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THE TRANSFORMATION OF POLITICAL CRIMES AND ITS IMPACT ON THE HUNGARIAN CRIMINAL REGULATION WITH SPECIAL REGARD TO THE INTERWAR PERIOD

1. INTRODUCTION: DEFINITION OF POLITICAL CRIMES

1.1. THEORIES ABOUT THE DEFINITION OF POLITICAL CRIMES

Distinguishing political crimes from ordinary crimes is one of the most important and controversial issues in criminal law science¹ which is a reason why no uniform definition has been created to date². Nevertheless, looking at the evolution of the legal history, it can be clearly established that the legislator already in the 19th century expressed the threat that this type of crimes poses to the protected legal subject, by addressing such crimes in the first chapter of the special part of the criminal codes³. Thus, it can be concluded that the notion of the legal subject of these crimes, as a protected value, depends highly on the given historical period and social construct, and therefore its content is always determined by the concept and the structure of the State⁴.

Although several different concepts were created both in the international and national legal literature during the 20th century⁵, it is evident that three defi-

¹ P. Angyal, *A magyar büntetőjog kézikönyve 7. kötet: Felségsértés, királykérdés, hűtlenség, lázadás, a hatóságok büntetőjogi védelme*, Budapest, Atheneum, 1930, p. 6.

² In the legislation in force, there is a consensus that these crimes “are still one of the most dangerous groups of criminal offences for the society”, and are aimed at making violent changes to the constitutional order. G. Molnár, *Az állam elleni bűncselekmények*, (in): E. Belovisc, G. Molnár, P. Sinku, *Büntetőjog, Különös rész, ötödik hatályosított kiadás*, Budapest, HVG Kiadó 2016, p. 377.

³ The 1843 Criminal Bill was an exception to this.

⁴ A. Barna, *Az állam elleni bűncselekmények szabályozása a 19. századi Magyarországon, különös tekintettel a büntettekről és vétségekről szóló 1878. évi 5. törvénycikk előzményeire és megalkotására*, Győr, Universitas-Győr Nonprofit Kft. 2015, p. 13

⁵ *Ibidem*, p. 14.

nitions provided in the general part of the criminal law, i.e. the legal subject, the motivation, and the purpose with regard to these crimes were used in each of the theoretical approaches⁶.

According to the so-called subjectivist school, political crime is a crime committed with a political motivation, thus the purpose of the perpetrators is to change the state and the social order⁷. This school, however, did not become prevalent in Hungary in the first half of the 20th century, indeed, several criminal lawyers criticized this point of view, like Ferenc Finkey, the Deputy Crown Prosecutor, the then President of the Criminal Council of the Supreme Court (Kúria)⁸, who believed that practically any crime could be regarded as political from this aspect since there is virtually no criminal offence which could not be committed with a political motivation⁹. This opinion was confirmed also by the Supreme Court Judge János Tarnai, who explained that some kind of motivation and purpose can be found in every intentional criminal offence, so crimes against the state cannot be distinguished on this ground¹⁰.

The objectivist school followed the opposite approach, according to which the injury caused to the legal subject, also known as the so-called political subject, can lead closer to defining these criminal offences¹¹. Thus, according to this school, political crimes are those directed against the heads of state, the form of government, the smooth operation of the national assembly and the government, the honour of the state and the nation, the citizens' rights, and so on¹². So it can be said, following this train of thought, that political crimes are essentially the same as crimes against the state¹³, which, in my opinion, is the most fortunate approach. In addition to the legal subject, it is necessary for the crime to display the object of the purpose, thus, the target of the criminal offence. Thus, in my view, the legal subject and the object must necessarily be linked to each other in respect of these crimes. On that basis, the University Professor Pál Angyal created the following concept in his textbook: "a political crime is an act violating or endangering the political-legal subject, and is recognizably aimed at changing the existing state or international status quo"¹⁴. However, this definition has not become preva-

⁶ J. Szűcs, *A készülő büntetőkódex és a politikai bűncselekmények*, „Jogtudomány Közlöny” 1947, issue 19-20, p. 300.

⁷ A. Barna, *Az állam...*, p. 14; F. Finkey, *A politikai bűncselekmények és a büntető törvénykönyv*, Budapest, MTA 1927, p. 6.

⁸ M. Madarassy-Molnár, *Hit – Tudás – Alázat, 60 éve hunyt el Finkey Ferenc*, „Iustum Aequum Salutare” 2008, IV, pp. 239-248.

⁹ F. Finkey, *A politikai...*, p. 6.

¹⁰ J. Tarnai, *A politikai büntett*, „Bűnügyi Szemle” 1916-1917, p. 257.

¹¹ A. Barna, *Az állam...*, p. 14.

¹² *Ibidem*; J. Szűcs, *A készülő...*, p. 299.

¹³ F. Finkey, *A politikai...*, p. 6.

