The Evolution of the Hungarian Csemegi Code from the Aspect of Early Criminal Policy (1908 – 1948)

*József Pallo**

Abstract

The Hungarian Csemegi Code, which was the first act – in a modern sense – that – obviously besides being a substantive law – had provisions that addressed questions related to the execution of its contents, was a milestone in the development of Hungarian criminal law. The vivid development (emanating from the urging will to reduce the gap between Hungary and the more developed countries, the progressively strengthening economy and the escalation of relevant correctional academic literature) apparent during the three decades that followed 1880 also resulted in a more lucrative period for the field of corrections as well. While towards the end of the 19th century, the classical school of correctional science mostly revolved around the questions of security, discipline, infrastructure and technical issues while being less focused on actual legal questions, the effects of the positivist school – by the 20th century – have seeped into its framework, resulting in the introduction of the so-called personality-influenced individualization, aimed at reducing the chances of recidivism and thus avoiding committing repeated offences. This process is symbolized by the several amendments made to the original Csemegi Code. Present study will address this historical and legal development arc in a more detailed manner.

Keywords: *Csemegi Code; Hungarian legal development; criminal law codification; criminology and criminal law; correctional (penal) law; general experiences.*

1. Introduction

When we analyze the historical nature of Hungarian criminal justice, the Csemegi Code (Act no. V. of 1878), drafted 140 years ago, can be very well considered a sure-fire milestone of the evolution of the field. This regulation has certain values which undoubtedly render it worthy of occupying the peaks of the turn-of-the-century criminal law, and it also provides feedback for several earlier codification attempts. This creates a practical and dogmatic synthesis which overshadows all the previous attempts. The significance of the Csemegi Code cannot be underestimated, since it had the profound effect of eliminating archaic policing structures containing feudal elements, paving the way for further decades in the development of applied criminal law in Hungary. This was the first legal device that contained separate provisions for the execution of sanctions and the first one to create a unique system by elevating these provisions to the top of the legal hierarchy. Several of the provisions contained in the Code were in effect until 1962 – a lengthy period that eventually led to several amendments in order to better mirror the changing landscape of criminal policy efforts. In this essay, I will address the focal points of the changes through several characteristic and representative quotes from early academic literature.

2. The First Amendment to the Csemegi Code (1908): Juveniles in the Spotlight

During the turn of the century, the direction of the reform initiatives grounded in the drastically changing domestic criminal environment was targeted towards the system of sanctions [1], namely the revision of certain provisions pertaining to juvenile people, which received great emphasis. The leading principles of the reform initiatives preparing the new type of criminal policy relied heavily on determinism and pragmatism, coupled with a special-preventive approach and a perpetrator-centered aspect. Certain changes pertaining to the tools dedicated to the protection of the community can also be noted. In the era, the accomplishments and results of revolutionary fields of science like anthropology, psychology and sociology received more and more recognition, which was an effective way on its own right since these endeavors managed to insert a new, deterministic approach (facts and hard science) into the place "vacated by" theological-philosophical indeterminism. As a direct and long-lasting result, the paradigms related to the goals and tools of punishment as an institution changed completely, meaning that sanctions were no longer considered as methods to address the damage caused in the fragile framework of legal balance, but as a tool to protect society in a more effective way by introducing

* Jozsef Pallo, PhD., (Dr. habil.), associate professor, Vice-Dean for Sciences, Faculty of Law Enforcement, University of Public Service Ludovika, Budapest, Hungary.

[1] Besides this, the introduction of conditional sentences, the reform of fines and indeterminate sentences as security measures were also on the agenda.

an individualistic approach to prevention. The philosophy of this new paradigm also meant that dangerous delinquents can – through the tools delivered by science – be filtered, identified and – through capital punishment or incarceration – removed from society. Following the principles of determinism, the will to act was approached from three, dimensions enjoying a crucial role (namely that of biosphere, sociosphere and psychosphere).[2] Since the path to crime could be identified this way, new possibilities emerged to address these three dimensions using goal-oriented and individualized targeting, coupled with specified correctional measures. In practice, this meant that criminals had to be treated and educated, striving to establish grounds on which one can safely assume that they would refrain from committing further crimes. The Csemegi Code was fairly moderate regarding the sanctioning of juveniles, and designated juvenile correctional centers for the treatment of this sub-category of delinquents. The regulation only stated that those perpetrators who were aged 12 to 16 and lacked the required recognition to become aware of the dangerous nature of their acts would be committed to a juvenile correctional institution[3] until the age of 20.[4] The first comprehensive amendment to the Csemegi Code took place among these circumstances, via Act no. 36 of 1908 (hereinafter: 1st am.).[5] Upon coming into effect, the 1st am. caused quite a stir in the field of criminal justice and corrections of juveniles.[6] While the Csemegi Code can be regarded as a code of law in the typical sense, the amendment shows signs of influence from the positivistic school of criminal justice. An important terminological novelty in the era was the introduction of a new category, namely that of a person who is dangerous to society, which resulted in a gap between someone being dangerous to the public and someone who is guilty of a crime. This made it possible to not only focus on the severity of the crime and facilitated the expansion of individualization as well. In practice, one's threat level was evaluated through an analysis of significant, pertaining personal characteristics which led to the fact that the sanctions imposed as a result were often milder or as a matter of fact more severe than they would have been in case of a strictly crime-based and focused evaluation. Based on the regulation, people aged between 12 and 18 were considered juveniles, who had new measures to face while reduced severity sanctions, fines and incarcerations slowly faded out. However, disciplinary reprimands and probation appeared as moral punishment, and the notion of correctional education was strengthened. Light or enhanced light regime was available to use as a last resort (as an *ultima ratio*).[7] It has to be noted however, that this was the first legal device that strived for the establishment of a penal system based on pedagogy and sought to facilitate a positive change in one's personality. The 1st am. had a separate decree aimed at its execution which perfected the so-called „family system", building on Anglo-Saxon[8] experiences. Ministry of Justice decree no. 27300/1909 contains particularly important rules related to the execution of light and enhanced light regime and the post-charge non-criminal detention of juveniles.[9] The regulation established a quite strictly differentiated and progressive system, in which juveniles were classified based on the nature of the crime committed and the background of the perpetrator. The chief elements of the structure adopted a simplified and less severe method of the progressive penal system. The admitted inmate was first put into complete solitary confinement dedicated to the surveillance of the prisoner, which lasted for a maximum of two weeks. Following this, the prisoner was relocated to a differentiated (for those of unstable state of mind, or alcohol abusers) regime of one-time offenders, recidivists or habitual („career") criminals. This professionally justifiable differentiation had the goal of ensuring that *„in order to avoid further delinquent actions and overlaps between certain threatened groups, prisoners are provided accommodation with fellow inmates whose education, moral principles and social background are more or less similar to those in question".*[10]

