

Scaremongering in the Hungarian Criminal Law

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Abstract

Pandemic had an impact on Hungarian criminal law and as part of it, the Criminal Code of 2012 was amended on several points. The history of criminalizing scaremongering has a one and a half century long past in Hungarian criminal law since the first national code had been adopted in 1878. Along these long decades, historical circumstances and legislative trends affected the wording and legal concept of scaremongering. At the beginning penalizing the dissemination of various untrue news was not regulated in the criminal code, but so-called scaremongering(s) as criminal offences were regulated in several documents and it took decades to form a single criminal law definition for it. The recent criminal legislation including the current and previous criminal codes in force significant changes affected the wording and legal concept of scaremongering. Harsher punishment of perpetrators during hard times or during special legal order was not unprecedented. There has been always a general and increased social unrest during special legal order of course and justification for a more severe punishment with or without being reasonable has already appeared before. The present paper is focusing on the former and current regulation of scaremongering in the Hungarian criminal law.

Keywords: scaremongering, pandemic, legislation, regulation, special legal order

I. Introduction

Criminalizing scaremongering has a long history in Hungarian criminal law. When the coronavirus epidemic hit Hungary and the Criminal Code in force was amended on several points, parallel with all this, there was a significant effervescence among criminal lawyers and scholars too¹. In addition to the changes of the past year different impacts and legislative trends affected the wording and legal concept of scaremongering along the last century. The early regulation of scaremongering was codified in several different laws and took decades to form a single criminal law definition for it, while the recent criminal legislation including, the current and previous criminal codes both, introduced significant changes affected the legal concept of scaremongering.

II. The Early Regulation of Scaremongering

The history of criminalizing scaremongering has a one and a half century long past in Hungarian criminal law codification. The national codification of criminal law

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¹ See the referred papers and authors in the references, for example and worth mentioning: István Ambrus, Mátyás Bence, Krisztina Ficsor, István Gál, András Koltay or Mihály Tóth.

started with the „Csemegi” Code², the very first Criminal Code of 1878. Although the Csemegi Code was a unique product of the Hungarian legislation at that time, penalizing the dissemination of various untrue news was not regulated here. An early so-called „scaremongering” had been regulated among the petty offences³ a year after of the implementation of the Csemegi Code. The first appearance and wording of the offence has been codified as „whoever, by setting off bells or any other alarm, knowing that there is no cause, disturbs the peace of the inhabitants; or who intentionally misleads the authority by reporting false news of distress or riot shall be punished by imprisonment for up to eight days. And if, as a result of reporting a false rumor, the police or the armed forces are called out: the perpetrator shall be punished by imprisonment for up to fifteen days⁴”.

Although the Csemegi Code was amended several times during the decades following the First World War, the substantive criminal offences of defamation and libel were codified in legislation supplementing original Criminal Code. During these decades, burdened by political, economic and social changes, an act on the more effective protection of the state and social order of the Kingdom of Hungary was enacted⁵, which was in force since 1921 and left a decisive mark on criminal law and order between the two world wars. These so-called state defense acts⁶ divided punishable acts into two groups. The law distinguished between these criminal offences as felonies and misdemeanors aimed at overthrowing or destroying the state and social order, and against the esteem of the Hungarian state and the Hungarian nation. While offences belonging to the first group are theoretically close to the nowadays so-called crimes against the state, while offences from the second should be punished as „defamation of the nation”, see as „the allegation or dissemination of a false fact that violated the credibility of the Hungarian state or the Hungarian nation⁷”. Criminalizing the defamation of the Hungarian nation as a „political scaremongering” during special legal order was linked to two pieces of legislation passed in 1930. In line with the Military Criminal Code⁸ the crime of cowardice could be committed by a military person only who „spreads false war news during hostilities and causes discouragement or danger to another⁹” while with another supplementary act entered into force after¹⁰, the original Csemegi Code was also amended. Based on the above-mentioned amendment, the scaremongering could have been committed by anyone fabricates or spreads false news in war-time or in connection with warfare and these perpetrators should be punished by a term of imprisonment of up to one year, unless his act was punishable by a more serious penalty¹¹”.

