

# Rule of Law and Criminal Law

## Thoughts about the criminal justice of the Millennium Era

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### Abstract

*The constitutionality of the legal system also includes the constitutionality of criminal law. Criminal law must also be constitutional. The changes that have taken place in the world and which are currently underway have implications for crime as well. Difficulties in tackling criminality could begin with the exact determination of crime dimensions and specificities.*

**Keywords:** *rule of law, constitutionality, criminal law, terrorism, corruption.*

The rule of law is a frequently quoted expression of the media organs of our age. There are countless attempts to define the rule of law as the opposite of the **police state**, which we would not discuss in detail here, but we want to point out that the idea of the rule of law has impacted on almost all segments of social life, including criminal justice.<sup>1</sup>

Undoubtedly, if we look at the **archaic status** of criminal law, we can immediately see a – mostly positive – change, but we are far from being able to know the realities of the rule of law in criminal law behind ourselves.

In this study, – within the limits of the content and scope – we briefly glimpse some of the **legal anomalies**, which **overshadows** the imaginary rainbow of the criminal law of the rule of law. The selection of topics to be discussed below has been subject to **subjective** considerations, namely that we have tried to collect the problems that have arisen in our practice and what are the common actors of the legal-literary publicity.

### 1. Revolution of a Rule of Law

The Hungarian Constitutional Court granted the Constitutional Court's interpretation of the political system change in its decision No. 11/1992 (III.4.), and „**ars poety**” of the

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<sup>1</sup> Antal Visegrády, *Jog-és állambölcselet* [Law-and State Philosophy], Dialóg Campus Kiadó, Budapest-Pécs, 2003, p. 327.

body still valid for the relation of political power and the Constitutional Court, legality and the most general context of the rule of law.<sup>2</sup> "Definition of rule of law in Hungary is a fact and a program at the same time. The rule of law is realized by the fact that the Constitution is indeed and definitely in effect. For the law, the change of regime means that a change in the legal system is possible only in the sense that it must be brought into line with the constitution of the rule of law, or – in case of new legislation – the whole legal system must be consistent ... The realization of rule of law is a process. It is a constitutional obligation for the state organs to do so. "[Decree 11/1992 (III.4.) AB]

In this decision, it stated that the law on persecution (approved but not announced) between 1944 and 1990 on the persecution of a serious offense committed in the **communist dictatorship**, but not prosecuted due to political reasons (treason, intentional homicide and death) was unconstitutional.

The Constitutional Court has found that making already annulled crimes punishable again, extending the length of time limitation of non-annulled offenses by interrupting law is unconstitutional.

According to András Szabó, the most well-known Hungarian expert in the topic, the rule of law can not be realized in the name of truth or politically motivated truth with if using methods in line with rule of law.<sup>3</sup>

The constitutional rule of law means that the provisions of the Constitution are binding on the entire legal system.

The constitutionality of the legal system also includes **the constitutionality of criminal law**. Criminal law must also be constitutional.<sup>4</sup> The constitutional rule of law can only react to violations of the law by means of the rule of law, so that no one can be denied of any legal guarantees. Failure to enforce legal guarantees means even justice can not be enforced within the framework of rule of law.<sup>5</sup>

Contrary to the Constitutional Court, German law enforcers have used the retroactive effect of criminal law in the so – **wall snipers** (Mauerschusser) lawsuits – though following a long theoretical search. For this, they called for the **radbruch's formula**.<sup>6</sup>

The question may arise why did the Hungarian Constitutional Judges not apply Gustav Radbruch's thesis?<sup>7</sup>

According to András Szabó, the radbruch's formula<sup>8</sup> is merely a question of whether some scholars of criminal law overestimate the significance of their theoretical elements.

<sup>2</sup> András Holló, *Az Alkotmánybíróság ...* [The Constitutional Court ...], Változó Világ Könyvtár 15, Útmutató Kiadó, Budapest, 1997, p. 65.

<sup>3</sup> András Szabó, *Jogállami forradalom és a büntetőjog alkotmányos legitimitása* [Counter-revolution of rule of law and the constitutional legitimacy of criminal law], Belügyi Szemle 1999/10, p. 6.

<sup>4</sup> Béla Blaskó, *Jogállam - Büntetőjog - Bűnösség* [Rule of Law – Criminal Law – Culpability], Magyar Jog 1995/4, p. 209

<sup>5</sup> Szabó, op. cit, p. 7.

