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## **AN APPROPRIATE RESPONSE TO CRIME IS FUNDAMENTAL TO THE HEALTH OF EVERY SOCIETY**

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### **1. The society and crime**

During the last few weeks or months, people in Central Europe have been celebrating the tenth anniversary of the changing of the political system. Presidents and Prime Ministers recall the events having taken place in the Fall 1989: how the Germans were proceeding from the North to the South, then to the West. At that time, hardly anybody could think how dearly we would pay for dismantling the iron curtain.

"Increased crime is the price of liberty" - said one of the prominent public figures of the last decade: the number one person of the Attorney General's Office which is independent of the government and the current political winds. Not everybody shared this view, and it is true even now. A certain part of the politicians would like to see the society that followed the changing of the political system just as most of us would like to see it: a rich and well-balanced society. A nation that lot of us envisaged in 1989-1990: the homeland of free and equal citizens. A state where following the disappearance of dictatorship, problems will be solved by dialogues and compromises. We thought that the state, the parties (smaller and bigger, left-wing and right-wing), the ever-increasing non-profit organizations and NGO-s would soon establish a pluralistic and peaceful world for us.

At that time, there were lots of people who simply failed to take it into account that life was not a rose-bed even on the more prosperous (and perhaps happier) side of the world, including Europe. Those, however, who could clearly see the negative features of the capitalist society believed that we would do everything in a different way. But we had to realize in a short time that *there was a pretty long distance between our hopes and the reality*. The laws of society prevail, and it is rather difficult for us to accommodate ourselves to the new expectations. Suddenly, a wave of crime flooded us we had never

thought of. The society was almost shocked, and those who had power in their hands, had at first proved uncertain about what to do, then tried to face the challenge while proceeding in a zigzag course. Success was little, but the consequences were serious: a totally unprepared state apparatus (including first of all the police) and a desperate and incredulous society had to combat offenses they had already known, but the crime-rate increased by orders; and had to fight against offenses that had been totally unknown before. Cities in Central Europe that had been famous for their safety before the changing of the political system became dangerous to life overnight, their streets were dangerous to walk along even in daylight. People were shocked by the series of burglaries. Some people lost their property they had made life-time efforts to collect. The population was flooded by car thefts, car vandalism, bankruptcies, frauds, bombings, etc.

In the meantime, however, social scientist (among others) tried to convince each other as well as the society that

- the previous penalties were too severe,
- death penalty is inhuman and unacceptable in a civilized state,
- the guilt of offenders should be proved much more thoroughly, along the principles of a constitutional state.

It is not surprising that a certain part of the public believed the high-sounding slogans of the politicians, and found that the best way from this chaotic situation is to be more severe; to re-enact death penalty; and to put even more people into prison. There was no mention of any profit-cost analysis, and even now, hardly anybody speaks about it.

## **2. The pre-conditions of an appropriate response**

In order to provide an appropriate response to the offenses committed in large numbers, the answerers will have to enjoy a suitable state for offering their response. They must be provided an opportunity to review their (short-time and long-time) interests, and articulate their answers to the problems. To this end, a *number of questions should be put, and answers found*. The issues to be addressed are the following:

### **2.1. The condition of the state**

When summarizing the answers to the questions below, everyone can find out the situation with his ideal concerning the most spectacular (and most tangible by its institutions) representative of the power. *What kind of a country does he live in?*

Is it a state that is

- legitim
- self-confident
- democratic, and

- dominates the economy?

Is it a state where

- the human rights are regarded
- the construction of the state is stable
- public safety is considered to be satisfactory by objective judgments (those of impartial outsiders)
- public safety is considered to be satisfactory by subjective judgments (e.g. those of the public).

In case, the answers to the above questions are not "yes" exclusively, the following questions should be put:

- Is the state healthy?
- If not completely, can the society be healthy?
- Do the citizens enjoy a strong and powerful state?
- Can a healthy society exist without a healthy state?

Responses to the last few questions will possibly be different, according to the values one prefers. However, a compromise should be reached, otherwise professionals will fail to send over a coherent message to the politicians.