² See as the Act V of 1878 on the Hungarian Criminal Code named after its scholar codifier, Károly Csemegi.

³ Act XL of 1879 on Hungarian Criminal Code on Petty Offences.

⁴ See Article 40 of the Act XL of 1879 and Tóth 2020, p. 6, see also Angyal, Isaak, 1941, pp. 14-15.

⁵ Act III of 1921 on the More Effective Protection of the State and Social Order.

⁶ See the similar so-called state defense acts or order acts from Europe: Yugoslavia (1920), Hungary (1921), Germany (1922), Czechoslovakia (1923), Romania (1924), Italy (1926) etc.; Belovics et al. 2012, p. 82.

⁷ Hornyák 2010, pp. 26-33.

⁸ Act II of 1930 on the Military Criminal Code.

⁹ Article 107(p. 3) of the Act II of 1930.

¹⁰ See the Act III of 1930 on the Entry into Force of the Military Criminal Code and on the Amendment and Supplementation of Certain Provisions of the Ordinary Criminal Code.

¹¹ See Article 80 of the Act III of 1930 (cf.: Article 14 of the Act XXIII of 1913 and Article 107 (p. 3) of the Act II of 1930); see also Koltay 2020a p. 322 and Koltay 2020b, p. 1.

It is unfortunate that the reform of the Military Criminal Code of 1930 and the military judiciary, as well as the justification for its co-regulation with „ordinary criminal laws” lacked a detailed legislative explanation of the above. The referred acts were dealing with the same legal problem, when the State Defense Act of 1921 punished the assertion or dissemination of an untrue fact infringing the credibility of the Hungarian state or the Hungarian nation, while the Military Criminal Code of 1930 penalized the same offence only in connection with warfare, except in the case where it caused such serious damage that it also damaged the credibility of the Hungarian state or the Hungarian nation¹².

The separate and independent „political” and „military” scaremongering was supplemented by the act on ensuring the order of economy and credit and the balance of public finances, which came into force only a year after the global economic crisis hit Hungary in 1930. From this year and being renewed annually, a new substantive article was in effect alongside with the other offences. This so-called „economic” scaremongering was a newly formed crime that could be committed by anyone who fabricated or falsified news that adversely affected the economic situation or credit life of Hungary¹³. In order to protect the national economy a temporary mandate was given to the Ministry of Economy. While the offence should have been punished originally until June 1932, but that had been extended from year to year and the article stayed in force¹⁴.

Following a scaremongering where the offence was regulated in several places, it took years for a uniform regulation covering political, military or economic life. First unification attempt took place in 1937 when in connection with the consequences and experience of the great world economic crisis it has been given rise to a new definition for scaremongering¹⁵, in which if „not punishable by a more serious penalty, it is punishable by imprisonment for a term not exceeding one year for fabricating news or spreading untrue news that may disturb public order or peace of mind or endanger the country’s foreign policy or adversely affect its economic situation or its lending practice¹⁶”. Although the new criminal facts being adopted in 1937, they did not cover all aspects of scaremongering, but created a wider definition for its different aspects being regulated in different legal sources before¹⁷. The unification and amendment described above did not affect the criminal offence of national defamation should be punished with a more severe penalty under the State Defense Act¹⁸.

III. Further criminal law regulation of scaremongering

The failed attempt for a democratic transition in the post-war Hungary led to a communist state order with different ideological emphases after 1945. The act on the

¹² Angyal, Isaák 1941, p. 685.

¹³ Article 9 of the Act XXVI of 1931 on Ensuring Economic and Credit Order and the Balance of Public Finances.

¹⁴ The referred deadline has been amended several times see: Act VII of 1932 (until 30 June 1933), Act X of 1933 (until 30 June 1934), Act XV of 1934 (until 30 June 1935), Act IX of 1935 (until 30 June 1936) and Act XVIII of 1936 (until 30 June 1937).

