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I.

1. During the latter thirty years the law of criminal procedure has completed a new phase of development in Hungary. Criminal procedure itself was closely tied up with the political forces and movement transforming Hungarian society as a whole. In the thirty years under review Hungary has changed from a capitalist system interwoven with feudal traits into a country now in the process of building socialism. Ownership conditions have under gone a radical change and so also the class structure and stratification of society. Also the nature of the political power differs from what it was earlier. All this manifests itself also in the law of criminal procedure, although here as before there is still criminal investigation, there are procurators, counsel for the defence, judges, appeal, etc. i.e. a number of institutions and the technical terms associated with them have remained intact. Still the meaning of the law and the trends in the application of it have taken a complet turn. Written law has the peculiarity that it may become a useful tool in the hands of various power groups, moreover social orders wide apart from oneanother may make use of one and the same law, at least for a certain time. In order to know what the law is used for, we have to become acquainted with practice and the nature of power.

2. It is not only the code of criminal procedure in the classical acceptation of the term, but even a few special provisions of law will betray the one on the other decisive or critical turn in the evolution of Hungarian society. It was an obligation of

the state of Hungary undertaken in the armistice agreement and then in the peace treaty to prosecute the war criminals, the perpetrators of criminal acts against peace and mankind, together with their accomplices. To this end the Provisional National Government authorized by the National Assembly by decree No. 81/1945.M.E. called to life the people's tribunals. The decree of the Government received its atatutory sanction in the form of Act VII of 1945.

The procedure of the People's tribunals organized by counties departed from the general rules in particular by two features. First, the cases were tried by divisions at the beginning of seven, later of five members composed partly of non-professional judges. The division was presided over by a professional judge, whereas the assessors were delegates of the political parties united in the Front of Independence. The function of the administration of justice was not split up between the president of the division and the assessors: they established the facts at issue, they brought in a verdict of guilty, and determined the sanction to be inflicted jointly. Secondly, unlike the earlier regulation, the decree recognized a single instance of legal redress only instead of the usual two instance redress.
The appellate court of the people's tribunals was the National Council of People's Tribunals.

The people's tribunals while discharging the functions for which they were called to life, and gradually even more, developed to important political institutions. During the five years of their operation they tried the cases of several thousand persons and their sentences imposed punishments on the former landowners,

the civil servants, officers ideologists of the overthrown political system. In this way these tribunals were instrumental in the liquidation of the earlier power relations, and thus they advanced the evolution and consolidation of popular democracy. As a matter of course, however, in the struggle led by the Communist Party the activities of the people's tribunals were of a secondary or supplementary kind only.

3. After the lost war Hungary's economy was in an extremely grave situation. The economy of the country was wholly disorganized, production dropped, shortage of goods and inflation came upon the country. The clearing away of the débris, the supply of the public with the necessaries of life, the payment of reparations, all called for a reorganization of economy and the most strenuous efforts on the part of the workers.
The conditions at that time insisted on the effective defence of the economy of the country with the weapons of criminal law, the warfar against hoarding of goods, profiteering, exploitation. Act XXIII of 1947 called to life the special divisions called usury courts, or in public parlance, the labour courts. Their jurisdiction extended to offences against economy of greater weight. The president of the division was in all cases a professional judge appointed by the minister of justice. The lay assessors were workers elected by the collectives of large industrial plants. The cases were determined in a single instance, and no appeal was allowed.

The activity of the labour courts effectively advanced the consolidation of the reorganized national economy. The courts fended off onslaughts direc

ted against the new elements of socialist husbandry in agriculture, they protected industry which had in the meantime been transferred to national ownership. The stubborn fight of these courts against offences to the prejudice of national economy contributed to the birth of new power positions in economy.

4. It was yet on a single occasion that the legislature had to introduce extraordinary criminal procedure and organize special divisions for the prupose. This was at the time following upon the suppression of the rising against the popular democratic system in 1956. The people's tribunals organized at that time tried the cases coming within their jurisdiction summarily. The trial could take place without indictment or a preliminary session of the court. Apart from the special organization of the division procedure essentially took place in conformity with the general rules and principles.

5. The principal trends in the development of socialist criminal procedure may be traced in the changes that have taken place in usual criminal procedure, although a few elements of it such as popular or lay participation in the administration of justice and the single-instance legal redress have become established already in the extraordinary procedures dealth with above. Before the enactment of the first socialist code in 1951 several procedural and organizational measures were introduced which opened the path to, and even called for, the compilation of a new code. Among these measures there was the abolition of an institution similar to the grand jury in Anglo-Saxon law. This took place in 1946, when

the functions of the aarlier institution were taken over by the division appointed by the court itself. So also the institution of the investigating judge or magistrate was abolished. His duties were taken charge of by the procurator.