## 2.2. The relation among the state, the economy and the society

The state and its representing body, the government can reach their goals and articulate their priority-list of values primarily by legal means, i.e. via legislation, and the application of the provisions in effect.

Offenders committing crimes which pose a serious threat to the society, will be punished by the state. It has been disputed whether punishment has got its aims, or it is simply means for the executive power<sup>1</sup> to declare that it will not tolerate the breach of certain values. The Criminal Codes of the states indicate which values form the very group whose breach will be considered particularly intolerable: they do it by determining the actions that criminal law will sanction; and by defining the measure of these sanctions. The *Hungarian Criminal Code* being in effect now, was compiled in 1978; since then, it has been amended several times. *The values its provisions protect* can be classified as follows:

- \* The state, and the socio-economic order of the country, the security of the sovereignty of the state: 15 facts.
- \* The existence and the safe life of the groups of various nationalities, races, and religions, and the interest of the nation in this respect: 9 facts.
- \* The human life, physical fitness, and public health: 31 facts.
- \* The freedom of conscience, action, movement, and keeping secrets, human dignity: 17 facts.
- \* The human honor: 5 facts.
- \* The institution of the (monogamous) matrimony: 2 facts.

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<sup>1</sup> Szabó, A.: Jogállami forradalom és a büntetőjog alkotmányos legitimitása (Manuscript, 1999.)

- \* The physical and mental health of infants and juveniles; their personality development: 10 facts.
- \* The freedom of sexual life (for women), the healthy sexual life: 9 facts.
- \* The purity and transparency of (the national and international) public life; the extent the responsibility of the state can be enforced; the legal and regular functioning of the state apparatus; trust in the state organs and the officials: 29 facts.
- \* The protection of (the right to) property and ownership: 18 facts.
- \* The protection of the national values: 3 facts.
- \* Public safety, public order, public tranquillity: 24 facts.
- \* The protection of economic values: 41 facts.

We can see that the number of facts facilitating the protection of the values concerned, have got an indicative function. However, it is more important

- \* how successfully legal practice can apply a given provision,
- \* to what extent the given values are covered,
- \* what kind of other means are at our disposal to guarantee the enforcement of values protected by criminal law, and
- \* how effective these means (partly within, partly beyond criminal law) are.

It is getting more and more obvious that *criminal law can manage just a (gradually decreasing) part of the offenses where the most serious breaches of values are committed*. The regulation by criminal law suffered a spectacular failure first in the field of traffic accidents: it considered practically every citizen a potential criminal, since everybody who drives a car can commit a reckless offense the criminal law punishes together with all its consequences. Legal professionals have been trying to warn everyone concerned for more than 25 years saying it is not too useful

- \* if the law-abiding majority of the citizens can not draw a clear line between themselves and those infringing the law; and
- \* if an accident - quite independent of the person infringing the law - can have such a decisive role in deciding who will become an offender and who will not.

It was in the early 1990s, when another period of failure of criminal law started. It turned out that along the development of science and technology, a number of new threats endangered primarily the developed countries, and the traditional means of the state (criminal law, for instance) were not sufficient to counterbalance them. Think of the internet, money laundering, the system of telebanking, as well as transnational crime, just to mention a few examples.

Together with the threat that emerged in the last decade, it also became obvious that *the economy has gradually been withdrawing from state supervision*. By its power it can afford to neglect the laws of the state, prefer values that are different from the official ones, and replace them by a new set of values. It is well-known that there are some powerful participants of the economy the state do not like, because the majority of these people strengthen their power by neglecting official norms, following illegitimate rules the state cannot accept. *The state* has already reached a point where it must admit that it has been unable to effectively combat organized crime, but *it would like to take a share of the profit organized criminals have accumulated*. That is what we call profit skimming or asset forfeiture.

In the meantime, the honest and - to a great extent - law-abiding taxpayers *expect the state to protect them*, ensure their well-being and safety. Lots of people think if the state punishes the offenders in a more severe manner, it will protect them from the new offenders committing new crimes. On one hand, the public is not satisfied, since relatively too few offenders are arrested by the police; on the other hand, they find it more important that those arrested be excluded from the chance of committing new crimes for as long a period of time as possible. These people know nothing of the fact that prisons are the best schools for criminals. We can regard them as a kind of training centers, where people drifting away from the law-abiding majority of the society train themselves - in an organized manner; and the taxpayer pays for it.

