



BENEDEK VARGA  
 <https://orcid.org/0009-0003-1008-7314>  
University of Szeged

## *The Codification of Socialist Criminal Law with Special Regard to Economic Crimes<sup>1</sup>*

### Abstract

In my study I am going to analyze the codification of criminal law in the socialist era in Hungary. In order to put the topic into context, I examined the political and historical circumstances which contributed to the legislative processes. Firstly, my research will address the question of how did the socialist ideology affect the traditional dogmatic system of substantive criminal law? Secondly I will analyze the erosion of the main principles of criminal law, for example the principle of *nullum crimen sine lege/ nulla poena sine lege*, and how the socialist legislation violated these principles. Thirdly, I focused on the development of economic crimes, examining the relationship of law and the socialist planned economy, as well as the codification technique of these crimes. Since the socialist era can be divided into several sub-periods, the trends in criminal legislation differ from one period to another, and therefore I basically undertook the detailed analysis of one sub-era, the Rákosi-dictatorship. As far as the sources are concerned, I reviewed systematically the relevant criminal law literature and I analysed specific economic crimes through archival sources from the Section XXV of the Budapest City Archives. Also an important element of the research was the overview of the Diaries of the National Assembly from the Hungarian Parliamentary Collection, as it helped gain a deeper understanding of codification.

**Keywords:** socialist criminal law, economic crimes, criminal dogmatics

## I. Political and economic circumstances

According to Ignác Romsics, the period during which Hungary was under the Soviet Union's sphere of influence can be divided into three main sub-periods: (1) the period

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between 1944–1949, which can be described as the era of the democratic transition; (2) the period of the classical *Stalinist* dictatorship, which was named after the General Secretary of the communist party *Mátyás Rákosi* (Rákosi-éra, between 1949–1953);<sup>2</sup> (3) the most diverse from the political and economical point of view: the so-called Kádár-era (named after János Kádár General Secretary), which began with the suppression of the 1956 Hungarian Revolution and War of Independence and ended with the “regime change” in 1989.<sup>3</sup> This milder period of the socialist dictatorship is also known as “goulash-communism,” referring to the apparent prosperity maintained by the party.

In October 1944, a far-right government (The Government of National Unity) took the power in Hungary, led by Ferenc Szálási who was the former leader of the national socialist Arrow Cross Party. The Nazi puppet government ordered a total mobilisation, leaving the country economically and militarily at the mercy of the Third Reich.<sup>4</sup> With the advance of the Soviet troops, the political situation changed, and the Arrow Cross government tried to evacuate the economic reserves of the country. While the military operations were still active in the middle and western areas of Hungary, a new political power was emerging in the eastern half of the country: In December 1944, a Provisional National Assembly and a Provisional National Government was formed in Debrecen.<sup>5</sup> As far as the political palette of the National Assembly are concerned, the following parties were represented in the legislature: the Hungarian Communist Party (one part of it returned to Hungary from Moscow), the Independent Smallholders’ Party, the Social Democratic Party, the National Peasant Party and the Civil Democratic Party.<sup>6</sup>

The main purpose of the new government and legislation was to conclude an armistice with the Allied Powers, which took place in January 1945, besides which they set the goal of land redistribution, which was achieved in March 1945. In 1945, the National Assembly adopted the most democratic electoral law in the legal history of Hungary,<sup>7</sup> under which elections were held in November 1945, in which the Independent Smallholders Party won 57% of the seats in the National Assembly. Consequently, the communists could not manage to win a majority (they had only 17%).<sup>8</sup> Zoltán Tildy, one of the leading members of the Smallholders’ became the Prime Minister of the new government, but the Soviet influence is well illustrated by the fact that the communists got the Ministry of the Interior, which controlled the police.<sup>9</sup> The newly elected legislature decided on the form of the state, breaking the constitutional continuity, and opted for a republic rather than a kingdom.<sup>10</sup> With the adoption of Act I of 1946, the Republic of Hungary was born, and the National Assembly elected Zoltán Tildy to be the President of Hungary by acclamation. Tildy’s place at the head of the coalition government was taken by another Smallholder politician, Ferenc Nagy.<sup>11</sup> It can be seen at this time that the

<sup>2</sup> Romsics, *Magyarország*, 426.

<sup>3</sup> *Ibid.*

<sup>4</sup> Palasik, *A parlamentarizmustól*, 18.

<sup>5</sup> *Ibid.*

<sup>6</sup> Romsics, *Magyarország*, 426.

<sup>7</sup> Palasik, *A parlamentarizmustól*, 38.

<sup>8</sup> Romsics, *Magyarország*, 286.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, 287.

<sup>11</sup> Palasik, “A köztársaság,” 62–4.

communists were not seeking to seize the power illegitimately, as the Soviet leadership in Moscow also favoured a gradual, peaceful takeover.

