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The Relation between Truth and Justice in Criminal Proceedings

The more we examine the duality of truth and justice, the more paths need to be crossed and diving deep into the relevant literature we may inevitably find ourselves evaluating them abstractly, on their own. From a criminal procedural point of view, however, I believe we are moving on the wrong track when assessing these concepts abstractly. Instead, it is worth examining the relationship between them, through the regulated system of the criminal justice system as a filter, keeping in mind the primary function of it. Criminal justice systems are not operating in a "vacuum", they have a function, namely to ensure social order. If this harmony was infringed by committing a crime, then the goal is to somehow deliver justice in broken human relationships. This is possible with a fair and satisfying result at the end of the criminal procedure, based on an attempt to establish what happened in accordance with the criminal offence.

Therefore, I do not wish to take a position for either justice or truth in itself; my paper does not address this issue on a philosophical, ethical, or theological approach. Instead, through the various types of criminal justice systems, I attempt to outline the interference between justice and the methods seeking for truth. After that, I will examine what guarantees are to be followed in each system to achieve the ultimate, just goal. The question necessarily arises as to whether one of the solutions can be better, can serve the primary function of the criminal justice system more effectively, then the other?

I. Theoretical Basis

I.1. Search for the Truth in Criminal Proceedings

There is consensus in legal literature that the basic concepts of criminal proceedings are structured along with different principles, actually on two paths; which the authors refer to by different names based on their special characteristics: Anglo-Saxon and Continental; accusatory and inquisitory; adversarial and non-adversarial systems, or cooperative and hierarchical systems.

It has to be emphasized that these models do not appear clearly internationally. The Anglo-Saxon model can be considered closer to the accusatory system, while the Continental model is most similar to a mixed system, but in each case the characteristics of the originally inquisitory and accusatory models are mixed.[2] According to Károly Bárd, the relationship between these two systems was originally characterized by "resistance", which is otherwise acceptable, since the essence of the regulation is to distribute power between and within constitutional institutions, legislature, courts or administrative institutions. Consequently, some transposal attempts would all destroy the structure already in place.[3] Today, of course, the situation is much more nuanced, and as a result of its comparative examination, Bárd also emphasizes that the two systems have converged and the scepticism about the transplantation of procedural solutions has not been confirmed. Moreover, several authors reiterate that the

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[2] Vida József: Kibékíthető ellentétek a büntetőeljárásban. Belügyi Szemle, 2019/5, 104.

[3] Bárd Károly: Az eljárási rendszerek közelítése. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 24–25.

presence of "foreign elements" is also beneficial, as they may provide an adequate counterweight to the weaknesses of the systems.[4]

Regulating the administration of criminal justice is the responsibility of the state, in connection with which, however, the state can decide what part it wishes to take part in. One of the possible ways in which the state undertakes to enforce and decide a criminal claim. This is the continental, professional approach to the procedure. The other is when the state only undertakes to enforce the criminal claim, but the final decision rests with its citizens - this is the Anglo-Saxon, the half-professional solution.[5] I do not wish to analyze the various systems in all procedural aspects, I am merely outlining the different ideas in terms of the search for truth in criminal proceedings, the fundamental principles behind each procedural system; and I make general conclusions in this regard. According to the procedural traditions of the Anglo-Saxon systems, the criminal proceedings are controlled by the parties, while in the Continental systems the procedures are managed by the state authorities. Lippke captures the difference in the primary function of these systems, as the former attempts to settle the conflict that has arisen by committing a criminal offence. While the latter highlights the importance of finding the truth about the charge against individuals.[6]

Mirjan Damaska points out that in criminal proceedings, where only the participants are shaping the proceedings, as in the Anglo-Saxon solution, there is, in fact, a "competition" between prosecution and defence. While, if primarily the authorities are managing the proceedings, as in the Continental solution, then the focus of this process is on to investigate the circumstances of the crime. Based on these characteristics, he also describes the former theory as cooperative; while systems based on the latter principles as hierarchical; which concepts I intend to use hereinafter.[7]

I.1.1. Search for the Truth according to the Hierarchical Systems

Professionalism

In procedural systems organized by the hierarchical principles, the justification of state criminal power is provided by its professionalism, which is why there is no jury, and therefore the professional judge, the investigative procedure and the "common file" in determining evidence is decisive.[8] It, therefore, focuses on the investigation by the authorities and the execution of the state's criminal policy. However, this requires to establish the real facts in connection with the criminal offence at the end of the procedure.[9]

These systems, therefore, impose the obligation to investigate on impartial authorities and the courts. Given that the final decision on guilt or innocence is in the hands of the latter, is committed to the full disclosure of the evidence and accurate findings of the facts. This consideration is intended to serve the professionalism of the evidentiary procedure[10], and it follows that the final judgment is primarily legitimized by a properly proved result.