The most thoroughgoing changes were those introduced by Act XI of 1949. By breaking away from the earlier system of judicature by professional judges the act gave full recognition to the participation of the lay element, assessors, in criminal procedure. In appellate procedure the new act recognized a single instance only and abolished the second. The socialist legal systems setting out from the principle of the indivisibility of judicial powers replaced the trial by jury by trial by lay assessor. In the procedure the professional judge /the president of the division/ and the lay assessors determin issues of fact and issued of law, guiltiness, jointly and decide so also on the sanction to be imposed. In Hungary the establishment of judicature by lay assessors is synonymous with the participation of the people in the administration of justice, yet an other manifestation of the development and consolidation of popular democracy in Hungary.

Act XX of 1949, the Constitution of the Hungarian People's Republic, for a protracted period of time defined a few democratic principles of vital importance for criminal judicature. Chapter VI of the Constitution stated the principle of the unity of the administration of justice, the principle of collegiate judicature, the participation of the people, the independence of the judiciary, hearing in open court,

the right to defence, and many others, among them the principle of the equality before the law.

6. Of the four acts of legislation preceding the now effective code of criminal procedure especially four deserve particular attention. These are Act III of 1951, the first Code of Criminal Procedure, its amendment enacted as Act V of 1954, the law-decree No. 8 of 1962, i.e. the second Code of Criminal Procedure, and its amendment, known as law-decree No. 16 of 1966.

With the coming into operation of the Code of Criminal Procedure of 1951 the Code of Criminal Procedure of 1896 and its several amendments ceased to have effect. The Code of Criminal Procedure of 1951 was a piece of socialist legislation not only because it was called to defend the socialist conditions of society, but also because of its system, the principles embodied by it, its institutions, it presents, the features of socialist codes.

In conformity with this Code procedure set in with criminal investigation, mostly conducted by the police. Decisions of importance made in this phase had to be approved by the procurator. The trial in court was on the whole uniform with that established by the Code now in operation. The Code allowed a single-instance appeal. An enforceable sentence could be reversed by a new trial, or legal remedy granted to a protest on legal grounds. Chapter I of the Code defined the fundamental principles of procedure, viz. the guarantees of personal freedom, allowance to be made for extenuating and aggravating circumstances, the freedom of evidence, the bars to procedure

hearing in open court the use of the vernacular. Hence the Code of 1951 to a great extent already incorporated the principles characteristic of the Code of Criminal Procedure now in force. There are, however, certain points where the differences between the two codes are quite striking.

The codification of criminal law in the 'fifties stood for the idea of unification. In criminal law the earlier distinction between felony and misdemeanour ceased to be recognized and there remained only the uniform category of criminality. Later even the category of petty offences was abolished, when these were turned into either criminal offences or acts against public administration, namely summary or minor offences. The idea of unification was given expression also by the Code of Criminal Procedure of 1951. Procedure was uniform before the district court as well as the county court, which meant a departure from the earlier law, when procedure in the district court differed from that in the county court. Nevertheless summary conviction, the bringing before the judge directly, as simplified form of procedure, remained in force as late as 1954. The keystone on unification was placed in 1954.

7. When the tragical consequences of proceedures instituted unlawfully had become known, the need came at the same time to be recognized for a reinforcement of the guarantees of lawful procedure. It was partly the knowledge of the injuries and the miscarriage of justice that gave the impetus to the enactment of Act V of 1954, the amendment of the Code of Civil Procedure. The act amended the Code in three respects. First, import-

guarantees were added to the provisions governing the stage of criminal investigation, among them what was given the term of declaring a person accused. Essentially this declaration was identical with the preliminary disclosure of the charge. If the authority in charge of criminal investigation was in possession of a sufficient number of data for the establishment of the perpetrator of the criminal offence, a properly substantiated decision had to made of calling the person to account as accused. The decision had to be communicated to him. After the termination of investigation the investigating authority allowed the charged access to the files, who could comment on them and even furnish evidence.

