

UNIVERSITY OF MISKOLC
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**COMING INTO EXISTENCE AND LEGAL HISTORY
DEVELOPMENT OF THE SPECIAL CRIMINAL RULES
CONCERNING THE JUVENILS IN HUNGARY IN THE
BEGINNING OF THE 20TH CENTURY**

Thesis of the PhD Dissertation

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I. Summary of the task of the research, the aims of the research

Criminal regulations regarding the juvenils in the chosen period is a difficult aim. It is necessary to show the international regulation because taking into consideration the principles and laws in those countries tha law norms relevant for the juvenils were created in our country. The goal of the PhD thesis to show the establishing and the development of the Hungarian criminal material, legal proceedings of the rules concerning the juvenil perpetrator circle that is different from adults because of their biological, psychic features.

The aim of my research first of all is to analyse the circumstances of the creation and the direction of the rules XXXXI of 1908 and VII of 1913 about the separating of the criminal law of the juvenils. I examine in the thesis speeches of the Members of Parliament that were made concerning the relevant criminal law of the juvenils in the creating of the above mentioned two laws.

I want to make an accent on the fact that our first Code of Law that represents the historical antecedents of the novel that didn't classify the criminals by their age so I will describe it only in this aspect. It connects the punishment of the juvenils to the accepting of the crime so it considered the type of the crimes, their social danger as in the case of adults. It didn't take into consideration their age features. I refer to some of the paragraphs of the XXXIII law of 1896 about the criminal code only for the sake of solving the practical questions of the criminal procedure according to the new principles.

The actuality of the research work shows that for the judge of the juvenils differently from adults – financial norms and norms of the proceedings of the creating the criminal rules – the opinions of the contemporary lawyers, politicians haven't been evaluated so far. The difficulty in the research was that from the chosen point of view the topic wasn't analysed. The experts dealt with the

punishment system and the norms of punishment examined by me in the Hungarian criminal thought.

In the first part of the PhD thesis I outline coming into existence of the North-American criminal institutions – childcare institutions, reformatory, letting for probation, patronizing institutions – that influenced Hungarian creating of laws. The new criminal code of the juvenils set up in North-America advocating prevention of the committing the crime and the improving education of the juvenils. Understanding of the new criminal law was adopted by the West-European countries. I draw a parallel between the indtitutions set up for the sake of the juvenils in the special criminal law of the juvenils in the American and European countries. I will analyse the establishing of the Hungarian childcare and patronage from the beginning of the creating of the child-care law in 1901. I will show how these institutions served the defence and support of juvenils and children who comitted crimes and started to decay. One of the aims of my research is to demonstrate close connection between the criminal law and child-care.

During the PhD thesis I want to show in details how the criminal adjudification of the juvenils was realized in some of the American and European countries. The question is why American development of law influenced the European and Hungarian creation and practising of the Criminal Code. During the research I want to highlight the importance of the juvenil court that was naturalized in the Hungarian law in the analysed period. I want to study which reform principles influenced the creation of the financial and proceeding norms concerning the juvenils. I examine the goals of Hungarian criminal law for the juvenils in the aspect of financial and procedure norms. The question occurs if the re-examination of the Csemegi Code was justified. I search the answer for the question if in the examined period our Members of Parliament raised their voices for the sake of adopting the new principles into the Hungarian law, whether there were in the Parliament people who weren't touched by the wind of the change. The

question is why in the Criminal novel weren't created the proceeding norms beside the financial norms. My research extends to the question if there were any problems while using of the rules of the novel for juvenils in practice, whether the contemporary lawyers gave solution and answered for them. I would like to show the created juvenil court by the Hungarian legislation in what measure approached the original American institution. I analyse how the law about the criminal court in the examined period fits into the row of similar laws on the continent.

During my research I look for the answer for the questions who are legally entitled to act in the cases of the juvenils and what are the expectations against them. Who were the creators of the law and what did they take into consideration when they urged codifying of the criminal rules regarding the juvenils. Which regulation of the VII. law of 1913 was more difficult to enact.

II. Source material and ways of the research

Methods of research while analysing are of different types. There is the interpretation of the criminal law, comparing of methods and at given places introducing the norms of international law. During the thesis I applicate comparing of the laws and the descriptive-analysing method. The subject of the PhD thesis confines only for Hungary. To understand the Hungarian regulations and with the aim of comparing in some cases I will refer to the international regulation. I discuss the financial criminal law but they are connected with the norms of proceedings. The new criminal institutions demanded new criminal laws.