This political situation changed, however, in 1947, with the deterioration of relations between the USSR and the US: Stalin ordered the acceleration of Sovietisation in Central Eastern Europe.<sup>12</sup> The communist takeover consisted of several components, from which I would like to highlight two: (1) the B-listing, which meant that officials were removed from the public administration by certifying commissions, officially explained as a way to balance public finances, but in reality explained by their deemed “political unreliability;”<sup>13</sup> (2) another important element of their political tactics, conceptual lawsuits. In 1947 the communists launched an attack against their main political opponent the Independent Smallholders’ Party. *Ferenc Nagy* was forced into emigration by extortion of himself with his family, and another prominent politician of the party, *Béla Kovács*, was arrested by the Soviet authorities for conspiracy against the Republic and deported to the Soviet Union.<sup>14</sup> All of these actions were part of the so-called “conspiracy against the republic” conceptual lawsuit, during which hundreds of MPs were arrested that led to the weakening of the governing Smallholders’ Party.<sup>15</sup> Although the Communist Party forced early elections in 1947, it could not even win a majority by fraud, with only 22% of the votes. After this, the communists tried to dissolve the parties that were still functioning: In June 1948, the Hungarian Communist Party merged with the Social Democratic Party, demolishing that Party’s autonomy, establishing the Hungarian Working People’s Party.<sup>16</sup> After the fusion of the parties, the communists went further and they established the Hungarian Independence People’s Front. All MPs had to join to this political organization and they were obliged to accept the ideology declared by the leadership of the Front.<sup>17</sup> No party was allowed to stand in the next elections, only the candidates of the Front could be voted for, which foreshadowed a communist victory.<sup>18</sup> The newly elected Parliament adopted a new constitution, the Act XX of 1949 about the Constitution of the Hungarian People’s Republic, which was the first codified constitution of Hungary. This constitution was a copy of the Soviet constitution of 1936, which meant that it broke with the continuity of public law and the achievements of the Hungarian historical constitution.<sup>19</sup> The new constitution created the Presidential Council of the Hungarian People’s Republic which was a collective head of state, authorized with the power to issue decree-laws.<sup>20</sup> The Presidential Council had the power to replace the legislative body, which meant that when the National Assembly was not in session (it was hardly ever in session during this period), it could legislate on any subject except the modification of the Constitution.<sup>21</sup>

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<sup>12</sup> Romsics, *Magyarország*, 430.

<sup>13</sup> Zinner, “Háborús bűnösök perei,” 129–33.

<sup>14</sup> Palasik, *A jogállamiság*, 221–2; 243–5.

<sup>15</sup> *Ibid.*, 194–210.

<sup>16</sup> Izsák, “A polgári pártok felszámolása,” 85–7.

<sup>17</sup> Feitl, “A kettős fordulat,” 368–70.

<sup>18</sup> *Ibid.*

<sup>19</sup> Horváth, *A szovjet típusú diktatúra*, 85–6.

<sup>20</sup> Horváth, “Diktatórikus berendezkedések,” 478.

<sup>21</sup> *Ibid.*

## II. The sources of criminal law in the socialist period

### II.1. Legislation before the communist takeover

As far as the legal sources of the criminal law are concerned, there was an interesting legislation tendency during this era. Since the political and economic tendencies changed in the different periods of the socialist era, consequently the criminal law legislation was not a uniformed process. It is also important to mention that until 1961, so until the codification of the Criminal Code of the Hungarian People's Republic, both the newly (post-war) created criminal law norms and certain provisions of the pre-war criminal law (e.g. the special part of the first Hungarian Criminal Code, the so-called *Csemegi Code*) were in force.<sup>22</sup> According to Ferenc Nagy, under the socialism the criminal law lost its guarantee function and the role of protecting the rights of individuals; in fact, the criminal policy was tantamount to the "criminalisation of politics."<sup>23</sup> This was the period when the following of German criminal dogmatics ceased to exist and the "bourgeois criminal law" was replaced by Soviet-socialist criminal law.<sup>24</sup> The first source of criminal law that mirrors the political and economical circumstances of this period was the Decree No. 8800/1946 about the criminal law protection of the economic order.<sup>25</sup> It may be striking that a decree established substantive criminal law norms which did not comply with the *nullum crimen* principles. The statutory legislation was based on Act VI of 1946, which authorized the government to issue *contra legem* decrees on criminal law, private law and administrative law in emergency situations in order to ensure the economic, financial and administrative order of the state.<sup>26</sup> The 8800/1946 decree regulated two types of crimes: (1) overpricing misdemeanours; and (2) acts violating public services.<sup>27</sup> As Imre A. Wiener notes, this decree basically took over the text of Acts created in the Horthy-era, especially the provisions of Act XV of 1920 about overpricing misdemeanours and Act X of 1941 about the punishment of acts violating public services, but it expanded the scope of the criminal liability, for example it criminalized the omission of the obligatory supply of crops and products.<sup>28</sup>

The next most important milestone of the development of socialist criminal law was the creation of Act VII of 1946 about the criminal law protection of democratic order and the republic. This act theoretically was designed to protect democracy and the multi-party system, but *de facto* it made a legal framework for cracking down on the political opponents of the communists.<sup>29</sup> One of the most essential features of socialist criminal law was that it used definitions which had uncertain meanings, and this legislative tech-

<sup>22</sup> Drócsa, "A szovjet büntetőjog-tudománynak," 160.

<sup>23</sup> Nagy, "A büntetőjog tudománya," 315.

<sup>24</sup> Nagy, *Régi és új tendenciák a büntetőjogban és a büntetőjog-tudományban*, 90.

