

# ENSURING UNIFORM ADMINISTRATION OF LAW IN CRIMINAL MATTERS - THE HUNGARIAN WAY

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**Keywords:** *administration of law, Hungarian law, European Court of Human Rights, interpretation of rules, the Supreme Court of Hungary*

## Introduction

The first question which must be put when dealing with ensuring uniformity of judicial practice is: why is it a problem? Why is it not evident that an act of parliament or any other source of law can be understood clearly, unequivocally? Why do the rules of criminal law and criminal procedure need any uniformity at international level? The answer is different in the mentioned two fields.

**In national law** even the rules are not self-evident, it is a very frequent phenomenon that two or more interpretations are possible. If the legislator foresees this problem of the future practice it may give explanation of a category in the given act itself or in the other rule called executive decree. But if a question remains open from the legislator's side the next and most usual solution is that actors of judicial practice interpret the notion of a rule.

**At international level** we have to speak about harmonisation rather than unification. The need to harmonise some fields of law of different countries emerged only in the last century. Criminal law - and consequently criminal procedural law as well – is the last bastion of sovereignty and states are reluctant to give it up. The most relevant organisations of harmonisation of even the rules of criminal law are the Council of Europe and its control organisations, first of all the European Court of Human Rights and different bodies of the European Union.

In my lecture I will speak about ensuring uniformity at national level and only touch questions of international harmonisation of law.

Before starting to discuss the Hungarian tools of unification I have to mention some basic questions necessary to keep in our mind when speaking about interpretation of rules.

## Separation of powers

Montesquieu in his well known publication 'Spirit of the Laws' described a model of the government – which seems to be ideal - where the political authority of the state is divided into legislative, executive and judicial powers. The legislative branch is responsible for making the laws; the executive branch is responsible for implementing, enforcing the law adopted by the legislative and the judicial branch is responsible for interpreting the constitution and laws. This solution may be appropriate to prevent the government's arbitrary exercise of power. Keeping in our mind these separated tasks we examine the connection between legislation and judicial powers especially the function of the judicial bodies and their law-interpretation which is limited in a sense.

As the Constitutional Court of Hungary said '...in order to ensure the uniformity of law application, there can be several possible solutions within the judicial system. The legislative power and the constitutional competence of the legislative branch are not violated by the mere fact that the judicial power provides for a uniform content of the statutes to be applied. As long as it is exclusively based on the interpretation of statutes (as long as the judicial branch does not

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fundamentally and directly take over the function of legislation), “judicial legislation” remains in line with the principle of the division of power.’<sup>1</sup>

## Connection between legislation and justice

As it follows from the separation of power the judicial bodies have to make their decisions using and adopting the rules formulated by the legislator. If a problem emerges during their activity they can solve it in two ways: using the tools of interpretation or sending a sign to the legislator that the law is not appropriate for the daily use. Undisputedly the first way is quicker but – as we have seen – provides limited possibility.

The other side of the connection between legislation and justice is when the legislator asks the opinion of the courts in the drafting process.<sup>2</sup> Usually the highest court is the direct partner of the Ministry of Justice, which is responsible for the preparation of draft laws (bills) if the field of criminal law and criminal procedure. This does not mean that lower courts have no possibility to express their view concerning a draft: the Supreme Court and the National Council of Justice regularly send all drafts to the lower courts as well and expect their opinion. The other way in which judges are involved into the legislation is that especially judges of the Supreme Court regularly participate in the work of codification committees.

## Independence of justice

The second question which has to be touched at the beginning is the independence of justice. Article 50 section (3) of the Constitution of Hungary declares that judges shall be independent and responsible only to the law. This norm defends the judge against any legal or illegal influence. One guarantee of independence declared by the Constitution is that judges may not be members of political parties and may not engage in political activities. On the other hand the independence of the court means a guarantee for the defendant as well. As the Constitution says „In the Republic of Hungary everyone shall be equal before the law and, in the determination of any criminal charge against him/her or in the litigation of his/her rights and duties, everyone shall be entitled to a fair and public hearing by an **independent and impartial court** established by statute.” (Article 57 Section (1)) Of course not only the Hungarian Constitution but the European Convention of Human Rights prescribes that “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” (Article 6 Section (1)). The independent judiciary is constitutionally protected against any external influence. Both the European Court of Human Rights and the Hungarian Constitutional Court have already emphasized the importance of judicial independence, especially the stability and neutrality of the judiciary several times.