I outline the creation of the criminal law in Hungary and approach it historically. The method is a dogmatical and historical fact supplemented with the research of history of law and conclusions that can be detracted from the point of view of European countries. I will outline the background of the law and comparing the speeches in the House I will point out the considerations that emerged in the norms of the Criminal Novel and Juvenil Court.

I analyse the juvenil financial law and the proceedings in the chronological order. I examine in the analysed period the laws that refer to the juvenils and were adopted by the Hungarian legislation, laws of punishment and changes as a result of historical development.

The research of the legal history made possible to compare the national and the foreign criminal laws in the examined period. Hungarian legislacy concerning the juvenils tried to follow the international development. I analyse the principles, rules and institutions of the foreign laws and fitting them into Hungarian law and order. Especially the practice of law in America gave me point of reference to make right conclusions.

I work up the relevant special literature. In the analysing the basic points were works of Pál Angyal, László Fayer, Ferenc Finkey and Rusztem Vámbéry.

Jenő Balogh's writing that appeared in 1909 was a prominent theoretical and practical guide that was created by the author taking into consideration his foreign practice of law. The source material of high value analyses the contemporary creation of the juvenile court.

Working with the primary sources helped the historical recognition. I put into the centre studying of the written materials that can be found in the Library of the House from 1906-1910 and 1910-1915. I got material of the circumstances of the creating of the regulations for juveniles in the criminal novel of 1908, opinions of our Members of Parliament and about the recommended law regarding the establishing of the Juvenile Court. Some patronage associations and documents, diaries and reports of that period were source materials. Except of the special literature and primary source I paid great attention for the published press materials of a given period. I studied especially the articles of the Law Journal. I noticed that the workers of the press took part in the preparatory works of the law. On their pages there were debates about the creating of the law. The paper that appeared on Fridays was an important document in getting acquainted with the codification tendency of the examined period. It dealt with the theoretical and practical questions of the contemporary creating of the law and their use with criticism and recommendations.

In the research first of all the bigger sized scientific articles gave the point of reference. To know the contemporary law institutions helped the information published in smaller but important in the professional point of view papers. I studied in detail articles referring to the underprivileged, tramps, beggars, foster-children, living in one-parent families or exposed that appeared in the Budapest Review and Law Review. Writings were recorded by the famous lawyers in the time of happening of the cases. They made an effort for verifying information.

III. Summary of the results of the scientific research

I felt important to outline the finishing period of the criminal science from 1870s to 1910s in the respect that how our lawyers and Members of Parliament wanted to improve the situation of the criminals whose personality was in development, their mental, emotive, volitional skills were in formation. Inestimable is the fact that those who took part in the creation of laws realized that the methods of punishment were not applicable. Instead of them the new methods were good for reforming the morality of juvenils with the help of the child – care work. I outlined that the criminal law in the crimes of juvenils gave up the old law system.

I had to admit comparing with the system of present financial law and proceeding regulation. The thesis makes richer the picture of the era by analysing the contemporary criminal law and noticing interesting facts that weren't known before. Because of the limit of the size of the thesis I want to analyse this topic in the future taking as a basis the international professional literature and compare the examined norms with the present criminal regulations.

After summerising the results of the scientific research the undermentioned can be concluded.

1. In the formation of modern criminal law the first step was accepting of the special criminal law with the special circle of perpetrators. Birth and strengthening of Juvenil Court and being widespread in the European criminal law practice in the beginning of the 20th century took place.

2. In the examined period there was established a special judicature and social policy organization and it was unique because it could validate the criminal power of the state with definite criminal circle. Followers of the new criminal ideas isolated from the adult criminals decayed, morally endangered juvenils. With these people dealt the Juvenil Court. In this connections its range of duties could be defined: the reformation, education and saving of the juvenils who committed

crime. Its importance was that in the course of action it gave special judgement for juvenils.