Secondly, the amendment of the Code restated the provisions relating to the preparation of the court hearing or trial. On receipt of the indictment the court was bound to examine the case in what was called a preparatory session when the law held out a prison term of more than two years for the offence of which the accused was charged, or the accused was under remand. In the preparatory session the court examined the case in camera, it had to obtain certainty whether or not the charge was lawful, whether or no conclusive evidence was available, whether or not there was a statutory bar to a trial. The court was free to stay or to suspend proceedings. As for its functions the preliminary session remined of the earlier quasi grand jury institution of Hungarian criminal procedure, however, with the by no means negligible difference that a division formed of the same persons could act in the preliminary session as in the subsequent stage hearing the case. This meant a higher degree of responsibility of the judges taking part in proc·lure.

Thirdly, far-reaching modifications were introduced by the amendment in appellate procedure. The new act considerably narrowed down the reformatory jurisdiction of the court of appeal. On the other hand it extended its powers of voidance. The court of appeal set aside the sentence of the first instance against which an appeal had been lodged if the rules of procedure had been gravely violated, if the sentence was not properly substantiated, i.e. the circumstances of the case had not properly been cleared up, the court of the first instance had failed to give the reasons for its decision, the facts as established by the first instance were incomplete. The court of appeal ceased to be a court establishing the facts, at issue and its reformatory powers extended only to issues of law: it could modify the legal qualification of the act. The amendment formulated the prohibition of the increase of punishment /reformatio in peius/. The court of appeal could not inflict a graver punishment on the accused when the appeal was lodged on the ground of leniency. The consequence of the extended powers of voidance was that the court of the first instance had to re-open the case in conformity with the instructions of the court of appeal.

8. The amendment of the Code of Criminal Procedure of 1954 provoked criticisms from many sides. That was objected to were the many superfluous formalities and the proliferation of clerical work at the courts. The extension of the powers of voidance and the obligatory preliminary sessions imposed an excessive load on the courts of the first instance. In the drafting stage of the Code of Criminal Procedure the legislator made the demands forth coming from forensic practice subject to a careful analysis and tried to meet demands considered justified.

The Code of Criminal Procedure of 1962 was strictly speaking not an entirely new piece of legislation. At least two thirds of its text is uniform with that of the earlier Code, and also its structure and arrangement agree with those of its predecessor. Amendments of moment related to the stage of criminal investigation, to the preliminary session and to appellate procedure.

Somehow to mitigate the gravity of declaring a person accused §. 108 of the new Code authorized the institution of proceedings against the suspect even before his being declared accused. Accordingly the authority in charge of investigation could summon the persons "suspected" of a criminal offence even before a charge was brought against him, and could hear him, take him into custody, issue a warrant of domiciliary search, etc. The person could be declared accused when there was well-founded suspicion of his having committed the offence. In practice and theory, however, the lines of separation between "open to suspicion" and open to "well-founded" suspicion are often apt to shift.

Secondly, the new Code brought about essential changes in the institution of the preliminary sessions. The holding of a preliminary session ceased to be obligatory dependent on the gravity of the sanction held out for the offence. On receipt of the indictment and the files of the case the president of the division of the court decided on the holding of a preliminary session within his own discretion. However, it was within the powers exclusively of the preliminary session to decide on the remission of the case, the staying of proceeding

on remand, and certain other questions of importance.

Thirdly, the new Code introduced reforms in appellate proceedings. The Code of 1962 authorized the court of appeal to take evidence, if the facts had been established by the court of the first instance imperfectly only, the circumstances of the case had not properly been cleared up etc. Still the powers of the court of appeal to take evidence were limited. On hand of the evidence taken the court of appeal could complete the facts as established by the first instance and carry through certain corrections.

9. In 1966 the amendment of the Code of 1962 was born. The purpose of the amendment was in certain spheres to accelerate and simplify criminal procedure. To this end it introduced new forms of procedure. The most important of these new forms was the bringing to trial, or before the court, summarily. In offences coming within the cognizance or the district court the procurator could within three days reckoned from the perpetration of the offence bring to trial the suspect without an indictment, provided, however, that the sanction imposed by criminal law on the offence was a prison term of less than five years. Another condition was that the establishment of the facts at issue and the legal qualification of the case should be void of complexities. Other conditions were that evidence should be available, the offender should have been caught in the act, or should have confessed to having committed the offence. This kind of procedure was resorted to in cases of rowdiness, prostitution, vagrancy and certain traffic offences. The cases were tried in conformity with the general rules, still it

should be remembered that counsel for the defence had to attend and, before the trial was opened, he had to be made properly acquainted with the case.

