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Social changes and the nature of offences against the norms in Central and Eastern Europe

The Hungarian way

Special attention was paid to this region of Europe a couple of years ago. In Western Europe and also in North America it was much spoken of the region's unique experiment. Lots of illusions had been created both in Mid-Eastern Europe and the abovementioned parts of the world about the possibilities, dangers, promised help, and the people's moral, cast of mind, interests and its representation. Also, illusions had been made about the new system's characteristics, tendency of changes, and the accompanying symptoms. Though, the historical perspective will still be missing for a while to the real and complex judgement of this age, outlines of some facts and tendencies already seem to shape. Real judgement of the situation starts to take shape instead of illusions.

In this study, I try to introduce the relation between the *change of regime and the nature of offences against the norms through four dimensions*. These are the political, economical and social changes, the crisis of values and norms related to the different changes.

1. Political changes

In the last two decades before the change of political system in Hungary, this country had the fewest signs of dictatorship of the Eastern bloc countries. The political system had been *criticized in limited degree*, depending on the world policy and the internal situation in the Soviet Union. The final point of criticism was the disbelief in social system. It appears that the system better endured criticisms coming from the leading apparatus than those arriving from outside. This is the reason why the reform efforts, playing a

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role in the change of political system, started from inside the communist party.

When the Soviet Union could no longer maintain its realm in the region, the old political system collapsed first in Hungary, which was the best prepared for the change of the affected countries. This was due to the reform efforts coming from the communist party.¹

The change of political system was prepared by the communist party elite which had reform communists among its members along with the opposition following a united strategy against the communist party. The opposition wanted to execute the alteration of old system peacefully. The change of old system had been carried out by referendum, following it free elections.

Among the *advantages* of the political changes is that the various concepts, though in a very different degree, could be outlined for a relatively long period. The scrupulous revelation of ideological differences, the precise identification of radical extremists - regarding their notions and the leading persons as well as the so called „hard liners” - became a reality.

Among the *drawbacks* of the form of political changes in Hungary is that the secondary questions, and confrontations among the several parties concerning these issues which came out during the discussions, diverted the attention from the number one issues that were mainly related to the economy and social situation. The solving of problems is more difficult and slower than it used to be during the years of centralised governing system. The cause of this is that the discussion of concepts happens at different levels and that interests of many parties have to be debated.

¹ The details can be followed and documented. The best publication about it is the *Fordulat és reform* (Turnabout and Reform) published in 1987. At that time, most of the authors of this publication went beyond the limits designated by the ruling power. The consequence was the exclusion of most of the authors from the communist party. This is especially important, since none of the authors questioned the exclusiveness of socialist political system in Hungary. They just wanted to improve the system by reforms. See *Medvetánc* (Bear dance) 2/1987. As regards the political situation in Hungary in 1993, none of the above authors belong to the favourites of the ruling power, even one of them had been sued by the Prime Minister because of the „defamation of the government”.

2. Economical changes

In Hungary - unlike in many countries having a similar political system - some initiatives of the market economy had started to take shape beside the strict planned economy during period of the old political system. Between the real or unreal limits of margins the slow transformation of the economical system - which had many stoppages - began from the mid 60s.

The ruling elite paid much attention to the avoidance of a potential overwhelming discontentment, similar to that of 1956. From the 70s this resulted in the raising of loans from abroad which was the only way to finance the relative welfare in the country - including the extension of rights of freedom with travelling possibilities. From the 80s onward the country kept running into debt, and the political system's operational problems became more and more visible. From the second half of the decade a quick decline started in Hungary. This process had taken place during the period when the crisis of the Mid-Eastern European region had began.

Notwithstanding we can state, that Hungary arrived to the *door-step of the change of political system among more consolidated circumstances*, than the Eastern bloc's other countries did. The private sphere was not unknown in the country. Gaining ground of it was typical in the second or so called grey economy. (At the same time the way of informal *opposition against the state* had been shaped. The experience of this opposition was usefully applied by the major part of the population in the following years too.) We are not very far from the truth if we say, that with the introduction of the new tax system, the invisible incomes became striking. In this regard the country's population consisted of two parts at that time: the ones who committed tax fraud, and those who were not in a situation to materialize such acts, because of the type of their job. This was the period when the so called surviving technics took shape on several territories of the economy. Since that time, more and more people are „forced“ to apply these technics, because they mean a temporary way out for them to avoid a financial collapse.