## Limits of the independence

There is a serious limit of independence and free evidence. In order to prevent the arbitrary administration of justice the Code on Criminal Procedure obligates the court to give reasoning (justification) of their decision. In such circumstances it became obvious for every participant of

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<sup>1</sup> Decision 42/2004 (XI.9.) of the Constitutional Court of Hungary

<sup>2</sup> This possibility is based on Act XI of 1987 on Legislation. Article 28 of this act provides that bills and drafts of government decrees shall be sent to the President of the Supreme Court if the rules concern the jurisdiction.

the procedure why the court made the given decision and they can confute the arguments when lodging an appeal. Reasoning is very important if in the remedy proceedings – knowing the reasons of the decision making - the court of appeal reviews the case.

We may think that the high court guidelines compulsory for the lower courts and interpretation accepted by the supreme court threat the independent decision making of the judges. To answer this question we have to have a look at different types of interpretation and their results.

The aim of the interpretation is to know what the intent of the legislator was, which usually can be achieved with the combination of different methods.

### **Types of interpretation<sup>3</sup>:**

From the methodological point of view the interpretation could be

- a) grammatical
- logical
- taxonomical
- historical.

The grammatical interpretation solely may not provide enough bases to find the intent of the legislator, it is necessary to follow the examination by using other methods.

Taking into account the result of the interpretation it could be

- b) within the text
- outside the text
- contrary to the text.

Of course the judicial interpretation should remain within the text. I do not examine the methodological questions, only would like to pin down that interpretation contrary to the text of the law is prohibited and interpretation outside the text is not supported either.

If the interpretation extends the text of the norm it may occur that a decision is not only not in harmony with the law but it is also unconstitutional.

- c) legislatorial
- judicial
- scientific.

The legislator usually interprets the law made by it in the commentary and in the interpretative provisions of the law. The aim of it is to make clear the intent of the legislator and provide a unified administration of the given act at the same time when the act is formulated. If the legislator fails to give a clear explanation of the content of a rule the judicial interpretation may take place with the aim of unification of the administration of justice.

While we as scientists would like our opinion to be taken into consideration, the reality is that scientific interpretation may influence the practice only through the interpretation of the legislator or the court. Scientific opinions are rarely cited in the courtrooms, however, in the training of the judges they play a definitive role. It is a well-known phenomenon that the content of textbooks used in the university training is overruled by the higher court interpretation and guidelines, and judges forget the nice theoretical points of views is very obvious.

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<sup>3</sup> To read more about the interpretation of law see – among others: Görgényi Ilona – Gula József – Horváth Tibor – Jacsó Judit – Lévay Miklós – Sántha Ferenc – Váradi Erika: *Magyar büntetőjog . Általános Rész, CompLex*, Budapest 2007. pp. 82 – 91; Bárd Károly – Gellért Balázs – Ligeti Katalin – Margitán Éva – Wiener A. Imre: *Büntetőjog Általános Rész. KJK Kerszöv, Budapest, 2002. pp. 42 - 43*

## Interpretation by the legislator – what we can find in the commentary of an act?

Interpretative provisions are rather frequently part of Hungarian acts. They explain how a word or an expression should be understood for the purposes of the given act. For example in the Criminal Code we can find explanation of the term ‘official persons’, ‘damage’, ‘recidivist’ etc. The justification of the law composed by the ministry responsible for the preparation of draft of a law, regarding the criminal code and the code on criminal procedure by the Ministry of Justice. This commentary speaks about reasons why the formulation of the given act was necessary, why the legislator thought that regulation as the proper solution etc. This is the most authentic resource of getting knowledge of the legislator’s will.

While this commentary of the legislator (or justification as it is called if we translate the term word by word) is written at the time of the formulation of the draft, the other type of commentary is made after the law was adopted. The latter is a handbook and its authors usually are scientists and practicing lawyers, recognised experts of a narrower field. This handbook is the result of mixed judicial and scientific interpretation but contains references to higher and constitutional court decisions as well.