In the procedural institution of bringing to trial or summary proceedings the idea of a segregation and differentiation of the procedural forms were already discoverable. This idea manifested itself even in the provisions purposing the simplification of procedure. By approval of the procurator the authority in charge of investigation could deny the institution of investigation in cases coming within the cognizance of district courts, where the dangerousness of the act to society was negligible. In certain sufficiently simple cases the Code even permitted the use of the files of earlier cases of petty offences or disciplinary procedures. In the trial phase, however, hearing was obligatory in conformity with the general rules. It should be noted that in practice recourse to this simplification was had extremely rarely and on exceptional occasions only. The Code permitted the waiving of investigation and of the act of accusation in cases which by the side of offences of a higher degree of gravity were for the purpose of the institution of procedure of little significance.

II.

1. The idea of differentiation in criminal procedure came into prominence with yet greater emphasis and also the question was put on the agenda whether it was not necessary to reconsider the potentialities offered by the law and then proceed to codifying them in a uniform system.

The question was raised even in the form. Whether the rights of the accused, of counsel for the defence, or of other persons would not be detracted from by a simplification of procedure.

Criminal procedure armoured with all possible safeguards keeps the personal freedom of man, his dignity, in view, and it is a general conviction that the acceleration or simplification of procedure does by no means justify the diminution of the procedural guarantees. Where simplification has good chances is in the first place the phase of criminal investigation, the preparatory session and appellate procedure. In the stage where the case is heard or tried the chances of simplification are poor.

An impetus to the splitting up of ordinary procedure into two sections was given by law-decree No. 27 of 1971, which divided the criminal offences into two categories, viz. felonies and misdemeanours. Then soon of necessity and in an urgent form the question was asked, whether misdemeanours, which by nature were of lower weight than felonies and on which penalties of a milder kind were imposed, should not be determined in proceedings somewhat simpler than those established for felonies.

2. The final answer has been given by Act I of 1973, the new Code of Criminal Procedure, effective since January 1, 1974. On drafting this Code the legislator had in view the reinforcement of socialist legality and the demand for the safeguard of civic rights. Proper attention was given to the division of the criminal

offences into two categories, viz. felonies and misdemeanours, efforts were made to simplify and to speed up proceedings. As regards the evidentiary rules much was done to allow a wide scope for the application of the new achievements in science and technology in criminal procedure.

3. The new Code of Criminal Procedure distinguishes two kinds of ordinary procedure, viz. procedure in felonies and procedure in misdemeanour. In procedure in misdemeanours the rules of criminal procedure have to be applied with the departures de fined by the Code. The district courts have cognizance in misdemeanours and a small number of felonies named in the Code on which a penalty of imprisonment for less than three years is imposed.

In procedure in misdemeanours investigation has been simplified. Instead of taking minutes the authority draws up a report of the evidence given by witnesses, of the survey, the experiment as evidence, the distraint of property, bodily search, and the hearing of what is called the completion of information. No report can be drawn up when the vernacular of the person heard is a language other than the Hungarian. The hearing of a person may be waived when this person has earlier been heard in disciplinary proceedings, proceedings in a petty offence, or other administrative procedure instituted against the suspect, and also when the files offer conclusive evidence.

In procedure in misdemeanours a judge ordinary acts. The rules of procedure essentially agree with those governing procedure in felonies. In procedure

in misdemeanours the court of appeals has been invested with rights extending beyond those usual in appeallate proceedings in felonies. The court of appeal may take evidence within a wider scope and when the sentence of the first instance is not properly founded, the court of appeal may establish facts differing from those established by the district court. The court of appeal may not, however, on hand of evidence taken or the contents of the files establish the guilt of an accused who has been acquitted by the court of the first instance, or against whom procedure has been stayed.

4. The new Code has preserved the special procedures established earlier, such as the institution of private prosecution, procedure before courts martial or military tribunals, and against juvenile offenders. Still the principles of these special procedures agree with those of ordinary procedure. Departures from ordinary procedure are such as are require by the nature of the case or the procedure. As a special procedure the bringing to trial or summary procedure following upon simplified investigation and on an oral charge /without indictment/ has been maintained also by the new Code.

In its principal features the new Code of Criminal Procedure has preserved the process of procedure as established by the Code of 1951. Except for private prosecution, procedure begins with criminal investigation. Thereafter the procurator beings an indictment against the accused and refers the case to the court. The court institutes the necessary action for the preparation of the trial. The trial of the first instance may be followed by an appeal of a single instance. An enforceable sentence

may be reformed by a successful motion for a new trial, or the protest on legal grounds brought forward by the Procurator General or the President of the Supreme Court.