To sum up the aforementioned, criminal proceedings are acceptable and justified if they make it presumable (or at least increases the possibility) that the content of the result is as accurate as possible, that is to say, that the facts established are adequate to what happened.

Practitioners aiming to get as close to the level of full certainty as possible, so they attempt to base the fairness of their decision on their deepest internal convictions. [11] According to Erzsébet Kadlót, the reason for this is that during the centralization of the state, it took the right to prosecution from the victim. This was proved by the ability of the professional state authorities to discover the objective truth as opposed to laypersons.[12] However, the cooperative methods are strongly emphasizing the contrary, as there is no objective truth that could be achieved by a neutral participant. Since even a genuinely disinterested third party will inevitably make assumptions about the reality he is trying to reconstruct, as the human mind selectively notices information and thereby becomes more sensitive to evidence that supports its assumption. In that regard, there is no difference in whether it seeks to prove or disprove that presumption.[13]

[4] William Pizzi: Sentencing in the US: An Inquisitorial Soul in an Adversarial Body? Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 65–66.

[5] Kúria Büntető Kollégium Joggyakorlat-elemző csoport 2012.L.II.E.1/6. szám. A bíróságok hatályon kívül helyezési gyakorlatának elemzése (büntetőügyek) 2012-es összefoglaló vélemény https://kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2012iimod2_2.pdf (letöltés időpontja: 2019. 12. 08.) 9.

[6] Richard Lippke: Fundamental Values of Criminal Procedure. Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weisser (ed.): The Oxford Handbook of Criminal Process. Oxford University Press, New York, 2019, 5.

[7] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 18–38.

[8] See detailed description: Kúria Büntető Kollégium, Joggyakorlat-elemző csoport: A bíróságok hatályon kívül helyezési gyakorlatának elemzése, büntető ügyek. 2012. Összefoglaló vélemény. 2012.EI.II.E.1/6. 9–14. oldal. http://www.kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2012iimod2_2.pdf (Downloaded: 2019. 12. 11.).

[9] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 160.

[10] Elisabetta Grande: Dances of Criminal Justice: Thoughts on Systemic Differences and the Search for the Truth. Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 158.

[11] Bencze Mátyás: A bizonyítékok értékelésének összehasonlító vizsgálata a tisztességes eljárás szempontjából. A bírói függetlenség, a tisztességes eljárás és a politika. Összehasonlító jogi tanulmányok. Gondolat Kiadó, Budapest, 2011, 223.

[12] Kadlót Erzsébet: A „vád igazsága". A büntető ítélet igazságtartalma. Magyar Közlöny Lap-és Könyvkiadó, Budapest, 2010, 24.

[13] Mirjan Damaska: The Faces of Justice and State Authority – A

Vertically organized procedure

Generally, in criminal proceedings organized on a hierarchical basis, there is no clear separation between the gathering of evidence during the investigation and trial phase. In Europe, this is only relevant in the English and Italian systems, where a sharp division separates the investigative and trial phases, and where the latter is the main area for gathering evidence.[14]

In a hierarchical system, the phases of criminal proceedings are thus built on each other, with a close connection and cooperation between them. The investigating authorities, the prosecution, the courts of the first instance and the courts of appeal together form a system designed to find out the truth.[15]

The Perception of the Truth in the Hierarchical Systems

According to the hierarchical, continental idea, criminal proceedings should be more determined to find the true facts. It does not mean that hierarchical systems do not have values as a fundamental requirement that might be an obstacle to the discovery of real facts, nor the belief that complete, "objective" truth can be achieved in each case.[16] I believe that it is more appropriate to declare that the system seeks the highest possible level of proof; to maximize the possibility of obtaining real facts, but at the same time accepts that the truth of the law can only be the truth that the law can establish by its own means during the legal proceedings.[17]