## Interpretation by the courts

Interpretation of the law is an essential part of the judicial practice. But the courts may not strike down the law itself. There are certain areas of statutory law in every system of law even in England in which little if any discretionary elements remain for judges. For example the Criminal Code prescribes what shall constitute a crime and what the penalties shall be. In this field the judge can make precedent mainly regarding circumstances taken into consideration during the sentencing procedure.

*Who (which courts) are authorised to interpret the law?*

It is an indisputable fact that the highest court of the court system which plays a role in the unification of the administration of justice is authorised to issue guidelines, publish decisions of theoretical importance and lower courts are bound to follow these or at least they do it on their own will.

*Judge made law or only judicial interpretation?*

There are several areas even in the continental law system where the legislator leaves room for judges to ‘make’ law. Sometimes statute offers either no rules or only general clauses or outline provisions. When a judge finds a decision of supreme court relevant for the case before him he will follow that decision. It has become more and more accepted and wide-spread in Hungary as well that lawyers refer to previous decisions of higher court published in law report and it can influence the judge particularly in questions which are not clear or are not precisely outlined in the law.

While the interpretation contrary to law is not accepted we can not speak about judge made law. However the Constitutional Court of Hungary said that the content of the uniformity decision is part of the so called ‘living law’.<sup>4</sup>

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<sup>4</sup> ‘The binding force provided for by the Constitution also means that if the Constitutional Court wishes to find out the actual and uniformly enforced content of a legal norm under review (the “living law”), it must take into account the uniform mandatory judicial interpretation of the statutory provision(s) and the content of the relevant law uniformity resolution. The living content of the statute (statutory provision) concerned is the law uniformity resolution.’ Decision 42/2005 (XI.14.) of the Constitutional Court of Hungary

## What is the role of the supreme courts?

In 1996 I participated in a conference dealing with this question. Presidents and other judges of the supreme courts and some experts invited by the Council of Europe discussed the present and the future function of supreme courts and their competences. A resolution was adopted at the end of that meeting on measures to reinforce the judiciary in countries of Central and Eastern Europe in which we can read some sentences that are timely nowadays as well. Among others, presidents and judges of supreme courts recall that 'by carrying out their imperative functions in a dynamic and progressive way, leading towards unifying the law, the supreme courts fulfil the role of controlling the application of the Constitution and legislation, as well as international legal instruments, including the European Convention of Human Rights...'<sup>5</sup>

The role of supreme courts is essential both in the judicial practice and in the legislative policy. The main task of the supreme court is to ensure unified practice with tools provided by national law (guiding principle, individual decisions, decision of uniformity etc.). Supreme courts in Europe have some common features regarding their authority and function, but we can find a lot of differences as well. In some states the supreme court is on the top of the court hierarchy with the highest and last appeal authority. In other countries the main task of the supreme court is to watch over the legality. The third group consists of supreme courts which have some mixed functions: working as an appellate court and watching over the legality as well. A separate class includes supreme courts of federal states, where every member state has its own supreme court and above them stands the federal supreme court.<sup>6</sup>

The supreme court may also influence the legislation at least in two ways: rules of judicial practice and guidance laid down in uniformity decisions of the supreme court are often enacted in laws. The second possibility is when draft laws are sent to the court for formulating expert opinion as it was mentioned earlier.

## The role of precedents in different systems of the law - two examples: England and Hungary.

As many scholar said the critical difference between Continental and English methods of legal thinking lies in the doctrine of the binding force of precedent.<sup>7</sup> The significant characteristic of English law is that under the doctrine of precedent the judges refer to previous decisions in order to adjudicate the case at issue. Normally, in the common law system precedents have binding character, but judges may occasionally depart from precedent or may distinguish between various precedents in evolving the new law.

As Konrad Zweigert has written '... the critical difference between Continental and English methods of legal thinking lies in the doctrine of the binding force of precedent.'<sup>8</sup>

### England:

*Common law and statutory law*

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<sup>5</sup> Resolution adopted on second meeting of presidents of supreme courts of Central and Eastern European Countries, held on 22-25 October 1996 in Tallin/Pärnu (Estonia)

<sup>6</sup> Based on: Zoltán, Ödön: A Legfelsőbb Bíróság a nemzetközi összehasonlítás tükrében. Akadémiai Kiadó, Budapest, 1989. pp 33-34

<sup>7</sup> See Konrad Zweigert, Hein Kötz: Introduction to Comparative Law, Clarendon Press, Oxford, 1994. p. 267; Henry J. Abraham: The Judicial Process, Oxford University Press, 1993. p. 11 and others.

