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REGULATORY STEPS OF COMBATING ORGANISED CRIME IN HUNGARY

Abstract

This study shall introduce regulatory steps taken to combat organised crime in Hungary. Phase by phase, it shall analyse the codification process of the definition of criminal organisation and its modifications, on the grounds of criminal law. Definition of criminal organisation has continuously adapted to the combat against organised crime that has led to several amendments of the definition in past few years.

Key words: criminal organisation, criminal association, detection, criminal law

Combating organised crime in Hungary has started at the end of the 1800ies. However, '[...] we can not define organised crime in the frame of the close-knit interpretation of a precision instrument with an infallible, non-extensive and eternal rationale that would cover all aspects of this phenomenon. Globalisation predicts, that specific signs and symptoms of organised crime do continuously change, adding a peculiar effect to each characteristics of this phenomena [...]'² Even before the incorporation of Codex Csemegi, our country's scientific criminal literature was familiar with multi-level criminal actions.

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² Czine, Ágnes, *Az emberkereskedelem, mint a szervezett bűnözés egyik megjelenési formája (Trafficking of human beings as one of the forms of organised crime)*, PhD study, 2011, Pécs, p. 8

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In his research, Aladár Schnierer has analysed the conceptualization of his era, and made a difference between criminal association and criminal gangs.³ Back then, responsibility of gang members was different, depending on their actual participation in the establishment of the gang, in their participation planning the jointly committed criminal acts, or, in fact, in their cooperation in the execution of the offence.

Codex Csemegi has already codified the definitions of association and league. Namely, its statutory provisions on aggravated measures of theft stated, that if ‘[...] two or more members of robbers’ of thieves’ in association were involved ...[...].’⁴

Although the Act did not define accounts of ‘thieves association’, judicial practice agreed, that it was thieves association, if two or more persons ‘[...] agreed in the conduct of indefinite numbers of thefts, regardless of the fact, whether the association was long-lasting or permanent’, and for which ‘[...] the association of two or more persons were not required [...]’.⁵

Of course, it is noticeable, that besides our country’s concerns to improve criminal law’s efforts in combating organised crime in the 19th century, international treaties implemented regulations on countering the most conspicuous criminal acts related to organised crime.⁶

Sharing the objective, our country implemented the following acts, for example,

- law Article LXII of 1912 on the incorporation of the international agreement for the suppression of the white slave traffic, signed at Paris and amended by the Protocol, ,⁷

³ Schnierer, Aladár, A büntető jog általános tanai. Heckenast Gusztáv kiadása (General doctrines of criminal law, published by Gusztáv Heckenast), 1973, Pest, p. 187

⁴ Law Article V of 1878 the Hungarian Criminal Code on felonies and misdemeanours, Section 336 (6)

⁵ Decision No. K.5143/1916 of the Curia, in Criminal Judiciary Decisions, vol. XI, ed. dr. Aurél Lengyel, in: Journal of Legal Sciences, 1918, Budapest, pp. 64–65

Decision No. K. 141 1/1926 of the Curia, in Criminal Judiciary Decisions, vol. XIX, ed. dr. Aurél Lengyel, in: Journal of Legal Sciences, 1927, Budapest, p. 137

⁶ Several other scientific fields have researched organised crime, among others, criminal geography. See more in:

1. Mátyás, Szabolcs, A szervezett bűnözés kriminálgeográfiai vizsgálata. In: Frigyer László (szerk.): Nemzetközi jellegű szervezett bűnözés nyomozásának kutatása információáramlási szempontból. I., Nemzeti közszolgálati Egyetem, (Criminal geographic survey of organised crime, In: ed. Frigyer, László, Research of transnational organised crime from the aspects of the flow of information I., National University of Public Service, 2018), Budapest, p. 134-168

2. Mátyás, Szabolcs, Az utazó bűnözés és szervezett bűnözés kapcsolatrendszer. In: Frigyer László (szerk.): Nemzetközi jellegű szervezett bűnözés nyomozásának kutatása információáramlási szempontból. I., Nemzeti közszolgálati Egyetem, (The network of traveller crime and organised crime, In: ed. Frigyer, László, Research of transnational organised crime from the aspects of the flow of information I., National University of Public Service), 2018, Budapest, p. 189-204

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- law Article XXIV of 1933 on the incorporation of the Hungarian – Finish agreement signed in Budapest on 23.11.1932., on countering overseas bootlegging.⁸

After World War II., and even after, during the establishment of the communist dictatorship a criminalist struggle against joint perpetrators partnerships seemed necessary. This caused serious damage to the ideology in such an era when criminal law openly become a means of class conflict.⁹ Statutory rule 24 of 1954 stated that ‘the penalty shall be imprisonment in jail up to ten years, also if the same person has repeatedly committed offences against public ownership, or if one or two member of the criminal league has participated in conducting the act.’¹⁰ The statutory rule did not stipulate the definition of criminal league.