The prisoners allocated to these groups worked together during daytime but spent the nights in separate living compartments. The legal environment also made it possible that those prisoners whose behavior and conduct allowed enjoy the privilege of a parole under the supervision of probation officers, during which they had to conform to special rules. According to rule that had been in effect ever since, based on a special directive of the court, juvenile prisoners could stay in juvenile correctional centers until the age of 21. The obvious goal of this directive was to protect those who *„could be saved"* against the perils and detrimental effects of adult prisons.

As a significant organizational measure, 1st am. introduced a special agency dedicated to the supervision of juvenile delinquents, which was composed of representatives of state-owned organizations and civilian corporations. When we talk about the importance of the 1st am., it has to be emphasized that *„the conservative forms of penal sanctions – namely those whose aim is pun-*

[2] LŐRINCZ, J., A javítástól a reintegrációig. A korrekcionalista ideológia metamorfózisa a hazai börtönügyben. (From Repair to Reintegration. The Metamorphosis of Correctionalist Ideology in Hungarian Prisons), In: GÖNCZÖL, K. (ed.), Gályapadból *laboratóriumot. Tanulmányok Finszter Géza professzor tiszteletére.* Budapest, 2015, p. 451.

[3] The establishment of these institutions was a meticulous and slow task, with the first one being completed in 1885, in Aszód (near Budapest). We also have to add that the judges opposed this new type of measure very much.

[4] The first institution dedicated to juveniles was completed late, in 1905 (Kassa, now Kosice)

[5] Among the executive provisions of the relevant legislation, Ministry of Justice decree no. 27200/1909 regulated the system and operation of correctional education.

[6] LŐRINCZ, J., *A fiatalkorúak büntetés-végrehajtása. (Juvenile Prison Law),* Budapest, 1998, p. 21.

[7] We must mention that the complexity of these provisions emanated from Act no.VII of 1913 on juvenile courts.

[8] Particularly Reformatories and those English versions (Borstal systems) are the ones we have experiences with.

[9] The different adjudication of this matter is underlined by the fact that if the last-case scenario of incarceration had to be used, then juveniles were usually put into light regime prisons. The minimum length of stay was 15 days, the maximum length was 15 years.

[10] LŐRINCZ, J., *A fiatalkorúak büntetés-végrehajtása. (Juvenile Prison Law),* Budapest, 1998, p. 30.

ishment – have been substituted by sanctions grounded in criminal policy, which are capable of influencing the future behavior of the perpetrators."[11] The culmination of the measures aimed at modernization was the establishment of the juvenile court of justice with Act no. VII of 1931, which unequivocally demonstrates that the notion of prevention had surpassed the notion of severity-based sanctioning and criminal repercussion[12]. We managed to settle an almost four decade-old debt Finkey described as:*„… partly their pragmatism, and partly their love for children has led the Americans to a conclusion we required long theoretical analysis and scientific debate to reach: the most effective tool against crime is the protection of children and the re-shaping of those juveniles who are still young enough to be saved."*[13] Along with the 1st am. came into effect of another legal device emblematic of the era, Act no. XXI of 1913 on loitering to avoid work, which we would like to describe in a few sentences. The draft of the act was submitted to the legislation on 6 May 1913: *„(…) the complete personality, the inherent dangers and their threat to society shall be analyzed and an indeterminate, preferably long security sanction shall be used to provide satisfying protection of the rule of law and public security."*[14] The new criminal policy brought forward notions that encouraged the use of alternative sanctions against certain groups of perpetrators. Following the philosophy of positivist criminal law, it introduced security regulations for those who were dangerous to the public and provided a definition as well: *„Those who possess traits that urge them to resort to measures that are harmful to society at the slightest stimuli, even in normal conditions, are dangerous to the public.*[15] This opened the way for the expansion of the dogmatic and practical array of tools with a new security measure. Besides the conservative sanctioning approach to loitering to avoid work (light regime incarceration or fine), the legal solution applied in Hungary used workhouse placement as an alternative measure. The legal minds of the era showed signs of modesty since they strictly determined that putting the „dangerous" label on this – sanctionable – type of activity is not something that is recommended. Despite this, it became universally accepted that the two constant components of someone who is „dangerous to the public" are a tendency to perpetrate a crime and "loitering to avoid work". These circumstances paved the way for the introduction of workhouses, the establishment of which was a quite controversial topic in Hungarian criminal justice. Finkey formulated his doubts as follows: *„Since only the court can sentence someone to workhouse stays, it is doubtful whether there is a need for the establishment of a new type of institution largely similar to the various regimes of prisons and detention".*[16] The Csemegi Code stated that those who were capable to work but did not do so and instead lived a life of loitering and vagrancy were to be admitted into a workhouse. The same sanction was used in the case of those who had been sentenced to prison or detained for specific crimes, upon their release, if the court determined that the crime committed was linked to their vagrant lifestyle. Due to the nature of this type of sanction, it was used as a security measure since loitering was considered as the unlawful passive behavior of someone who broke their social duties, thus making them antisocial. Punishment was not considered the chief goal in this case, but rather the limitation of one's freedom in a way that would be sufficient for facilitating their familiarization with work and thus removing the threat factor they had posed before.[17]