3. I considered it necessary to back up included in the 2. point to examine the dominating ideas of the criminal code of the 19th century. The system of the previous era was modified: instead of the capital and corporal punishment they enacted the imprisonment and penalty but the didn't make difference between the perpetrators and didn't take into consideration their age. There weren't paid attention to the personality of the perpetrators while judgement of the crimes committed by the juvenils. Though they examined the mental development of the juvenils, in some countries they can state the criminal responsibility even at the age of 7 or 9. To support it there are some undermentioned arguments. On one hand against people who were in front of the Court were used the same types of punishment as for adults. Progressive lawyers of the era were indignant by capital punishment that was used against people who were under 18. On the other hand the insufficiency of the criminal regulation was that in most of the countries the young age was only a mitigating circumstance.

4. The reform movements that started in the 19th century admitted that juvenils committed crimes could be approved and transformed. Realization of it thrust into the background of the retaliation especially at the sight of the exasperating datas of the criminal statistics On the turning of the century the number of the juvenil perpetrators increased. It was necessary to make a quick solution for the sake of reaching the aims of punishment. Famous representatives of the criminal science made reforms, first of all the idea of personalizing was admitted. Perpetrators were divided into groups and were treated in an appropriate way.

5. The state and the society created a defending mechanism against the perpetrators of the definite age. The child – care together with the criminal law

aimed the defence of the perpetrators who were solitary and morally endangered children and youngsters.

6. Analysing the historical roots of the Juvenil Court and implantation it into the Hungarian law the researches outlined that the special organ of the criminal law was organized by the practical reform ideas. We can't omit the influence that was made on each other by the society defending movements because it can be stated that the criminal law of juvenils was connected to the duties of the child – care.

7. Developing of the law in the continental countries lag behind North-American countries that have short historical background. These countries made an accent on the practice and they put into the centre the child – care and made efforts on the defending of the juvenils. This work had good results, it became indisputable that it helped the endangered criminal juvenils with their education and to be successful they enacted the new law institution. Letting for the probation, position of a patron, reformation and the juvenil court became the American achievement in the life of law. Following the North-American criminal law in the European practice of law was adopted the idea that the underaged couldn't be considered as a criminal even if he committed the crime. To defend juvenil criminals there were created special laws.

8. Despite the fact that in 1890s the modern lawyers in our country started fighting for the revision of the archaic rules concerning the juvenils in the Criminal Code, continually put off creating of the individual law about the juvenil court. It can be explained in two ways. On one hand in the Criminal Novel they wanted to fill the long-felt gap and the planners of the recommendations didn't enlarge it with the reform institutions. They realized that with the embedding the course of action coming into force would be later. The real possibility of it I argument with the fact that they had made efforts for creating the Novel for 20 years. On the other hand, Jenő Balogh, the creator of the II. part of the Criminal Novel influenced the

codification of the proceeding norms. It came out from his view when he introduced the new North-American institution in the Law Journal in 1905. Instead of the organization of the juvenil court he thought the steps of the rules of procedure enough. From his point of view it could create conditions to hold a trial by an individual constant officer in the cases of criminal under 16 at the court of first instance.

Analysing the question in relation I came to the conclusion that the Ministry of Justice accepted in 1908 Jenő Balogh's opinion. Our legislation didn't fill the default in the Criminal Novel taking care of the norms of the organizations according to financial rules. Despite the above mentioned the contradictions appeared in the explanation of the Criminal Novel. It was stated in it that beside the financial norms it is necessary creating the law that regulates the judge organization and its course of action according to the new ideas.

9. The product of Hungarian legislation tried to approach the original American legislation. The law about the juvenil court and juvenils fitted the created similar laws on the continent. Juvenils were taken out of the existing criminal laws, those were used only for adults. In the course of action against the juvenils there wasn't a public prosecutor and the defending counsel, the so-called detective idea came into force. During thinking over this question an idea came up to put the cases of the juvenils instead of the court into the hands of a different administrative organ. They saw the explanation in the fact that the American juvenil's judge did not act according to the rules of the Criminal Code but as a detective with full power. There were differences between British and American law institutions. The two legislation belonging to the same law family organized the institutions regarding the juvenils in different ways. The British juvenil court is clearly a criminal court while the American had a feature of a court of guardians.

10. The so-called continental juvenil courts were organized on the basis of three ideas. Firstly, the effort for the specialized judgement, secondly, the bad influence on the juvenils during the procedure before the court, thirdly, possible omission of the imprisonment the pre-trial detention and remand using the later forced education or placing on probation instead of them.