<sup>6</sup> Katalin Ligeti – Imre A. Wiener, *A radbruchi-formula* [The Radbruch's Formula], In: Károly Bárd – Balázs Gellér – Katalin Ligeti – Imre A. Wiener: *Büntetőjog – Általános Rész* [Criminal Law – General Part], KJK-Kerszöv Jogi és Üzleti Kiadó Kft, Budapest, 2002.

<sup>7</sup> Bix H. Brian, *Radbruch's Formula, Conceptual Analysis and the Rule of Law*, In: Imer B. Flores – Kenneth E. Himma (eds.): *Law, Liberty and the Rule of Law*, Ius Gentium: Comparative Perspectives on Law and Justice, Volume 18, Springer Science+Business Media Dordrecht, Heidelberg/New York/London, 2013, pp. 65-67.

<sup>8</sup> See, Marijan Pavčnik, *The Symbolic Meaning of Radbruch's Formula - Statutory (Non-) Law and the Argument of Non-Law*, *Rechtstheorie* 46 (2015), pp. 139-142.

In the law, the law has positive normative binding force. However, the theoretical theorem has neither normative power nor normative function. Despite the fact that the criminal law theory says abortion is punishable by unbearably unjust means, fetal deportation will still be punished if it is stated punishable by the Criminal Code.

In a study by András Csúri, in the case of crimes committed under communist dictatorships („Mauerschützer”<sup>9</sup>), only the blatant cases would be punished, where the unlawful act was objectively clear and obvious to the perpetrator.<sup>10</sup>

The rule of law revolution – says László Majtényi correctly – is a paradox, because the rule of law and the revolution can not coexist. For us – this is part of the paradox – it was not the commonplace of history that is fulfilled; It is not the rule of the law that devours her children, but her children of excellent appetites devour her. The rule of law revolution – we must understand – is a reality. In contrast, the historical constitution of the revolutionary state is present, part of our life, defines its framework; This time it is still stronger than those who regard them as their toy.<sup>11</sup>

In addition to the rule of law revolution, there are countless phenomena in the Hungarian legal system, including in the broad sense of criminal law that are against the fulfillment of the rule of law. That is why we can rightly call these misadministration, lawless law enforcement as **counter-revolution of rule of law**. In 2006 for example, peaceful demonstrators in Hungary were raided, people on the ground were beaten by police, but then the existing ruling political power did not initiate criminal proceedings, and the new government, in 2011, relinquished responsibility for the 5-year term of delinquency.

## 2. Challenges of the Globalized Society and Crime

The changes that have taken place<sup>12</sup> in the world and which are currently underway have implications for crime as well. The globalization of society functions as a **power economy** and as a **power society**.

Contrary to the rapid change in natural and social phenomena, methods of dealing with crime are characterized by relative stability. The security of law enforcement requires a high degree of stability, the system of law enforcement skills education, the use of law enforcement methods over a longer period of time can lead to considerable familiarity, possibly even harmful innervation.

All this suggests that a relatively rapidly changing crime is facing a **conservative** law enforcement. Géza Katona raises the question: With the development of science and technology, does the contemporary theory and practice of fight against crime in Hungary meet the needs of society?<sup>13</sup>

<sup>9</sup> Wall sniper.

<sup>10</sup> András Csúri, *Múltrendezés, avagy a berlini falnál leadott lövések büntetőjog megítélése*, Belügyi Szemle, 2004/9, p. 185.

<sup>11</sup> László Majtényi, *A jogállami forradalom történeti alkotmánya* [Historical Constituion of the Rule of Law Revolution], Jogi Fórum 19 November, 2003. (<http://www.jogiforum.hu/publikaciok/122.2.0>)

<sup>12</sup> Ulrich Kiss, *Globalizáció vagy párbeszéd?* [Globalization or Dialogue?], Távolatok 2005/1, pp. 4-5.

<sup>13</sup> Géza Katona G, *A kriminalisztika és a bűnügyi tudományok* [Criminalistics and the Criminal Science's], BM Kiadó, Budapest, 2002, p.7.

### 2.1. Increasing crime rate and criminal statistics

Statistical data indicate an increase in crime rate and in severity. The increase of crime rate is a global phenomenon. Difficulties in tackling criminality could begin with the exact determination of crime dimensions and specificities.

Analysis can only be made based on crimes that are known to the authorities, although it is known from **latency** research that the actual size of the crime exceeds the figures found in the criminal statistics.<sup>14</sup>

### 2.2. Violent crime and detection rates

Practical criminologists have known – although this is not necessarily supported by official statistics – that the number of violent crimes increases, and that crime is exposed to violence beyond the rational level.