Szöllőssy makes a remark on the unfavorable international experiences when he states that *„the lack of independently functioning workhouses is one of the reasons for the courts' refusal to use this type of security measure. As a matter of fact, they believe that if a person sentenced to a workhouse and is later admitted into a light regime prison, then in the end there is no point treating the two institutions as two different, separate entities."*[18] Finkey tries to solve this quite serious issue by arguing that the emergence of the workhouses was in itself a result of the differentiation and – as it is – it signifies the further practical development of tools dedicated to the protection of society. He adds that the need to treat work-avoiding loiterers in a special way requires institutions like these, particularly when we consider the principle of individualization. He provides a concise argument by saying that *„The mentality and personality of an urbanized, lazy vagabond, robber or sexual murderer is completely different from a young peasant who in a drunken stupor becomes involved in a bar brawl and may shed some blood during it."*[19] He supports the idea of constructing workhouses and stands by his opinion, arguing that this would be *„the peak of our penal system".*[20] The law came into effect on 1 January 1916, encompassed by rudimentary material conditions further worsened by the fact that no workhouses have been constructed in the future either. This rendered the whole question „empty", despite the fact that the will to reduce vagrancy and to control recidivism certainly deserved some support.[21] After this short briefing, the following assumptions can be made related to the significance of the 1st am.: due to the effects of criminology, which by then had become a social science in its own right, a paradigm shift occurred, which was based on the fact that

[11] LŐRINCZ, J., *A fiatalkorúak büntetés-végrehajtása. (Juvenile Prison Law),* Budapest, 1998, p. 45. p.
[12] LŐRINCZ, J. - MEZEY, B., *A magyar börtönügy története. (History of Hungarian Prison Law)* Budapest, 2019, p. 124.
[13] FINKEY, F., *Szemelvények kisebb szakdolgozataiból. (Selections of shorter articles 1890-1940)*, Budapest, p. 74. p.
[14] Indokolás a közveszélyes munkakerülőkről szóló törvényjavaslathoz, (Explanation on the Law) In*: Képviselőházi irományok, 1910. XXVI. kötet, 711. szám,* Budapest, p. 240-289.
[15] Indokolás a közveszélyes munkakerülőkről szóló törvényjavaslathoz, (Explanation on the Law) In: *Képviselőházi irományok, 1910. XXVI. kötet, 711. szám,* Budapest, p. 268.
[16] FINKEY, F., *A társadalmi védekezés és büntetőjog. (Social defense and Criminal Law*.) Miskolci Jogászélet, Miskolc. 1925, p. 41.
[17] The actual measure started operating among quite harsh infrastructural conditions, since in 1916, only two light regime institutions had separate workhouses. In the case of male offenders, the location was Jászberény, while women were sent to the Kalocsa workhouse.
[18] SZÖLLŐSY, O., *Magyar Börtönügy. (The Hungarian Corrections.)* Budapest, 1935, p. 226.
[19] FINKEY. F., *A társadalmi védekezés és büntetőjog. (Social defense and Criminal Law.)* Miskolci Jogászélet, Miskolc. 1925, p. 40.
[20] FINKEY. F., *A társadalmi védekezés és büntetőjog. (Social defense and Criminal Law.)* Miskolci Jogászélet, Miskolc, 1925, p. 44.
[21] Workhouses were finally made obsolete by Law Decree no. 39 of 1950.

instead of punishing its subjects, the system had to make up for the education they had not deceived before to ensure that they eventually become law-abiding citizens. This was the first step in 20th century Hungarian criminal justice towards using the core values and accomplishments of criminology.[22] However, there is a significant contradiction between the Csemegi Code and the 1st am since while the former serves repression, then the latter follows the principle of prevention. Fortunately, out of the two, the latter managed to gain the upper hand – even if it was just for a while.[23]