11. Among the representative there were famous politicians and lawyers who made their speeches representing the direction of the development of the West-European and North-American criminal law. In many cases I quoted them making perceptible their point of view regarding the subject of the thesis. I want emphasize the representatives Ernő Bródy and Samu Bakonyi who made an accent on taking into consideration the mental and moral development of the young criminals while committing the crime became ascertainable. Samu Bakonyi in front of the public of Parliament outlined that because of the principle of the equality before the law it was disadvantageous for the development of the juvenils that after their indiscretion the court placed them together with the accused people from whom they learnt only bad things. I want to mention György Nagy and Ernő Bródy who urged rising the lowest age of the punishment up to 14. Bakonyi and Bródy saw the importancs of the institutionalization of child-care, a patronage, supporting of the prisoners that they act for the sake of underaged. Sándor Nagy and Soma Fenyvesi who took part in the prisonersupporting Congress in Pécs supported all the acts of the society. Dezső Nagy accented on the achievements of the homes of destitutr children in the speech in the House of Representatives.

Samu Bakonyi emphasized that the saving of the decayed youngsters should have been the task of the society, legislation and executive authorities. So the educating of the juvenils can have benn solve by organizing and cooperatiiong of the social, legislative, state and society institutions.

Géza Kenedy analysed in detail the position of judges who worked in the proceeding institutions. Jenő Balogh reported that for the sake of the practical use

of their knowledge the Minister organized a special course. Joining point of view of Balogh, Béla Blanár outlined that it is necessary to educate the new judges because they acted for the sake of the future of the criminals. But he emphasized that the right acting without the developing of the patronage institution is unimaginable. István Vazul Popovics's speech is memorable because he thought that supporting of the church is also important. In his opinion they could make easier the work of the court. While discussing the recommended law Member of Parliament Géza Kenedy called the juvenil courts as separate criminal courts.

12. Enacting the new law material the well-known specialists of the era from their experience made a conclusion that from the regulations the part referring the juvenils is the largest, However Pál Angyal and Béla Ujfalussy wanted the exemption of the contradicting regulations.

13. I studied the development of child defending in the analysed period. Before the creating of the law of 1901 volunteer associations and other child-friend organizations acted in the defence of the children. The state began to build a more modern base of the social child-care only at the turning of the 19th-20th centuries. Even in this time it acted parallely with the previous volunteer child-care. The XXI. article of the law of 1901 meant a progress because it extended the state child-care for the children from 7 to 15 who could not be placed in the home of orphans or other similar institutions. They were in the home of destitute children or at reliable caretakers. My opinion is that the child-care had to be the task of the state as the question of the education or the institution of defence.

We can accept as a great development organizing of the system of the child-care institutions: there was organized a separate child-care department within the Ministry of Home Affairs and in 1903 doctors and teachers organized the Committee of Studying Children, more than 60 patronage clubs joined to the work of National Childcare League and National Childcare Association.

14. I studied in details the Hungarian patronage action. I introduced the definition of patronage admitting view of Albert Irk. According to him, following the definition of Jenő Balogh, in our country they meant under it supporting of imprisoned and social child-care.

Pál Angyal's activity highlighted the results of the first national prisoner supporting Congress that was held on 6-7 September 1907 and the importance of the patronage institutions of Pécs such as the Patronage Circle of Pécs, Committee of Childcare of Pécs-Baranya. Nándor Bernolak's activity was important in this field because according to his opinion only the associations that were helped by the church could help in the patronage work. In December 1908 he was the organizer of the Catholic Patronage Association in Kassa. I considered it necessary to show the role of patronage congresses in the interest of the underaged. World War I broke the development of the partonage work especially because the state of war crossed the fourth congress that was planned to hold in September 1904 in Kolozsvár.

The PhD thesis outline that the changed life conditions needed new regulations. Our legislation initiated that a reform with the II. part of the Criminal Novel and with the accepting of the VII. law of 1913 it became completed. It was important because it gave new modern norms into the hand of the judge who dealt in the cases of the juvenils. Before it he could judge according the course of action and not taking into consideration the defence of the juvenils and their moral change.

Possibility of using the results of the research:

The results of my work can be used in two fields. I explored the concrete part of the Hungarian legislacy – the given period of dualism by the primer resources. That is why first of all historians of the history of law can be interested in it. The topic from the point of view of social science raises new questions that have to be answered. It can be useful also for the researchers in the question of the history of

press because the public's opinion about the juvenil criminals were published in the contemporary magazines. Studying of the chosen law topic it raises attention on the analysing of the social questions from the point of view of phylosophy, morality and religion looking for answer for the prevention of juvenil delinquency in these fields as well.