<sup>25</sup> Nagy, *Anyagi büntetőjog. Általános rész. I.*, 60.

<sup>26</sup> 1946. évi VI. törvénycikk a nemzeti kormány részére rendeletek kibocsátására adott felhatalmazásról. Section 1.

<sup>27</sup> 8800/1946. (VII. 28.) ME rendelet a gazdasági rend büntetőjogi védelme tárgyában. Section 1.

<sup>28</sup> Wiener, "Gazdasági," 768.

<sup>29</sup> Horváth, "Az 1946. évi VII.," 99–100.

nique was also reflected in the text of this act, as Attila Horváth notes.<sup>30</sup> The following example will illustrate this well. According to Section 1, any person who commits an act which aimed to overthrow the democratic order of the State or a democratic republic established by Article I of 1946 or initiates a movement or conspiracy for the aforementioned purpose, is guilty of a felony. The “democratic order” or the “conspiracy” were statutory elements the legal meaning of which only depended on the judges’ discretion.<sup>31</sup> The concept of conspiracy was interpreted so broadly in the judicial practice that any kind of informal “anti-regime” discussion and meeting could be subsumated under the statutory definiton.<sup>32</sup>

## II.2. Legislation after the communist takeover: The new General Part of the Criminal Code

Following the communist takeover, a two-way process of criminal law legislation began: on the one hand, the codification of the Soviet-compatible general part started, and on the other hand the Presidential Council issued several decree-laws which regulated new type of crimes, although the special part of the *Csemegi Code* was still in force. As far as the general part is concerned, Emil Schultheisz, one of the leading criminal law professors of the era, criticized the dogmatic system of *Csemegi Code* on several points. He stressed that the *nullum crimen* principle could not be maintained in its then current form, because it prioritised the primacy of the individual’s interest over the interest of the society.<sup>33</sup> Taking the Soviet *Code Ugolovnij* as a model, he emphasized that the new act would have to regulate the retroactive application of criminal law.<sup>34</sup> He also criticized the trichotomous system of *Csemegi Code*, arguing that the category of misdemeanour had not passed into the public perception, besides which the trichotomous categorization did not serve any procedural purpose in the legal system.<sup>35</sup> It is necessary to highlight that *Schultheisz* recommended the introduction of the definiton of “act harmful to society,” as the material side of the unlawfulness of the crime.<sup>36</sup> It is important to note that the material/substantive approach of unlawfulness could be evaluated as a modern dogmatic opinion, as it is the definitional element of the legal definiton of delict in the current Hungarian Criminal Code.<sup>37</sup> So the category of “act harmful to the society” is not problematic, that is, until it has ideological or political content however.

During the parliamentary debate of the General Part, similar political and legal opinions occurred to Schultheisz’s views. Endre Tóth MP, firstly underlined that the new

<sup>30</sup> *Ibid.*, 101.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Schultheisz, “A Btk. reformjára vonatkozó elgondolások,” 194–5.

<sup>34</sup> *Ibid.*, 195. Miklós Kádár, the professor of criminal law in the socialist period also criticized the *nullum crimen* principle. According to Kádár, the main problem with the *nullum crimen* principle is that it defines the crime in a purely formal way (a crime is what the law declares it to be) without giving an answer why it should be punished. See more: Kádár, *Büntetőjog*, 120.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 196.

<sup>37</sup> See for more information about the “harmfulness to society”: Hollán, “Megkésett búcsú,” 1–24.

general part is necessary to ensure adequate criminal law protection for the 5-year plan, which started January 1950.<sup>38</sup> Tóth then stressed that the legal definition of the delict should be based on the concept of “harmfulness to the society” which allows the meaning of the crime to be sufficiently flexible and adaptable to social and economic changes.<sup>39</sup> According to him, not only the violation of the formal law, but also the conflict with the purpose and direction of the “revolutionary development” may have criminal consequences in the socialist law.<sup>40</sup> This opinion is a clear negation of the basic principles of criminal law.

The next speaker was Aladár Halász, who firstly explained that the first condition of the new criminal law regime was the transformation of the judicial system, by which he meant the introduction of lay judges and the training of new judges and prosecutors in the newly established socialist academies. Halász endorsed the abolition of the distinction between felony and misdemeanour, because this distinction had no relevance in procedural law; it did not allow the layman to recognise what fell within the jurisdiction of the regional court and the district court.<sup>41</sup> The Minister of Justice István Ries strongly criticized the formalised legal definition of the delict in *Csemegi Code*, emphasizing that the Soviet legal discipline gave substance to this “legal frame” when they created the concept of “harmfulness to society.”<sup>42</sup> The minister corrected Tóth’s remarks, who thought that the antisocial feature of the act directly implies the realization of the delict, because the harmfulness was only one definitional element of the delict. It was followed by an argument which illustrates that socialist criminal law did not focus on the committed act, but the personal and material circumstances of the offender: he explained that the court had to take account of not only the harmfulness of the act, but the harmfulness of the perpetrator, (...) “it is not indifferent whether a poor peasant violates the obligatory supply or a kulak does it.”<sup>43</sup>

The Act II of 1950 about the General Part of the Criminal Code entered into force in May 1950, repealing the General Part of the *Csemegi Code* and all of the legal opinions detailed above have been included in the act. The first Section declared the main purpose of the criminal law: the protection against the acts harmful to the society.<sup>44</sup> The Act gave a legal definition to “harmfulness to society”: it covers any activity or omission which harms or endangers the state, social or economic order of the Hungarian People’s Republic, or the person or rights of others.<sup>45</sup> “Harmfulness to society” is an important element of the modern crime definition, since it is the material aspect of unlawfulness;

<sup>38</sup> Az 1949. évi június hó 8-ára összehívott Országgyűlés Naplója. II. kötet, 89.