Nevertheless, several judicial decisions referred that ‘besides the agreement in commission of several criminal acts, certain organisation of forces offending public ownership is required to the adjudication of criminal association, likely, some systematic agreement is necessary in the joint and collective perpetration, in more significant circumstances and measures of the execution.’¹¹

Later Act V of 1961, the first socialist Criminal Code of the nation has stipulated the definition of criminal association in Section 114: ‘,[...]criminal conspiracy shall mean when two or more persons are engaged in criminal activities under agreement, or they conspire to do so’.¹²

Directive No. 0011/1963 (BM/LÜ) of the Ministry of Internal Affairs and of the Prosecutor General expressed that the perpetration of a criminal act is organised, if

- there is functional relation between the members,
- conspiracy characterises the criminal acts and the perpetrators,
- the relationship is permanent, and

⁷ Law Article LXII of 1912 on the incorporation of the international agreement for the suppression of the white slave traffic, signed at Paris and amended by the Protocol

⁸ Law Article XXIV of 1933 on the incorporation of the Hungarian – Finish agreement signed in Budapest on 23.11.1932., on countering overseas bootlegging

⁹ Pallo, József: Era of Change in the Hungarian Prison Law (2018) Journal of Penal Law and Criminology , Vol. 6 , Nr. 1 p. 55-71. , p. 17

¹⁰ Statutory rule 24 of 1950 on the protection public property, Section 5 (2)

¹¹ Judiciary Decisions, vol. 4 issue 5 of 1956, pp. 131–132, Case No. 1275 (Supreme Court Decision. Kf.I.10.805/1955)

¹² Act V of 1961 on the Criminal Code of the Hungarian People’s Republic Section 114

- conduct of the criminal acts is characterised by articulated division of labour.

Although the definition does not mention the hierarchy of the organisation, and it also misses to refer to the articulate objectives of the organisation, nevertheless, they have recognised the danger to society that organised criminal actions represent.¹³

Codification of Act IV of 1978 (the former Criminal Code or hereinafter also referred to as the Btk.) attempted to implement additional regulations, such as ‘if more persons joined together to engage in criminal acts, any defendant participating in the agreement shall be liable for all other felonies committed during the time interval when he was proven the member of the group, even if he only gave assistance to one of the acts.’¹⁴

In the end, this has not been incorporated in the original wording of the old Btk., but Section 137 (6) of the Interpretative Provisions stipulated within the General Rules, gave a definition of criminal associations, likely to the prevailing regulations, just as it was provided in 1961’s Btk.

Change of the regime at the end of the 1980ies and Hungary’s joining the European Union in 2004 were the most important milestones of later momentums. Along with the opening borders, entering the European Union became notably effortless, advancing the appearance of Hungarian criminals abroad, and enhancing the emergence of foreign offenders in Hungary. This challenge requires a complex response involving significant criminal codification.¹⁵ Experts involved in combating organised crime are committed to two main approaches: members of the first group campaign for the exact definition of organised crime, since they find the fundamentals of efficient combat in a unified definition, while experts of the other group recant the idea of a uniform definition, and due to the different nature of

¹³ Ürmös Simon, Gabriella, Organised crime, In: Technical English topics for the intermediate and advanced English language exam, Police College, 2002, Budapest, p. 39

¹⁴ Hajdu, Lajos, Az első (1975-ös) magyar büntetőkódex-tervezet, Közgazdasági és Jogi Könyvkiadó (The first draft (1975) of the Hungarian Criminal Code, Economic and Legal Publishing), 1971, Budapest, p. 394

¹⁵ Pallo József: The First Correctional Legislation and Codification Following the Regime Change in Hungary In: Journal on European History of Law, Vol. 9, Nr. 2, 2018, p. 176-180.