¹⁴ P. Angyal, *A magyar büntetőjog kézikönyve...*, p. 6.

lent in the Hungarian criminal literature either, since, according to this concept, few criminal offences could be considered political crimes. The Attorney-at-law Rusztem Vámbéry reacted to this by stating that the essence of these crimes is not the legally protected interest, but rather “the fact of being worthy to be protected”. This is an indispensable subjective element making a substantive difference between the common crimes and the crimes against the state. According to this logic, perpetrators, who commit theft (as defined by law) by and cumulatively with trespassing on private property, do not take into account the fact that they will violate the property right itself by their act. On the contrary, a person who commits the crime of rebellion knows that the legal subject of the crime is the existing constitutional system¹⁵.

The so-called nihilistic opinion and the eclectic approach should also be briefly mentioned¹⁶, the first one stating that the political crimes cannot be defined¹⁷, and the second one dealing separately with the trends in the international and national legal literature in this respect¹⁸. In other words, crimes against the state committed within the national territory and abroad should be treated differently, for which Ferenc Finkey states, I believe rightly, that this is nothing more than the “unjustified hesitation”¹⁹.

Overall, it can be seen that none of these approaches provide a satisfactory answer as to what should be considered a political crime, although, in my own view, the theory of the objectivist school is the closest to a precise definition.

The perception of political crimes underwent a significant change during the Soviet takeover following the World War II²⁰, which also had a significant impact on the domestic criminal law literature. While the objective approach to these crimes was mostly accepted during the first half of the century, after 1945 the opposite trend could be observed, so the subjective assessment of crimes against the state came to the fore, in the light of which the President of the Criminal Council of the Supreme Court János Szűcs attempted to give a definition of political motivation in his article of 1947. In his view, perpetrators falling into this category cover those who “are motivated by the idea or creation of disturbances in the state administration”. Thus, the crucial characteristics of these crimes is that the perpetrators are “engaged in politics”. The eclectic approach also came to the fore, which obviously served the purpose of implementing the Soviet criminal

¹⁵ J. Bárd, *A politikai büntett*, „Jogtudományi Közlöny” 1917, issue 32, p. 286. He states this indirectly when he explains why he disagrees with the above mentioned opinion of János Tarnai.

¹⁶ A. Barna, *Az állam...*, p. 14.

¹⁷ F. Finkey, *A politikai...*, p. 6.

¹⁸ A. Barna, *Az állam...*, p. 14.

¹⁹ F. Finkey, *A politikai...*, p. 8.

²⁰ A. Horváth, *A büntetőjog története Magyarországon a szovjet típusú szocializmus időszakában, különös tekintettel a koncepciók perekre*, (in:) M. Barna, T.M. Révész (eds.), *Ünnepi tanulmányok Máthé Gábor 65. születésnapja tiszteletére*, Budapest, Gondolat Kiadó 2006, p. 206.

law science into the Hungarian legal system. Having this in mind, Szűcs wrote that all the legislative work commenced in 1945 “just hang in the air” without a substantive definition of political crimes that is different from the one set by the international law²¹.

1.2. CHANGES IN PUBLIC PERCEPTION OF POLITICAL CRIMES

Changes in the political crimes can be best observed through the social perception thereof. In the 19th century the perpetrators of the political crimes were subtly distinguished from the so-called common criminals. However, since different values and ideas collided in this case²² due to the theories arising the 20th century, these perpetrators lost their “privileged position” amongst the criminals, and were no longer distinguished from the common criminals. As an example, it can be mentioned that according to the rules of the Csemegi Code²³, anyone who committed a crime against the state was sentenced to serve their imprisonment in a state penitentiary institution of low-security level, where the conditions of the execution were much more humane than in the penitentiary institutions of medium-, or high-level security at that time²⁴. However, this was not always accepted by the prisoners, e.g., Mátyás Rákosi started a hunger strike with his fellow inmates while serving his sentence in the penitentiary at Vác, the aim of which was to classify them as political prisoners and not common criminals²⁵.

2. SHORTCOMINGS OF THE CSEMEGI CODE WITH REGARD TO CRIMES AGAINST THE STATE AND A BRIEF INTRODUCTION TO THE ACTS OF ORDER

The Csemegi Code attempted firstly to create a comprehensive regulation on political crimes, which, according to the *Offences* by Attila Barna, is “a large-scale,

²¹ J. Szűcs, *A készülő...*, p. 301.

²² A. Barna, *Az állam...*, p. 13.

²³ T. Löw (ed.) *A magyar büntető törvénykönyv a büntettekről és vétségekről (1878:5. tcz.) és teljes anyaggyűjteménye*, Vol. 1-2, Budapest, Pesti Könyvnyomda – részvénytársaság 1880.

²⁴ F. Finkey, *A politikai...*, p. 5; I. Szabó, *A felségvétség tényállása a Csemegi – kódexben*, Sectio Juridica et Politica, Miskolc, Vol. XXI/1 2011, p. 116. Already in the 1910s, the Crown Appellate Judge Mihály Perjéssy sharply criticized the security level of the state penitentiary institution set out in the Csemegi Code by claiming that it violates equality between citizens. M. Perjéssy *A Btk. revíziójáról*, “Bűnügyi Szemle” 1912-1913, p. 371.