<sup>39</sup> István Timár also stressed this function of “harmfulness to society.” In: Timár, “Az 1950. évi II. tc. egyes kérdései,” 380.

<sup>40</sup> *Ibid.*, 92–4.

<sup>41</sup> *Ibid.*, 97–8.

<sup>42</sup> *Ibid.*, 104.

<sup>43</sup> *Ibid.*, 105.

<sup>44</sup> 1950. évi II. törvénycikk a büntetőtörvénykönyv általános részéről. Section 1.

<sup>45</sup> The legal definition of “harmfulness to society” is almost similar in the current Criminal Code, except for the socialist peculiarities: “An ‘act harmful to society’ means any activity or passive negligence which prejudices or presents a risk to the person or rights of others, or the fundamental constitutional, economic or social structure of Hungary provided for in the Fundamental Law.” In: Act C of 2012 on the Criminal Code. Section 4, Paragraph 2.

the problem arises when it is given ideological content. The Act eliminated the category of misdemeanour, creating a bichotomous system, so the delicts had two forms: felony and contravention.<sup>46</sup> The second section created the most important instrument of criminal arbitrariness, because it allowed the retroactive application of the law. The act declared that offences shall be adjudicated under the criminal law in effect at the time when they were committed as a general rule, but if a new law entered into force between the commission of the delict and its adjudication, the newer law shall apply to the act committed before it entered into force.<sup>47</sup> The provisions of the act not only violated the *nullum crimen sine lege praevia* principle, but the principle of culpability based liability. The legal definition of the criminal offence did not contain the culpability (*mens rea*); this definition only had two elements: (1) the act shall comply with a statutory provision and (2) it shall denote harmful to the society.<sup>48</sup> Consequently the intention or negligence were not necessary to establish criminal liability, and this form of liability was placed on an objective ground.

### II.3. Criminal law regulation by decree-laws and the born of the new code

As I have mentioned, there was a two-way legislation tendency during this period, besides the systematic repeal of the provisions of the *Csemegi Code*. The Presidential Council issued several decree-laws which regulated new types of crimes, for example the Decree-Law 4 of 1950 about the criminal law protection of the planned economy, which I will analyse in detail later. It is necessary to mention the Decree-Law 17 of 1955 which abolished the category of contravention;<sup>49</sup> consequently the Hungarian criminal law became monistic, because from then until 1971 there was only one type of criminal offense: the felony.<sup>50</sup> Because of the parallel legislation processes, the regulation became fragmented and the number of criminal law norms was permanently increasing, which made the application of law more and more difficult. As a result, the Ministry of Justice prepared the *Compilation of Substantive Criminal Laws in Force*, which was not a legal source; it did not statute new criminal law provisions, it only served as a guideline to courts in order to know which acts and decrees were in force.<sup>51</sup> The next milestone was the adoption of Act V of 1961 about the Criminal Code of the Hungarian People's Republic, which was the second "complete" (regulating both the general and the special part) criminal code of the Hungarian legal history, after *Csemegi Code*. This criminal code also followed the monistic system, regulating only one type of crime, that of felony, although it broke with the two-component legal definition of Act II of 1950, reintroducing culpability as one of the conceptual elements of crime.<sup>52</sup>

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<sup>46</sup> Földvári, *Magyar büntetőjog*, 29.

<sup>47</sup> 1950. évi II. törvénycikk a büntetőtörvénykönyv általános részéről. Section 2, Paragraph 2, Point (b);

<sup>48</sup> Timár, "Az 1950. évi II. tc. egyes kérdései," 380.

<sup>49</sup> 1955. évi 17. tvr. a kihágás intézményének és a kihágási bíraskodásnak megszüntetéséről. Section 1.

<sup>50</sup> Nagy, *Anyagi büntetőjog I.*, 60–1.

<sup>51</sup> Bacsó, "A hatályos anyagi," 420–1.

<sup>52</sup> Nagy, "A büntetőjog tudománya," 312.