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priorities, advocating that listing of the characteristics a nonsense, consequently, they urge more accurate description of the features.¹⁶

Domestic judicial changes accordingly reflected to international treaties and agreements, with regards to the fact that organised crime knows no national borders. Criminal legislation on organised crime required several phases in Hungary. The regulations was and still is required to adapt to the conformation and manifestation of criminality, whereas, criminal law must provide the adequate measures, assisting to the effective combat against organised crime. In accordance with the provisions on offences committed in the frame of a criminal organisation, the maximum of the applicable penalty shall be doubled, besides other adverse legal consequences. Thus, any agreement in the engagement of criminal offences committed by criminal organisations might imply severe exonerations, so defining criminal organisation with due accuracy is a guarantee to meet the constitutional canon.¹⁷

*1997's amendment to the Criminal Code has implemented the definition of criminal organisation: '...criminal organisation is a form of criminal association established for the purpose of continuous constitution of criminal offences that is based on the division of labour with the objective of gaining profit.'*¹⁸ Simultaneously, the Act has implemented the statutory provision titled 'Establishment of criminal organisation', that criminalized the establishment, control of the criminal organisation for certain criminal acts, and penalized the members of the criminal organisation as well. Further specificity of the statutory regulation is that it regulates the constitution of a criminal act committed in the frame of a criminal organisation amongst the aggravated circumstances in case of sixteen offences: procuring solicitation, pandering, illegal immigrant smuggling, criminal offences with explosives and blasting agents, criminal offences with firearms and ammunition, counterfeiting individual identification marks, misuse of drugs, money laundering, violation of foreign exchange regulations, tax fraud and fraud related to social security, smuggling and custom fencing, theft, fraud, robbery, extortion, fencing.¹⁹

¹⁶ Tóth, Mihály, *Bűnszövetség, bűnszervezet*. Komplex Kiadó Kft (Criminal association, criminal organisation, Komplex Publishing), 2009, Budapest, pp. 13–15

¹⁷ Bárányos, Bernadett, *Bűnszervezet: hatékonyság vagy alkotmányosság*, *Jogi tanulmányok*, 2012/1., (16. évf.) (Criminal organisation: efficiency or constitutionality, *Legal studies*, vol. 16, 2012/1), p. 279

¹⁸ Act LXXIII of 1997 on the modification of Act IV of 1978 on the Criminal Code

¹⁹ Ürmös Simon, Gabriella, *Organised crime*, In: *Technical English for Officers*, Dialóg Campus, 2018, Budapest, p. 91

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The Act ordered compulsory confiscation for the constitution of establishment of criminal organisation and for offences conducted as the member of a criminal organisation.

Criminal law must provide the adequate responsive measures for crimes constituted and manifested in the frame of a criminal organisation, since such acts principally violate and imperil society's interests in protection of assets, the right to a healthy life and the security of the economy. Organised crime's danger to society is a central issue of governments all over the world, due to its compromising effects to the economy.²⁰ Preparedness of the state must be consolidated in order to suppress organised crime.²¹

*Definition of criminal organisation has been amended in 1998, nevertheless, it did not change the position according to which criminal organisation is one of the forms of criminal association: 'criminal organisation is a form of criminal association constituted by the means of systematic conduct of criminal acts in order to gain profit, that is based on the division of tasks, on hierarchy and on involvement deployed on personal relations.'*²² The Act has increased the number of criminal offences to eighteen, for which membership in a criminal organisation is being recognised in the consequences of aggravated circumstances: human trafficking, procuring solicitation, pandering, illegal immigrant smuggling, criminal offences with explosives and blasting agents, criminal offences with firearms and ammunition, arms trafficking, counterfeiting individual identification marks, misuse of drugs, money laundering, violation of foreign exchange regulations, tax fraud and fraud related to social security, smuggling and custom fencing, theft, fraud, robbery, extortion, fencing.

According to the aggravated statutory provisions, perpetrators sentenced for criminal offences committed in the framework of a criminal organization may not be released on parole, moreover, execution of a sentence of imprisonment

²⁰ Albanese, Jay S., Risk Assessment in Organized Crime Developing a market and Product-Based Model to Determine Threat Levels, *Journal of Contemporary Criminal Justice*, vol. 24, p. 3, 263–265

²¹ Preamble to Act LXXXVII of 1998 on the modification of criminal regulations

²² Act LXXXVII of 1998 on the modification of criminal regulations, Section 35

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may not be suspended if the perpetrator committed the crime in the framework of a criminal organization. Furthermore, the statutory regulation has amended the rules of confiscation as well.

