

ESSAYS OF LEGAL HISTORY

PUBLICATIONS OF THE DEPARTMENT FOR HUNGARIAN
STATE AND LEGAL HISTORY

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Development of the Hungarian Criminal Law in the 19th century

Budapest

1994

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In 1848 Hungary had no Criminal Code. At the plenary session of the House of Representatives on 14 December 1848, Kossuth proposed the preparation a bill on criminal matters. The House of Representatives carried this proposal but the codification could not take place as a result several Acts of Parliament included criminal regulations: e.g. Act of military events. Although a unified Criminal Code was not created, 1848:3.tc. on the *Responsibility of Ministers* (including their criminal liability). The ministers' *legal responsibility* embraced: a) the ministers liability for any action or any ordinance which endangered or injured the independence of the country, the Constitution, Acts of Parliament, personal liberty, if the minister acted in his official capacity; b) the ministers' responsibility for embezzlement and also for misapplication of property; and c) the ministers' liability for any defect of negligence concerning the execution of Acts of Parliament. The House of Representatives had the right to initiate criminal proceedings against ministers. The criminal acts of ministers were tried by a court which consisted of certain MPs chosen by the Parliament itself. The ministers' *political responsibility*: "Proposal distrust" - its consequence was that the minister resigned his position or the whole government left.

The 1848:18.tc. *Press Act* confirmed that the press law cases would be tried by jury. One of the most important innovations of this Act was the introduction of so-called "*gradual press liability*" (1. writer, 2. editor, 3. publisher, 4. owner of the printhouse).

The most significant criminal Statute of this period was the *Martial Law Act*, 1849:1.tc. concerning the setting up and procedure of summary military courts and mixed courts which had civil and military judges. A person of legal age might be punished by death before these courts if he had committed any of the following crimes against the state:

- taking up arms against the country, its constitution, independence and integrity
- acting as a spy and accepting any office or commission from the enemy
- if acting contrary to Acts of Parliament.

In 1852 the *Austrian Criminal Code* was introduced in Hungary. This Criminal Code could be characterized by its punishments which were sometimes disproportionately severe to the crime committed and by nebulous definition of political crimes. The Austrian Criminal Code remained in force in Hungary until 1861. In that year at the meeting of the Commission of high-ranking judges and lawyers (*Országbírói Értekezlet*), Ferenc Deák and the sub-commission for Criminal Law proposed the introduction of the 1843 Bill on Criminal Matters. However this Bill was never enacted. Instead the Provisional Legal Regulation, the various Criminal Acts and criminal practice and procedure enacted before 1848 remained in place. Under these provisions there was no distinction between nobles and commoners in their punishment.

In order to prepare the judicial reforms, Boldizsár Horváth, Minister of Justice convoked a commission in the spring of 1867. The Bill was composed by the judge Imre Csatskó who finished this work by November 1869. Boldizsár Horváth resigned his position in 1871, and so the Bill was ignored although the General Part was published.

Károly Csemegi was commissioned to compose a new bill for the Criminal Code. He also examined foreign models: e.g. the Austrian proposal of 1870, the 1875 Bill of Glaser and the German and Belgian Criminal Codes, and the proposed Italian Code. The Minister of Justice presented the Bill to Parliament in 1875. After long debates both Houses of Parliament passed Csemegi's proposal with small amendments. It was published in the Official Law Gazette as the Hungarian Criminal Code on Crimes and Misdemeanours, 1878:5.tc. and took effect from 1 September 1880.

The Csemegi Code (1878:5.tc.)

Principles

In international legal practice the French Penal Code of 1791 was the first which confirmed the principles of criminal law. The most important principles were: (a) equality before the law; (b) there is no crime without a law (*nullum crimen sine lege*); (c) there is no punishment without a law (*nulla poena sine*

lege); (d) presumption of innocence. The Csemegi Code accepted these principles saying that crimes or misdemeanours would be acts which were declared to be crimes or misdemeanours by statute. For committing a crime or misdemeanour anyone could only be punished by a punishment provided for in the Code.

According to the Csemegi Code there were three types of criminal acts: crimes, misdemeanours and petty offences. Crime (felony) was considered as an offence against the Code: its punishment would be by the court's judgment death or imprisonment for more than 5 years. Misdemeanours were offences which were caused maliciously or negligently: less serious than felonies and generally punishable by a fine or imprisonment for less than 5 years. By consideration of all the circumstances of a crime, the judge had the right to "correct" a crime and treat it instead as a misdemeanour, based upon attempt, complicity or other mitigating circumstances. Petty offence was regarded as an unlawful interference which was punishable by a fine or imprisonment.