²⁵ E. Liptai (ed.) *Löwy Sándor élete és mártírhálálra*, Budapest, Ságvári Endre Könyvszerkesztőség 1980, pp. 89-91, at the court trial held between 12 July and 4 August 1926 in the case against Rákosi and Vági, Rákosi himself mentioned also the hunger strike commenced with his fellow mates, Budapest City Archives VII. 5. c. 8771/1925, p. 431.

careful work that defined the legal and political perception of political crimes for a decade²⁶. It is worth mentioning that the chapters covering these crimes were subject to various criticisms during the parliamentary debate because the penalties were regarded as being too strict²⁷ in comparison to the draft of 1843²⁸. This was indeed a valid statement since the death penalty was only imposed for homicide before, while the Csemegi Code proposed death penalty, life imprisonment or imprisonment from 10 years to 15 years for the perpetrators of crimes against the state in a penitentiary institution of high-security level or state penitentiary institution of a low-security level²⁹.

The Penal Code classified the following acts to be punishable for the protection of the state and social order: Section 127 defined the crime of high treason, according to which acts violating the existence, the constitution, and territorial integrity of the state, or the personal integrity of the head of the state shall be punishable. In addition, Section 131 punishes the association that was formed with the intention of committing high treason. Section 134 criminalizes the case of high treason where the perpetrator directly invites the public orally or by disseminating or publicly displaying a document, printed matter, or graphic illustration. Section 135 makes it obligatory for the individuals who have credible knowledge of the fact that high treason is being committed and there is still a real possibility to prevent it, to report it³⁰. According to Section 142, a person who violates the subject or service loyalty to the state commits treachery³¹, and, at last, Section 152 on rebellion punishes coercing the state authorities³². Therefore, it is clear that the descriptive word “political” does not even appear in the act. However, in addition to these criminal offences, there were also rules which indicated that crimes against the state were also considered political³³: for example, Section 7

²⁶ A. Barna, *Ph.D. értekezés tézisei*, Budapest, ELTE ÁJK 2010, p. 41.

²⁷ *Ibidem*, p. 34.

²⁸ A. Barna, *A politikai bűntettek szabályozásával kapcsolatos viták az 1843. évi büntetőkódex-javaslat anyagi jogi részének tárgyalásai során*, (in): G. Máthé, T.M. Révész, G. Gosztonyi (eds.) *Jogtörténeti Pergamen: Ünnepi Tanulmányok Mezey Barna 60. születésnapja tiszteletére*, Budapest, ELTE Eötvös Kiadó 2013, pp. 45-65; cf. L. Fayer (ed.) *Az 1843-iki Büntetőjogi javaslatok anyaggyűjteménye*, Vol. 3, Budapest, MTA 1900, pp. 157-184.

²⁹ P. Angyal, *A magyar büntetőjog kézikönyve...*, p. 6; G. Térffy (ed.) *Igazságügyi Zsebtörvénytár*, Budapest, Grill Károly Könyvkiadóvállalata 1930, p. 1003.

³⁰ K. Edvi Illés, M. Degré, *A magyar büntetőtörvénykönyvek zsebkönyve*, Budapest, Révai Testvérek Irod. Intézet R.-T. 1924, pp. 66-68; P. Angyal, *A magyar büntetőjog kézikönyve*, Vol. 4: *Az állami és társadalmi rend hatályosabb védelméről szóló 1921. III. t-c.*, Budapest, Athaneum Irodalmi és Nyomdai R.-T. Kiadása 1928, p. 5; cf.: E.R. Werner, *A magyar büntetőjog kézikönyve*, Budapest, Hornyánszky Viktor Hozomány 1898, pp. 230-237.

³¹ P. Angyal, *A magyar büntetőjog kézikönyve...*, pp. 5-6; cf. E.R. Werner, *A magyar...* pp. 247-259.

³² I. Szabó, *A fелség sértés...*, p. 107; cf. E.R. Werner, *A magyar...* pp. 261-271.

³³ F. Finkey, *A politikai...*, p. 4.

on the temporal scope said that the provisions of this act can also be applied if the perpetrator had already been found guilty for the perpetration of crimes under chapters I³⁴, IV³⁵, IX³⁶ outside the territory of Hungary and had served his sentence imposed on them there³⁷; furthermore, another example is the introduction of the state penitentiary institution of low-security level, which, according to the ministerial reasoning, was inserted among the provisions of the Criminal Code as a sanction for political crimes³⁸.