### III. The regulation of economic crimes

#### III.1. The criminal policy and the codification technique of economic crimes

The first question which has to be answered in the context of economic crimes is the relationship between economic administration and criminal policy in the socialist period. Sándor Túry, the author of the first Hungarian economic criminal law monograph, said that the greater the influence of the state on the management of economic life, the more criminal law provisions were necessary to protect the economy.<sup>53</sup> It is explained by the fact that in state-controlled economic systems even the slightest disruption of economic life threatens the implementation of the economic plan of the state. Túry cited the Soviet Union as an example, where the *Code Ugolovnij* regulated the “crimes against the economy” in a specific chapter.<sup>54</sup> Emil Erdösy also noted that in the socialist economy the legal regulation of property is not sufficient to ensure the smooth functioning of the economy, but the state has to intervene in the economy as a co-owner and as the representative of public authority.<sup>55</sup>

In order to deeply understand the main features of socialist legislation, it is worth briefly reviewing the regulatory model of economic crimes between the inter-war period in Hungary. During this period the legislator did not regulate economic crimes in the *Criminal Code (Csemegi Code)*, but created specific side-acts (*Nebenstrafrecht*), for example Act XV of 1920 about overpricing misdemeanours or Act XXXII of 1920 about tax fraud.<sup>56</sup> The legislator used two main regulatory techniques in this period: (1) the “blanket-delicts” (*Blankettstrafgesetz*), which were filled with content by another act, decree or administrative provision (e.g. tax fraud); and (2) besides the “blanket-norms,” the legislator created definitional elements which were sufficiently flexible to adapt the changing of economic circumstances.<sup>57</sup> Such definitional elements aimed at the overpricing misdemeanours, of the so-called convenience goods, the legal meaning of which depended on the current state of the economy, the supply and demand.<sup>58</sup> In contrast, during the socialist legislation, these definitional elements which required judicial discretion were gradually disappearing and the “blanket-delicts” began to dominate in the field of economic criminal law. This became particularly emphatic from 1950, the year in which the statutory decree about the criminal law protection of the planned economy was adopted.<sup>59</sup> As a result of the direct economic controlling model, most of the criminal offences were equal with the breach of obligations imposed by economic governance standards. The illegalities committed in the 1950s are illustrated well by the fact that during this period the criminal liability could be established even in the absence of an economic governance standard that would have filled the “blanket-delict,” where the courts

<sup>53</sup> Túry, *Gazdasági szemlélet és*, 14.

<sup>54</sup> *Ibid.*, 15.

<sup>55</sup> Erdösy, *A gazdasági reform*, 22.

<sup>56</sup> Wiener, “Gazdasági,” 765.

<sup>57</sup> Wiener, *Gazdasági bűncselekmények*, 115.

<sup>58</sup> Vadász, *Az árdrágító visszaélésekről szóló 1916. évi IX. tc.-ről*, 13.

<sup>59</sup> Wiener, *Gazdasági bűncselekmények*, 116–7.

referred to “socialist morality.”<sup>60</sup> The turning point in the criminal policy occurred in 1961, when Act V of 1961 entered into force, which broke with the concept of the “formal protection of the planned economy.”<sup>61</sup> The legislator added “economic detriment” to the definitional element (dogmatically the result of the perpetration) of the criminal offence, and consequently the courts had to examine the economic consequences of the breach of obligation.<sup>62</sup>

### III.2. Crimes against production and consumption

Based on historical development *Imre Wiener* distinguished two main types of economic crimes: (1) the crimes against production and consumption; and (2) the financial crimes.<sup>63</sup> The roots of the crimes belonging to the first category go back to the inter-war period, when the legislator criminalised overpricing misdemeanours and acts violating public services.<sup>64</sup> Although Decree 8800/1946 partly took over the text of the previous legislation, I think, as it was mentioned above, it is important to underline two facts. On the one hand, the criminalisation of the omission of the obligatory supply signed an important change in economic policy: the state not only wanted to protect the redistribution of the products, but wanted to sanction the acts which violated the production and manufacturing obligations.<sup>65</sup> Also, the decree criminalised the act when someone uses, consumes, destroys or making unusable the stock of crops or products in his possession, contrary to the law or the requirements of prudent management; moreover it was also a criminal offence if someone failed to comply with his legal obligation to produce a crop (livestock, animal or vegetable) or a product (raw material, semi-finished product or finished product).<sup>66</sup> These provisions indicate that the economic criminal law showed signs of being a “crisis criminal law” in this period. It is also important to highlight that the decree broadened the scope of profiteering from overpricing. Under the previous regulation the overpricing profiteering was punishable only if the perpetrator increased the price of the goods by any intermediate trade (*quasi* chain-trade), which was not necessary to get goods from the producer to the consumer; but the decree supplemented this statutory definition, making it a criminal act if someone professionally traded without a valid trade licence.<sup>67</sup>

The strictest protection of production began with the creation of Decree-Law 4 of 1950. The decree-law distinguished between two types of offences: (1) sabotage; and (2) crimes against the economic plan.<sup>68</sup> The sabotage also had two forms, active and passive sabotage. The first category was committed by anyone who violated the economic plan or a sub-plan by deliberately damaging, destroying or rendering it dysfunctional.

<sup>60</sup> *Ibid.*, 118.

<sup>61</sup> Tóth, *Gazdasági bűnözés*, 28.

<sup>62</sup> 1961. évi V. törvénycikk a Magyar Népköztársaság Büntető Törvénykönyvéről. Section 224.

<sup>63</sup> Wiener, *Gazdaságigazgatás*, 13.

<sup>64</sup> *Ibid.*, 14.

<sup>65</sup> Wiener, “Gazdasági,” 768.

<sup>66</sup> 8800/1946. (VII. 28.) ME rendelet a gazdasági rend büntetőjogi védelme tárgyában. Section 7.