3. The Second Amendment to the Csemegi Code (1928): multiple recidivists

Following the defeat suffered after WWII, negative tendencies started appearing in Hungarian society, with a gradual increase in the crime rate and the structure of the delinquencies committed. By the 1920 s, the argument claiming that „within the category of multiple recidivists, there are hard-core criminals whose life is a life of crime and who are susceptible to habitual offending" once again gained support. The lawyers of the era labeled this category of criminals as people who possess an inherently never-ending urge to commit offences, although the unified use of this designation remained an endeavor that was difficult to pull off. The official argument was that these habitual criminals – who posed constant danger to public security and society – had become so depraved that treatments aimed at special-prevention were no longer considered effective in their case. Consequently, the need emerged for a more effective measure, which in its principle would last for an indefinite period, during which these delinquents would be pacified as long as they are considered a threat to public security. This goal was only manageable through legislation, and as a result Act no. 10 of 1928 was born (hereinafter: 2nd am.),[24] which further amended the Csemegi Code. The regulation contained 52 sections and addressed two larger fields of criminal justice: it reformed financial penalties and it introduced the increased severity workhouse (quasi „preventive arrest") as a novel device dedicated to habitual criminals.[25] The regulation was targeted towards those recidivists who committed crimes against life, sexual freedom or assets on three separate, individual occasions, the last two during the last five years, and did so customarily; or showing signs of living a life based on crime.[26] This new act also settled a debt since it filled the suggestions from 1913 with content and created a complex legal environment for dealing with dangerous perpetrators. Contrary to the rules on workhouses, there was no professional debate at all. As a matter of fact, the initiative gained widespread support. To quote Finkey's words: *„The criminal-judicial talks of the last decades all agreed on the fact that in the case of the so-called „career criminals", who have become accustomed to a life of crime, regular prison or workhouses sentences simply do not seem sufficient since these highly dangerous people can no longer be deterred (or their personalities repaired) by these alternatives. These delinquents require specialized treatment in dedicated institutions:"*[27] As for their legal nature, enhanced severity workhouses are basically a mix of strict regime prisons and regular workhouses. They use the „indefinite placement" used by workhouses as the most effective tool for protecting society but put strong emphasis on several elements otherwise associated with strict regime prisons (e.g. the strict obligation to work, high order and discipline). The increased severity is also apparent in the time to be spent inside: in the case of regular workhouses, this was 5 years at most, while in the case of enhanced workhouses this upper limit was erased, effectively offering the opportunity for life sentences, should parole be denied. The rules of execution were also similar to those used within strict regime prisons, effectively creating a non-typical form of a life sentence. More so, we can only provide marginal excuses that would support their difference: one of these is that in the case of enhanced severity workhouses, several steps used within the prison systems (e.g. solitary confinement upon admission, progressive rules etc.) were skipped. With the intention of protecting the dogmatic foundations of this rather unique system, Finkey argues that *„Our enhanced security workhouses indeed conform to their title, since the 2nd am. created an upgraded version of them by unifying the advantages of strict regime prisons and regular workhouses and omitting elements that would not belong due to being inadequate or ineffective in the case of the highly dangerous criminals anyway."*[28] However, we cannot avoid providing a direct comparison between the fundamental aspects of regular and enhanced severity workhouses. There is a difference between the rules of execution, since while regular workhouses could be compared to light regime prisons, enhanced severity workhouses were more like strict regime prisons. We must also make a remark on the fact that these contained differences resulting from the differing nature of the measures. Regarding the manner of execution used within the two types, we can safely assume that both of them were based on the daytime labor and night-time separation of pre-set groups. The formal goal to be achieved was to ensure the subjects' reliance on work and increase their work-related diligence, within a pseudo-progressive system. The importance of group classifications is underlined by the fact that multiple recidivists visited separate workshops, but they were further differentiated by age, intelligence and education as well. Those who denied work or posed a threat to their peers had to be separated as well.

[22] MEZEY, B., *Magyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 304.
[23] In the later years, regulations pertaining to juveniles slowly eroded, the process of which is complex enough to be worthy of a dedicated analysis.
[24] The full title of the law: Act no. 10 of 1928 on several questions of criminal justice.
[25] Enhanced regime workhouses had to be used instead of a sanction, with only its minimum length being designated, and lasted at least 3 years. Following these three years, the incarcerated could ask his or her release from the Minister of Justice, which the Minister decided on following receiving the opinion of the supervisory organ operating next to the workhouse. Thus, this type of measure could last for a life, in which case its severity was equal to strict regime prisons.
[26] MEZEY, B., *Magyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 317.
[27] FINKEY, F., *A társadalmi védekezés és büntetőjog. (Social defense and Criminal Law.)* Miskolci Jogászélet, Miskolc. 1925, p. 43.
[28] FINKEY, F., *Büntetés és nevelés. (Punishment and Education.),* Magyar Tudományos Akadémia, Budapest, 1925, p. 23.