Overall, it can be seen that the creation and entry into force of the Csemegi Code have brought about a “significant conceptual clarification” regarding these criminal offences³⁹. Nevertheless, as a result of the World War I and the subsequent constitutional crises, the quality and the perception of crimes against the state undergone a transformation for which the Code could no longer provide an adequate legal response. It has become common knowledge that these criminal offences are determined in a very narrow sense, that is, the aggravated cases of incitement are not covered, and the definition of publicity, meaning the manner the crime is committed, is missing, therefore, several of these kinds of acts cannot fall under the scope of the Code. Another issue were the mild penalties to be imposed despite the fact that the perpetrators of incitement threaten the society with the outbreak of class conflicts and revolutions⁴⁰. This should primarily mean that the preparation of these crimes was not or only very mildly punished, contradicting the circumstances described by the Attorney-at-law József Bárd already in 1917, according to which the main difference between the political and common crimes is that while in case of the former one the preparatory acts are punishable in view of the outstanding importance of the protected legal subject, in case of the latter one, this is not always necessary⁴¹. The importance of making the scope of political crimes stricter has also emerged from a different aspect: a position was established that the reform is necessary because several acts criminalized in the Code should fall under the fundamental right to freedom of expression in

³⁴ Sections 126 to 138 in Chapter I of the Criminal Code contained the various crimes of high treason, P. Angyal, *A magyar büntetőjog tankönyve*, Vol. 2, 7th ed., Budapest, Atheneum 1938, pp. 82-83.

³⁵ Sections 152 to 162 in Chapter IV of the Criminal Code contained the crime of rebellion and related crimes, P. Angyal *A magyar büntetőjog tankönyve...*, pp. 84-85.

³⁶ Sections 190 to 192 in Chapter IX of the Criminal Code set out the felonies and misdemeanors against the religious freedom. These included blasphemy, disturbing religious practice, as well as attacking and ill-treating the priest, P. Angyal *A magyar büntetőjog tankönyve...*, pp. 90-91.

³⁷ <https://goo.gl/Y5v1YR> (visited March 20, 2017).

³⁸ F. Finkey, *A politikai...*, p. 5

³⁹ I. Szabó, *A felségvétség...*, p. 107.

⁴⁰ F. Finkey, *A magyar anyagi büntetőjog jelen állapota*, Budapest, Grill Károly Könyvkiadó vállalata 1923, p. 175.

⁴¹ J. Bárd, *A politikai büntett*, „Jogtudományi Közlöny” 1917, issue 32, p. 286.

the 20th century, which should actually prevail. That is why the editorial board of the “Legal Gazette” (“Jogtudományi Közlöny”) wrote in a publication of 1917 that “the reform of political crime must be aimed at removing the obstacles left behind by a primitive age in the Criminal Code and preventing the dissemination of thought”⁴².

That is the context in which the necessity of adopting the so-called Acts of Order in criminal law has emerged which can be described as special laws attempting to protect the existing social order and constitutional system by making the scope of political criminal offences stricter based on the constitutional changes in Hungary. As a result, three Acts of Order were adopted in the 20th century, the first was introduced by the National Council⁴³ set up in 1918. They included the Act of Order No XI of 1919 on the protection of the form of government of the People’s Republic, the aim of which was to fight off communist movements⁴⁴. The first Government of Teleki has adopted the next Act of Order for abolishing the anarchy and suppressing extremists, namely the Act of Order No III of 1921 on the more effective protection of the state and social order (hereinafter referred to as the State Protection Act), which was followed by the Act of Order No. VII of 1946 on the protection of democratic state order and the Republic, which was called by Dezső Sulyok, the member of the Smallholders’ Party simply as the “butcher’s act”.

The purpose of this paper is to present these latter two pieces of legislation through legal analysis, pointing out their impact on criminal law.

3. ACT OF ORDER NO. III OF 1921 ON THE MORE EFFECTIVE PROTECTION OF THE STATE AND SOCIAL ORDER IN THE LIGHT OF THE POLITICAL AND LEGAL CONTEXT OF THAT TIME

3.1. PROS AND CONS ON THE DRAFTING OF THE ACT OF ORDER

The adoption and drafting of the State Protection Act were followed by great interest among the lawyers of that time which resulted in several opinions in favour and against the necessity of its adoption⁴⁵. The criminal lawyers who

⁴² „Jogtudományi Közlöny” 1917, issue 32, p. 288.

⁴³ K. Salamon, *Nemzeti önpuisztítás 1918-1920*, Budapest, Korona Kiadó Kft. 2001, p. 46.

⁴⁴ K. Kovács, *Államjogi változások a Magyar Népköztársaság idején 1918/1919-ben*, „Jogtudományi Közlöny” 1969, issue 2-3, p. 74.