5. Chapter I of the new Code of Criminal Procedure defines its purpose. Accordingly by the regulation of criminal procedure guarantees have to be provided for the exploration of criminal offences and the application of the provisions of the criminal law of the Hungarian People's in conformity with socialist legality.

The Code also enumerates the fundamental principles of criminal procedure. It formulates the principle of ex officio procedure, the presumption of innocence, the safeguards of personal freedom and other civic rights, the principle of the free appraisal of evidence, the right to defence, the right to legal redress, the use of the vernacular, the distribution of the procedural functions, oral procedure and directness, and the principle of trial in open court. It is for the first time that a Hungarian code of criminal procedure has enumerated the cardinal principles of criminal procedure in as detailed a form as the present Code. The statement will hold its own even if certain principles have besides the Code been defined by the Constitution or pronounced also by Act IV of 1972 on the organization of the Judiciary and Act V on the organization of the Procurator's Office.

The principle of the presumption of innocence appears in a code of criminal procedure for the first time. On defining this presumption the Code lays stress on three elements, viz. first, in criminal procedure the onus probandi rests on the proceeding authorities. Secondly, the accused

cannot be bound to bring forward evidence of his innocence. Thirdly, a fact not properly proved cannot be appraised to the prejudice of the accused. The presumption of innocence has been formulated by the Code as follows: No person shall be considered guilty until his responsibility under criminal law has been established by an enforceable decision of the court.

For the safeguard of personal freedom and other civic rights the Code declares that in criminal procedure personal freedom and other civic right shall be respected and these rights cannot be restricted unless in cases and in the manner stated by law. In the course procedure the authorities have to ensure the legality of coercive measures affecting the civic rights.

The guarantees of personal freedom receive special stress in the provisions relating to remand. No person can be confined to remand unless he has been informed of the offence of the commission of which he is suspected. In the course of criminal investigation a person cannot be confined to remand unless by special approval of the procurator. The term of remand cannot as a rule extend beyond one month, however, this term may be extended by the superior procurator. After the lapse of three months remand can be extended only by the Procurator General. Still even in this case the maintenance of remand has to be substantiated by giving proper reasons monthly. Remand can be extended to beyond a year only by the Supreme Court.

Special stress should be laid on the functions of the procurator at remand and also in criminal

investigation in general. The procurator's office is an authority independent of the investigating authority /the police/ and is subordinate to the Procurator General, who answers in person to the Legislature. The procurator supervises the lawfulness of investigation and remand, and is bound to maintain legality.

The Code brings under regulation the use of the vernacular in a new form /in conformity with the Constitution and the Act on the Organization of the Judiciary/. Under the earlier law only a person ignorant of Hungarian could use his own mother tongue. The new Code declares "In criminal procedure every person can use his vernacular in both word and writing". i.e. irrespective of whether or not he is acquainted with the official language of the country, i.e. the Hungarian. This provision is yet another step towards the attainment of the principles of the Leninist policy towards nationalities.

There was a controversy on the contradictory nature of procedure also in socialist as well as Hungarian legal literature. It remains a fact that for the discussion of the question in the socialist legal system what was characteristic was not the prevalence of the abstract, Simon pure principle of contradictoriness. In the socialist legal systems the court performs an activ part and for the establishment of the truth it may decree the taking of evidence independently of the motion of the parties and for that manner it is in no way bound to obey the motions of the parties. The procurator has to consider the damning evidence and aggravating circumstances as well as the exculpating and extenuating circumstances. And yet there is no doubt that in the trial stage the functions of the accusation, the defence and the administration of justice are clearly distinguishable.

This has been given expression in the new Code of Criminal Procedure among the fundamental principles of procedure, together with the principle of the equality of the parties, viz. that in judicial procedure at the taking of evidence the prosecution, the accused and counsel for the defence are invested with the same rights. At the same time the Code declares the principle that the court is tied to the charge. Judicial procedure cannot be instituted unless on a lawful charge and the court can decide on the responsibility under criminal law only of the person against whom the charge has been brought and only on the ground of an act defined by the indictment.

6. The Code confirms the rights of the accused. The accused may rightfully demand to be made acquainted with the criminal offence for which procedure has been instituted, or is in progress, against him. In the course of investigation he may be present at the deposition of the expert, at the survey, at the experiment as evidence, at the presentation for recognition. In conformity with the rules he may inspect the files immediately before the completion of investigation. Still even while investigation is in progress he may inspect the minutes taken of his own deposition and of the procedural acts at which he has attended. In each phase of the procedure he may bring forward motions, make comments, when the case is tried he may address questions to the persons heard, he may avail himself of the privilege of the last word, and give notice of appeal.