It is apparent that those subjected to workhouses had to spend at least a year inside, with the maximum allowed timeframe being 5 years. The date of their release was determined according to their behavior and diligence during their first year inside, essentially giving them an opportunity to influence their fate. In the case of enhanced severity workhouses, the minimum length was 3 years, but the stay could last indefinitely. A strongly enforced compulsion to work was apparent in each of these institutions. Those admitted could not pick a preference, and exceptions were granted only on medical or psychological grounds. In these cases, however, the admitted person had to be transferred to a different location to better suit his or her medical needs. The question of employment was a crucial factor for workhouses from the aspect of agricultural work, due to certain sources that doubted the suitability of this type of labor, arguing that most admitted delinquents had had urbanized lifestyles before, and it would be dangerous anyway to employ them in large open areas. Finkey had a firm opinion on this matter as well, as he argues that *„those important principles that support the (mostly agricultural) open-air labor of prisoners remain just as important in the case of workhouses as they are in prisons. Economical and humane reasons alike call for the introduction of open-air labor options in workhouses and enhanced regime workhouses, albeit not exclusively, but after taking into account factors such as the personality of the convicts and the environmental conditions on the premises."*[29] Even from a dogmatic point of view, enhanced security workhouses were the sources of many other issues, of which I will briefly describe the most outstanding ones. The first was the introduction of the term *„constantly present proclivity to perform criminal offences".* Several futile attempts had been made to create a compact and duly abstract content for this term, but in vain, resulting in the lack of a uniform interpretation. Due to its lack of pre-requisites, this category was inherently utilizable against basically anyone. Its inconsistent and antinomic nature was also apparent in the fact that it was available to use in the case of severe and mild crimes (or even financial crimes) alike. However, white-collar criminals did not belong under this category, so those who committed fraud, forgery or similar offences had no reason to be afraid of being put into an enhanced severity workhouse. The disproportioned nature was also discernible by the fact that while according to the regulation, the minimum length of custody was 3 years, if a perpetrator on parole breached a pre-described behavioral rule, the next parole could only take place after 5 years, despite the fact that no actual crime had been committed. In practice, this meant that when discussing parole (as in conditional release), committing a crime and breaching a behavioral rule absurdly fell under the same category. This, however, did not change the official interpretation as set by the justice sector, as follows: *„sending a person to an enhanced severity workhouse is a security measure, taking into account the guidelines of the London international penitentiary congress in 1920. The use of sanctions that are in proportion with the crime committed and the delinquencies of the perpetrator is wrong and it would be better if it was tied to a workhouse stay, because according to some findings, using definite sentences does not seem to provide the required benefits in certain cases. Hence, a new suggestion uses indefinite sentences and regulates their application to ensure that no parole can take place until the convict becomes capable of living a law-abiding life within society.*[30] The normative foundations of the 2nd am. were grounded in the perpetrator-focused approach, which means that the sanctions were not proportional to the severity of the crime committed, but to the danger the subject poses, resulting in the use of indefinite sentence lengths. In this system, criminal tendencies and the actual crime committed were symptoms of the delinquents' threat to society.We can find a viable and adequate conclusion to this legal measure in the following statement:

„The enhanced severity workhouses could have been a useful tool to increase the safety and security of society if they had provided some sort of education within their walls. Without this, society was only protected from these delinquents as long as they remained inside. From this aspect, the indefinite nature of the sentences to be spent inside did not in the end result in the increased protection of society."[31] Considering all these, it is completely understandable that the regulations of the 2nd am. dealing with the enhanced security workhouses remained futile and ultimately non-realistic notions of Hungarian penal history.[32] This phase of legislation (and the resulting experiences) practically concluded the codification process of the interwar period. We must note, however, that the codification of criminal law had been called for before the war as well. With the words of Pál ANGYAL: *„…the continuous postponement of the Criminal Code reform equals to sacrificing the Hungarian criminal law."*[33] In the last peaceful year before the brink of WWII, the deprivation of one's liberty could be exercised in one of the following ways: strict regime prison, medium regime prison, light regime prison, enhanced light regime prison, workhouse, enhanced severity workhouse. Sentences could be served in one of the six national penitentiaries, 23 higher court and 90 county court jails (light regime) and two workhouses. By this time, however, history has caught up with Hungary which – coupled with the dramatic change of the political-legal landscape – foreshadowed the twilight of the hegemony of the Csemegi Code.

4. The Third Amendment to the Csemegi Code (1948): Detention of the Mentally Insane

After the end of WWII, there was a political will to pave the way for the criminal responsibility of those responsible for war crimes, and to ensure the legal background of this endeavour. This was precluded by a decree of the prime minister that introduced the people's tribunals, which was later elevated to the top of the legal hierarchy through Act no. VII of 1945. In the case

[29] FINKEY, F., *Büntetés és nevelés. (Punishment and Education.),* Magyar Tudományos Akadémia, Budapest, 1925, p. 55.
[30] *Magyarország igazságügye az 1927. évben. (The justice of Hungary in 1927.),* Budapest, p. 49.
[31] MEZEY, B., *Magyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 317.
[32] We have to add, however, that this approach did not disappear completely, since albeit modified it appeared once again as a measure called enhanced severity detention in Law Decree no. 9 of 1974.
[33] ANGYAL, P., A joghézag problematikája a büntetőjogban. (The Problem of Loopholes in Criminal Law) In: *Értekezések a philosophiai és társadalmi tudományok köréből,* Budapest, 1942, p. 45.