These factors are the reasons for that it is inconceivable to control the proceedings in a ‚private' way, and therefore obliges the competent authorities to investigate the truth. According to this consideration, the facts to be established in the proceedings might negatively affect the individual interests of the parties; giving a reason to attempt to hide these facts rather than to reveal them. This, of course, does not mean that this solution would completely exclude the parties from the process of discovering the necessary information and facts, but the control of the fact-finding process is mainly concentrated in the hands of qualified public officials in the proceedings.[18]

I.1.2. Search for the Truth in the Cooperative Systems

Customer Centred Procedure

The most characteristic feature of cooperative procedural systems about the search for the truth is that it gives the parties the right to arrange individual procedural acts. The primary purpose of criminal proceedings in these systems is to resolve the conflict between the parties. This consideration based on the fact that, within certain legal limits, the parties have the sovereign right to decide what form of procedure and resolution is desirable for them in terms of their conflict.[19] Thus, the cooperative procedural system emphasizes the autonomy of private parties in a criminal case. This is accompanied by the decisive role of the lay jury, which embodies the participation of the society, as well as the so-called client litigation, characterized by the fact that the evidence is obtained at the trial through a "battle" between the parties.[20]

However, the question arises as to whether it should be the parties or the trial judge who determines the range of evidence to be taken into account at the hearing. Again, the answer to this question must be interpreted in light of the primary purpose of the proceedings, which is to resolve the conflict between the parties. If the scope of the facts about the criminal offence is not determined by the parties, the focus will again shift away from the primary purpose of resolving the dispute between theindividuals. Although, of course, the trial judge may also have good reason to examine facts or circumstances other than the evidence alleged by the parties; however, this would operate against the basic idea that its role would be limited to resolving the dispute between the parties.[21] In the cooperative systems, the primary intention to resolve the conflict raised by committing a crime is so powerful that it also allows for various forms of plea bargaining. Moreover, criminal proceedings are conducted in this way in most cases and not by holding a trial according to the general rules.[22]

Within the practice of plea bargaining, a lesser, or even completely other criminal offence may form

Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 120.

[14] Roberto E. Kostoris (Ed.): Handbook of European Criminal Procedure. Springer International Publishing. University of Padua, Padua, 2018, 355.

[15] See detailed description: Kúria Büntető Kollégium, Joggyakorlat-elemző csoport: A bíróságok hatályon kívül helyezési gyakorlatának elemzése, büntető ügyek. 2012. Összefoglaló vélemény. 2012.EI.II.E.1/6. 9-14. oldal. http://www.kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2012iimod2_2.pdf (Downloaded: 2019. 12. 11.).

[16] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 161.

[17] Somogyi Gábor: A bírói igazságkeresés útjai. Az objektív valóság és a processzuális igazság kibékítése. Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapja alkalmából. Pázmány Press, Budapest, 2018, 337.

[18] U.o.

[19] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 118.

[20] See detailed description: Kúria Büntető Kollégium Joggyakorlat-elemző csoport 2013.El.II.E.1/4. A vád törvényességének vizsgálata. 2013. Összefoglaló vélemény. 11-16. http://www.kuria-birosag.hu/sites/default/files/joggyak/a_vad_torvenyessegenek_vizsgalata.pdf (Downloaded: 2020. 04. 14.).

[21] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 109–113.

[22] In the United States, approximately 98% of the cases are resolved in the so-called form of plea bargaining. In England, this legal institution has a little less relevant, but still, only 2-4% of cases are heard by the jury. (Elek Balázs: Költség és időtartalékok a büntetőeljárásban. http://ujbtk.hu/dr-elek-balazs-koltseg-es-idotartalekok-a-buntetoeljarasban/#_ftn8 (Downloaded: 2019. 12. 09.).

the basis of the charge[23]; thus, in fact, the system sees the role of the prosecutor and the defendant as opposing private parties. Although the judge may refuse to accept their agreement, it is very rare, given that there is still "some factual basis" for admitting guilt.[24] Despite its widespread use, many authors express their concern about this solution and agreement, it causes embarrassment and dissatisfaction in these systems.[25]

About cooperative procedural solutions, several studies point out that the so-called laissez-faire concept can be considered as a special characteristic. Concerning the procedural rules relevant to the present subject, it means limiting the intervention of the state's criminal justice system to the lowest possible level. In this relation, criminal proceedings are thus a confrontation between two opposing parties before a passive public official who has not been involved in the fact-finding process at all, since any judicial - and thus state - intervention in forming the proceedings is inconceivable because it would violate individual liberty. Contrary to John Langbein's proposal to increase the judge's activity in the American system[26], Oscar G. Chase directly envisioned that strengthening the role of the judge and restricting the parties' right of disposition would lead to a further spread of authoritarianism, which is already a serious social problem in American society.[27] According to some authors, furthermore, the creation of a jury (originally a prosecutor's and then a judicial body) helped primarily to strengthen the concepts of cooperative criminal proceedings.[28]