To the prejudice of an accused under remand only such restrictions may be applied as are necessary for the achievement of the ends of criminal procedure

or are required by the rules of the prison to which the accused has been committed. The accused under remand may communicate with counsel after his first hearing, orally and not supervised, or in writing under supervision. He may communicat with his dependants or any other person orally and in writing. The dependant named by the accused mus be informed of the fact of arrest, care must be taken of minors without supervision, the property and the home of the accused under remand must be secured.

The rights of counsel for the defence have been widened. Unlike the earlier provisions the Code decrees the compulsory attendance of counsel not only at the trial, but already during investigation. If the accused has not briefed counsel the court will appoint counsel for him. The attendance of counsel is obligatory when the law decrees the imposition a punishment of a prison term of more than five years on the offence, if the accused is ignorant of the Hungarian language, if he is under arrest, if he is imbecile or insane, or is by evasion of the law abroad and therefore procedure takes place in his absence.

The new Code has extended the rights of counsel at criminal investigation. He may attend the hearing of the suspect, may even move the putting of questions. He may be present at any act of the investigating authorities where the accused may also attend. He may inspect the files of the investigating authority, at latest when before the completion of criminal investigations the minutes or other documents are made known.

To safeguard the interests of the accused

the Code defines not only the rights of counsel, but also his duties. In the interest of the accused counsel is bound to make use of all lawful means and ways of defence without delay. He has to advise the accused of all lawful methods of defence and of his rights. He has to promote the exploration of all exculpating facts or such as may mitigate the responsibility of the accused. As a rule only lawyers can act as counsel. In certain cases of minor importance of which the district court has cognizance also the statutory agent, or by a power of attorney, a relative or next of kin of age of the accused may plead for the accused.

7. The procurator performs a dual function in criminal procedure. In the phase of investigation he may also perform acts of investigation. His principal function is, however, superintendence over the lawfulness of investigation. Certain decisions of importance made by the investigating authority cannot become effective unless the procurator has given his consent. Such are e.g. the denial, suspension or termination of investigation, confinement under remand. In the process of investigation the procurator may take charge of the case, he may have the files handed over to him, and may attend at acts of the investigating authority. Applications for legal remedy or complaints are determined by the procurator.

The procurator lays the indictment against the accused and pleads for the prosecution at the trial. /Private prosecution is an exception, still even here the procurator may intervere for the prosecution./ Under the earlier code at hearings in the district court the procurator was bound to attend on exceptional occasions only.

The demand forthcoming from the field for the extension of the participation of the procurator on grounds of both principle and practice was becoming general. The principle of bilateral hearing of the parties, the enforcement of the principle of contradictoriness, etc. in fact insisted on the participation of the procurator. The new Code keeping before it the demand and possibilities of judicial practice, has extended the sphere of cases where the procurator is bound to appear also at a trial before the district court. In conformity with the new Code the procurator is bound to appear at the hearing of the first instance whenever a felony is tried. In trials of misdemeanours the procurator has to attend when the accused is under remand, he has notified the court of his intention to attend, the court has obligated him to appearance, or the accused has pleaded insanity and therefore decision has to be made on the question of compulsory treatment at a mental home.

The Code consistently enforces the principle of the tiedness of the court to the charge, i.e. the court cannot go beyond the charge brought in the bill of indictment. According to the earlier code the court was under no obligation to stay proceedings on the withdrawal of the charge by the procurator. Under the law now in force this the court cannot do anymore. The legislator has set out from the assumption that the withdrawal of the charge amounts to the w.t of a charge at all, and therefore the court cannot give a ruling on the substance, i.e. on the guiltiness or non-guiltiness of the accused. This provision increases the responsibility of the procurator for the preservation of legality, i.e. that the perpetrators of the offence should be tried, an only they.

8. The new Code of Criminal Procedure has carried through considerable changes in the composition of the divisions of the court. Unlike the earlier code, the new Code recognizes trial by a division of five in the first instance, instead of the earlier trial by a division of three /one professional judge and two lay assessors/. Practice has shown that often the division of the court had to carry an excessive load when it came to try a case of a high degree of complexity, e.g. there was a large number of persons to be tried, the establishment of the facts at issue and the law at issue involved difficulties beyond the usual, and there was an excessive volume of files. Therefore in conformity with the new Code the county court or the military tribunal may have cases tried by divisions of five, viz. devisions formed of two professional judges and three lay assessors, if the case is one of prominent importance or of extreme complexity. In the administration of justice the rights and duties of both the professional judges and the lay assessors are the same.