The *change of political system* found an economy being on the edge of collapse, the structure of which could not be saved, but was *still operating*. The priorities which must enter into action unpopular measures in order that the country could join the western economies

were known. The way of realization however was unclear, and the experts who did not have the same opinion about it, recommended various solutions.

We can state, that the *first government* which came to power after the change of political system in Hungary, *has been unable* to keep his promise regarding the execution of the change of economic structure. Recession had accelerated in the first times. The economy has been stagnating at nadir since a long period. Since the beginning of the change of political system, the Hungarian government has tried to apply *four different models* to the change of economic structure. All of them however has lacked the supporting basis, and therefore, all were one or a few ministers' and some backing experts' lonely actions.

Among the *advantages* of the economical changes after the change of the political system, we can mention the decrease of tension among the people and its' relatively easy ceasing in the short run. This came true due to the slow changes, as the longer time during which the people get used to the changes, makes the crisis beaten masses of the society more accomodating.

Among the *drawbacks* of the change the first and most important is the danger, that affects the population's way of thinking. The long lasting crisis identifies the new system with the old one, and even, it has the old system seen in a more favourable picture, than it was during its period of existence. The long lasting crisis also makes a possibility, that the problem solving ways, which are on the border or out of legal rules, strengthen, become general and turn into problemsolving technics for the most part of the society.

3. Social changes

From the 80s the society's differentiation kept expanding on, and the difference of income between the lower and upper classes had increased. Already at that time began to take form a so called poor community which was then named *lumpen class*. In the case of these people it was obvious that they were unable to climb up to the others, though this was not their fault. They definitely fell behind from the society's main line.

The relatively quick change in the economy including a sharp turn on many territories - based on the traditions of the previous system in Hungary - did not give time to the people to protect themselves

against the new system's effects. As long as they cannot do this, the symptoms of the neocolonization will exist nationwide. On certain levels of the working population, the marks of the type of exploitation that flourished in the 18th and 19th century capitalism can be found. So, in addition to the falling behind of big masses from other parts of the population, the working classes' exploitation is going on. This is especially important, as the real change of the economical structure has still not yet begun.

Among the *advantages* of the type of change that keeps going on in Hungary, we can mention, that the society is not „blowing up“ because of the new situation, as the slowness of the changes does not make it possible for those who have demagogical thoughts to lineup masses behind them. This way, the nation can avoid a radical conservative (left- or right-winger) political turn. The society tends to accept the new system's conditions.

Among the *drawbacks* of the change we have to speak about the missing of the political changes' revolutionary adventure. In the future, the population probably cannot be convinced of the support of such measures, that could have been accepted by the people in the first few months of the new government's reign. The consequence of slow and controversial change of economy - which has been full of stoppings and turns - is that one cannot see the end of „turnel“.

4. Crisis of values and norms

One of the main reasons of the ex-communist countries' collapse - apart from the economical causes - was that the *societies of these countries had never identified themselves with the official scale of values* formed by the ideology, and which were recommended to follow, and - during certain periods - made obligatory. People had not accepted the official values' main elements. The people in these countries had lived according to a *dual scale of values*. Both scale of values contained many negative elements. The unacceptability of certain elements of the *first* (the announced) scale of values legitimated the *second* scale of values with its numerous negative or so called „no“ values that had been institutionalized by the society. During the last decades, the second scale of values had been built into many classes of the society so strongly, that the abolishment of it needs a change of political system or a similar social explosion - resulting a catharsis.

Another possibility for the abolishment of the second order of values can be the effect that a durable change in the first scale of values can make. The second „no“ values include for instance the priority of self interests instead of social cooperation, atomism, negligence of a community's helping force, and the lack of other people property's respect. We can see that a part of the above „no“ values also exist in societies selected or predestinated for integration. Therefore, positive changes cannot be anticipated in those circles. The economical shock however, that goes through the society can justify that many „no“ values get to neutral or positive values. The communities watch with a kind of silent sympathy rather than a disagreement the ones who rob wealthy people. On certain territories a silent sympathy and solidarity starts to take shape for the support of those making actions against the official order of norms. The expansion of this attitude can undermine the official order of norms established and protected by the parliament of a democratic state.

This view makes it possible, that the individual, - supported either by his or his own class' scale of values - find out the limits of written rights.

It appears, that all kind of change of a political system results the *weakening of norm pressure*. This is a natural process both form inside and outside. The various scales of values - as a result of the slowness of changes - keep living on, accustomed to the altered situation. This fact is justified by such anomalies, as when theoretically prohibited, but practically preferred norms blend with indisputable norms, that are causing obvious reactions.

