On legal culture

ANDRÁS KARÁCSONY

Budapest
2004
On legal culture

ANDRÁS KARÁCSONY

Budapest
2004
On legal culture

András Karácsony
Eötvös Loránd University Budapest

In the frame of my lecture I intend to examine a problematic issue, namely, legal culture. My basic question is: How the legal culture of the European societies contributed to the survival of legal traditions in the changing world of law. My examples are drawn from the history of Hungarian politics and law. Thus I would like to demonstrate that despite the fact that in certain periods of the historical development Hungary was far from the mainstream European political thought, its legal culture has always been European, consequently we managed to find our way back to the European traditions. An important reason for the necessity of research concerning legal culture is the challenge of legal harmonization, which for many years has been the most important task in Hungary. The success of this attempt is not merely a legislative question, but another question can be raised; are there links between the Hungarian legal culture and European traditions? In culture, especially in legal culture, hundred-in some cases thousand-year experience manifests. This experience is not a well-planned process, it comes into existence as a consequence of different contradictory wills. Legal culture generally contains emotional as well as rational elements. When we talk about law as a cultural phenomenon, that is to say: legal culture, in that case we do not mean current legal norms. Definitions of legal culture and law itself can easily be separated. Law refers to the hierarchy of legal norms; in this territory we can observe decisions with the goal of putting an end to conflicts. Contrary to this, legal culture is not a hierarchic system: emotional, behavioral aspects, value systems constitute its essence. Legal culture is a wider category compared to law, which contains also the environment of current legal norms. Before we examine a legal culture we should consider the following factors:

Legal cultures are historical entities. From methodological point of view, the change of legal institutions can be analyzed partly by the historic approach, partly by the methods of comparative law. The former method is suitable to point out the linkages between national law and other legal cultures. In this respect we face flexible legal culture if there is at least one example for reception. I have to note that a reception can not only be a consequence of an independent decision; sometimes invading forces initiate new legal regulation as it was the case in Hungary during the eighteenth and nineteenth centuries under the Habsburg rule. Those legal systems in the case of which there are no examples or there are merely rare occasions for reception can be labelled as non-flexible legal systems. A legal culture demonstrates
reception can be labelled as non-flexible legal systems. A legal culture demonstrates the attitude of people towards law. In a society citizens' attitudes to legal norms are called the non-professional component of legal culture. This element varies from country to country. In the ancient Rome, law primarily served as a mean of dispute settlement, consequently professional lawyers were authorized to practice it. In the ancient Athens, however, the role of law was not so important, decisions were made not by professionals. Once law appears in the pantheon of the widely accepted principles within a society, its general acceptance and respect is more obvious.

Faith in law often overloads law itself, thus it can indicate that the role of further norms (for instance moral norms) is not adequate. The overloading nature of Hungarian law exemplifies this phenomenon; high level litigation supports the theory that law has traditionally enjoyed priority and wide respect concerning conflict resolution in our country. A further dimension of our legal culture is the attitude of law professionals towards law itself. When we discuss this issue we do nothing but analyze specialists' (professionals') legal culture. Attitudes of everyday citizens and professionals should not diverge seriously - despite the fact that their knowledge regarding law significantly differ - otherwise disorder is more likely to emerge in functioning of law. One of the basic indicators of law is the relationship between its acceptance and the acceptance of those general principles and values which stand behind the legal system. If not only legal norms are advocated by the majority of the society but also the aforementioned principles, we talk about an orientative legal culture. Whereas, when merely legal norms are accepted, regulative legal culture can be observed. Where law bears an orientative function, law and moral, religious, political elements are interrelated entities. In regulative legal cultures the emphasis is on the explicit legal norms.

The precondition for this later type of legal culture is rational legal regulation, professional institutional legislative background. European as well as Hungarian legal culture belongs to this type. The history of Europe shows us that the contradictions between respect of legal traditions and the changing dynamics has merely been partial. An explanatory reason for this phenomenon can be the multi-level nature of the European legal tradition, where changes have never been too radical, and resulted in moderate, partial change.

*This multi-level structure consists of the following elements:

- In the fist place we have to mention the traditions of the ancient Greek philosophy. In Greek political-philosophical thought the demand for systematic scientific analysis appeared in an early stage, and remained an important element. Besides, methodology played also a key role (we can think about the philosophy of Plato or Aristoteles for example). As greek tradition influenced on philosophy,
People tend not to look for new alternatives unless there are no adequate means to be used or legal problems are followed by other inadequate mechanisms in other spheres (for instance economic difficulties).

Finally, in the closing section of my lecture, I would like to outline how Hungarian legal culture affected on planned reforms in the second part of the XX. century. I must stress two breaking-points.

The first one is the period of 1945-48, when pre-socialist arrangements took place. The second is the change of regime, social-political transition in 1989-90.

From 1948 political actors decided to break with the existing legal framework and traditions. Under the socialist regime the importance of law - as a mean used by political actors - on the one hand increased, but on the other lost its previous prestige. During this period laws played a merely symbolic role, whereas other lower-hierarchical legal norms determined everyday-life of citizens. The orientative dimension increased in the case of this legal culture.

Despite the fact that the introduction of socialist law in Hungary during the communist era was based on the Soviet model, this did not mean the disappearance of European (Roman-German) legal traditions. Hungary has managed to keep - to a certain extent - continuity, the traditions of Hungarian legal heritage, which helped the 1989-90 transition to be made easier, as political decision-makers turned to this heritage and re-established certain elements of the previously existing components. As a result of the above mentioned reason, political changes in 1989-90 were followed by legal changes which, thus, easily fulfilled the high expectations of the citizens. The new framework has been built upon an old traditional base, there was no need to create completely new legal institutions, as socialism kept a part of the Hungarian legal heritage.

Social prestige of law partly increased (in terms of the demand for constitutionalism), partly decreased in relation to the economic sector. Slow legal procedures, difficulties concerning the execution, sudden changes does not support the faith in the legal framework in Hungary. I hope that this closing part of my lecture has clearly demonstrated that the ability to survive of old legal traditions is considerable and this may either restrict or support deliberate legal changes.


In preparation:

Barna Mezey: Einführung in die ungarischen Aufklärung

Michael Anderheiden: „Selbstverschuldete Unmündigkeit“ Philosophische Erläuterungen zur Aufklärung


Harald Maihold: Strafen am Leichnam

Attila Barna: Verwaltungsreformkonzeption des Josephinismus in Ungarn