Contrasted with the divisions of five the new Code has established the institution of a judge ordinary. Already the amendment of the Constitution of 1972 declares that the law may give recognition to exceptions from under the rule of administration of justice by a division of the court or with the participation of lay assessors. Hence procedure by a judge ordinary, recognized ... cases of misdemeanour only, must be considered an exception. In the present instance, however, there is a duality of exceptions, viz. first, an exception from the principle of collegiate judicature, and, secondly, from the principle of judicature by lay assessors. These exceptions have be...

made on considerations of economy rather than theory. Cases where the facts at issue and the law at issue are relatively easy to determine and procedure may be brought to an end at short notice do not justify the withdrawal the lay assessors from their daily routine or even productive work. There is hope that the professional judges now proceeding as judges ordinary, will be able to attend to the lawfulness of procedure and enforce the pronciples of the legal policy of the country. The brief spell so far allowed to the operation of the institution of the judge ordinary and the scantiness of experience so far gathered do not as yet permit an appraisal of the institution.

9. The rules governing evidence were perhaps those which were most in need for a reform. The reform itself had to satisfy a duality of considerations. First, the new law of evidence had to be elastic enough to be capable of receiving into it the achievements of science and technology, and secondly, definitive enough to become a safeguard of legality.

The new Code of Criminal Procedure continues to give priority to institutions whose technical equipment and installations render them capable of giving an expert's opinion in cases of complexity rather than to call, on individual experts. As a matter of course expert examination may take place also in the absence of the authority or court of law. The accused, the injured party and the witness have to tolerate the expert examination. Among the material proofs the Code expressly mentions objects which record data by a mechanical or chemical process. The same applies also to documentary evidence. The taking of evidence called by the earlier code "investigation by

way of experiment" has in the new Code received the designation of "evidence by way of experiment", may be performed also by the court. Essentially this evidence consists in the artificial "playback" of the perpetration of a criminal offence, or a phase of it, at the site or under similar circumstances. By this way the statements of the witness or accused may be chacked for their truthfulness.

The Code declares the principle of the freedom of ecidence in the meaning that "free use may be made of any evidence which is suitable for the establishment of the facts at issue..." Hence the Code contains no restrictions as regards the choice of the means of proof or of evidence. Still the participation of an expert has been made compulsory when an inquiry has to be made into the mental condition of the accused. This obligation may be extended also to other cases such as e.g. the establishment of the cause of death by autopsy, etc. Practice and socialist jurisprudence equally reject recourse to means endangering the personalit and consciousness of the person at the hearing, such as the administration of drugs or hypnosis. In like way Hungarian law does not approve of the use of a lie detector, as a means not infallible an besides uncapable of replacing the discretion of the judge.

The Code deals with the lawfulness of the taking of evidence as a question of utmost importance. It expressly decrees the observance of the provisions governing examination or evidence. It also decrees that by duress, threats or any other similar methods, no person can be forced to make a confession. The sanctions of these provisions are of a procedural kind or such as come within

the purview of criminal law. The court of appeal will reverse the sentence, and annul procedure of the court of the first instance if the rules of procedure have been violated in as grave a manner as to influence the sentence substantially. A case of this kind is the taking of evidence in a manner conflicting with the law. The sanctions under criminal law have been taken up in the provisions relating to prejury, false accusation, examination under duress.

10. The new Code, too, has preserved the earlier system of appellate proceedure. The right of appeal has been left unrestricted, as before. Legal remedy is of a single instance. As a principal rule the court of appeal will irrespective of who and on what ground has lodged an appeal supervise the whole sentence appealed against and also the preceding procedure. Certain measures have, however, been taken for the extension of the powers of the court of appeal at the establishment of the facts at issue. According to earlier legislation the court of appeal could take evidence "within a narrow scope" only. The present Code does not recognize such restrictions. The limitation has, however, been retained that evidence cannot be taken of facts at issue as a whole, and its taking has to be restricted to questions of detail. In procedure in misdemeanours the powers of the court of appeal at the establishment of the facts at issue have been extended. The court may not only "supplement" or "correct" the facts at issue to the prejudice of the accused /provided that the procurator has lodged an appeal with the court to this end/, but may even change them. There is, however, an important restriction to this right: the facts at issue once established cannot be changed

to the prejudice of the accused acquitted by the court of the first instance, or against whom proceedings have been stayed. /An accused once acquitted cannot be sentenced on the ground of new facts at issue unless by trial in the court of the first instance after the earlier sentence has been annulled./ The reformatory jurisdiction of the court of appeal has been widened to the same extent as its powers of establishing the facts at issue. On the ground of the facts at issue supplemented, corrected or changed the court of appeal may, within the limitation of the prohibition of an increase of the sentence, change the qualification of the offence or the punishment.