⁴⁵ The debate on the draft law of the bill in the national Assembly is noteworthy, which however can not be presented for reasons of space. *Az 1920. évi február hó 16-ára hirdetett Nemzetgyűlés*

supported the drafting of this special law pointed out that the Csemegi Code needed to be amended in order to prevent the emergence of various mass movements in the light of the revolutionary events that took place in 1918-1919⁴⁶. Pál Angyal and Ferenc Finkey also agreed with this opinion. According to Angyal, this law was needed because the Criminal Code was “deficient with regard to the preparatory stage”, thus, it was necessary to break through the doctrine granting impunity for preparatory acts by the new rules. In his opinion, the purpose of the law was prevention, that is to say, “to have an educational effect on the society as a whole, and thus, to get involved in the great work of developing the social-ethical man, and thereby to be accustomed to the great task of social education”⁴⁷. Finkey approached the issue from a political point of view saying that it is the “absolute right and obligation” of the state to defend itself against the communist, anarchist propaganda that endangers the public and social order. That is, this defensive function of the state is equally important not only in case of attacks from abroad but also in case of domestic conspiracies⁴⁸. This point of view was criticized by the former legal expert of the Investigating Department of the A.V.H., Péter Barna⁴⁹, during the communist dictatorship, who argued that this reasoning was incorrect because it did not support the existence of the State Protection Act, it only referred to the national sentiment⁵⁰. The opinion of a Jurist and University Professor Erik Heller is also worth mentioning, since he justified the necessity of the Act of Order in the context of the fundamental rights, saying that “the traumas our sweet homeland experienced have shown that not even the unrestricted civil liberties can serve as a miracle cure for mankind”⁵¹.

Conversely, the opinion of the jurists criticizing the need for such supplementary regulation was that, on the one hand, Bolshevism was no longer a danger to Hungary since it had failed in 1919, and on the other hand, the Csemegi Code and the other special laws already in force would provide adequate protection to prevent similar situations in the future⁵². In his article entitled *The Draft of Order*, Vámbéry referred to the law as “criminally smuggled goods”. The premise of

Irományai, Vol. VII, authentic edition, Budapest, Az Atheneum Irodalmi és Nyomdai Részvénytársulat nyomdája 1921.

⁴⁶ A. Miskolczy, *A forradalom büntetőjogi védelme a forradalmi mozgalmak ellen*, (in): *Tanulmányok a társadalom – és közigazgatáspolitikai köréből*, Budapest, p. 188; cf.: M. Perjéssy, *Az állami és társadalmi rend hatályosabb védelméről szóló törvényről*, „Miskolci Jogászélet” 1927, issue 12, p. 3.

⁴⁷ P. Angyal *A magyar büntetőjog tankönyve...*, p. 7.

⁴⁸ F. Finkey, *A magyar anyagi...*, p. 178.

⁴⁹ When writing this book he was a university professor.

⁵⁰ P. Barnai, *Az állam belső biztonsága elleni büntettek*, Budapest, Közgazdasági és Jogi Könyvkiadó 1958, p. 17.

⁵¹ E. Heller, *Az állami és társadalmi rend hatályosabb védelméről*, “Ügyvédek Lapja” 1922, 4.

⁵² M. Perjéssy *A Btk. revíziójáról...*, p. 2.

his criticism included the state and the social order as concepts. He thought this was so abstract that it could not be regarded as a protected legal subject, thus, the law itself did not make any sense. The basis for his other important thesis was the “conservative force of criminal law”, meaning that the economic, social, and ethical grounds are not laid down by criminal law in the country, but rather on the contrary, “criminal law reflects the stability of state and social order”. So, the outbreak of a revolution cannot be prevented by the drafting of a law.⁵³ His reasoning was contradicted by Pál Angyal who claimed that the Csemegi Code had already provided protection of the abstract concepts in several cases, including the criminal offence of blasphemy, where the protected legal subject was the use of the proper terms to describe God⁵⁴. In addition, he determined the role of criminal law as a law that participates in the creation of the order, not only represents it, thus, he attributes more educational power thereto than his fellow peer. By doing so, he defined criminal law as a kind of “educational restraint”⁵⁵. In his book *Crimes against the internal security of the state*, Péter Barna simply referred to the State Protection Act as the “terror book”, and additionally, in order to deceive the readers, he emphasized that “it took great, desperate effort from the jurists of that age to pass the law”, which did not respect the fundamental liberties and aimed to “suppress the populace”⁵⁶. Besides, he argues that the law contains a number of irreconcilable problems⁵⁷ that I will explain in more detail in the legal analysis. It is also important to mention the name of Ákos Győri, who referred to the necessity of the State Protection Act in his defence plea during the trial against Rákosi and Vági. In his opinion, “the screw, the warden, and the solitary confinement has never solved social problems and troubles”.

All in all, it can be seen what kind of contradictions the drafting of the State Protection Act had brought to the surface at the beginning of the 1920s. The most important driving force behind it was the historical and political situation, as well as the desire to avoid such a domestic political disaster as the one that happened in 1919. In this context, the legislative work, which had been carried out in order to strengthen the society, should be recognized.

3.2. THE SYSTEM OF THE STATE PROTECTION ACT AND THE CRIMINAL OFFENCES THEREIN

The Act of Order covers two main groups of criminal offences. Sections 1 to 6 define the basic and aggravated cases of overturning the state by force, and the

⁵³ R. Vámbéry, *A rendjavaslat*, „Jogtudományi Közlöny” 1921, p. 41.

⁵⁴ E. Illés, M. Degré, *A magyar büntetőtörvénykönyvek...*, p. 88.

⁵⁵ P. Angyal *A magyar büntetőjog tankönyve...*, p. 8.