The number of crimes on the subject's side, the number of criminal offenses, indicates that the number of detected crimes is not followed by an increase in the number of detected perpetrators, ie the number of **uncharted crimes** is clearly on the increase.

The **lack of discovery** is accompanied by a decline<sup>15</sup> in the public's willingness to report (e.g., "the police does nothing anyway") and the increase in their **fears of crime**,<sup>16</sup> which further increases the number of latent crimes. However, we can not go without saying the deterioration of the public's sense of security, although the press has undoubtedly had a negative impact on this trend.<sup>17</sup>

The negative outlook of criminality is indicated by the fact that rate of **juvenile** and even pediatric participation is constantly on the increase. It is also a worrying sign that foreign nationals<sup>18</sup> are increasingly becoming perpetrators or victims of crime in Hungary, and there is still no clear evidence of any links between **migration**<sup>19</sup> and potential criminality.

A drastic increase in crime has now led to a rise in the workload of the investigating authority. In the case of crimes against property, that affecting and most irritating an average citizen, the feasibility of substantive investigative work is already questioned. Developments are most visible in the higher ranking law enforcement officers' offices and company cars, rather than in "trenches", that is, in small local police units.

### 2.3. Responsibility of criminal policy and science

In the last fifteen years, the struggle against the crime has not remained free from current policy impacts. Law enforcement on the slogans level can be considered as no

<sup>14</sup> See László Korinek, *Látencia és prognózis* [Latency and Prognosis], *Belügyi Szemle* 1987/4, pp. 78-80.

<sup>15</sup> Pál Déri, *A bűnözési statisztika és a valóság* [Criminal statistics and the Reality], BM Kiadó, Budapest, 2000, p. 155.

<sup>16</sup> László Korinek, *Félelem a bűnözéstől* [Fear of Crime], Közgazdasági és Jogi Könyvkiadó, Budapest, 1995, p. 57.

<sup>17</sup> Valér Dános, *Kriminológiai ismeretek* [Basic Criminology], Rejtjel Kiadó, Budapest, 2000, p. 85.

<sup>18</sup> Katona, op.cit. p.9.

<sup>19</sup> Róbert Bartkó, *The new Europe Challenge- The relationship between the illegal crossing of border and the terrorism*. In: SGEM International Multidisciplinary Scientific Conference on Social Sciences.

more than **virtual law enforcement**. We simply have to note that no result can be achieved against crime without financial support.

One has to forget once and for all the era of **improvised policing** actions that draw media attention. It should be noted that a single swallow does not make summer.

The inadequate effectiveness of the fight against crime, alongside negative social and economic factors, also raises the issue of the **lack of scientific background**.<sup>20</sup>

It is true that criminology has developed countless exceptionally excellent theories of criminality (becoming a criminal), but it seems difficult to go beyond the theses of the classic school, F. von Liszt: "Best Criminal Policy is a Good Social Policy".<sup>21</sup>

Therefore, if we need more than **first-aid type** symptomatic treatment against crime, we can achieve results only by address social policy, labor management, family policy, housing policy, moral education etc. – in a complex way.

### 3. New features of crime

#### 3.1. Organized crime

The emergence and spread of organized crime was a new decisive factor in the development of Hungarian crime history in the 1990s. Despite the fact that it can not reasonably be reflected in the indicators of crime statistics, organized crime has developed a model of criminality tools and methods that significantly influence the theory and practice of law enforcement.<sup>22</sup>

Organized crime is difficult to be defined on the material side, because almost all crimes, in case of committed with others, are organized. It is more appropriate to approach from the subject point of view, which requires the existence and functionality of a "criminal organization" for the purpose of establishing organized crime.

The definition of a criminal organization was established by the Hungarian legislation in accordance with European legal norms and criminological principles and its foundation and operation were properly sanctioned. Nevertheless, criminal organizations and organized crime remained in the field of **scientific debates** and press reports, they were not converted into court judgments. But this is not just a Hungarian specialty. The criminological theses on the fundamental characteristics of the activities of the criminal organizations also explain the causes of frequent failings of law enforcement.<sup>23</sup> Combating organized crime with new (or partly new) law enforcement tools – witness protection, undercover investigator, secret information gathering, etc. – soon after the initial **euphoric mood** came the disillusionment. We can only rejoice over the fact that in the usual Hungarian legislature exaggerations there has been no legalization of the **"reversal of the burden of proof"**, which exists in the tax law. We do not consider the abolition of classical criminal prosecution principles to be a positive process on the altar of combating organized crime.