<sup>67</sup> *Ibid.*, Section 2, Paragraph 2.

<sup>68</sup> Timár, “A tervgazdálkodás,” 150.

The passive sabotage covered a wide range of conducts.<sup>69</sup> First it was a felony if someone terminated or limited the operation of a company or carried out the work late with malicious intent, in particular with the aim of violating the implementation of the national economic plan.<sup>70</sup> It was also a crime if someone engaged in production that involved an unreasonable waste of materials, energy, or labour or if the production did not comply with the extent of existing or expected needs, or the production generally did not comply with the requirements of reasonable management.<sup>71</sup> The punishment of these criminal offences was crude, and in the case of causing particularly serious damage to the order of the national economy, the death penalty had to be imposed. These statutory definitions contained a multitude of definitional elements which did not comply with the *nullum crimen sine lege scripta* principle, so they did not meet with the requirement of any precise statutory definition (e.g. “malicious intent,” “violating the implementation of the national economic plan.”)

### III.3. Financial crimes

The roots of the financial crimes also go back to the inter-war period, where their appearance is marked by two acts: Act XXXII of 1920 about felonies and misdemeanours intended to defraud the public treasury (tax fraud), and Act XXVI of 1922 about the misuse of payment instruments. The tax fraud was regulated as a blanket-delict between 1920–1959, where the Tax Fraud Act was only a “framework act” which was bedecked with content by the laws on certain taxes and public debts.<sup>72</sup> Such laws involved the act of luxury sales tax, transfer tax on property or the act about general income tax.<sup>73</sup> The structural transformation of the regulatory model was carried out by Decree-Law 17 of 1959, which introduced uniform rules for all types of taxes, eliminating the blanket-delict based regulation.<sup>74</sup> The decree law regulated three alternative perpetration activities of tax fraud. The first was committed by someone who intentionally misrepresented or concealed a fact that is significant for determining tax liability before the public authority and thereby reduced the tax revenue;<sup>75</sup> the second form of tax fraud was committed by anyone who deceived the tax authority and obtained a tax reduction or exemption; the third form regulated the tax fraud involving excise goods, which was committed by a person who had produced excise goods in the absence of a legal requirement or authorisation or who had deliberately evaded excise controls.<sup>76</sup>

Besides the tax fraud, the other recodified criminal offences were the foreign currency crimes, which were regulated by Decree-law 30 of 1950. In line with the criminal legislation of this period, this decree did not specifically deal with criminal offences,

<sup>69</sup> *Ibid.*, 151.

<sup>70</sup> 1950. évi 4. tvr. a tervgazdálkodás büntetőjogi védelméről. Section 2. Paragraph 1.

<sup>71</sup> *Ibid.*, Section 2. Paragraph 2.

<sup>72</sup> Angyal, *Adócsalás*, 50.

<sup>73</sup> Tóth, “Tisztázatlan,” 157.

<sup>74</sup> *Ibid.*

<sup>75</sup> 1959. évi 18. tvr. az adócsalás büntetéről és a pénzügyi szabálysértésre vonatkozó rendelkezések módosításáról. Section 1.

<sup>76</sup> *Ibid.*

but the protection of foreign exchange management in general. The socialist state had a monopoly on foreign exchange management and this meant that all operations and settlements in gold or foreign currency were concentrated in the hands of the state.<sup>77</sup> As a result, the first eight chapters of the decree-law contained administrative rules on foreign exchange trade, which required the authorisation of the foreign exchange authority for example for exporting foreign currency abroad or entering into a transaction with a foreign person.<sup>78</sup> Only the last chapter of the decree-law contained criminal law provisions stating that any breach of any obligation relating to the management of foreign currency (e.g. failure to obtain the necessary authorisation) was a criminal offence.<sup>79</sup>

## IV. Economic crimes in the light of the legal practice

### IV.1. Sabotage against the brewing industry: The case of the Kőbányai and the Dreher breweries

According to the indictment, following the nationalisation of large and medium-sized enterprises, the increase of production and the reduction of self-consumption made it necessary to profile certain industries. In the brewing industry, the profiling began in 1948.<sup>80</sup> At this time, the accused B. A., who was the general manager of the Brewing Centre, got a subpoena to develop a profile for the beer industry. According to the indictment, a “chauvinistic competition” began between two breweries, Kőbányai and Dreher. B. A. as the head of the brewing centre, prepared a cooperation agreement, under which the initial brewing would take place at the Kőbányai brewery while the fermentation at the Dreher brewery and the beer transported between the two breweries via pipelines. The cooperation plan contained false data and it was concealed from the workers, and the implementation of the plan left the brewing industry disorganised and unclear. The other defendant in the case was T.V.L., the chief engineer of the Kőbányai Brewery, whose job was to maintain the technical equipment of the factory.

According to the facts of the case, the defendant sabotaged the maintenance of the brewery equipment and prohibited the workers from carrying out maintenance work, which reduced productivity.<sup>81</sup> In addition, in September 1950, 60 wagons of coal at one of the brewery sites caught fire as a result of T.V.L.’s negligence, causing the company a significant financial loss. Another accused, V.E., who was an engineer at the Kőbányai brewery, also had a duty to facilitate the production obligations set out in the cooperation agreement. According to the indictment, his sabotage consisted of failing to report to the Ministry of Light Industry that the factory was under-producing when the heat

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<sup>77</sup> Wiener, *Gazdaságigazgatás*, 118.