Horizontally Organized Procedure

In the case of a judicial system based on the cooperative consideration, there are no qualified officials whose primary task is to gather evidence and make it part of the „common file"; nor is there, in principle, a higher-level body before which the case could continue after the first judgment has been delivered. The procedure presumably ends before a homogeneous, one-instanced judicial body, and probably decided by a single judge. In short, we can even say that the trial itself can be seen as synonymous with the whole legal process. The historical roots of this highly concentrated procedural model are traditionally rooted in the different structures of the authorities[29], as in these systems the police and prosecutorial functions remained in the hands of private individuals until the middle of the 19th century.[30] For this reason, due to the lack of investigation by the public authorities, this "preliminary phase" of the procedure was not integrated into the subsequent proceedings; not as it has in systems operating according to hierarchical principles. Thus it is still true today that it is very difficult to obtain adequate evidence out of court before a trial.[31]

The Perception of the Truth in the Cooperative Systems

Compared to the principles of the hierarchical model, the cooperative approach emphasizes that there is no objective truth that can be achieved by a neutral participant.[32] This is because even a genuinely uninterested third party inevitably makes assumptions about the reality it is trying to reconstruct[33], therefore the human mind selectively notices information and thereby becomes more sensitive to evidence that supports its assumption.[34] Thus, in the case of fact-finding by the state authorities, a pre-existing presumption may be an influencing factor even before the evidence is presented.[35]

[23] See detailed description: Pápai-Tarr Ágnes: A büntetőeljárás gyorsításáról. Gondolat Kiadó, Budapest, 2012.

[24] Ibid

[25] The existence of the Innocence Project foundation in the United States reveals a lot about the perception of the practice of plea bargaining, as it aims to free the staggering number of innocent people who remain incarcerated and to bring reform to the system responsible for their unjust imprisonment. https://www.innocenceproject.org (Downloaded: 2019. 12. 05.)

Therefore the possibility of a "negotiated truth" as a result of the criminal procedure raises serious concerns and worry, even in Anglo-Saxon countries, including the United States, where the possibility of an agreement with the accused rests on the most solid foundations. (Mirjan Damaska: Negotiated Justice in International Criminal Courts. Journal of International Criminal Justice. 2004/2, 1027.). See detailed description from the american literature: Nancy Amoury Combs: Copping a Plea to Genocide: The Plea Bargaining of International Crimes. University of Pennsylvania Law Review, 2002/1. See detailed description from the british literature: A. J. Ashworth: The Criminal Process: An Evaluative Study. Oxford University Press, Oxford, 1998.

[26] John H. Langbein: The German Advantage in Civil Procedure. University of Chicago Law Review, 1985/52, 823–886.

[27] Oscar G. Chase: Legal Processes and National Culture. Cardozo Journal of International and Comparative Law. 1997/5, 23. Referred by: Bárd Károly: Az eljárási rendszerek közelítése. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 25.

[28] See detailed description: Elisabetta Grande: Dances of Criminal Justice: Thoughts on Systemic Differences and the Search for the Truth. Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 145-150.; John H. Langbein: The Origins of Adversary Criminal Trial. Oxford University Press, Oxford, 2003; William Pizzi: Sentencing in the US: An Inquisitorial Soul in an Adversarial Body? Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008; Roberto E. Kostoris (Ed.): Handbook of European Criminal Procedure. Springer International Publishing. University of Padua, Padua, 2018.

[29] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 57.

[30] John Langbein: The Origin of the Public Prosecution at Common Law. American Journal of Legal History. 1973/4, 313.

[31] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 57–58.

[32] The recognition of these cognitive barriers - and other factors that hinder the discovery of the truth - is of course valid in the hierarchical models as well. (See detailed description: Somogyi Gábor: A bírói igazságkeresés útjai. Az objektív valóság és a processzuális igazság kibékítése. Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapja alkalmából. Pázmány Press, Budapest, 2018, 338.) See also: Finszter Géza: A büntetés igénye – hatalom tudás nélkül? Dolgozatok Erdei Tanár Úrnak. ELTE Állam-és Jogtudományi Kar, Budapest, 2009, 60-99.; Herke Csongor: Megállapodások a büntetőperben. Monográfia Kiadó, Pécs, 2008, 88–92.