<sup>8</sup> Konrad Zweigert loc. cit. p. 267

In common law systems judges refer to the previous decisions in order to adjudicate the case before them. ‘...when a judge comes to try a case, she must always look back to see how previous judges have dealt with previous cases (precedents) which have involved similar facts in that branch of the law... Because the branches of English law have been gradually built up over the centuries, there are now hundreds of thousands of reported case decisions available ... so that the task of discovering relevant precedents and achieving consistency is by no means simple.’<sup>9</sup> In British law schools moot court competitions are regularly organised for students who can try how good they are at the practice in looking for the adequate precedents.

#### **Hungary:**

*How do decisions of higher courts influence the judicial practice?*

In Hungary – as in other countries of the continental law system – there is not any legal rule which compels a judge to follow the decisions of higher courts, but the reality shows that they do it. We try to find some argument to explain this phenomenon. The most important fact is that in the appeal procedure higher courts have the power to quash the decision of lower courts if they depart from the rules the supreme and other higher courts laid down in their previous decisions. It is very difficult to imagine a judge who wants his decision to be quashed because of the mentioned reason. It is also true that judges of higher – especially of the supreme courts – have outstanding respect, skill, special knowledge and these circumstances help to accept their points of view. The other case when guidelines given by the higher court has to be followed is if they decide in cases which come to them by way of appeal. The space for remedy made by the court of second and third instance is limited and if the decision is quashed and sent back to the lower court the appeal court gives authoritative interpretation and provide guidance which must be followed in the repeated procedure.

### **Decisions of the Supreme Court – do they have binding force? Legal background**

#### *Constitution of Hungary*

Constitution of Hungary contains detailed rules not only defining elements of the court system but pinning down that ‘The legal system of the Republic of Hungary accepts the generally recognized rules of international law, and shall further ensure the harmony between domestic law and the obligations assumed under international law.’<sup>10</sup> This provision will be important when discussing the harmony between national law and international requirements.

The Constitution deals with the function of the Supreme Court as well, emphasizing that it ‘shall ensure the uniformity in the application of the law by the courts; its resolutions on the uniformity in the application of the law shall be binding on all courts.’<sup>11</sup> So the binding force of the Supreme Court’s decision is based on the Constitution.

#### *Act No 66 of 1997 on the Organization and administration of Courts (Organisational Act)*

As it is written in the Section 27 of Act 66 of 1997 ‘Ensuring uniform application of the law by the courts is the duty of the Supreme Court.’ The Supreme Court realises/performs this duty in two forms: it adopts uniformity decisions which are binding for all other courts and publishes decisions made in individual cases which may have theoretical importance.

The so called Organisational Act refers the task of ensuring uniformity only into the competence of the Supreme Court, although earlier it was mentioned that lower courts may play an important role in the proper administration of justice. Article 25 of the act says as follows

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<sup>9</sup> Penny Darbyshire: Darbyshire on the English legal system. Eighth Edition. London, Sweet & Maxwell 2005. p. 41

<sup>10</sup> Constitution of Hungary Article 7 Section (1)

<sup>11</sup> Constitution of Hungary Article 47 Section (2)

The Supreme Court shall

- a) adjudge the legal remedy submitted against the decision of the county court or the regional court in the cases set forth by an Act,
- b) adjudge petitions for review,
- c) adopt an obligatory uniformity decision applicable to the courts,
- d) proceed in other cases referred to its jurisdiction.

It is a very important issue that general rules of the uniformity procedure are laid down in this act, because they are applicable not only in criminal law but in other branches of the law as well. Special provisions are incorporated in the procedural codes as Code on Criminal Procedure and Code on Civil Procedure.

#### *Code on Criminal Procedure*

The Code on Criminal Procedure deals with competence and procedure conducted by different courts in criminal cases. As it was mentioned we can find general rules of uniformity procedure in the Organisational Act but specialities of the criminal cases are prescribed in this Code.

#### *Other laws*

Competences of the courts regulated in the highest level of the hierarchy of the rules. Only the Constitution and acts are appropriate forms to arrange these questions.