A special problem is the *changes and controversies in the scale of values* of the society's elit. These things are not always exemplary for most part of the population, but they are definitely considered guiding. Today, the scale of values and samples living within the not yet stabilized elite in Hungary, usually cannot be followed, and if they can, they are hard to be realized. It is another question if these values are exemplary. That is why the safe selection of the values to be protected is difficult.

Values however, do not automatically specify norms, least the norms of criminal law. Moral values may and often do differ from legal norms. „In our legal system, value judgements cannot create norms of criminal law. To create such norms, - as it is well-known - a legal action is necessary. It means that a value judgement has to go

through complicated social and legal procedures in order to become a norm of criminal law. The criminal law selects independently the values that have to be protected."²

The system of norms a part of which is strengthened by the law and which is exemplary for the community, is crystallized in the relation of individuals and the society. „It has to be considered, that the individual is living, thinking and acting as a member of the society - and not in isolation. The points of view expressed by other members of the society make an impact on the individuals' content of mind, and this creates the moral system of norms that includes the society's content of mind. Laws had been made from the moral system of norms by the reigning class - first occasionally, then «by planning» - with its organisations of power, and compelling force."³

As values and order of values belong to the circles of moral rather to that of law, the protection of values by the law can only be fruitful, if *scale of values preferred by the ruling power* is not against the one that the majority of the population accepts. A characteristic feature of this territory - we have already mentioned it in connection with other issues - is the simultaneous presence of supported, tolerated, and prohibited activities. The handling of actions belonging to the tolerated zones means that though the authorities are aware of the mass execution of certain prohibited actions, they do nothing, until the persons who carrying out the activities do not go beyond the border. „Following of the law has to be a moral action. The realization of it needs however, that most part of the population be convinced about the value of laws. Penalty in itself is an inadequate tool to morally reprove someone. It is only good to deepen the already existing moral values. Consequently, law has to be confined to the actions, in the cases of which the public moral is identical with the official concept, or when people are indifferent toward legal regulations."⁴

² T. Király: A büntetőjog és garanciák. (Penal law and guarantees) Jogtudományi Közlöny (Journal of Law) 5/1981, 360.

³ R. K. Merton: Társadalomszemlélet és társadalmi struktúra, (Social view and social structure) Budapest, 1980, 452-471. V. Hámor: Jogi és jogon kívüli normatív elemek a polgári ítélkezésben. (Legal and non-legal normative elements in the civil justice) Jogtudományi Közlöny (Journal of Law), 9/1984, 490. o.

⁴ T. Geiger: Über Moral und Recht. Streitsgespräch mit Uppsala. Duncker und Humblot, Berlin, 1979. 178-182.

The *norms protected* by criminal law are part of a state citizens' *safety of existence* and the defense system used for the protection. It is another question, how the protection of safety of existence serves a society's interests in the long run.

In the mid-eastern region of Europe it tends to become a generally accepted concept, that both the protection of values by criminal law and the legal procedure itself are *ultima ratio* to the operation of a society. Apart from this, the notion that values and norms have to be (primarily) protected by other means and methods instead of the use of criminal law tends to expand. Certain parts of these notions belong to the theme of creating laws. For the control and press back the harms of civilisation, - the goal of which includes protection of values in our complicated world ruled by technics, - the criminal procedures built on the principles of Roman law are improper. Other law branches (primarily the civil law and some other branches) are more proper to save effectively values and norms by forcing keeping of the norms that have to be respected. The application of these law branches can be especially fruitful, if the norms defined in laws can express the people's interests. With the representation of these interests people can automatically protect the defined norms without being warned or even forced by penalties to do their obligation.

It is necessary to determine „that in which cases are necessary the application of criminal laws. This has to be determined by social necessities rather than the types of criminal sanctions.”⁵

The criminal law is an *ultima ratio* in the sense that „it is an improper means for the solving of social problems. The criminal law is not a means that can make an impact on the course of events and social facts that causes committing of criminal acts.”⁶

It is necessary to deal with the question that what kind of scales of values and priorities must a democratic state have. It is also important to speak about, what type of advantages and disadvantages the different order of values and priorities have on the various parts of criminal policy and for the prevention of criminal acts.

⁵ A. Szabó: A büntetőjog reformja. (Reform of penal law), G & G Publishing House, Budapest, 1990, p. 39.

⁶ *Ibid.*, p. 45.