[33] Elisabetta Grande: i.m. 145–150.

[34] Mirjan Damaska: Evidence Law Adrift. Yale University Press, New Haven, 1997, 90.

[35] Craig C. Callen: Cognitive Strategies and Models of Fact-Finding. Crime, Procedure and Evidence in a Comparative and International Context. Essays

Cooperative systems do not place the evidence-gathering process in the pre-trial phase[36]; that is why, in most cases, the trial judge knows the least about the case, as there is no "common file" on the case, also known to the judge, the prosecutor and the lawyer, containing the results of the investigation.[37] This solution primarily endeavours to establish the truth within the legal framework, in the courtroom, as its purpose is to resolve the dispute, to establish the truth of the dispute. In the course of the proceedings, they seek the truth only to the extent necessary to resolve the debate between the parties.[38] The emphasis is primarily to ensure compliance with the procedural rules and the fair application of them, not so much the accuracy and validity of the outcome of the proceedings.[39]

I.2. Conclusions on the Relation between Truth and Justice in Criminal Proceedings

To sum up the aforementioned, searching for the truth in criminal proceedings is based on different considerations in the different systems. In methods organized by hierarchical principles, facts relevant to the relation of criminal proceedings are discovered by qualified officials, given that the state takes over the prosecution of the victim. It proves this by the fact that it is thus possible to find the true facts or at least very close to reality.

According to the cooperative concept, in comparison, the facts are presented by the parties, as a criminal offence is considered as a conflict between the parties, which the criminal proceeding attempts to resolve. Jerome Frank captures the focus of the two systems by referring to the „fight theory" as the Anglo-Saxon solution, and „truth theory" as the Continental solution.[40] In the latter case, a search for the truth by impartial authorities is desirable, as a result of which it will be possible to determine what actually happened.[41] In summary, justice in a criminal proceeding is guaranteed by "substantive justice".

In the cooperative system, on the other hand, justice is manifested in passivity on the part of the authorities and in the opposition of the parties by providing the conditions of a fair procedure, therefore achieving "procedural justice". Thus, the state already fulfils its role by ensuring the conditions for the equal "competition" of the parties.[42]

The result of different ideas will be a different perception of the truth established during a criminal procedure. The hierarchical system assumes that the impartial court established the facts that actually occurred in reality, but at least it is really near to it. While in the cooperative system, facts presented by the direct perceivers of reality constitute the truth established in the criminal case.

With regard to the assessment of the relationship between the search for the truth in criminal proceedings and justice, the first step must, in my view, be to determine what the primary function of criminal justice is; and then, in line with the research question raised, to examine whether one solution can be more effective in achieving the final aim than the other. Of course, the various goals of the criminal justice system, criminal law and punishment, as well as their connections could be the subject of an individual thesis. Therefore I will merely point out the differences with only three short definitions here, and refrain from describing the exhaustive literature. Rather, I consider the synthesis of these ideas to be my opening point.[43]

in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 168.

[36] Roberto E. Kostoris (Ed.): Handbook of European Criminal Procedure. Springer International Publishing. University of Padua, Padua, 2018, 355.

[37] William Pizzi: Sentencing in the US: An Inquisitorial Soul in an Adversarial Body? Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 66.

[38] Erdei Árpád: Mi az igazság? A büntetőítélet igazságtartalma. Magyar Közlöny Lap-és Könyvkiadó, Budapest, 2010. 13. oldal.

[39] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 148.

[40] Jerome Frank: Courts on trial. Princeton University Press, Princeton, 1949, 80-102.Referred by: Bárd Petra: Az angolszász és kontinentális büntetőeljárás eltérő igazságfelfogása. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 40.

[41] At least we are getting close to it.

[42] Bárd Petra: Az angolszász és kontinentális büntetőeljárás eltérő igazságfelfogása. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 39.

[43] Analysing the goals of the criminal justice system, criminal law and punishment

Bibó István: Válogatott tanulmányok. Etika és büntetőjog. http://mek.oszk.hu/02000/02043/html/42.html (Downloaded: 2020. 04. 14.)

