory-educative labor was a punishment of general applicability, a large group of offenders was then excluded. In practice, reformatory-educative labor was not used on people in a number of professions where a clean record was required for employment. Furthermore, it could not be imposed on individuals in positions of authority, as this could have led to the absurd situation of the convict being in charge of directing the members of a given unit who are at the same time meant to be guiding and educating the convict.

The apparent fiasco of reformative-educative labor led some experts even to suggest its abolition in the sixties.[12] However, in 1971 legislators made a further attempt to save the institution and extended the scope of its applicability. They realized that the expected reformative and educative activity of work collectives had turned out to be a mere illusion. Not only had the idea of collectivism lost much of its credibility, but production units with members who had been working together for years had become a rarity as a consequence of the liberalization of the labor market and employees' increasing mobility in the sixties. Therefore, the legislators introduced a new form of reformatory-educative labor, namely, the implementation of the sanction within specific work colonies. The minister of justice was authorized to take care of the detailed rules of implementation in a separate decree. However, the decree never materialized. It was perhaps the lack of clear concepts as to which group of offenders should be sentenced to serve reformative-educative labor at the work colonies, the failure to provide proper facilities, and the organizational shortcomings that explain why the only provision of the 1971 amendment that has never entered into force was the one on the work colonies.

In the course of the preparatory works to the present Penal Code (dating back to 1978), the majority of the experts involved in the drafting activity agreed that the retention of reformative-educative labor in its traditional form was senseless. It therefore came as a complete surprise to them when they saw that the final draft of the Penal Code prepared by the Ministry of Justice adopted the provisions of the 1961 code in a basically unchanged form. The draft was then sanctioned by Parliament, but the legislators' liking for reformatory-educative labor (which might perhaps be explained by ideological considerations) could not stop the institution's slow death. In 1987, only 2,944 out of the total of 59,682 convicts were sentenced to reformatory-educative labor. The vehement debates of the sixties and seventies did not reappear in the legal periodicals this time. No further discussions were needed, as theorists, practitioners, and policymakers all

knew that reformative-educative labor in its traditional form, as introduced in 1950, had failed totally to become a serious alternative to imprisonment in Hungary.

Severe Reformative-Educative Labor

In 1984 severe reformative-educative labor as an independent sanction was introduced into Hungarian penal law. The introduction of this new form of principal punishment was part of the campaign against work-shy individuals, who, according to the evaluation of the crime-control agencies, represented a danger to the public. (According to official information, there are approximately fifteen thousand to twenty thousand cases per year where various measures of a penal or administrative nature are imposed by the authorities for publicly dangerous work-shyness.) The amendment to the Penal Code in 1984, besides introducing severe reformative-educative labor, raised the maximum prison term for publicly dangerous work-shyness from one to two years, while the sanctions for the corresponding administrative infraction were also strengthened.

Severe reformative-educative labor, which must be performed at a workplace within a locality designated by the court, with the additional obligation to live in a "semiopen" institution, was partly intended to fill the gap between imprisonment and reformative-educative labor, which had come to be filled by the payment of a fine in installments over the years.

In 1987 the scope of application of reformative-educative labor was broadened, and in addition to work-shy individuals, perpetrators of certain property crimes were eligible.

As far as the restrictions attaching to the liberty of the convict are concerned, this new sanction may certainly be regarded as a credible alternative to imprisonment. However, the rules regarding its implementation make it doubtful whether there are any significant differences between the two types of sanction at all: inmates may only leave the institution in their leisure time and the locality over the weekend with the permission of the institution's management. As far as the choice of work to be done is concerned, it is economic interests that dominate. Convicts, predominantly males, are forced to do hard, physical work in areas where there is a permanent shortage of workers. The hard labor frequently does not correspond with the physical conditions of the target group. It has, for instance, been reported that in one of the localities where convicts serve their sentences, 80 percent of the 127 inmates were regarded as alcoholics, and one-quarter of them had been subjected more than once to long-term medical treatment prior to sentencing for alcohol-related problems.[13]

Many convicts perceive severe reformative-educative labor as a particularly hard prison regime and force the courts to commute their sentences to

imprisonment by breaking the work obligations or violating the restrictions attached to the sanction (in 1987, in about 18 percent of cases, sentences were converted into imprisonment).[14]

According to the law, one day's severe reformative-educative labor corresponds to one day of prison, indicating that legislators also regard severe reformative-educative labor as a sanction coming close to incarceration as far as the harm inflicted upon the convict is concerned. For all of these reasons, it is doubtful whether severe reformative-educative labor could be defined as a genuine alternative to imprisonment. The obligations placed upon convicts, the hard working conditions, and the extent to which their personal liberty is restricted actually make it a specific form of imprisonment imposed upon a particular target group.