<sup>20</sup> Katona, op.cit. p.9.

<sup>21</sup> József Földvári, *Magyar Büntetőjog - Általános Rész* [Hungarian Criminal Law – General Part]. Osiris Kiadó, Budapest, 2002, p. 47.

<sup>22</sup> Katona, op. cit. p.10.

<sup>23</sup> Katona, op. cit. pp.113-115.

### 3.2. Terrorism

The fight against terrorism can be observed both in our material criminal law<sup>24</sup> and international conventions ratified in the subject.<sup>25</sup>

In the field of typology of terrorism, many outstanding studies have been published in both domestic<sup>26</sup> and foreign literature, but we would not address them all in this place. The essence of terrorism – according to Samuel Huntington – conflicts between different civilizations, most often as cultural or ethnic conflicts.<sup>27</sup> With regard to terrorism, it must be stated that the commitment of the modern state to operate society as a **pacified society**, characterized by inner peace, is seen as failing gradually.

Terrorism appears as "a new terrorism" in these days, as the main export product of those are on **the losing end of globalization**.<sup>28</sup> The fight against terrorism raises serious questions. What is terrorism? Which state or institution is entitled to determine who are the terrorists?

Following the attacks on 11 September 2001, the US administration is the only one who considers itself having an exclusive right to answer these questions, and the international community does not raise serious objections to this policy. In our view, the failure of this US doctrine that interprets terrorism is now gradually becoming visible. The main question is that whether terrorism is a **war** or a **crime**. The United States facing terrorism with military measures, but this is not an appropriate way of approach, as terrorism is in fact a crime and law enforcement measures are significantly more effective against it compared to military measures.

### 3.3. Economic and financial crime

The consequence of the operation of organized criminal groups (criminal organizations), which appear as a player in the economy leads to **the blurring of the boundary** between organized crime and economic crime.<sup>29</sup>

Determining the concept of economic crime is a rather complicated task, since it is all about whether we intend to define it based on legal or criminological considerations. Mihály Tóth, a prominent Hungarian expert in the topic, considers it important to emphasize in conceptualization that economic criminality, in addition to and beyond the

<sup>24</sup> Róbert Bartkó, *A terrorcselekmény dogmatikája a nemzetközi büntetőjogban* [Dogmatics of the Acts of Terrorism in the international Criminal Law], Jog – Állam – Politika 2011. Különszám pp. 155-159.

<sup>25</sup> Balázs Elek, *From poaching to financing terrorism.: Thoughts on poaching endangering society*, Journal of Eastern European Criminal Law 1, 2016, pp. 190-193

<sup>26</sup> László Korinek, *A terrorizmus* [The Terrorism], In: Csaba Fenyvesi – Csongor Herke (eds.), *Emlékkönyv Vargha László egyetemi tanár születésének 90. évfordulójára*, Studia Iuridica Auctoritate Universitatis Pécs Publicata 132, PTE ÁJK, Pécs, 2003, pp. 169-181.

<sup>27</sup> Samuel P. Huntington, *The Clash of Civilizations?*, Foreign Affairs, Summer 1993, p. 22. „Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will dominate global politics. The fault lines between civilizations will be the lines of the future.”

<sup>28</sup> László J. Kiss, *Az „új terrorizmus”, avagy a háború metamorfózisa: a „régí háború”-tól az „új háború”-ig* [The new Terrorism, other the Metamorphosis of the War: from the “old War” to the “new War”], Valóság, 2002/7, p.15.

<sup>29</sup> Katona, op. cit. p. 13. See László István Gál, *Economic crimes in Hungary after the change of the political system in 1989*, In: Ye Qing (ed.), *International Symposium on Sino-European Economic Criminal Law: Conference Papers*, Institute of Law of Shanghai Academy of Social Sciences, Shanghai, 2015. pp. 17-19.

individual interest criterion, is typically damages or threatens the order of economic activity, the management obligations, the fair and legitimate management framework.<sup>30</sup>

Evidence of the relationship between financial crimes<sup>31</sup> and organized crime does not require any further discussion. Foreign experience has shown that financial crimes, including evasion of tax, excise and social insurances, are a kind of "**banana shell**" for organized crime, because it is not unlikely that the perpetrators persecuted for serious violent crimes could be judged based of these delinquents, but they are actually judged by the court based on financial offense.