III.

1. Both society and the individual person expect from the law of criminal procedure that it be an appropriate legal means for the exploration of criminal offences, the establishment of criminal responsibility, and at the same time be a safeguard of those who are not guilty of a criminal offence. The present Code of Criminal Procedure does justice to these expectations. In Hungary in criminal judicature as well as in all other fields legal order dominates. The administration of justice is properly balanced and free from extremes. For this tribute may be paid to a number of factors, such as the legal policy, the laws and to those in charge of the application of the law. During the past thirty years not only the laws have changed and, we may safely state, improved, but also the professional standards of the authorities in charge of investigation, the procurator's office and the law courts have risen. In the meantime also a legal policy emphasizing legality has struck roots in the country.

2. We have tried to demonstate some of the landmarks in the trends of the changes in the law of criminal procedure. In the following we should like to point out certain democratic and humanitarian traits of the changes. Democratism in criminal procedure stands for the administration of justice by and for the people's power. Still this is not all, for democratism manifests itself also in the principles of criminal procedure, such as the election of the judges, their independence, the presumption of innocence, the freedom of defence, and the guarantees of personal freedom. When now Hungarian Criminal Procedure is placed in juxtaposition to the principles laid down in the International Agreement on Civic Rights the statement may justly be made that Hungarian criminal procedure is well adapted to the principles and rules of this instrument of international law.

Often we are unable to free ourselves of the impression as if there were an intrinsic contradiction in the association of humanism, humanitarianism with the meting out of the extreme penalty or the deprivation of a person of his freedom. As if the voicing of humanitarianism were also out of place in cases of men sentenced for murder, rape, the infliction of bodily torture, looting, etc. In fact in the past centuries criminal procedure and humanism were mutually exclusive concepts. Even today one is heard put to it when it comes to suppress aversion and repugnance to those guilty of crimes, and have human dignity recognized and honoured also in them. Yet for criminal procedure the only position permissible is to recognize that the suspect or accused is not yet under a sentence, it is

by no means certain that he will be convicted of the crime laid to his charge, and therefore the human being has to be respected in him. This is the approach of the Hungarian Code of Criminal Procedure to criminality and this is the principle permeating it. Humanism of this kind does not subsist on sentimentalism: it is of a wholly rational kind. It relies on the conviction confirmed by experience that the all-social problem called criminality is in the last resort a human problem and in addition a problem which cannot be solved unless by humane or humanitarian methods.

3. As has already been made clear, the evolution of Hungarian criminal procedure has directly been influenced by the exigencies of society and also political needs. Occasionally these have manifested themselves in each a short-lived provision of law, the organization of a special tribunal or the institution of a special procedure. The law, the Constitution, or the Code formulating regular criminal procedure incorporate theses and principles for whose shaping and establishment efforts have been made also on the part jurisprudence. What redounds to the merit of Hungarian legal sciences, and where have they failed, are questions which will have to made subject to special investigations. Still the role of socialist jurisprudence, and within it of Soviet jurisprudence, is clearly recognizable in this evolution. Several in stitutions, such as declaring a person accused, the system of appeal extending the reversal or annulment of a sentence and its concomitant single-instance legal redress and in particular the participation of lay assessors in judicature, are as many items manifesting the influence of a jurisprudence transmitting Soviet

experiences in judicature. This also explains why in its system, principles, institutions Hungarian criminal procedure bears resemblance to other socialist codes of criminal procedure, although in many of it details it is wholly specific.

4. The law of criminal procedure cannot be kept apart from criminal law. It is called to life to apply criminal law in practice and so the two disciplines grow to become mutually interrelated means in the struggle against criminality. Still it follows from the essence of socialist society that it cannot content itself solely with the means offered by criminal law. Socialist society wants to explore the causes of criminality, the soil and climate fostering it, and tries by social and cultural measures and institutions to prevent crime from being committed. The task is one fraught with almost insuperable difficulties and the path to be covered is an arduous one. Here criminal procedure has a significant role, still judged by the standards of society it is only a secondary one. And exactly this is the most outstanding recognition of all.

Dr. Tibor Király

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