Elek Balázs: IX. Fejezet a Büntetés kiszabása, Új Btk. Kommentár (főszerkesztő: Polt Péter), Budapest, Nemzeti Közszolgálati és Tankönyv Kiadó, 2013., 2. kötet.

Elek Balázs: Az igazság és a jogerő összefüggései. https://www.uni-miskolc.hu/~wwwdeak/Collegium%20Doctorum%20Publikaciok/Elek%20Bal%E1zs.pdf (Downloaded: 2020. 04. 14.)

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Nagy Ferenc: A generális prevenció teóriájáról pozitív megközelítéssel, Jogtudományi Közlöny, 2016/5., 250.

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Balla Lajos: Adalékok a visszaeső bűnelkövetők megítéléséhez a magyar büntetőjogban, Bírák lapja, 2011/1–2.

Vígh József: A bűnözés és bűnmegelőzés Magyarországon, Rendészeti szemle. A Belügyminisztérium folyóirata 1993/3,7.

Sipos Ferenc: A büntetés céljának változásai a magyar büntető anyagi jogban a Csemegi-kódextől az 1978. évi IV. törvényig, In: Profectus in litteris, 3. kötet, Előadások a 8. debreceni állam- és jogtudományi doktorandusz-konferencián 2011. június 3.

Kertész Imre: A büntetés hozama és ára, Belügyi szemle, 2003/1,122.

Földesi Tamás: Jog és igazságosság. Közgazdasági és Jogi Könyvkiadó, Budapest, 1989., 131–283.

Bárd Károly: Igazság, igazságosság és tisztességes eljárás. Fundamentum 2004/1.

Criminal justice is essential for the preservation of the order of human and social relations, and therefore its primary task is to protect the coexistence of people in the community.[44] The state, therefore, seeks to promote the smooth coexistence of society by providing for the imposition of a sanction - aimed at general and special prevention - against acts fronting the community. The purpose of the Criminal Code is recalled in the Preamble, which is to protect the inviolable and inalienable fundamental rights of human beings, as well as the independence, territorial integrity, economy and national assets of the country. Finally, the objective of punishment is, in the interest of the protection of society, to prevent the perpetrator or any other person from committing a criminal offence.[45]

These goals are linked: the state (also) seeks to fulfil its obligation to citizens to protect their personal safety and property, thus ensuring the smooth coexistence of society by the administration of criminal justice.

Consequently, one aspect of the realization of the ultimate goal, ie the social order, is that criminal justice prevents committing criminal offences by the means of punishments. The other, to which Bibó very pertinently points out, is that if this social order is violated through committing a crime, the criminal justice system provides a regulated framework for the conduct of the anger caused in society as a result. In other words, it gives a sense of security, that law prevails over disorder.

Restoration of the order violated by a criminal offence is possible with a fair, satisfying result of the criminal proceeding, but the basis for this is that we first take a position on the question of what is the truth, what happened. This is the first major issue in a criminal procedure, the "material justice" dimension emphasized by hierarchical systems. However, this is necessarily accompanied by the requirement of "procedural justice" emphasized by cooperative systems, ie that the proceedings provide equal conditions for the accused to prove his own position. The second main question, therefore, is whether, on the basis of the truth thus established, the defendant is liable for the act and, if so, what sanction is required. This is the question of justice in relation the punishment.

The emphasis must therefore be on making a real effort to find out the truth in order to answer both main questions correctly, but this requires both methods of seeking for the truth (ie the duty of the authorities to seek for it and the possibility for the defence to disclose the facts). Consequently, it is irrelevant whether we call the facts established in the criminal proceedings "procedural" or "material" truth. If the decision of guilt or innocence and the imposition of punishment are ultimately based on a „truth" which is logical, reasonable, clear and meets common sense, ie convincing to an outsider, the ultimate goal will be achieved. István Feleky states in connection with the requirement of common sense that one who thinks in this way is clear to the other party, and is ultimately acceptable.[46] According to Lajos Nagy, at the end of the process of decision-making, the judge should reasonably come to the truth, namely on the basis of facts and assessment that excludes all subjectivity and intellectually causes everyone to make a similar decision.[47]

It is, therefore, necessary to explain the grounds of the judgment, how the decision was reached; and its role is to get the same decision in others, based on the same data.[48] It is exactly the reason why the practice of plea bargaining and a settlement that is completely different from the reality is unable to reach the final goal. Justice as a result of a criminal procedure – or, at least a satisfactory outcome – can not be based on mere assumptions or an agreement based on false facts. The consequence of it is that criminal justice loses its original purpose, as it is not able to restore the social order violated by committing the crime at all. We can also say that the ultimate legal justice can not be imagined without true statements.[49] Besides, it is essential for the realization of the goals of each punishment that the defendant also experiences it as a disadvantage, as a deprivation reaction stemming from the community.[50]