of the people's tribunals, death sentence, forced labor and strict and medium regime prisons were all valid sanctions. The rules of execution were set by a ministry of justice decree.[34] Another characteristic attribute of the era was that people's tribunals and regular courts operated side by side. The latter used the measures aimed at the deprivation of liberty as per the Csemegi Code (strict, medium and light regime prisons, workhouses and enhanced severity workhouses). Practically, prisons within the system were either light regime court jails, national penitentiaries and workhouses. The regulations were based on a justifiable social need and contained several elements that suggested that the national legal structure had become a *„grotesque tool directly controlled by the monolithic state politics".*[35] It is difficult to talk about bright-minded, complex legal approaches in this era, but several conformist ideas criticizing the Csemegi Code appeared quite early. This criticism was quite indirect, as it was used to slowly erode the status quo of criminal law through several of its key elements. In the words of Miklós KÁDÁR:*„… we provide an illustrative list of several legal measures that are – from the aspect of the democratic Hungary – quite controversial and cause confusion not only among the public, but also among law experts."*[36] With the politics shifting to the left, the Csemegi Code started to lose its grounding, which led to a slow degradation of its fundamentals and ideas. It was constantly compared to the Soviet regulations with the intention of proving that the foreign approach is far superior to it. It is also obvious that the reigning power could not (and did not want to) comprehend and utilize the extremely concise and refined structure of the Csemegi Code. In order to achieve certain political and economic goals, the system required a dramatically new form of criminal code that régime could shape and alter according to its own needs and interests.

The preparation of the 3rd am. began in this political climate, with the intention of ceasing and supplementing certain shortcomings of criminal law. It was not meant to be long-lasting, which fact is underlined by Miklós KÁDÁR as he argues that *„the new criminal code, built on strictly principled and dogmatic fundamentals, can only last as long as it suits our vision and thus remains a far cry from our earlier patchwork regulations containing inadequate rules."*[37]

The draft had a rich array of amendment suggestions, but this was not in proportion to what actually came to fruition. As far as correctional issues go, we have to emphasize that the suggestion would have terminated death sentences in the case of civic courts in favor of life sentences. Incarceration itself was present in two different grades (strict and light regime prisons), which were linked to the actual length of the deprivation of liberty contained in the sentence. Medical detention was suggested in the case of delinquents posing a danger to the public, but this was supplemented by optional parole. The reception of this regulation was not overwhelmingly positive. Several opinions[38] arose that the risk of recidivism (as in repeated offences) was not a pre-requisite for the use of this measure, which in turn was considered a security measure rather than a medical one. In order to understand the prelude to this, there might be a need for a brief retrospection. According to the Csemegi Code: *„those who commit offences unwillingly (e. g. in the state of being senseless) or under a state of mental confusion and thus lack the required the free will, resolution and determination, shall not be held accountable for them".*[39] Thus, Csemegi Code made a difference between mental derangement (psychosis) and a state of senselessness, which, however, do not limit each other. He further adds the general formula of the *„lack of intellectual talent" but* does not provide a taxative list of its types.[40] Moreover, he excluded the culpability of those under 12.[41] This regulation did not provide directions from the aspect of execution-therapy, but it contributed to the future development of the field by establishing the definition of insanity and inserting it into the structure of criminal law. This system lived on with virtually no changes to its content until 1948, when the 3rd am. sought to put the accomplishments of the perpetrator-focused approach to good use. In light of this endeavor, it tried to introduce progressive steps to regulate the treatment of people with reduced sanity. The 3rd am. devotes a dedicated chapter to the *secure detention*[42] of mentally insane persons to be used in the case of persons over the age of 18 whose insanity limits their capacity to act in a responsible manner. This detention can last up to a year, with a court revision 3 years before the planned release date, the results of which can influence the stay by adding an extra year certain conditions related to the recovery of a given person. Security detention faced harsh criticism. For example, István Schäfer claimed that mimicking the symptoms of mental insanity might have been an easy way for those looking to avoid punishment for their offences to do so.[43] Béla HORÁNYI used medical arguments to state that a lengthy institutional stay that

[34] As a significant change, enhanced light regime prisons were abolished in 1946.

[35] LŐRINCZ, J., A sztálini büntetőpolitika és konzekvenciái a hazai büntető igazságszolgáltatásban. (Consequences of Stalin's penal policy and justice.) *In: Börtönügyi Szemle.* vol. Nr. 2, 2007, p. 73.

[36] KÁDÁR, M., Gondolatok a büntetőjog reformja köréből. (Thoughts on the scope of criminal law reform.) In: *Jogtudományi Közlöny.* vol. Nr.1, 1946, p. 75.

[37] KÁDÁR M., Gondolatok a büntetőjog reformja köréből. (Thoughts on the scope of criminal law reform.) *In: Jogtudományi Közlöny.* vol. Nr.1, 1946, p. 76.

[38] SCHÄFER, I., Biztonság vagy gyógyítás? (Safety or Medicine) *Jogtudományi Közlöny.* vol. Nr. 6, 1949, p. 219.

[39] Csemegi Code 76.§

[40] The regulation also addressed the questions of responsibility in the case of deaf delinquents or those between 12 and 16 years of age.

[41] Csemegi Code 89.§

[42] The professional environment was quite vivid during the codification, during which the Lawyer Trade Unionm headed by Miklós KÁDÁR *(1904-1971)* drafted a complex suggestion which contained a so-called "rehabilitative detention", which defined certain treatment options and made conditional release a possibility. It also addressed the question of those of reduced responsibility. The ultimately good-willed and high-standard suggestion was only partly adopted by the 3rd am., however.