A considerable part of the society declines to take even the smallest responsibility in the process whose result is that the majority of the people can spend their lives without committing any crimes, but a smaller part does commit a crime, once or twice in their lives, or set out committing crimes as a life-style. The majority of the public decline to learn how close the relation between life-chances and committing crimes is. They do not want to face the fact that the costs of their (relative and often modest) well-to-do life are taken away from the social stratum that provisionally or for good have fallen behind the streamline of the development of the society. A number of people fail to notice that there are some individuals for whom prisons mean security, and offer a relatively well-to-do life, considering their outside conditions.

And now, we can put the question: *what responses can society offer to the challenge of crime?*

On *legislative level*, we can say that society offers more or less adequate responses to the actions that breach its order of values. Concerning the *application of laws*, however, these responses show great differences, and are imbued with political aspects to a much greater extent than legislation. It rarely occurs that the professional opinions are not only listened to but also accepted (it is also true, on the other hand, that professionals often go into debates, but are ready to take a common platform in a number of questions).

It also happens almost exceptionally that society - via its representatives - seems ready to study the possible negative impacts of a given measure on the short and also on the long term. These impacts could appear unexpectedly, but in case of sufficient foresight, they can be well predicted. The lack of this rational way of thinking is no surprise considering that society often fails to take into account even the obvious and unfavorable impacts.

Society does practically nothing to manage its own life, and get independent from the state support which is necessarily limited. This particularly applies to the period when a society is in transformation from dictatorship to democracy. Contrary to previous expectations, ten years after the changing of the political system we can hardly find even the outlines of those NGO-s which would facilitate the efficient management of local problems, such as supporting families in the state of breaking up; advising neglected and drifting youth; or assisting former prisoners to find their places in society again. The majority of the public do not feel induced to better understand and assist those who live in less favorable

conditions. Moral and interest deficiency are added in this attitude. People still expect help "from above", while the state is getting more and more helpless.

### 2.3. What can state and society do?

The conclusion is obvious: we cannot expect a healthier (more exactly "less ill") society to appear in the near future. On the contrary: *these developments are moving in the direction of a state and society that will gradually be victimized*. A different conclusion could only be drawn if the roles and responsibilities listed below brought about a positive outcome:

The state and the society are able to:

- recognize the problems
- set up an appropriate hierarchy
- provide suitable (appropriate) answers to the challenges
- take the responsibility
- and they are not only able to do all this, but are also ready to carry out the above

tasks.

Reality, however, seems to be much less favorable. We have good reasons to put the following questions:

- What is it the state has so far failed to find an answer?
- What is it individuals and society as a whole are ready to undertake, and what do they shift to the state?
- How do the state, the society and the individuals manage the problems; and what means do they use to influence them?
- What do the state and the society underline? What do they consider important, and what do they neglect?
- What do individuals expect from the state concerning crime management?

During the last ten years, there were several *studies* done - partly in international cooperation - *on the public's fear of crime, and attitude toward offenders*. One of these studies provides information about the social factors that determine the type of sanctions one wishes to be inflicted according to the value that was breached.<sup>2</sup> These factors are in a close connection with the process of growing up and becoming an adult. Though the analysis and evaluation of the results have not yet been finished, the outcome shows that the conditions in which an infant is growing up (such as the social situation of the family; the principles along which parents bring up the child; the way parents react to the infant's behavior, etc.); the different financial situation reflected by the household; the gender and the age basically determine the punitivity of the individual; the extent he is ready to punish someone; and also the type of his reaction to various infringements of norms. Consequently, *we can hardly talk about any uniformed reactions from the part of the society*.

What we can talk about instead, is the following:

- \* how can the different social strata articulate their opinions;

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<sup>2</sup> Research on the relation between moral and law (OTKA, 1997-1999.)

\* how can the various political powers and interest-groups make these opinions serve their objectives - and via these "mediators" - how loud these viewpoints can get?