⁵⁶ A. Barna, *Az állam...*, p. 16.

⁵⁷ *Ibidem*, p. 21.

related misdemeanour of failing to report such crime, as well as, the incitement to such crime and directly inviting to commit such crime. It must also be mentioned that the act defines the so-called misdemeanour of antimilitary incitement in order to protect the military. This crime can be regarded as a special case of overturning the state by force. The provisions on the “impunity of the relative in case of failing to report the crime, impunity in case of failing to report the crime where the authority already has knowledge thereof, and withdrawal from the commission of the criminal offence of overturning the state by force”⁵⁸ are placed among these statutory provisions⁵⁹. Sections 7-8 can be considered as the second part of the State Protection Act which defines two criminal offences. One is the so-called “libel against the nation”, which can be committed by stating false facts, and the other one is the so-called “dishonouring the nation”, which can be committed by using or taking abusing statements or actions. These are essentially libel and defamation against the Hungarian state⁶⁰. In conclusion, it can be stated that the criminal offences that were included in the act have already been examined by the criminal law literature, but they were still considered entirely novel. In the following, I present the basic and aggravated cases of the criminal offence of overturning the state by force since this was the most elaborated criminal offence in the act.

Section 1 determines the crime of overturning the state by force, accordingly, “a person who initiates or leads a movement or organisation that aims to overturn or destruct the lawful order of the state and the society by force, especially in order to establish exclusive power for a certain social class” commits the criminal offence. Anyone “who is actively involved in such a movement or organisation, as well as who promotes such a movement or organisation” is guilty of a misdemeanour⁶¹. According to Ferenc Finkey, the purpose of the regulation is to nip the communist, anarchist propaganda in the bud. Therefore, this Section is aimed at preventing the preparatory acts of incitement, including the organisation of an operation of mass movements, rather than the various kinds of acts of incitement⁶². Contrary to the previously defined political crime, it is clear from the specific text of the act that a much stricter, but extremely precise legal provision was introduced by giving an exhaustive list of acts of perpetration. The policy behind this was primarily to prevent deeds that are not considered to be criminal offences from falling under the scope of the act, and secondly to bring the State Protec-

⁵⁸ As to the knowledge of the authority, the known facts and press releases are considered relevant.

⁵⁹ P. Angyal *A magyar büntetőjog tankönyve...*, p. 4.

⁶⁰ F. Finkey, *A magyar anyagi...*, p. 186.

⁶¹ E. Illés, M. Degré, *A magyar büntetőtörvénykönyvek...*, p. 646 ; P. Angyal *A magyar büntetőjog tankönyve...*, p. 28.

⁶² F. Finkey *A magyar anyagi...*, p. 182.

tion Act closer to the spirit of the Csemegi Code⁶³. The solution to this problem was to enact the method of perpetration, namely “by force”, besides listing the criminalized acts of perpetration, since these together designated the boundary the crossing of which may result in the emergence of harmful thoughts within the society that may lead to the outbreak of a revolution and to collapsing of the old order. This is why the reasoning of the act states that “the aspiration of citizens to improve existing circumstances can only be sought through the constitutional institutions that were intended for this purpose. The presentation of ideas can only be free provided that they are planned to be realised through the constitutional institutions of the state”⁶⁴.

The aggravated case of the criminal offence of overturning the state by force is also remarkable. Section 2(1) of the State Protection Act created a so-called *delictum complexum*, a complex criminal offence. It combines the crimes provided in Sections 1(1) and (2) with another criminal offence of the Criminal Code that is committed in relation to movements and organisations⁶⁵. According to the reasoning of the legislative draft, the enactment of these provisions and imposition of more serious punishments were necessary because it is not just about organising or growing a movement, but about criminal offences that promote the goals set therein, that is, they are more dangerous to the society than the other criminal offences⁶⁶. The relevance of this provision lies in the fact that the legislator created a special form of liability in the criminal law of that time, which essentially means holding the instigator criminally liable as a perpetrator, but it is also similar to forms of the “so-called liability for the outcome” since the person is being held liable for felonies or misdemeanours that were not committed by the participants of the movement, they only had knowledge thereof⁶⁷. So, the persons involved are liable for the greater danger even if they were not aiding or abetting the creation thereof. That is, the legal basis of the penalty is objective, “the fact of the commission” shall be regarded as being relevant⁶⁸. Peter Barna explains in relation to the aggravated cases that even Pál Angyal, in his opinion, has said that this provision violates the fundamental principles of criminal law, but he did not

⁶³ *Ibidem*; *Az 1920. évi február hó 16-ára hirdetett Nemzetgyűlés Irományai*, Vol. VII, authentic edition, Budapest, Az Atheneum Irodalmi és Nyomdai Részvénytársulat nyomdája 1921, Vol. VII, p. 100.

⁶⁴ *Az 1920. február 16-ára összehívott Nemzetgyűlés irományai*, Vol. IV, authentic edition, Budapest, Pesti Könyvnyomda Részvénytársaság 1921, p. 311.