The Code maintained the death penalty. It confirmed not only the maximum but also the minimum level of punishments, both sentences and fines.

The Code's *General Part* included introductory provisions, regulation on its territorial and personal effect and defined certain matters, e.g. the various punishments, and the meaning of attempt, complicity, intent and negligence/recklessness. Further it specified the grounds (e.g. unconsciousness, insanity, threat, reasonable force, self-defense) which negated or mitigated the offender's legal responsibility or capacity. Finally it defined the penetration of several crimes by the same person. The *General Part* also regulated the criminal procedure and the reasons for excluding execution of punishment.

The *Special Part* included the factual elements of the crimes, the specific types of crimes and their penalties.

System of Penalties

The Csemegi Code made a difference between the death penalty, the imprisonment and the fine.

1) High treason being the king's murder (regicide) or its attempt. The Court had the right to commute the death penalty to a life sentence or to imprisonment of 15 years. The death penalty could not be applied against an offender who had not reached the age of 20 years. In the absence of a reprieve by the Head of

State, the death penalty could be executed, usually by hanging.

2) There were four types of imprisonment: a) penitentiary or penal servitude: life sentence or 2-15 years' detention; b) prison: 6 months-12 years' detention; c) state prison: 1 day-15 years' detention, only in case of certain political crimes and of the duel; and d) jail: 1 day-5 years' detention.

The person who was sentenced for life could be released by the Minister of Justice after 15 years' imprisonment.

Although the Code made a difference between the grades of imprisonment, in reality this distinction was not so significant. An offender sentenced to the penitentiary had to work which was determined by the regulations of the penal institution. Every day he was allowed to walk for an hour in the yard of the penitentiary. A prisoner had the right to choose the work which he liked, and he could spend two hours every day in the open air. The offender convicted for jail also had to work, and the person sentenced for less than two years was allowed to wear his own clothes and also obtained other privileges. The offender convicted for state prison did not work and he could wear his own clothes. State prison in fact was not a form of deprivation of liberty but rather isolation from social and political life.

3) A fine could be an independent punishment or supplementary punishment (HUF 1-4.000)

Definitions in the General Part

According to the Csemegi Code, "attempt" was defined as an overt act, beyond mere preparation, moving directly towards the accomplishment of a crime. Attempt of a crime (felony) always had to be punished. The Special Part included specific regulations concerning the attempt of a misdemeanour. One could only attempt to commit a crime of malice or intent.

As complicity was considered any wilful collaboration of two or more persons in the commission of a crime of intent. The Csemegi Code drew distinction between three sorts of complicity: a) solicitation: commanding, encouraging or asking another person to engage in conduct that constituted a crime or a misdemeanour; b) accessory: a person who actively, knowingly, intentionally aided or contributed in a secondary way or assisted in or contributed to a crime or misdemeanour as a subordinate; and c) conspirator: one who with another person or persons committed a criminal act. They all had

the same intention to accomplish the crime and participated in its commission.

The General Part confirmed that a crime (felony) could only be committed intentionally. That was true also for misdemeanours, unless the Special Part provided otherwise.

Grounds for lack of criminal responsibility were insanity, unconsciousness, non preventable threat, necessity and self-defence. Self-defence meant the right to protect one's person or members of one's family, and to a lesser extent, one's property, from harm and unlawful and direct attack by an aggressor.

The Code included rules also for juvenile delinquents: A minor under the age of 12 could not be sentenced by criminal process. Juvenile offenders between 12 and 16 years old could be punished by the criminal process only if they had the mental capacity. Persons under the age of 20 could not be convicted of the death penalty or committed to a life sentence, but only for less grave punishment confirmed by the Code.

The General Part also included regulations relating to mitigating circumstances.

The Code set out clearly that the convicted criminal would be sentenced according to the most serious crime which he had committed:

either if (a) he had committed several offences by the same act at one moment in time;

or if (b) he had committed offences of the same or of a different nature at various times.

Finally, the General Part embraced regulations about the criminal's execution, the royal pardon and the lapse of time as grounds excluding the initiation of criminal proceedings and execution of the final sentence.

Crimes regulated in the Special Part

According to the Code political crimes were: high treason, disloyalty to the state (treason) and rebellion. High treason meant a crime against the life, person and personal liberty of the king, and the order of succession to the Crown, and also violent change to the Constitution, or any criminal act endangering the Compromise between Austria and Hungary. The Code also considered as high treason that criminal act which intended with violence to submit to foreign domination the territory of the Hungarian state or any other country of the

Austro-Hungarian Monarchy. Punishment of high treason causing the death of the king or its attempt would have resulted in the death penalty; in all other cases the offender of such a crime was punished by imprisonment.