<sup>78</sup> 1950. évi 30. tvr. tervszerű devizagazdálkodással kapcsolatos szabályokról. II. chapter.

<sup>79</sup> *Ibid.*, IX. chapter.

<sup>80</sup> Budapest City Archives Section XXV 60. f. Documents transferred to the Public Prosecutor’s Office from the Chief Prosecution Office of the Capital (Henceforth: BCA. XXV. 60. f.) Box No. 156. 1950. Áü. 48430/3.

<sup>81</sup> *Ibid.*

was extreme in the summer of 1950 and the plan was that the brewing had to be overrun by 20–25 percent due to the increasing demand for beer.<sup>82</sup> At the end of the indictment, there is a reasoning in which it is socialist party ideology that is presented instead of legal arguments: “In the field of our nationalised industry and commerce, the enemies of the people’s democracy are making attacks. Their ultimate aim is to undermine the economic order which is the basis of people’s democracy.”<sup>83</sup>

The Budapest County Court ruled on the case at first instance. The court ruled that T.V.L. and V.E.’s conduct infringed the provision (Section 4) of Decree-Law. 4 of 1950 about the criminal law protection of the planned economy,<sup>84</sup> which said that any person who intentionally breaches an obligation based on law or a provision of public authority which refers to the production, handling, use, or acquisition of a product or commodity, endangering the implementation of the national economic plan, is guilty of misdemeanour. The court based its legal reasoning on the fact that the accused had endangered the national economic plan by intentionally failing to comply with the maintenance (T.V.L.) and reporting obligations (V.E.) In this case the criminal liability was based on a blanket norm, which was filled with content by an administrative provision, exactly the cooperation agreement which was approved by the Economic Plan Office. However, the court ruled *expressis verbis* that it had not dealt with the details and merits of the cooperation agreement, which was considered a serious legal problem, since criminal liability under the decree-law attaches to a breach of obligations based on law or administrative provision. Moreover the court found the accused guilty without taking into consideration whether the cooperation agreement could be considered an administrative provision or not.

The prosecution appealed against the judgment in order to obtain aggravation and the defendants and their defence lawyers appealed in order to obtain acquittal and mitigation. The final decision in the case was taken by the Supreme Court, which affirmed the decision of the first instance court with the addition of the legal argument. The court ruled that the cooperation agreement became an administrative provision because it was approved by the Economic Plan Office, and consequently all the people involved in the brewing process were obliged to act in accordance with the cooperation agreement.<sup>85</sup> The court added that while a technical manager has the right to determine the work schedule, this right does not extend to disregarding the economic plan, with the court finishing the reasoning with ideological arguments instead of legal ones: “If the technical manager chooses the path of competition and corporate chauvinism instead of socialist cooperation, and thereby jeopardises the implementation of the plan, he must bear the criminal consequences of his actions.”<sup>86</sup>

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<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> BCA. XXV. 60. f. Box No. 156. B. III. 9004/1950/10.

<sup>85</sup> BCA. XXV. 60. f. Box No. 156. B. IV. 003–1951–12.

<sup>86</sup> *Ibid.*

#### IV.2. Withdrawal of nationalised assets from state ownership: an example of the retroactive application of law

The case of Gy. J. and Gy. B. illustrates well how the legislation eliminated the *nullum crimen sine lege praevia* principle, creating the possibility of the retroactive application of the law. According to the facts of the case, the accused, GY.J. and GY.B., ran a mechanical shop in Budapest. The defendants were the owners of this shop.<sup>87</sup> They decided to hide their finished goods, machinery and semi-finished goods in order to prevent the state from acquiring property rights in case of a future nationalisation. In 1948 and 1949, the defendants transported these assets to their own homes. The mechanic's shop was nationalised in February 1950 and after nationalisation the whereabouts of the goods belonging to the shop were not reported and the goods were still hidden. The prosecutor and the district court based the criminal liability on No. 1/1950 (I.7) Decree of the Council of Ministers, which provided about the implementation of Decree-Law 20 of 1949 about the state ownership of industrial and transport companies. The ministerial decree made it a criminal offence to conceal, divert or attempt to divert a nationalised company or property from state ownership.<sup>88</sup> The case highlights the lack of guarantees of substantive criminal law. On the one hand, the criminal liability was based on a criminal law provision contained in the final provisions of the Decree of the Council of Ministers', which basically regulated a non-criminal law territory. On the other hand, the ministerial decree entered into force on the 7th of January 1950 and the alleged acts were committed in 1948 and 1949, so consequently it can be concluded that the criminal law provision applied retroactively, because before the entry into force of the decree, there was no norm declaring the act above punishable.