⁶⁵ E. Illés, M. Degré, *A magyar büntetőtörvénykönyvek...*, p. 654-655; P. Angyal *A magyar büntetőjog tankönyve...*, p. 60.

⁶⁶ *Nemz ir*, Vol. IV, p. 311.

⁶⁷ M. Degré, *Az állami és társadalmi rend hatályosabb védelméről szóló törvény*, „Magyar Jogi Szemle” Vol. II, p. 296 ; P. Angyal *A magyar büntetőjog tankönyve...*, p. 64.

⁶⁸ P. Angyal *A magyar büntetőjog tankönyve...*, p. 65-66.

explain what was the ground behind his opinion⁶⁹. This obviously shows that he twisted the relevant part of the explanation of the textbook on the State Protection Act relying simply on ideological grounds.

4. CIRCUMSTANCES OF THE DRAFTING OF ACT VII OF 1946

After the end of the World War II, the legislation concerning the establishment of the People's Courts was the most important indicator of the communist act of order, because this new court system was developed in several stages. The first decree was published on 5 February 1945. Later, the first amendment made it possible to impose death penalty on juveniles who were more than 16 years old at the time of committing the crime. Finally, in September of that year, the Provisional National Assembly adopted Act VII of 1945 on People's Courts. The purpose of such courts was to hold the war criminals liable, such as the former Prime Ministers László Bárdossy and Béla Imrédy, the former State Secretaries of Home Affairs László Bakó and László Endre, and Minister Andor Jaross who were convicted on this charge. A year later, in 1946, this judicial forum had Ferenc Szálasi and his companions, as well as Döme Sztójay with his entire government executed⁷⁰. In sum, People's Courts played an increasingly important role in developing the communist dictatorship after convicting the war criminals and the former "Nyilas" politicians, so it can be said that they helped the Hungarian Communist Party to rise to power and to keep it afterwards⁷¹. This resulted in the fact that the application of the State Protection Act was no longer in the interest of the power because they wanted to give a broader competence to this judicial forum and the exact⁷² precise text of the criminal offences in the Act of Order that was then effective did not make it possible. This demand essentially led the Communists to adopt Act VII of 1946 repealing the State Protection Act and Act XVI of 1938 on the criminal provisions necessary to safeguard the state order. According to the Commentary to this Act, "this provision removes this mournful piece of legislation from the Hungarian body of law, which was mostly applied inexorably rigorously by the judicial authorities against the left-wing individuals, who were brave and courageous to oppose a system that led the Hungarian people into

⁶⁹ A. Barna, *Az állam...*, p. 20.

⁷⁰ T. Zinner, *XX. századi politikai perek – A magyarországi eljárások vázlata*, Budapest, Rejtjel Kiadó 1999, p. 32.

⁷¹ *Ibidem* p. 33; A. Horváth, *A büntetőjog...*, p. 207.

⁷² *Ibidem*.

disaster twice within a short period of time”⁷³. In the light of this quote, it can be stated that the adoption of the act was required primarily by the political necessities. The National Assembly itself discussed the draft on 12 March that year⁷⁴ and adopted it after a very short general and detailed debate; it was published one and a half weeks later, on 23 March and entered into force immediately⁷⁵. Adopting the draft in such a short time clearly indicates that there was a consensus among the parties with regard to the need for a new regulation, irrespective of the fact that there were disagreements regarding the legal issues within the committee before. Keeping this in mind, I would like to tone slightly down the statement of Mária Palasik, who said the adoption of this Act caused a much greater disagreement among the parties than the discussion on the issue of choosing the system of government in 1945⁷⁶.

4.1. COMPARISON OF THE NEW ACT OF ORDER WITH THE STATE PROTECTION ACT

Before comparing these laws, it is important to note that despite they regulate the same criminal offences, they were created for entirely different criminal policy purposes. While the purpose of the State Protection Act was to sanction crimes committed upon extremist ideological grounds in order to protect the existing state and the social order, till then, Act VII of 1946 provided the basis for a more rigorous assessment of political offences and for organising various show trials for a long period of time. Later, in 1952, this piece of legislation was incorporated into Chapter I of the Official Compilation of Effective Criminal Law Regulation (hereinafter: OCCLR) resulting in the loss of its separate law character⁷⁷. Between 1950 and 1953, a total of 380,000 people were sentenced under this law⁷⁸, including Minister of Interior László Rajk,⁷⁹ and Archbishop József Mindszenty⁸⁰. However, in making comparison it should be kept in mind that the jurists working with this law clearly determined the State Protection Act

⁷³ I. István, M. Ábrahám, *A demokratikus államrend és köztársaság büntetőjogi védelméről szóló 1946. évi VII. T.-C.*, Budapest, Atheneum Kiadása 1946, pp. 49-50.

⁷⁴ *Az 1945. évi november hó 29-re összehívott Nemzetgyűlés Naplója, Vol. I*, authentic edition, Budapest, Atheneum 1946, p. 702.