#### **Organisational background**

##### *Judicial system of Hungary*

In order to understand the administration of justice and the possibility of unification of judicial practice we have to be familiar with the structure of the Hungarian judicial system.

There are four levels of the courts:

- 111 local courts (and district courts in the capital) have general authority to act as first instance courts. 105 local courts are located in the major towns of Hungary and 6 district courts in Budapest.<sup>12</sup>
- The second level of the court system consists of 19 county courts and the Metropolitan court of Budapest. These courts are competent to hear cases at first instance and at second instance as well if the appeal was lodged against the decision of local courts.
- 5 regional courts of appeal compose the third level of the court system. These courts are authorised to hear cases as second and third instance courts.
- The Supreme Court is the highest judicial body in Hungary. “The Supreme Court adjudges the legal remedies submitted against the decisions of the county courts or the regional courts in the cases set forth by an Act; adjudges petitions for review; adopts obligatory uniformity decisions applicable to the courts.”<sup>13</sup>

A little bit later I will speak about the role and activity of the Constitutional Court but I have to emphasise that this court is not part of the court system of Hungary.

##### *Some interesting data concerning the activity of the courts in Hungary*

The number of judges working for different courts in Hungary was 2887 in 2008 and it means that 28,74 judges have a role in administration of justice/100000 inhabitants. These numbers include judges of different divisions (civil, criminal, administrative, labour, business as well). Number of cases – also in 2008 – was 1.562.166.<sup>14</sup>

<sup>12</sup> [http://www.birosag.hu/engine.aspx?page=birosag\\_english\\_03\\_judicial](http://www.birosag.hu/engine.aspx?page=birosag_english_03_judicial) (02.04.2010)

<sup>13</sup> [http://www.birosag.hu/engine.aspx?page=birosag\\_english\\_03\\_judicial](http://www.birosag.hu/engine.aspx?page=birosag_english_03_judicial) (02.04.2010)

<sup>14</sup> Source of data [http://www.birosag.hu/engine.aspx?page=birosag\\_english\\_03\\_judicial](http://www.birosag.hu/engine.aspx?page=birosag_english_03_judicial) (02.04.2010)

### Who is responsible of the uniformity of judicial practice?

As it was mentioned earlier this task is located to the Supreme Court but regional courts of appeal and municipal courts play a significant role showing the proper way of administration of justice to the lower courts. Two of the main sources of judicial function deal with this question:

Constitution of Hungary Article 47 Section (2)

‘The Supreme Court shall ensure the uniformity in the application of the law by the courts; its resolutions on the uniformity in the application of the law shall be binding on all courts’

Article 27 of Act 66 of 1997

‘Ensuring uniform application of the law by the courts is the duty of the Supreme Court.’

*The role of the Constitutional Court* (relevant from the uniformity point of view)

‘The establishment of a constitutional court was decided in 1989 .... The aim of founding such an institution was the defence of the new constitutional order and the protection of human rights under the Rule of Law. The Parliament passed the Act on the Constitutional Court on October 19, together with the amendment of the constitution. ... The Court commenced functioning on January 1, 1990.’<sup>15</sup>

In Hungary the Constitutional Court has power to examine whether a law or some provisions of it is constitutional or not and in the latter case it annuls the given rule.

The court's decisions cannot be contested.

Some tasks of the Constitutional Court are the following:

- Preliminary (ex ante) review of adopted statutes
- Posterior review of a legal norm
- Review of statutes from the aspect of conformity with international treaties (Examination of conflicts between international treaties and laws)
- Interpretation of provisions of the constitution
- Review of constitutional complaints submitted because of violations of rights provided for in the Constitution.

If the Constitutional Court establishes the unconstitutionality of a statute, it annuls it in whole or in part. Its decision on annulment is published in the Official Journal of Hungary.

The law or other legal means of state administration annulled by a decision of the Constitutional Court may not be applied from the day of publication of the pertaining decision in the official journal.

The decisions of the Constitutional Court may not be appealed and are binding on everyone.

## The role of the Supreme Court

The Supreme Court of Hungary has three different functions:

- adjudges the legal remedies
- passes **uniformity decisions** and
- issues decisions of theoretical importance.