It is well-known that a considerable part of the politicians can make use of the fact that the most active part of the population in the elections (namely the elderly people, particularly elderly women) are much more concerned about the safety of themselves and their properties than the other strata of the society. Their concern is independent of the fact that it is not in any practical way connected to the extent of the real threat - as it turns out from all competent studies. This, of course, does not contribute to the awareness of the underinformed public. And there is another thing that also fails to facilitate the efficiency of the legal services: the political powers in Hungary are stumbling from one scandal into another. *Practically there is no party in this country which would not be accused by another party of committing serious offenses, and of concealing them.* And also there is hardly any political power which would be ready to take the responsibility for its activities. The institutional irresponsibility of the "House of Lords" has its impact on the "House of Commons". What the average citizen learns is that he had better deny everything, take no responsibility, since procedures take so long a time that finally everything gets confused, and no one is able to find out the truth.

If the legislator - influenced by the current political lines - simply improvises, without doing the necessary preparatory work - the will of the state cannot be (or can only be partly) implemented. The political parties have already recognized that the increasing crime-rate is a sensitive issue for the public. This also applies to the promises to reduce this rate. Therefore, the parties are getting ready to interfere in a spectacular manner, pretending that some decisive measures are going to be taken to quickly change the situation. However, the theoretical professionals of crime prevention believe this kind of a "show" is in practice pretty expensive and surely inefficient.

Concerning the government, their efforts are easy to understand, since four years that elapse between two elections, are not a long period of time, and they intend to show some positive results. But the following facts should also be taken into consideration:

- \* crime-rate has got a kind of original inertia; self-movement as a consequence of some previous impacts;
- \* social changes influencing the crime-rate do not take place quickly enough to have a basic effect on crime within one or two years;
- \* there can be a big difference between the actual crime-rate and the public's feelings. The way this relation is changing can be influenced by facts which are totally independent of crime.
- \* a quick action is often a kind of substitute action that will foreseeably have no influence at all on the quantitative development of the crime-rate or its composition. However, it is possible that such actions will have a calming effect on the public opinion, particularly if the mass-media do a good job.<sup>3</sup>

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<sup>3</sup> A brilliant example is the "legislatory mania" that followed the changing of the political system and has been going on since then. It has resulted in a number of criminal provisions whose facts no one has yet implemented, or more often it was impossible to prove. However, it could make the public feel that the governments reacted to the challenge of crime in a quick and definite manner.

\* very few politicians have taken it into account so far that a Criminal Code which is constantly changing and losing its inner balance, could do great harm to the principle of legal security, or what it means when the reliable application of the law stops existing.

As far as the *new social phenomena* are concerned, it is getting more and more characteristic that *the regulatory function of the law fails to operate*. This situation has got two reasons. First: criminal legislation - by its nature - reacts to existing phenomena; it assesses reality retrospectively from the viewpoint of the society's interests, and depending on this assessment it sets up prohibitions for the future. Second: it is pretty difficult to assess to what extent a given phenomenon is dangerous to the society, and even if we succeed in doing so, a relatively long period of time elapses before an adequate response appears.

When comparing the above list with reality, we can see that quite often the *regulatory function of the law fails to prevail*. It is particularly true in economy. A number of people say that *economy will resist to being criminalised*. Economy is controlled by its inner laws, and the punitive reactions of the state fail to prevail. Some people think the reason of this situation is that the order of values of globalization and modernization is different from the legal background of the traditional criminalisation.

Another "obstacle" for offering an appropriate response is that the court procedures are sluggish. *Courts* are under the obligation to meet all requirements of the constitutional state, so they *work slowly, and their rules are often unpredictable*. This makes things difficult not only in criminal cases but the lengthy civil and administrative procedures also hurt some interests. The wearisome court procedures do not contribute to the quick administration of justice or the enforcement of well-founded claims. Thus, indirectly though, they contribute to the "spontaneous" solution of certain cases that should be dealt with by the courts of a constitutional state. On the other hand, the offended parties will never be compensated for, since this sluggish and inefficient work can ruin one's life often for good.