It can be a base in the research of the criminal law, proceedings and criminals taking into consideration the fact that findings of the PhD thesis can give the basis for working out the reform plans of the present time. The ideas in the period of creating the criminal law of the juvenils that is different from the adults can be authoritative while developing the existing norms. The analysed period can be an exemplary because it can help to solve practical law questions arisen in the present legislacy. It can be stimulating that in the 19th-20th centuries the creating of laws took place with social cooperation. It is necessary to study the practice of the European countries and of the countries out of Europe to achieve the criminal reforms. It can be the example that shoud be followed in the present. The professional appreciation that helped the success of the creating of laws on the turning of the 19th-20th centuries can be a good example for the future legislation. My research can help in the question how it is possible to examine in the correlation the connection between the society and the juvenil delinquency.

Acception of the fact that the developing of the society influences the idea of improving in recommends within the legislacy to isolate the juvenil judges to detect the features of the personality of the juvenils. It can prove the necessity of the creating the norms of the financial law, proceeding and execution in the only law for the legislacy of the special perpetrators.

IV. List of Publications written in the Theme of the Dissertation

1. Introduction of American juvenile court in Europe. Kassa, 2014. (currently being published)
2. Development of national childcare for the sake of decreasing the criminality. In: Stipta István (szerk.): Doktoranduszok Fóruma, Állam- és Jogtudományi Kar Szekciókiadványa. Miskolc, 2014. (currently being published)
3. The Bill about the Juvenil Court in the mirror of Parliament Speeches. Publicationes Universitatis Miskolcensis Sectio Juridica et Politica, Tomus XXXI. (2013), pp. 151–162. ISSN 0866-6032.
4. Opinions of the House about the revision of Csemegi-Code. In: Collegium Doctorum Konferencia, Collegium Doctorum Konferencia [elektronikus dok.]: Miskolc, 2012. április 19. Bíbor Kiadó, Miskolc, 2013. paper 6. ISBN 978-963-9988-50-7.
5. Legislation of the era of dualism. In: Stipta István (szerk.): Doktoranduszok Fóruma, Miskolc, 2011. november 08., Állam- és Jogtudományi Kar Szekciókiadványa. ME ITTC, Miskolc, 2012. 141-146.
6. Igazságszolgáltatás a századfordulón. In: Cs. Jónás Erzsébet-Pethő József (szerk.): Százéves századelő, Bölcsészet- és társadalomtudományi tanulmányok, Bessenyei Könyvkiadó, Nyíregyháza, 2010. 121-130.

7. Resocialization of the juvenil criminals. In: Czövek István (szerk.): Tanulmányok az egyetemes és magyar történelem köréből. VIII. Bessenyei György Könyvkiadó, Nyíregyháza, 2010. 77-88.
8. History in new aspect: repressing juvenil crimes. In: Czövek István (szerk.): Tanulmányok az egyetemes és magyar történelem köréből. VII. Bessenyei György Könyvkiadó, Nyíregyháza, 2009. 65-89.
9. Structure of the Hungarian society in the mirror of our laws of Middle Ages. In: Czövek István (szerk.): Tanulmányok az egyetemes és magyar történelem köréből. VI. Bessenyei György Könyvkiadó, Nyíregyháza, 2008. 17-27.
10. Ways of creating of the juvenil courts. In: Stipta István (szerk.): Miskolci Doktoranduszok Jogtudományi Tanulmányai 8. Miskolci Egyetem Deák Ferenc Állam- és Jogtudományi Doktori Iskola kiadványsorozata. (Studia iurisprudentiae doctorandorum Miskolciensium) Bíbor Kiadó, Miskolc, 2007. 297-319.
11. Supervision of the juvenil probation. In: Stipta István (szerk.): Doktoranduszok fóruma, Miskolc, 2007. november 13., Állam- és Jogtudományi Kar szekciókiadványa. ME ITTC, Miskolc, 2007. 217-221.
12. Distinctive criminal judgement of the juvenils in the Criminal Novel of 1908. In: Stipta István (szerk.): Doktoranduszok fóruma, Miskolc, 2006. november 09., Állam- és Jogtudományi Kar szekciókiadványa. ME ITTC, Miskolc, 2006. 241-245.