

**OPENING ADDRESS AT THE THIRD GERMAN-HUNGARIAN
COLLOQUIUM ON PENAL LAW AND CRIMINOLOGY**

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Ladies and Gentlemen,

The relations between the German and the Hungarian criminal jurists and criminologists have spanned several centuries. Let me mention two private facts in this respect: *one is* that my father was a pupil of Franz Liszt in Berlin, in the early 20th century. *And the other is* that in the mid-1970s, I was lucky enough to have the chance to get acquainted with the theses of Günther Kaiser in Freiburg. And I consider it a special favour that – at that time –, a certain Mr. Hans-Jörg Albrecht was working in the neighbouring room as a young scientist beginning his career.

I think there is nobody in this room who could remain unaffected when hearing the name of the Max-Planck Institute of Freiburg, which has accepted and trained generations of lawyers. This institute is famous for its hospitality and also for its high level of professionalism. Here, in Hungary, we just call it the Mecca of forensic sciences.

In the course of the last ten years, this is the third occasion scientists of forensic sciences of the two countries can meet at events organised for this purpose. We are glad to host these events for the second time now at our Institute. Thanks to the financial support of the Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit, now, – for the first time –, we can greet several colleagues from various other Central and Eastern European countries.

It is common knowledge that – owing to its geographical and cultural position –, Hungary wishes to function as a bridge in shaping the new

Europe. It is an objective of our Institute to host various discussions on criminal policy in this region. That is why we are really glad to meet our friends here, the scientists of the former socialist countries.

There are numerous reasons for thinking together, since in many respects these countries do not only have a common past but a common future as well. This statement could be reinforced by several examples of our historical, cultural and scientific heritage. Considering the main topic of this conference, we should focus our attention on the system of sanctions. Sovereignty has always been volatile in these "draughty" regions of Europe. In the last one thousand years, it has primarily been the great powers of the West and the East, the North and the South that decided upon the norms the infringement of which would bring about retaliation, and upon the punishment the violators of the norms would get.

It is general experience that the severity of the penalties is gradually growing as we go from the North to the South, or from the West to the East. It was true some two hundred years ago, and it is also true at the dawn of the 21st century. We can state it for sure: it did not do good to Central-Europe that during the second half of the 20th century it was influenced by the East, though the ideology of the Byzantine culture was not able to force back the ideas originated in the Western Christian culture. And in this culture, the ideas about guilt and punishment, or the sense of punishment have been gaining refinement since the age of the Enlightenment.

However, it is a fact that the way of thinking typical in the "existing socialism" has not disappeared completely during the ten years that have elapsed since the transformation of the political system took place. Even now, we can experience that beliefs (from time to time, with a taste of fanaticism in it) or sentiments of missionary zeal together with some stupidity, can overcome common sense, enforcing the interests of a certain group, and ignoring the views of scientists. Politicians go on ignoring the viewpoints of a criminal policy recommended by professionals; and they can do so because they know that promising stricter penalties or longer duration of imprisonment will bring them lots of votes at the election.

This way of thinking is certainly not a regional phenomenon. Strangely enough, in Hamburg, North Germany (with their democratic traditions for more than half a century now) a rather primitive and exclusively punishment-oriented demagogy was able to bring about a landslide victory at the first election in the new millennium. Perhaps those who stand up for stricter penalties in the West and in East-Central-Europe have not read works that criticise strict penalties. Certainly, there are some people who have read these critical views but they do not believe them. And what is even worse, there are some

who have read these ideas, they even agree with them at the bottom of their hearts, but they still oppose them because they find these views harmful to their short-term objectives. And now I am not speaking about the radical views on the vanity of punishment, represented primarily by Patrick Tömudd. I am speaking about those who try to prove the advantages and the drawbacks of the various forms of punishment, the benefits and disadvantages of penalties on the individual and at the level of society; and these people often support their views by making various calculations. Unfortunately, it is impossible to reason with them relying on scientific rationality; perhaps certain interests of politicians could be used as arguments. This behaviour is dangerous because it often contains elements of fanaticism.

The Central-European countries that are represented at this meeting through their professionals will be members of the European Union in a short time. The harmonisation of the legal systems is drawing to its end in each country. However, this process will only be complete, if the principles and the messages sent by the scientists to the politicians are also in harmony. Therefore, the professionals of the forensic sciences in the Western and the Eastern parts of Europe should get acquainted with the present-day practices and the future intentions of other countries first. They should also know what the causes of the changes are, because these issues will lay the foundations for mutual understanding. If we harmonise our views and reasons, it will be easier for us to represent them, mainly at forums where the acceptance of a decision needs consensus. Our objective is harmony, not standardisation. If we can think together, it will – again – be easier for us to efficiently react to some unexpected challenges. And unfortunately, unexpected challenges may often be posed nowadays. The institutions of the criminal substantive law and procedure, as well as legal security are facing certain new threats.

The tragic events of the last few weeks will throw a new light upon crime prevention. Obviously, the main emphasis and the proportions will be shifted in the future. Issues like globalisation or organised crime posed a challenge for us even prior to September 11th. Even at that time, there were discussions on the relation between morals and criminal law; the opportunities for restricting the human rights; the constitutional and legal framework (and primarily, the limits) of the secret collection of information, etc. And certainly, the original topic of this conference (Systems and developments of penal sanctions) has been a central issue in the past few years. Previously, however, hardly any word was said of the fact that the Western (and perhaps not only the Western) part of this continent was full of "sleeping terrorists". And we should add that even now, it is a problem for our democracy to handle them.

The challenge, however, is great. And what is at stake is the survival or the disappearance of a civilisation that is more than two thousand years old. The countries of the Jewish-Christian culture have to fight against fanaticism, which actively denies the value of human life. Obviously, traditional criminal law is a completely inefficient means against this ideology. Consequently, the appearance the utilisation of certain new means of prevention can be expected. However, the majority of these means can easily do harm to the institutional system of a constitutional state, and can also bring about the liquidation of the system, if they are not under strict control. In Europe, both in the West and in the East, everybody knows what the results of aim-oriented rationality can be.

In the course of the past few years, we have paid too much attention to the improvement of local crime prevention, because it will improve the feeling of the community. We thought the only victims could be the citizens. We failed to pay attention to the question whether the existence of the state should also be protected (and if yes, how) in the world of globalisation. On the contrary: we made efforts to restrict the omnipotence of the state (and we were right when we did so). We addressed the problem in a one-sided approach: we were not very interested in what would happen to the citizens if the state failed to survive a violent attack from outside (the theory that said the state would die out, had already been doomed to failure). Crime management and crime prevention should try to find a solution for this threat right now, and even in the future. Though pro-active intervention has brought about certain constitutional concerns I am sure its means and methods will flourish in the next few years, since these means and methods are the only efficient ones in the case of particularly dangerous offences. We can only hope that the European Union of the Constitutional States will not become the European Union of the Police States. It depends on us, – to some extent, at least.

I would not be surprised to hear that the events of the past few weeks are addressed in some of the presentations. The criminal jurists and criminologists of Western and Central Europe will have to find their own answers to the challenges of the so-called Western civilisation. And we should do it without giving up the principles of human criminal justice.

Thank you.