### 3.4. *Cyber crime*

Technological globalization has brought about the emergence of new forms of crime. As a result of globalization, financial operations have become increasingly **computer based**, bringing with it the appearance of cyber crime.

Cybercrime shows a varied form of realization. One of the most dangerous form is the illegal intrusion into computer systems that violate data protection provisions. In the economic sphere, the computer can be used to inflict enormous damage by obtaining information in an unlawful way. Everyday people are particularly irritated by the so-called "**e-banking**" (bank card/credit card counterfeiting) crime.<sup>32</sup> However, it should be noted that all these require a high degree of IT knowledge.

The spread of internet trading further increases the risk of becoming victims of this kind of crime. The security of electronic signatures or the IT security of the so-called "**wireless**" services does not seem completely convincing either.

In addition to its many advantages, the Internet **carries risks**, with a target group of young people (*e.g.* "pedophile industry"). In connection with computer crime, we have to mention copyright abuse, as these crimes are often committed by computer (*e.g.* copying a music CD/DVD). With regard to copyright and copyright infringement, its **decriminalization** should be considered. The fact is that law enforcement is characterized by selectivity and casualty. Illegal copiers are randomly picked up by the authorities, since if we went through a college dormitory we would most probably encounter several illegal cases. It would be more appropriate to apply a one-off royalty of copyright works, and then allow them to be copied free of charge.

### 3.5. *Corruption*

Corruption slowly and slowly becomes a criminological topos in the characterization of Hungarian public sphere. The issue of police corruption<sup>33</sup> is a popular area for corruption research. Unfortunately, however, there are still spheres where corruption has serious social consequences. Two of the old and new types of corruption in corruption will be described below: judicial corruption and corruption in public procurement.

<sup>30</sup> Mihály Tóth, *Gazdasági bűnözés és bűncselekmények* [Economic criminality and crime], KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2002, p. 22.

<sup>31</sup> See László István Gál, *Broker Scandals in 2015 in Hungary*, Pravna Rijec 13/ 2016. pp. 347-349.

<sup>32</sup> Heine, G.: *E-Banking, Die einzelnen Rechtsgeschäfte* [E-Banking, The private legal transactions], Berner Bankrechtstag, BBT Band 9, Institut für Bankrecht an der Universität Bern, Hrsg.: Wolfgang Wiegand, Stämpfli Verlag AG, Bern, 2003, pp.109-131.

<sup>33</sup> István Szikinger, *Rendőrség és korrupció* [Police and Corruption], In: Mariann Kránitz (ed.): *Korrupció Magyarországon I.* [Corruption in Hungary], Transparency International Magyarországi Tagozata Egyesület, East-West Management Institute, Budapest, 2003, p. 129.

The questioning of the intractability of the judiciary is undoubtedly one of the "delicate" themes in democracies. The issue of judicial corruption is a rather underdeveloped area both in foreign<sup>34</sup> and Hungarian<sup>35</sup> literature. This is due to the low number of cases occurring, but the latency is not negligible.

The old Roman saying, "Quis custodiet custodes?" is especially true for this case. Who is guarding the shepherds? Who is entitled to check for justice? The existing legal system does not essentially provide answer for this.

Corruption cases in international comparison show high rates in Latin-speaking countries. In our country, such a figure has been so small - since only a few cases have emerged since the regime change - that it might not be worth considering the phenomenon by adopting official criminal statistics. However, corruption and attempted intrusion into the independent and impartial functioning of the judiciary can not be excluded by one hundred percent. Such experiments can be assumed and perceived by executive power, as well as the private sector.

The executive power in our country does not have the right to appoint the judges. The only disturbing factor is that the current government has the decisive power in determining the court budget and the remuneration of judges.

Another important area of the fight against corruption is the public administration sector. Unfortunately, the personal connection based system in the public sector has basically not changed much since the change of regime. In order to exclude or reduce corruption in the public sector, public procurement procedure was introduced.