Severe reformative-educative labor will thus most probably never become a genuine alternative to imprisonment. Through Act XXIII of 1989, the Hungarian Parliament abolished the criminal offense and the administrative infraction of "work-shyness representing danger to the public." According to the motivation behind the act, the penalization of a work-shy way of life is contrary to Hungary's international obligations, as it violates the prohibition against forced labor as set down in the International Pact on Civil and Political Rights, as well as in the ILO pact on forced and mandatory work. Furthermore, so the argument runs, the penalization of the so-called work-shy way of life lacks any rational basis under present economic conditions, when unemployment has become a significant social problem in the country. The penalization of work-shyness would only open the way for the even more oppressive treatment of individuals who live on the periphery of society, without contributing to the solution of the social problem itself. Since severe reformative-educative labor is tailored above all to control work-shy individuals, the decriminalization of this category is likely to lead to the abolition of severe reformative-educative labor.

The Obligation to Perform Unpaid Work for the Public as a Specific Form of Implementing Reformative-Educative Labor

In 1987 there was introduced in Hungary a new form of implementing reformative-educative labor that is practically identical to the community service to be found in the legislation of numerous countries. The rules follow the Western European pattern, although, formally, community service is not an independent sanction but rather, as it is in Poland, a specific form of implementing reformative-educative labor. The useful work performed for the community has to be done by convicts on their day off or during their holidays. According to the law, the court dealing with the case decides only the type of sanction to be imposed, while the place and type of work is assigned by the so-called "court of corrections," presided over by a single

judge. The bulk of the work, however, rests with the probation officers who assist the judge in finding appropriate work.

The procedure resulting in the designation of the place of work and the determination of its type runs as follows: the local authority departments in charge of collecting information on available jobs generally present the courts with a regular list of firms and institutions willing to provide work for persons sentenced to undertake community service. Probation officers then visit these workplaces and make inquiries as to the type of work offered. If they find the work suitable, they will contact the convicted person and inform him or her of the work available. The discussions with the convict are formalized in writing and presented to the court along with the probation officer's recommendation as to which workplace should be designated. When making the recommendation, the probation officer should consider the convict's condition, skills, and previous training. On the basis of the recommendation, the judge will decide on the place and type of work, paying due regard to the convict's state of health, obtaining the opinion of a medical expert if necessary.

Apart from the work obligation, the convict's personal liberty is not restricted. As in the case of "ordinary" reformative-educative labor, the violation of the work obligation or a serious breach of work discipline may lead to community service being commuted into imprisonment. While two days of "ordinary" reformative-educative labor correspond to one day in prison, the respective relation in the case of community service is one to one. The rules on commuting into imprisonment indicate that community service is regarded by legislators as the more severe sanction in comparison with "ordinary" reformative-educative labor. On the other hand, the rules on exemption from the detrimental consequences of conviction show that community service is the sanction that carries the least stigma. The offender sentenced to community service is exempted from the detrimental consequences of conviction on the day the court's decision becomes final. Thus the offender remains a person with a clean record and may keep his or her job even where a clean record is a precondition of employment. In the case of "ordinary" reformative-educative labor, the offender is exempted from the detrimental consequences of conviction on the day he completes his sentence.

Undoubtedly, it was the legislators' intention to extend the applicability of community service to all types of offenders, independent of social status, job, and position. The legislators' expectations, however, have not yet been fulfilled. In 1988 (the year in which community service was introduced), 70 percent of all convicts were unskilled workers, many of them unemployed.[15]

In contrast to severe reformative-educative labor, the introduction of community service met with general approval among experts, and the first

eighteen months following its introduction gave some positive indications. However, the reservations of those who had called for longer and more thorough preparatory work prior to the introduction of community service seem to have been confirmed by the practice of the courts.