⁷⁵ V. Olti, *A demokratikus államrend vagy a demokratikus köztársaság megdöntésére irányuló bűntettek*, „Jogtudományi Közlöny” 1947, p. 333.

⁷⁶ M. Palasik, *A köztársaság kikiáltása és büntetőjogi védelme*, „Valóság” 1996, p. 64.

⁷⁷ F. Kahler, *Joghalál Magyarországon 1945-1989*, Kalocsa, Zrínyi Kiadó 1993, p. 196.

⁷⁸ *Ibidem*, p. 195.

⁷⁹ T. Zinner, *„A nagy politikai affér” – a Rajk – Brankov - ügy*, Vol. I-II, Budapest, Saxum Kiadó 2014.

⁸⁰ F. Kahler, *A főcsapás iránya: Esztergom*, Budapest, Don Bosco Kiadó 1998.

as a legislative premise, moreover, the judicial practice regarding the adjudication of the crimes falling under the scope of this law was based on the judicial practice related to this former legislation⁸¹.

The system of the Act of Order was formed in such a way that the “crimes committed to overthrow the state order” were the most elaborated, including the related misdemeanour of “failure to report”. It was followed by the crimes of “instigating and inciting against state order” and their less punishable versions, and finally, the legislator determined as crimes the so-called “dissemination of untrue facts” as well as their less punishable versions⁸². It is clear that the criminal offences were practically the same as those in the State Protection Act. It is also worth noting that the rigour of the new legislation is reflected even in the fact that it did not consider the cases of withdrawal from the perpetration of the crimes as mitigating or exempting circumstances.

In the following, I would like to highlight the elements of the law which differed from the provisions of the State Protection Act. According to Section 1, “a person who commits an act, initiates, leads or provides financial support for a movement or organisation aimed at overthrowing the democratic state order or democratic republic as determined in Act I of 1946 is guilty of a felony”⁸³. The first problem of legal interpretation is raised by the legal subject of the provision, which, according to the *Reasoning*, is the democratic state order and the Republic as the state of government⁸⁴. This shows that, in this case, similarly to the State Protection Act, the legislator has set the value to be protected in this special law, which could use a more extensive elaboration. However, the legislator only briefly clarifies the reasoning as to what the legal subject should actually mean, according to this, every act and movement or organisation that is anti-democratic, fascist, aimed at building dictatorial systems instead of the existing state order shall fall under the scope of Act VII of 1946.⁸⁵ This means that the legislator created a so-called “framework criminal offence” which gives room for judicial arbitrariness⁸⁶. According to the explanation of the law, the court has the discretion to judge whether the act in question is capable of overthrowing the democratic state or republic⁸⁷, that is to say, the court could classify any kind of act to be dangerous to the society by applying Section 1.

⁸¹ I. Tímár, M. Ábrahám, *A demokratikus államrend...*, p. 9.

⁸² A. Barna, *Az állam...*, p. 46.

⁸³ I. Szabó, M. Ábrahám 1946, p. 3. Another essential similarity with Act III of 1921 lies in the fact that the perpetrators' conducts are the same.

⁸⁴ *Az 1945. évi november hó 29-re összehívott Nemzetgyűlés Irományai, Vol I*, authentic edition, Budapest, az Atheneum Irodalmi és Nyomdai Részvénytársulat Nyomása, 1946, OLTÍ 1947, p. 333.

⁸⁵ *Ibidem*.

⁸⁶ A. Horváth, *A büntetőjog története...*, p. 208.

⁸⁷ I. Szabó, M. Ábrahám 1946, p. 13.

The next significant difference was the ignorance of the manner of perpetration during the drafting process. Whilst the Act of Order of the Horthy era criminalized violent behaviours, after 1945, the state could prosecute also peaceful actions under this law⁸⁸. According to Section 3, a person who commemorates acts of war or anti-democratic acts, or praises the perpetrator of such acts, commits a misdemeanour⁸⁹. So, whoever disagreed with the aspirations of the communist party⁹⁰ or who acclaimed a person sentenced by a court to be a martyr, or agreed with the commission of the crimes, could have been subject to this law⁹¹.

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^{88 88} A. Horváth, *A büntetőjog története...*, p. 208.

⁸⁹ I. Szabó, M. Ábrahám 1946, p. 25.

⁹⁰ A. Horváth, *A büntetőjog története...*, p. 208.

⁹¹ I. Szabó, M. Ábrahám 1946, p. 26.

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Summary

In the 20th century, the perception and quality of political crimes underwent significant changes, which led to the creation of constitutional law. Act III of 1921 was the first piece of legislation that substantially tightened the scope of crime against the state, but because of precisely defined offences and related judicial practice, it could be avoided that deeds, which essentially fall within the scope of the exercise of fundamental rights, could fall under the Act.

The following significant criminal law, which strengthened existing provisions to an extent that provided a good basis for the establishment of a later Communist dictatorship, was brought about by the persistence of Soviet presence following the World War II.

KEYWORDS

political crimes, Criminal Code, libel against the nation

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