¹⁵ See Act X of 1937 on the Further Extension of the Authorization Granted to the Ministry.

¹⁶ Article 2 of the Act X of 1937; Koltay 2020a p. 323 and Koltay 2020b, p. 2.

¹⁷ See: Article 80 of the Act III of 1930; Article 9 of the Act XXVI of 1931; Article 40 of the Act XL of 1879; Article 7 of the Act III of 1921etc.

¹⁸ See the preamble for the Act X of 1937.

criminal defense of the democratic state and the republic created a new offence in which the perpetrator „in the presence of two or more persons, to state or spread rumors of any untrue fact or allegation that is capable of disturbing public order or public peace, or endangering the country's foreign policy interests or adversely affecting the economic situation¹⁹”. The crime could only be committed by alleging or rumoring an untrue fact that was capable of inciting contempt against the democratic state order and the republic order or undermining its international esteem, but did not punish insignificant or harmless remarks containing untrue facts. Regarding the legal regulation of scaremongering the legislator has penalized the untrue facts only while argued that „this would unduly restrict freedom of criticism”²⁰ The criminal law protection of the international esteem of the Hungarian state was justified by the closer international relations and by the interest of Hungary in joining the United Nations, but a couple of years later the originally quite slight regulation tightened by adopting certain amending provisions related to legislation reforms of a communist one-party system.

Following the fragmented legal regulation of the earlier decades, a generally formulated definition of scaremongering has arisen with the adoption of the new Criminal Code of 1961 and which replaced the long-lived Csemegi Code from 1878 and its additional criminal legislation. Based on the new code „a person, who claims or spreads rumors, in front of others, of a false fact or fact distorted in such a way as to disturb the public peace or adversely affect the economic situation shall be punished by imprisonment for a term not exceeding two years”²¹ and it should be punished by imprisonment for a term from six months to five years if „the offence was committed through the press of reproduction or in front of a large audience²²”. The criminal offence was included in the chapter on crimes against public security and public order as emphasizing its characteristic and close connection to public order and disturbing public peace of people. The heritage of a partly overlapping subject circle of a diversified regulation the new concept of scaremongering had to be combined and merged with each other. Hereby the legislator identified the legal object requiring primary protection in public peace through which various interests may be jeopardized by the spread of false or untrue rumors resulting confusion and restlessness in behavior of people.

The „old” Criminal Code of 1978, which replaced the short-lived Criminal Code of 1961 meant a qualitative change in the legal regulation and in the regulation and wording of scaremongering, in which „a person who, in front of others, states or disseminates any untrue fact – or any misrepresented true fact – that is capable of causing disturbance shall be punished by imprisonment for up to one year, correctional-work or a fine. The punishment shall be imprisonment for a term not exceeding three years for a criminal offence if the scaremongering is committed in a place of public danger or during a war²³”. Significant changes were adopted during the political and legal transformation of Hungary in 1989 when the old criminal offence of scaremongering was just a lasting piece of the one-party legal system²⁴. Following the necessary modification, scaremongering could be committed only „when someone in front of a large audience, states or disseminates any

¹⁹ Koltay 2020a, p. 323 and Koltay 2020b, p. 2.

²⁰ See the Article 4 of the Act VII of 1946 on the Protection of the Democratic Order and the Criminal Law of the Republic.

²¹ Koltay 2020a, pp. 323-324 and Koltay 2020b, pp. 2-3.

²² Section 218 of the Act V of 1961 on the Criminal Code of the Hungarian People's Republic.

²³ Section 270 of the Act IV of 1978 on the Criminal Code of the Hungarian People's Republic.