Assaulting the king or any member of the royal family or causing injury to the king has made a specific offence.

Hostile conspiracy with a foreign state's government, espionage and also assisting the enemy's army were considered as disloyalty to the state. Its punishment was the penitentiary.

The organisation of and/or participation in an unlawful assembly which intended (with violence or dangerous threat) to influence or to inhibit the function of the Parliament or any of its commissions, or the work of the government were regarded as rebellion. Its punishment was state prison.

Violence against members of Parliament and incitement against the Constitution, Acts of Parliament and the authorities were also counted as political crimes.

Personal and civil rights to liberty were also protected by the Csemegi Code. Some of the most important rights were right to vote, freedom of religion, personal rights to liberty, secrecy of correspondence etc. Based upon the regulations of the Code injuries to one's reputation were considered as misdemeanours. Two types of the defamatory actions were defined in the Code.

The Csemegi Code included the following criminal acts against one's life or person: 1) murder: unlawful killing of another human being. It required a premeditated intent to kill plus an element of malice (malice aforethought). Its punishment was the death penalty or sometimes under specific circumstances, the penitentiary; 2) homicide: any killing of a human being by another one which was intentional but not premeditated. Its punishment was 10-15 years' detention of penitentiary; 3) duel; 4) infanticide: killing of an illegitimate child during or soon after its birth by the mother; 5) procicide: procuring an abortion intentionally, killing of the fetus in the womb; 6) manslaughter: reckless and unlawful killing of another without malice, either express or implied. The Hungarian law knows only involuntary manslaughter; 7) single combat; and 8) bodily injury.

According to the Code crimes against property were: theft, robbery, embezzlement, blackmail, misapplication of property, accessory after the fact, fraud, intentional damage of another's property, forgery .

The Code made also a difference between crimes of public danger: Crimes against the life, person, or property of a human being, endangering not only one but more persons. These were: damaging of railways, of ships, or arson etc.

Crimes and misdemeanours (against public administration) committed by public servants or by lawyers: One of these criminal acts was bribery: its offender could be any official person, judge, inquiry judge or juror who required or received any gift or money to influence the performance of his official duty. A lawyer committed bribery having undertaken representation of a client without his agreement, or having been corruptly influenced he acted so as to damage his client.

Code of Petty Offences (1879:40.tc.)

The Code of Petty Offences completed the Csemegi Code. The types of petty offences could be defined not only by an Act of Parliament but also by ministerial or local governments ordinances. Consequences resulting from petty offences were different from those of crimes or misdemeanours since the person who committed a petty offence would not be registered as previously convicted. Offenders of such an offence were fined or sentenced to imprisonment.

Amendments to the Criminal Code

The Act 1908:36.tc. introduced the suspended sentence, set out regulations relating to juvenile offenders and to supplementary punishments and forfeiture, modified the punishments of theft and counterfeiting, and established more serious penalties for the traffic in white slaves.

The Act 1913:7.tc. set up of a Juvenile Court.

The Act 1913:21.tc. regulated the protection of the public against danger arising drifters and tramps, and introduced a new penalty: committal to the workhouse for indeterminate term with a minimum of one year, and maximum five.

The Act 1914:14.tc. on press law cases determined the criminal acts committed by publication in the press and the "gradual press liability".

The Act 1914:41.tc. concerned the legal regulation of the Protection of Reputation.

Importance of the Csemegi Code

This was the first Hungarian Criminal Code. The new principles and theories of the Code were as follows:

1. The sole basis for sentencing was to be the act itself and not the person who committed it.

2. The principle of proportionality: less serious acts had to be punished by less grave penalties, and more serious acts had to be punished by more serious penalties.

3. The basis of the liability was the culpability of the offender.

4. The first and most important condition of the criminal liability was capacity. No one could be guilty who lacked the mental capacity to commit a crime. The Code made a distinction between the full mental capacity and the absolute lack of mental capacity.

5. The principle of individual ethical liability: its basis was the power of choice involved in the axiomatic freedom of the human will. By this principle the Csemegi Code did not know the legal institution of recidivist and the penalties for undetermined level (e.g. workhouse and high-security imprisonment).

6. The punishment should fit the crime: it was used in connection with the principle of individual ethical liability. The offender had to be punished because he had abused his free will and his freedom of choice. The grounds for the punishment were not his character of public danger; the society had no intention to re-educate the human being.

7. The exact definition of legal institutions was very important. Criminal lawyers regarded this Code as one of the best Criminal Codes in Europe in the 19th century. It is true that it was sometimes too complicated and intelligible only to experts of criminal law because only they could find the way through the legal labyrinth. It is worth while to mention that the General Part was effective until 1950 and several regulations of the Special Part were effective until 1960.