The fact is that the Supreme Court in Hungary like in other countries hears only a minimum proportion of the cases. While they deal with only a small number of issues, in many areas of law the Supreme Court rarely makes decisions. It reviews decisions in ordinary and extraordinary legal remedy procedure. As a court of second instance it examines appeals submitted against the decision of the regional courts and as the court of third instance appeals submitted against

<sup>15</sup> [http://www.mkab.hu/index.php?id=home\\_en](http://www.mkab.hu/index.php?id=home_en) (17.04.2010)



decisions where the country courts were the courts of first instance. In the extraordinary legal remedy process it examines final decisions of all courts if the breaches of law cannot be remedied in other way. These procedures are called ‘Judicial review’ and ‘Appeal on legal grounds’. The latter one seems to be more important regarding our topic, because its primary aim is to recognise the unlawfulness of the decision. The Prosecutor General may lodge an appeal on legal grounds at the Supreme Court against the unlawful and final decision of the court, unless the final decision may be contested by other means of legal remedy.

Decision of the Supreme Court concerns the position of the accused if the decision in favour of him should be made, in other cases the decision may only establish the fact of unlawfulness.

Although these procedures are very rare the legal and theoretical statements of the Supreme Court should influence the uniform administration of justice.

Harmonisation procedure in which the decision of uniformity may be adopted shall be introduced in details later.

Here I would like to mention that in order to inform all administrators of the justice and the public as well the publication of the Supreme Court’s decisions is very important. Uniformity decisions are published in several forms: the most important resource is the Hungarian Official Journal, in which laws, decisions and resolutions of the Parliament and the Government, decisions of the Constitutional Court are available for everybody. Besides this different printed and online collections of laws and decisions contain uniformity decisions and judicial college’s opinion. The latter one is a special tool in the hand of the Supreme Court used to show the right way of interpretation of law. ‘In order to ensure uniform practice in adjudication the judicial college shall analyze the practices of the courts and express its opinion in disputed matters in the application of the law.’<sup>16</sup>

Beyond uniformity decisions and college’s opinion the Supreme Court has the right to issue decisions on principle. These are judgements passed by the chambers of the Supreme Court in various cases and are selected for publication with a view to unify the interpretation of law because the solution of the relevant legal problem is considered theoretically significant.<sup>17</sup>

## Uniformity proceeding

The uniformity procedure is the most important tool of ensuring the harmonisation of administration of law in the Hungarian system.

There are two cases when this process may take place:

- if in order to develop legal practice or ensure uniform sentencing policy a harmonisation decision is required in a theoretical question, or
- if a chamber of the Supreme Court intends to deviate from the decision of another judging chamber of the Supreme Court with respect to a legal issue.

The Organisational Act and the Code on Criminal Procedure as well contain provisions on the question who are authorised to initiate this procedure, whom the panel of uniformity proceeding consists of and the rules of the procedure. It is special in the criminal procedure that usually the decision of the Supreme Court does not influence the individual decision and the situation of the accused. But if the guidelines concerning the theoretical question render the disposition of the final court decision (affected by the harmonisation decision) establishing the criminal liability of the defendant unlawful, the harmonisation chamber shall repeal the unlawful

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<sup>16</sup> Article 33 Section (1) Act No 66 of 1997 on the Organisation and Administration of Courts.

<sup>17</sup> <http://www.lb.hu/english/index.html> (02.04.2010)

disposition and acquits the defendant and/or terminates the procedure. If the defendant is detained, the chamber shall terminate the detention.

As it was mentioned earlier, the uniformity decision shall be published in the Hungarian Official Journal.

*Responsibility of heads of the county courts*

We have examined possibilities of the Supreme Court in unification of the administration of law but one question has remained open: how is it noticed that it has to act?

In order to ensure the uniform application of the law the president of the regional court and the county court, the head of the judicial college and the president of the local court shall continually monitor the administration of justice in the courts they supervise as it is prescribed in the Organisational Act. If they realise that a contradictory practice has developed, they have to inform the president of the higher level court and submit the decisions and other relevant documents.<sup>18</sup>

Here I have to mention that not only presidents of courts but the judicial colleges have to analyze the practices of the courts and express their opinion in disputed matters in the application of the law and propose, if necessary, commencement of a uniformity procedure to the head of the college of the Supreme Court or the regional court.