In case the participants of the business community are suspected offenders throughout months or sometimes even years, they can lose everything, just like those who make efforts to enforce their just property claims in a legal way. If the truth turns out after a long period of time, even if the court rules that the suspect is innocent, or adjudicates the amount in dispute, it can be too late. Economic life - by its nature - will not tolerate these lengthy procedures of the administration of justice. Until the constitutional state fails to enforce a quick administration of justice, it will have been unable to offer an appropriate response to the challenge of crime.

This situation for the citizen who would like to obtain information means that there is no legal security in Hungary, and the state fails to meet the requirements of the public, as far as the implementation of its responsibilities is concerned.

#### **2.4. What is crime prevention?**



It is primarily crime prevention a healthy society will react to the challenges of crime. It will utilize state and private resources to keep its life tolerable.

This approach means that it is certainly not appropriate for the citizens to sit down and wait idly for the assistance of the state that will clear away all problems and difficulties. However, the state is wrong if it assumes that the existing means of criminal policy will prove sufficient to keep the crime-rate on a tolerable level. It is of great importance to elaborate the criminal provisions in order to make those who pose a serious threat to the interests of the society accountable for their deeds. It is essential to have a high-level system of crime control to retaliate the offenses. It is not less important that the sentences should be executed, i.e. no offense should be left unpunished.

*Government policy*, however, has got a number of legal and non-legal means to prevent offenses, and reduce the number of potential offenders. These means are seemingly independent of crime. It is the responsibility of the state to design and implement the whole system of legal environment.

It is also the task of the state to develop an *educational policy* (with legal background behind) which offers the students not only lexical knowledge, professional training, and a diploma for doing some business, but also teaches them how to communicate; how to manage those who differ from the average; how to overcome various kinds of deficiencies brought from home; how to accommodate themselves to the conditions of a changing society, etc.

The state also should ensure that the *social and employment policy* could offer the chance to everyone who wishes to work that he will get some job; his accommodation and medical conditions are also ensured; and he can participate in various kinds of training if he wishes to do so. The state cannot afford itself the "luxury" to put up with the fact: this or that group of people need not be taken care of, since they have already been lagging far behind the main trends of development. Groups that right now are unable to articulate their interests, could tomorrow undermine the very foundations of the society. This interrelation (just like several other social interrelations) has been well-known for everyone at least since Marx's times, even if some people have thought lately that certain social interrelations have already become obsolete. The Chechens, Kosovo, Northern-Ireland, Karabah, Kurdistan, Sardinia, Bristol and the Bronx, the slums in Latin-America and South-East-Asia, the riots of the poor; the cruel deeds of those primitive people who were infuriated by the religious and political fanatics; the blood-bathes caused by tussies and khutus, catholics and those belonging to the Reformed Churches; the constant threats of nuclear and chemical weapons brought about by the egoistic attitude of the Great Powers, all these prove that a narrow-minded policy which neglects the minorities will sooner or later turn out to be its undoing.

The global spread of organized crime, black economy and corruption, together with all their consequences (partly unknown for us at this moment) prove that the statesmen have failed to recognize the interests of the citizens they lead. Apart from a few exceptions, politicians use the citizens as a means to enforce their own interests, though they should feel responsible for the citizens of their nations.

At various ends of the networks of *organized crime*, we can often find people who have got nothing from the legal society, therefore they feel no responsibility towards the "first" public. They consider themselves to be out of the law in effect. It is obviously impossible to exert any influence on them by criminal political means. If the state does nothing, their easy replacement can be guaranteed. While the state and its citizens are busy dealing with their "small businesses", organized crime (with the cooperation of these "outlaws") is systematically disrupting the society and its state. This sometimes goes on in a hardly noticeable form, e.g. by the breaking effect of drugs, or smuggling people; sometimes in a more spectacular manner, e.g. bombings, or chemical weapons.

The legal means (primarily those of criminal law) of crime prevention together with the protection of the interests of the public can make people's lives tolerable. *Local crime prevention* has got an essential role; its driving force should be the local governments, since they function as the most direct representative bodies of the neighborhood. At present, however, it is not clear for the people in several countries of the world. Local governments, in many places, are not more than the "extended arms" of the central power; they collect taxes and appear as a punitive authority, instead of representing the interests of the citizens.