Corruption risk is the most commonplace in sectors where decisions have a significant economic impact, and there is not enough (legal and other) assurance that they will be provided on a professional basis. Corruption professionals refer to four main areas where corruption risk deserves particular attention: privatization, party financing, state subsidies and public procurement.<sup>36</sup>

In the case of public procurement<sup>37</sup>, corruption factors<sup>38</sup> can be as below: outsider organizations; distribution of funds allocated to support persons; Disposition of property or their right of use; Transfer of exclusive licenses (concessions); Public procurement.<sup>39</sup>

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<sup>34</sup> Sergio Moccia: Das korrumpierte Strafrechtssystem (eine nur italienische Geschichte?) [The Corrupt Criminal Law System (one not just italianStory?)], In: Bernd Schünemann, Wilfried Bottke, Hans Achenbach, Bernhard Haffke, Hans-Joachim Rudolphi (eds.): Festschrift für Claus Roxin zum 70. Geburtstag am 15. mai 2001, Walter de Gruyter, Berlin-New York, 2001. pp 1487-1504.

<sup>35</sup> László Kőhalmi, *Korrupció és hatalom* [Corruption and Authority], In: Ferenc Csefkó/Csaba Horváth (eds.): *Korrupció Magyarországon* [Corruption in Hungary], Pécs – Baranyai Értelmiségi Egyesület, PTE Állam – és Jogtudományi Kar, Pécs, 2001.p. 146.

<sup>36</sup> Lajos Berényi, *A korrupció kérdése a közbeszerzésekben* [The Question of the Corruption in the public procurement], In: *Korrupció Magyarországon III.* In Transparency International Magyarországi Tagozata Egyesület, Budapest, 2003, p.25.

<sup>37</sup> Csaba Szilovics, *About the Causes of Corruption in the Hungarian Public Procurement System*, Journal of Eastern European Criminal Law 2, 2016, pp.106-108.

<sup>38</sup> Csaba Szilovics, *Korrupció és közbeszerzés* [Corruption and public procurement], *Közjogi Szemle* 2010/1. pp. 46-48.

<sup>39</sup> Anna Dessewffy, *A közbeszerzés és a korrupció összefüggései* [Relationships of the public procurement and corruption], In: *Korrupció Magyarországon III.*, Transparency International Magyarországi Tagozata Egyesület, Budapest, 2003, p.71.



## 4. Other Challenges

### 4.1. Criminal legality of legal persons

The legal institution in Hungarian criminal law since 1 May 2004 is the criminal liability of legal persons, but only in a few cases criminal proceedings have been initiated against companies.<sup>40</sup> Law enforcement agencies are reluctant to initiate criminal proceedings against legal persons, simply said, this legal institution has not obtained "civil rights" in law enforcement practice.

### 4.2. Privatization in the fight against crime

Western tendencies start to appear in Hungary, and – although with a slight delay – we can witness **the privatization of criminal law**. Privatization has created a specific "security market" and it is felt that the state gradually returns – part of the crime prevention and regulatory power – to citizens and the society. It is now clear that modern states, which call themselves welfare states, are unable to guarantee the security of citizens, and instead encourage them to "buy" security for themselves, for example: alarms, special locks, video cameras, etc.

In essence, it induces a kind of "**positive ghettoization**" process, *i.e.* those having a sufficient financial base can create "security" in a limited area (such as a residential park).

This privatization process, however, raises its head in the full range of criminal justice, including in the execution of sentences. Nils Christie correctly notes that criminal justice is in an exceptional situation, as there is no risk of raw material shortage, the supply is infinite. It is an industry that is comparable to Australian rabbits or Norway wildlife; It has hardly any natural enemies.<sup>41</sup>

In these days – with a slight exaggeration – the "**punishment**" industry – within the United States in particular – has been set up with the classical characteristics of major industries – criminal justice has features that can lead to creation of Western type Gulag (concentration camps), according to Nils Christie.<sup>42</sup>

There are also some authors who call the privatization process in criminal law as **reprivatization**, referring to the fact that we are essentially returning to the early period of criminal proceedings, when the victim had the judgement over the case, and he could freely decide regarding any retaliation.

The wave of privatization slams through the reality of the whole criminal proceeding. Just to mention one example, the privatization of public law and investigation in the criminal process.

## 5. Closing remarks

In our study, we have not get into details of several criminal-law issues that are currently unanswered (*e.g.* the future of a single European criminal law/criminal procedural/enforcement law). We have tried to flare up trends that, in the long term, can not be left without a substantive response to criminal law making and law enforcement.

<sup>40</sup> See, Ferenc Sántha, *Criminal responsibility of legal Persons in Hungary*, Sectio Juridica et Politica, Miskolc, Tomus XXIII/1, 2005, pp. 232-235.

<sup>41</sup> Christie Nils, *Büntetésipar* [Punishment industry], Osiris Kiadó, Budapest, 2004, pp. 13-14.

<sup>42</sup> Christie, *op. cit.* p. 15.