The basic issues of the search for truth and justice are, of course, were raised in connection with creating the new code on criminal procedure[51] in Hungary. From a practical point of view, the difficulty of seeking the truth is primarily related to the principle of the separation of procedural functions, i.e. should the trial judge play an active role or is it merely a duty to the prosecutor and the defence? However, it is not an exaggeration to say that the method on how to seek the truth affects almost every other principle and institution of the criminal justice system.[52] Without further elaboration, I do not consider that it is necessary to quit the continental approach and instead adopt the principles of the Anglo-Saxon system. This, of course, does not mean that it should be impossible to compromise

[44] Belovics Ervin, Nagy Ferenc, Tóth Mihály: Büntetőjog 1, HVG-ORAC Lap-és Könyvkiadó Kft, Budapest, 2014, 80.

[45] Act C of 2012 on the Criminal Code, Section 79.

[46] Feleky István: A józan ész. Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapja alkalmából. Pázmány Press, Budapest, 2018, 106.

[47] Nagy Lajos: Ítélet a büntetőperben. Közgazdasági és Jogi Könyvkiadó, Budapest, 1974, 197.

[48] Ibid.

[49] Földesi Tamás: Jog és igazságosság. Közgazdasági és Jogi Könyvkiadó, Budapest, 1989, 91.

[50] Belovics Ervin, Nagy Ferenc, Tóth Mihály: Büntetőjog 1., HVGORAC Lap-és Könyvkiadó Kft., Budapest, 2014, 460.

[51] Act XC of 2017 on the Criminal Procedure Code.

[52] Tóth Mihály: Hol az igazság mostanában? – szemelvények és reflexiók Király Tibor professzor tiszteletére. Hack Péter, Horváth Georgina, Király Eszter (Szerk.): Kodifikációs kölcsönhatások. Tanulmányok Király Tibor tiszteletére. ELTE Eötvös Kiadó, Budapest, 2016, 24–26.

and either assess the defendant's cooperation or take into account other considerations that limit the search for the truth, as compromise is not necessarily a distortion of the truth.[53]

I merely attempt to point out that although criminal proceedings are formally closed by an agreement, even in any crime or any facts, I believe that to fulfil the primary function and to achieve the punitive goals (special and general prevention, protection of society, restoration, reprisal) an agreement based on facts that completely false is inappropriate for this. It seems reasonable to conclude that the search for the truth within a regulated framework is of paramount importance for the ultimate justice of criminal proceedings.[54] In other words, the search for the truth can be considered as a means to reach justice as a result of criminal proceedings and thus to restore the order of society infringed by a criminal offence.

Authors who emphasize the Anglo-Saxon considerations, take the opposite view. According to some views, the truth is unnecessary to achieve justice, as justice *is* before truth.[55] For my part, I can not agree with this because, in my view, it excludes justice if the facts established during the fact-finding process are not adequately related to reality, but at least we do not seek to do so.

However, that consideration is correct according to the requirement of procedural fairness. The requirement of seeking for the truth – the aspect of substantive justice – does not mean that it can not be restricted in favour of procedural justice. Thus, the requirement of the separation of procedural functions and the principle of the equality of arms is of great importance in these systems as well. It must therefore be emphasized that there have to be values at a fundamental level which, where appropriate, limit the discovery of the truth. It is, therefore, reasonable to conclude that the principles of seeking for the truth emphasized by each system are in fact interconnected and presupposed, and thus neither can be better or more effective than the other.

[53] Ibid.

[54] Lippke emphasizes the importance of seeking for the truth in criminal proceedings in the context of the right to human dignity. He argues that if we attach particular importance to human dignity, especially the human dignity of the person accused of a crime, then a real effort is required to determine whether he has actually committed a criminal offence. (Richard Lippke: Fundamental Values of Criminal Procedure. Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weisser (ed.): The Oxford Handbook of Criminal Process. Oxford University Press, New York, 2019, 5.).

[55] See detailed description: Ho Hock Lai: A Philosophy of Evidence Law. Justice in the Search for Truth. Oxford University Press, New York, 2008, 64.