This also applies to the *law enforcement organizations* whose main function should be the protection of the interests of the neighborhood. Instead, the police are often the local executive organs of the central power, though they should rather serve the legal protection. A centralized police organization seems inefficient in its function of protecting the citizens primarily in those countries where previously it used to be their main task to protect the interests of the state power built exclusively on central and ideological bases.

### 3. The actual priorities

#### 3.1. The state - the economy - the individual

Some social scientists (such as criminologists) in the West have been warning us for years now that essential changes have been taking place in the relation between the state and the economy.<sup>4</sup> *The transformation and globalization of the economy have invalidated the moral values of earlier times, and broken up the consensus on the social norms.* Instead of these traditional regulatory means the absolute priority of one's interest became the number one means of regulation. Sack says: in place of the consensus on the above-mentioned moral values and social norms, it is the interest that decides whether or not a norm has been breached in a given situation. It is the outcome of the profit-cost analysis that determines what kind of a decision will be made.

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<sup>4</sup> See: Sack, F.: Umbruch und Kriminalität – Umbruch als Kriminalität. In: Sessar, K. – Holler, M. (Hrsg.): Sozialer Umbruch und Kriminalität in Mittel- und Osteuropa. Eine Tagung. Centaurus-Verlagsgesellschaft. Pfaffenweiler 1997, 91-154. pp.

On its way from the period of transformation towards democracy, the society will face several difficulties. I would like to underline two of them, since both are in a close connection with globalization; more precisely, they are one of the consequences of globalization. They are:

- \* economy has got independent of the state's will,
- \* organized crime has been spreading.

### **3.2. Constat on the health of the society - the present and the prospects for the future**

The above views can make it clear that presently, the majority of the societies fail to meet the criteria concerning the features of a healthy society I was talking about in the introduction. A society that is not healthy, however, will be unable to offer appropriate responses to the challenges of crime.

If society were healthy, it would be able to offer appropriate responses to the challenges of crime.

If society - and its formal representative: the state - were self-confident and were not afraid, if their power were not illegitimate and unstable, then it could ensure that the human rights prevail, and could also ensure the democratic participation in decision-making.

If public safety (and its reflection in the public opinion) were more favorable,

- then the issues of crime prevention and the management of the offenders would not be taken as questions of the current political situation, but society would take measures that are based on profit-cost analysis, and seem successful on the long term in protecting its interests;
- then society would accept that crime cannot be stopped;
- but it would realize then that it's only responsibility is to put those who pose a serious threat to its interest within tolerable restrictions.

One can put the question where and on what conditions can the criteria of a healthy society be enforced, that is: *"Is there a healthy society at all?"* We can surely say we are probably facing an ideal-model that can be approached, but can hardly ever be reached. The European Jewish-Christian culture and its emanation to several continents tell us that the peace and well-being of the society can be approached via the absolute consideration and priority of the human rights. The more the citizens of a given state can implement of these rights, the better they can face and understand the challenges of a changing world. And when a state is in difficulty, it can mobilize as many people to avert the threatening challenges, as many people and communities it could persuade earlier to stand beside. It is impossible to gain supporters for unpleasant decisions (even if the situation is critical), without the support of the responsible majority of the public, as well as those of the minorities.

The states, however, form various communities. In our case, in a world that is gradually getting global, it would be necessary for us to apply those values, principles and methods which I mentioned earlier. Otherwise, we will have to realize that the real problem is not that

- our purse was stolen while we were traveling by tram
- our apartment has been robbed,
- we were seriously attacked on the subway

but that governments, countries and even continents are purchased by interest-groups which know no moral, they only have interests. And they will enforce their interests by all means.

**In a moral-free interest as a kind of value-dimension, the only aim is: power. And the means for getting, keeping and extending it are money and violence.**

The re-distribution of the world has already started, but has not come to an end yet. Perhaps it is not too late for us to define some basic values of the global world, since in this way we could set up the criteria and the features of a healthy society.