[43] SCHÄFER, I., Biztonság vagy gyógyítás? (Safety or Medicine). *In: Jogtudományi Közlöny*. vol. Nr. 6, 1949, p. 219.

followed a short-term recovery period might have actually been harmful.[44] While the introduction of security detention had been a supported initiative from the reform movements of the 19th century, Hungarian criminal law did not have a separate category for mental insanity even in 1948. It is certain that by drafting the 3rd am., the legislators wanted to address the shortcomings of the Csemegi Code,[45] with a degree of success. When we talk about shortcomings, we cannot avoid the fact that the legislators in this case – beyond addressing the goals of pacification – did not go the extra mile. Although the 3rd am. was drafted among a dynamically changing environment [46], it echoed the ideas of an obsolete era, which meant that it was undesirable in the long term. While this became possible with the beginning of the communist regime in 1949, the whole penal and criminal system in Hungary required comprehensive simplification, since its array of tools included was aimed at depriving one from his or her liberty, coupled with post-charge non-criminal detention. The rule of the Csemegi Code was nearing its end. Barna MEZEY provides a concise depiction by noting that *„the majority of penal and criminal law had become political affairs, and several provisions of Soviet pattern conflicted with the conventional, normative text of the Csemegi Code."* [47] By this time, the intention to create a new criminal code had already appeared, but – interestingly – the lawyers (contrary to the drafting of the 3rd am.) did not provide feedback, and *„remained ignorant of the fact that new legislation crucially important to the nation had been in the making for the last two years."* [48] The silent protest of the experts is underlined by István RIES, who addressed a heated complaint to the participants of the conference of the Hungarian Association of Lawyers in 1948: *„Justified or not, it is without a doubt that criminal and penal legislation enjoys the most widespread public attention. We wanted them to come up with a whole arsenal of academic debate, demanding the implementation of the most recent scientific accomplishments. I would like to let you know that only those who had worked will have to right to criticize!"* [49] The reasons behind this silent resistance is not certain. I believe that the Hungarian lawyers had grown up reading the Csemegi Code and thus instinctively sensed certain negative tendencies that foreshadowed the dark future. Their worries became justified with the new, Soviet-style constitution coming into effect in 1949. This silence and indifference were basically a resigned farewell to an era on the brink of extinction. History was not kind to the lawyers: from the peaceful and comfortable confines represented by the framework offered by the Csemegi Code, they were relocated into the cold, harsh and rudimentary system of Soviet law, opening the way for the continuous deformation of legal thinking and opening all doors for the Stalinist criminal policy. After the political turmoil in 1949, left-wing parties emerged victorious and gained the power they wanted after the infamous „blue ballot" elections. This also meant that criminal justice theory and criminal policy started to move in the same direction, covering for the aggressive expansion of Stalinist criminal policy. The following, characteristic quote provides a vivid description of the era's ideas: *„From the aspect of our criminal law and criminal policy, I believe it is of utmost importance that our lawyers learn that criminal justice has a bourgeoise way and has a socialist way. There are no compromises between these two, since there is no third alternative in criminal law either."* [50]

5. Closing Remarks

When analyzing the reception of the Csemegi Code, it must be noted that its fate was quite hectic. It even received serious criticism from the opposition during the preparatory debates of the draft. Béla KOMJÁTHY, chief speaker for the opposition noted that the bill was largely different from the original draft of 1843, which means that it did not contain the division of offences, introduced capital punishment and determined a minimum sanction.[51] Csemegi received several personal attacks as well, with many of his critics saying that he had completely ignored the contents of the bill of 1843, further worsened by his supposed abuse of the opportunity to satisfy his legislative needs. The gist of this criticism can be unraveled through the words of Barna MEZEY, who claims that *„the Hungarian lawyers' almost nostalgic longing for the bill of 1843 is only partly the result of nationalistic emotions, even if we take into account the fact that a bill from 1843 could not simply become law 'as is' in 1878. We know – particularly about Fayer – that he consistently fought for humanist ideas and that he had great affection for ideas rooted in the reform period and which eventually made it into the bill. This was the issue he emphasized and the spiritual heritage that he wanted to protect."* [52]

There was a practical hiatus in the overly complicated, often overlapping rules of the penal system, coupled with the even more lax less logical framework of sanctions and auxiliary measures. The provisions about juveniles were sketchy, and the regulation's reaction to recividism (which by then had become apparent) was also grounds for debate. Besides the exaggerated influence of the dogmatic approach, the unrealistic nature of the rules was also mentioned as a problem, which basically stigmatized foundations of the Csemegi Code as *„something that was already obsolete when it was published".* [53] Despite all the criticism

[44] HORÁNYI, B., Az új büntetőnovella elmeorvosi szempontból. (The new criminal code from a psychiatric point of view.) In: *Jogtudományi Közlöny*. vol. Nr. 23, 1948, p. 452.

[45] Based on the 3rd am., committing a crime while drunk was a sui generis offense. The amendment also brought novelties by introducing several new types of offences (e. g. illegal crossing of borders, drunkenness etc.).

[46] This is also apparent by the fact that the 3rd am. issued more severe sanctions in the case of offences against life or those that involve bodily harm; and offences against the state or against assets.

[47] MEZEY, B., *Magyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 333.