#### IV.3. Attack against the Church through economic criminal law: Foreign currency offences

The following case was a side-case of the so-called Mindszenty trial. József Mindszenty was the Archbishop of Esztergom and the last Prince-Primate of Hungary, who after the communist takeover openly spoke out against the illegalities committed by the communists. Cardinal Mindszenty was arrested at the end of 1948 on trumped-up charges of conspiracy against the Republic, espionage and currency trafficking, and the Special Council of the Budapest People's Court sentenced him to life imprisonment.<sup>89</sup> Mindszenty's condemnation caused an international outcry and marked a turning point in a series of communist attacks on the Church, because before it the conceptual lawsuits were typically conducted under the pretext of war crimes, but after the Mindszenty-trial the communists also took action against priests who had previously held anti-war and anti-fascist views.<sup>90</sup>

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<sup>87</sup> BCA. XXV. 60. f. Box. No. 154. 1950. Áü. 46425.

<sup>88</sup> *Ibid.*

<sup>89</sup> Gergely, *A Mindszenty-per*, 5.

<sup>90</sup> *Ibid.*, 6.

The main accused of the analysed side-case was B.I., who was the Primate's Comptroller, so he was in charge of the economic affairs of the Archbishop of Esztergom. According to the prosecution, *Mindszenty* on his return from the Canadian Congregation of Mary brought thousands of US dollars and cheques to Hungary.<sup>91</sup> The Cardinal handed them over to B. I. and instructed him to sell them at an unofficial price rate. B. I. then contacted W. T., who was the manager of the First Savings Bank of Pest, who purchased the foreign currency. It is at this point that Prince Pál Esterházy's name came up, who was one of the greatest philanthropists of the 20th century Hungarian history, and he was also the accused of the *Mindszenty* trial. He became involved in the case when W. T. sold the dollars to him through his secretary, accused H. G. As stated in the indictment, H. G. had collected a large amount of dollars for Esterházy in his apartment over the years, and had not placed them in a sealed deposit. According to the facts of the case, it was necessary to store the dollars because *Esterházy* intended to smuggle his remaining assets abroad in foreign currency. At the end of the indictment, there is a reference to a larger political conspiracy, which was actually a political declaration against the Church and it said that the persons holding high ecclesiastical and religious office "placed themselves above the state" and had "placed themselves outside the legal system of the Republic" in order to "overthrow the achievements of the national economy."

The case was heard by a special court for economic criminal law cases, the Usury Court of Budapest. The question may well arise: why were the abovementioned conducts "harmful to society"? The court referred to a government decree No. 8400/1946, which regulated the trade with foreign currencies,<sup>92</sup> which was issued before the communist takeover. It is important to mention that this decree was issued during the hyperinflation of 1945/46 and the purpose of the legislation was to eliminate the escalating currency and non-metallic trading and increase the currency reserves of the Hungarian National Bank.<sup>93</sup> As a result, the regulation imposed the obligation to place the foreign payment instruments to a sealed deposit and if someone failed to do it, they were deemed to have committed a criminal offence.<sup>94</sup> Consequently the court convicted the accused for failure to comply with the deposit obligation.<sup>95</sup> On the one hand, this case shows how the legal application of this period used a law created in a previous socio-economic context to remove a group labelled as political enemies from public life; on the other hand, it signs the appearance of an enemy criminal law (*Feindstrafrecht*), during which the social status of the perpetrator became the measure of "social dangerousness," rather than the act actually committed.

<sup>91</sup> BCA. XXV. 60. f. Box. No. 29. 1949. Áü. 100.490/5.

<sup>92</sup> BCA. XXV. 60. f. Box. No. 29. Mb. XV/2. 3378/1949.

<sup>93</sup> Botos, "A pengő megsemmisülése," 203.

<sup>94</sup> 8400/1946. (VII. 28.) ME rendelet a külföldi fizetési eszközök és követelések, a külföldi értékpapírok és az arany forgalmának, valamint a fizetési eszközök kivételének újabb szabályozása tárgyában. Section 17.

<sup>95</sup> BCA. XXV. 60. f. Box. No. 29. Mb. XV/2. 3378/1949.

## Summary

During my research, I could draw the conclusion that the socialist criminal legislation, especially the legislation of the Rákosi-era, demolished the guarantees of the substantive criminal law, which can be summarised as follows. Criminal law was characterised by fragmentation: this is explained by the fact that the criminal law provisions were placed in several separate laws, government decrees and decree-laws, and therefore the statutory legislation made the criminal law vulnerable to political interests. As far as the main principles of criminal law are concerned, Act II of 1950 created the possibility of the retroactive application of the law (as is demonstrated by the archival case presented above), abolishing the principle of *nullum crimen sine lege praevia*; moreover it removed the culpability from the legal definition of criminal offence, establishing objective liability in criminal law. It is essential to highlight that the legislator ignored the requirement of precise legal definition (*nullum crimen sine lege certa*), giving the green light to an ideology-driven application and interpretation of the law.

As regards economic criminal law, the following observations can be made: first, this is the territory of criminal law where the “over-regulation” was most noticeable, as in regard to the planned economy model the legislator surrounded every aspect of production with penal rules. Secondly the “blanket delict” regulation model dominated this field of law, which was problematic, because the court did not always examine the background norms which filled the framework delict. As far as the regulatory technique was concerned, between 1945 and 1961 the legislator did not regulate statutory definitions in explicit criminal law acts, but swayed between the provisions of acts and decrees regulating other subjects. In addition, it can be noted that in the 1950s the formal criminal protection of the socialist economy prevailed, which changed with the entry into force of Act V of 1961.

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