In 1988 there were only thirty-six cases in the whole country in which offenders were sentenced to community service. No research findings are yet available capable of revealing the causes of the courts' reluctance to impose the new sanction more frequently. We are therefore forced to confine ourselves partly to a repetition of the arguments voiced prior to the introduction of community service by experts within the framework of the discussion about the new provisions of penal law.[16] The country's present economic situation and the lack of proper jobs do not favor the extensive use of community service: in practice, only institutions operating under the supervision of the local authorities (such as hospitals) are willing to provide work opportunities. As a result of increasing unemployment, factories are becoming more and more reluctant to provide work for individuals sentenced to community service. In a number of cases in 1988, community service simply could not be implemented, for the lack of openings. As a result of certain negative historical experiences in Hungary, when the work obligation was used as a sanction against minorities and political opponents of the regime, the public is inclined to perceive community service as an extremely defamatory sort of sanction. The same holds true for the convicts themselves. Out of the thirty-six persons sentenced to community service, six did not even take up the post or complete the work, because they perceived the tasks to be performed (mainly cleaning work) as humiliating and preferred to spend a few days or even weeks in prison. Due to poor preparation and sensitization, the public and the managers of factories who should provide work possibilities have but vague or false ideas about what the institution of community service is actually all about.

Conclusion

The gloomy picture drawn of the difficulties involved in replacing incarceration with alternatives involving work duty performed under conditions of liberty should not lead to the belief that sanctions containing work obligations are inappropriate as alternatives to imprisonment. The fiasco of reformative-educative labor and the problems concerning community service in Hungary should be interpreted as a warning to decision makers in other countries to refrain from introducing alternatives to prison without making the proper organizational preparations, undertaking a thorough analysis of the economic and social conditions in their country, and testing the intellectual and psychological state of the population or adequately informing and preparing the public.

Notes

1. K. Györgyi and S. Lammich, "Entwicklung des Strafrechts, der Kriminalität, und der Strafzumessungspraxis," Ungarn seit dem Inkrafttreten des Strafgesetzbuches von 1978, ZStW 100 (1988), pp. 990, 992.

2. I. Andrejew, *Zur vergleichenden Darstellung des Strafrechts der sozialistischen Staaten*, ZStW 99 (1987), pp. 152–161.

3. K. Bárd, *Some General Traits of the Criminal Justice Systems of the Socialist Countries, with Special Reference to Hungary*, HEUNI publication no. 7, Helsinki, 1986, pp. 1–12; M. Filar and E. Weigend, "Die Entwicklung des Strafrechts", den sozialistischen Staaten Europas, ZStW 98 (1986), p. 247.

4. Filar and Weigend, "Die Entwicklung des Strafrechts," p. 250.

5. I. Andrejew, *Zur vergleichenden Darstellung*, p. 160, and N. Bishop, *Non-Custodial Alternatives in Europe*, HEUNI publication no. 14, Helsinki, 1988, pp. 69–71.

6. Filar and Weigend, "Die Entwicklung des Strafrechts," pp. 250 et seq.

7. I. Andrejew, *Le droit pénal comparé des pays socialistes*, Paris, 1981, p. 129.

8. Ibid., p. 161.

9. V. Papadopol and C. Turianu, "Strafen und MaBnahmen ohne Freiheitsentzug im rumänischen Strafrecht," *Jahrbuch für Ostrecht*, vol. 28 (1986), pp. 349–76.

10. Papadopul and Turianu, "Strafen und MaBnahmen," p. 358.

11. K. Györgyi, *Punishment and Penal Measures* (in Hungarian) Budapest, 1984, p. 56.

12. Ibid., p. 92.

13. On the problems related to severe reformatory-educative labor, see Gy. Vokó and Gy. Sáfrán, "On the experience concerning the implementation of severe reformatory-educative labour" (in Hungarian), *Bulletin of the Prosecution Office*, no. 1 (1988), pp. 32–36.

14. See ibid., p. 33.

15. The data on community service were provided by the Hungarian Ministry of Justice.

16. "Discussion on the amendment of the provisions in penal law" (in Hungarian), *Criminological Review*, no. 16 (1987).