[48] SCHULTHEISZ, E., A Btk reformjára vonatkozó elgondolások. (Ideas for penal code reform). In: *Jogtudományi Közlöny.* vol. Nr. 9-10, 1949, p. 192.

[49] SCHULTHEISZ, E., A Btk reformjára vonatkozó elgondolások. (Ideas for penal code reform). In: *Jogtudományi Közlöny.* vol. Nr. 9-10, 1949, p. 193.

[50] TIMÁR, I., Az 1950. évi II. törvény egyes kérdései. (Certain issues of Act 2 of 1950.) In: *Jogtudományi Közlöny*, vol. Nr. 11-14., 1950, p. 382.

[51] MEZEY, B., *Magyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 288.

[52] MEZEY, B., *Magyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 289.

[53] GYÖRGYI, K., *Büntetések és intézkedések. (Penalties and Measures.).* Budapest, 1984, p. 15.

it received due to its several flaws and shortcomings, it is undoubtable that the Csemegi Code was a well-thought-out regulation, and the attached legal explanations were nothing short of legal masterpieces. After the criticism faded (particularly with the 1st am. coming into effect), the act was very much capable of fulfilling the task it was intended to. The attitude towards its provisions was positive even during the coalition period. A good example to this would be the remark of István RIES, minister of justice, who claimed that *„it is the culmination of ideas vying for ensuring individual freedom and the concise and clear description of the matter of fact."*[54] György AUER considered the act as *„one of the most significant achievements of Hungarian legislation".*[55] The communist legal literature found the focal point for its criticism in the apparent presence of social classes and the material's obviously inconsistent nature, stressing the obsolescence of the practicist approach. Several writings and opinions published to commemorate the centenary of the material used detailed and profound social, historical and legal analyses to elaborate on the virtues of the Csemegi Code, creating an awkward atmosphere within the thrill of joy that followed the recently finished criminal justice codification.[56] HORVATH gets straight to the point by noting that *„all in all, the criminal code of 1879 contained provisions that served the era well, and its historic significance lies in the fact that with it, a uniform and codified criminal justice regulation has become established."*[57] Imre MARKÓJA, the former minister of justice also acclaimed the Csemegi Code, which according to him *„realized liberal legal principles and put an end to the feudal criminal justice system."*[58] As a conclusion, it can be stated that the Criminal Code of 1878 broke the pattern of the earlier principles grounded in feudalist criminal justice and narrowed the gap between national policies and the bourgeois system of Western Europe. It fell in line with the requirements of its age and fit seamlessly into the array of contemporary great European legislative works focusing on rule of law, equality and humane punishments. Its liberal point of view is largely similar to the original reform efforts from 1843, with some of its differences can be explained by the changing political-social-historical environment of post-Compromise Hungary. Nevertheless, the dogmatic regulation of the penal system, the blindness towards the psychical characteristics of delinquents and the rigid sanctioning mechanism were huge fetters on the regulation itself, so much so that several resulting contradictions were never addressed by the later amendments either.[59] The Csemegi Code considers crime a legal phenomenon, disregarding the social nature of crime at all. It considers repercussion as its main task, paying no attention to prevention whatsoever. The Csemegi Code remains a work of permanent value within the field of classical Hungarian criminal justice, particularly dogmatically. This regulation governed judicial practice not only during the period of its establishment, but decades later as well. Its significance cannot be doubted, since this was the first legislative effort that contained separate executional clauses and a unique system.[60] Its complex and expansive framework observed almost all the elements, values and principles of contemporary European criminal legislation, making it capable of providing adequate answers to the various challenges of the era in Hungary, and it also showcased and served the notion of penology. Finally, by examining results gained through an elaborate analysis of the general experiences we can state that trying to find these within the provisions of certain regulations would be a futile effort. Rather, they shine a light on the ever-present rule that – regardless of the era – seeks to preserve the delicate balance between legal policies and professionalism, declaring that: the values and tools that are employed by penal law shall by no means govern or rule over society or the individual, since their tasks is to serve these very elements.

[54] MEZEY, B., Ma*gyar jogtörténet. (The History of the Hungarian Constituztion),* Budapest, 1998, p. 289.

[55] AUER, GY., *A büntetőtörvények egyes fogyatékosságainak megszüntetéséről és pótlásáról szóló 1948.évi XLVIII. törvénycikk magyarázata*. (Act XLVIII of 1948 on the Elimination and Replacement of Certain Disabilities of Criminal Laws), Budapest, 1949.

[56] Law decree no. 11 of 1979 entered into effect on 1 July 1979.

[57] HORVÁTH, T., Az első magyar büntető kódex száz év távlatából. (At the centenary of the first Hungarian Penal.) Code. In: *Jogtudományi Közlöny.* vol. Nr. 4, 1978, p. 201.

[58] MARKÓJA, I., *A magyar büntető törvényhozás 100 éve*. (100 years of Hungarian criminal legislation.) In: *Magyar Jog,* vol. Nr. 3, 1979,p. 140.

[59] HORVÁTH, T., Gondolatok a büntetésvégrehajtási jog kodifikációjához. (Thoughts on the codification of the prison law.) In: *Jogtudományi Közlöny,* vol. Nr. 6, 1978, p. 297.

[60] It has to be noted that the original idea was that then-minister of justice Boldizsár HORVÁT wanted an independent act for execution, but these eventually made it into the Csemegi Code.