The attributes of organised crime can often confuse the adaptation of law enforcement measures. Such attributes are, for example: secrecy, preclusion of law enforcement measures (e.g. through coercion, threat or corruption), mixing of legit and illicit activities – the ability to cover or shuffle the profit out of sight. If legislation wants to constitute aggravated penalty to the participation in organised crime, it must insert the definitions of »organised crime« and »criminal group« into the statutory provisions of law.²³

In 2001, description of the criminal organisation has again been modified, that is the currently applicable definition. As part of the combat against organised crime, legislation has aggravated penal consequences, ordering that the person who has committed an intentional criminal act in affiliation with organized crime that is punishable by imprisonment of five years or more, shall be subject to double the upper limit prescribed for the crime in question, however, it shall not exceed twenty years.²⁴ The Act redefined criminal organisation, as in it shall mean when a group of three or more persons collaborate in the long term to deliberately engage in criminal acts in an organized fashion, which are punishable with five years of imprisonment or more. This Act has also amended the definition of criminal association: ‘...shall mean when two or more persons are engaged in criminal activities in an organized fashion, or they conspire to do so, and attempt to commit a criminal act at least once, without, however, creating a criminal organization.’²⁵

²³ Hollán, Miklós, The resolutions of the XVI. International Congress of Criminal Law, In: Hungarian Law, 2000/2., p. 116

²⁴ Act CXXI of 2001 on the modification of Act IV of 1978 on the Criminal Code, Section 5

²⁵ Section 137 (6) of Act IV of 1978 on the Criminal Code

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Description of criminal association corresponds with the presently applicable definition.

Legislation has codified the individual statutory provision of ‘Affiliation with organised crime’, essentially by enlisting the preparatory conducts stipulated among the General Provisions of the Btk.

The above mentioned regulations and the amendments of the statutory provisions prove that both our country and the European Union²⁶ devote accentuated attention to combating organised crime.

The definitions incorporated in the Criminal Code provide a frame for the penalization of the members of groups affiliated with organised crime, therefore, the conducts of criminal organisations must be correspondent to the elements of the given definition.

Overall, we may state that the definition of criminal organisation has been incorporated to our Criminal Code in 1997²⁷, however, several amendments have been passed until 2001. The definition of criminal organisation has been modified in 1998, nevertheless, it did not change the position that criminal organisation is one of the forms of criminal associations.²⁸ Hierarchy and the involvement based on personal relations were further new elements. Today’s regulation has been codified in 2001, whereas legislators were not satisfied with the idea of the agreement of two persons, since cooperation of less than three persons shall not result the adjudication of criminal organisation.

Changes in the definition of criminal organisation 1997-2001
It is a form of criminal association established for the purpose of continuous constitution of criminal offences that is based on the division of labour with the objective of gaining profit
It is a form of criminal association constituted by the means of systematic conduct of criminal acts in order to gain profit that is based on the division of tasks, on hierarchy and on involvement deployed on personal relations.
It is a group of three or more persons collaborate in the long term to deliberately engage

²⁶ This statement is supported by the changes in the definition since 1997, however, as a result of my research, I believe, that a re-regulation of the definition would be beneficial.

²⁷ Criminal organisation is a form of criminal association established for the purpose of continuous constitution of criminal offences that is based on the division of labour with the objective of gaining profit

²⁸ Criminal organisation is a form of criminal association constituted by the means of systematic conduct of criminal acts in order to gain profit that is based on the division of tasks, on hierarchy and on involvement deployed on personal relations.

in criminal acts in an organized fashion, which are punishable with five years of imprisonment or more.

The last amendment (Act CXXI of 2001) has excluded the elements that could aggravate evidentiary measures, so some perpetrator's structures may be deemed as criminal organisations that would not be considered as such from the criminalistics' point of view.²⁹

Conditions of international cooperation in detection and crime prevention must be further secured. Hungary has engaged in several bilateral agreements regarding countering organised crime.

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²⁹ Bócz, Endre, A szervezett bűnözésről és a bűnszervezet fogalmáról (On organised crime and on the definition of the criminal organisation), *Magyar Rendészet*, 2008/4., (VIII. évfolyam), 2008, Budapest, p. 22

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