²⁴ See Act XI of 1992 on Annuling Convictions for Certain Offenses against the State and Public Order Committed between 1963 and 1989.

untrue fact or any misrepresented true fact that is capable of causing disturbance is guilty of a misdemeanor and committing this crime should be punished by imprisonment for up to one year, community service or a fine. The punishment should be imprisonment for a term not exceeding three years for a criminal offence if the scaremongering is committed in a place of public danger or during a war²⁵. This form of scaremongering had been modified only after the political transformation when assessed the constitutionality of the elements of scaremongering. After this examination related to the freedom of speech and criminal law regulation, the new form of criminal law regulation penalized „any conduct of uttering or publishing before the public at large a statement one knows to be false or with a reckless disregard for its truth or falsity at the scene of some emergency by which to violate public order or disturb the public peace at a place of public danger is guilt of a felony punishable by imprisonment not exceeding three years”²⁶ after 2000. This regulation form has been incorporated into the new Criminal Code of 2012²⁷ and lasted for two decades until the legal side effects of the outbreak of the coronavirus epidemic²⁸.

IV. Outlook: The Pandemic and the Regulation of Scaremongering

Pandemic had an impact on Hungarian criminal law and as part of this, the Criminal Code of 2012 was amended on several points²⁹. As a result of the social phenomena that accompany the epidemic situation the changes affected the wording and legal concept of scaremongering on the basis of which thereafter „a person who, at a site of public danger and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact with regard to the public danger that is capable of causing disturbance or unrest in a larger group of persons at the site of public danger is guilty of a felony and shall be punished by imprisonment for up to three years”, furthermore „a person who, during the period of a special legal order and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection is guilty of a felony and shall be punished by imprisonment for one to five years³⁰”.

The harsher punishment of the perpetrators of certain crimes during war time or during special legal order in force can be understandable and it would not be without precedent in the Hungarian criminal law and theory according to which, „in the defense of the state and its order, especially in times of war, it is often necessary to impose particularly minor offences with disproportionately severe penalties in order to have a deterrent effect even by deterrent example³¹”. The ground for the old concept of the justification for a more severe punishment has already appeared before. Naturally there has been always a general and increased social unrest during the times of

²⁵ See Section 16 of the Act XXV of 1989 on the modification of the Act IV of 1978 on the Criminal Code and see also Koltay 2020a, pp. 323-324 and Koltay 2020b, pp. 2-3.

²⁶ See as the Section 2 of the Act CXXV of 2000 on the modification of the Act IV of 1978 on the Criminal Code.

²⁷ Act C of 2012 on the Criminal Code.

²⁸ See here also Belovics 2012 pp. 543-544 and Gellér 2013, pp. 102-105.

²⁹ See the Act XII of 2020 on the protection against the coronavirus (see also the bill No. T/9790 on the protection against the coronavirus).

³⁰ See Section 337(1)(2) of the Act C of 2012 and see also Bencze, Ficsor 2020 and Tóth 2020, p. 8.

³¹ Hacker 1940 p. 13.

special legal order like during a war an imminent threat of war or during the times of an emergency crises affecting society. In these times mentioned before public peace becomes more vulnerable and its consequences more severe. Scaremongering has a different shape and effect on criminality in different and turbulent times as cited above. In times of peace, the custodial sentence was completely waived or its execution was suspended for probation. In times of war, a more severe punishment may be justified, but it must be considered because the deterrent effect of a short-term imprisonment may no longer be effective after the first custodial sentence has been served.

In special cases of the current offense of scaremongering, the time and the place of the offense as particular circumstances shall be punished more widely during a special legal order, by a person who's miscarriage capable of hindering or preventing the efficiency of protection³². The offense committed during special legal order, as a qualifying circumstance, not just defines the scope of acts to be punished more severely, but has been applied during the pandemic with more or less effectiveness due to the initial uncertainties of the investigation authority³³. The legislator's consideration and need for decisive action to give greater protection to public peace in times of emergency is understandable. However, it is not prudent to place a fact with a difficult historical legacy in a much broader framework in such a way as to make it difficult for the law enforcement to interpret the law, and while arousing doubts in the observer.

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³² See also Ambrus 2020, pp. 13-14.

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