## International impacts

The fact that criminal law and criminal justice was protected from any outsider influence, because it was the last bastion of sovereignty was mentioned earlier. Only national traditions, cultural, ethical values etc. were taken into consideration when rules of criminal law were determined. 'The Council of Europe and the European Union have exerted ever-increasing influences in co-ordinating the criminal justice policies of their Member States. It should not be overlooked, however, that while Europe is growing together quickly there are still serious problems which have to be overcome on the way to an integrated European criminal justice system.'<sup>19</sup> Avoiding the long explanation of reasons why international harmonisation of criminal policies became important I would like to touch only some aspects of the international impact on unification/harmonisation of judicial practice. One important field of this process is the protection of human rights.

## European Convention on Human Rights

Member states of international organisations tried and still try to develop a common fund of legal rules, concept and principles, e.g. member states of the Council of Europe ratified the European Convention of Human Rights and submitted themselves to the authority of the European Court of Human Rights and by that act accept the standard legal guarantees for fundamental rights of individuals. It is very important as well, that all members of the European Union are members of the Council of Europe at the same time, so respect of the common guarantees is ensured theoretically.

I would like to emphasize that not only the Council of Europe but the Committee of Ministers, the European Committee on Crime Problems have played an outstanding role by issuing

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<sup>18</sup> Simplified description of the procedure written in the Article 28 of the Act No. 66 of 1997

<sup>19</sup> Joachim Hermann: Criminal justice policy and comparativism. A European Perspective. In: Comparative Criminal Justice Systems. From Diversity To Rapprochement. Proceeding of the International Conference for the 25th anniversary of the International Institute of Higher Studies in Criminal Sciences, Siracusa (Italy) 16-20 December 1997. Association Internationale de Droit Penal, Nouvelles Études Pénales No. 17, 1998

recommendations, resolutions, organising conferences in order to discuss questions of criminal justice.

## European Court of Human Rights

Decisions of the Court bind the states involved; there is no possibility to submit any appeal. If a decision condemns the state, it has to execute every measure prescribed by the decision. The case law of the ECHR has double effect: It provides legal remedy to the individual whose right was violated and the decision plays a significant role in developing domestic law and in domestic judicial practice. In addition a decision may influence not only the legislation of the state involved directly, but the legislation of states having the same or similar legal background.

Precedents have very important impact in the practice of the Court: it takes into consideration its previous decisions when deciding a question tried earlier and even in the reasoning of its judgment the Court refers to decisions in former similar cases.

### *Cases concerning Hungary directly*

In cases when the Court find out that some rules of the Hungarian system of law violate an Article of the Convention, it means a direct duty of the legislator to prepare the necessary modification of the internal law, because in the Constitution it is declared that the Republic of Hungary shall ensure the harmony between domestic law and the obligations assumed under international law. If the violation is based only on the practice it needs an intervention of the state as well depending on the nature of violation.

### *Other important cases*

Not only cases in which Hungary was directly involved have influenced the domestic legislation. As a good pupil in the school Hungary tries to learn from faults of other member states and takes into consideration the case law of the Court during the codification process.

Concerning the rules of the Code on Criminal Procedure it could be interesting to mention that one reason of the judicial review (a form of extraordinary legal remedy) is the following:

‘a body for the protection of human rights, created by way of an international treaty established that the conduct of the procedure or the final decision of the court has violated a provision of the international treaty promulgated by law, provided that the Republic of Hungary has submitted herself to the jurisdiction of the international body for the protection of human rights and the violation of law may be remedied by way of a judicial review’.

## European Court of Justice

Questions of criminal law and criminal procedure do not frequently emerge before the European Court of Justice. But now when the last tower of sovereignty is about to be lost we should not neglect the role of this Court in ensuring the uniformity of administration of law in member states.

## Framework decisions of the EU

Framework decisions as a special tool in co-operation in criminal matters are used to approximate the laws and regulations of the Member States in the European Union. They are binding on the Member States as to the result to be achieved, but leave the choice of form and methods to the national authorities. Member States have to lodge a report on how they implemented requirements of a framework decision to the European Commission. Because earlier the adoption of such an initiative needed the unanimous decision of the Member States it was difficult and took a long time to have the necessary consent.