

# Aspects of Criminal Policy and Law Enforcement Science<sup>1</sup>

Béla BLASKÓ – Anikó PALLAGI<sup>2</sup>

*The authors examine the connection between law enforcement activities, law enforcement science and the scientific system of criminal policy, their mutual presumption and interaction. The law enforcement activities serve to uphold law, order and public security against unlawful human behaviours. The criminalisation of certain types of behaviour is a quasi fundamental resultant of law enforcement activity, which may provide criminal policy with a guideline by realising activities dangerous to society, or antisocial during its operation. In addition to the above, however, the relationship is multi-directional as the state receives information on the current status of crimes in the course of the completion of law enforcement tasks, and the quality of the completion of law enforcement tasks fundamentally influences the course of crimes.*

**Keywords:** law enforcement, law enforcement science, criminal policy, penal law, Criminal Code

## Introduction

In the course of studying the penal system and thus the criminal policy of a state, one must also investigate, beyond the traditional principles of criminal policy, the aspects of public administration, and within its scope, those of law enforcement administration, furthermore, the influence of law enforcement studies on the science of penal law. In connection with law enforcement and based on the most common approach, it must be acknowledged that no human community can prevail in the long run if its members fail to create a certain kind of order with a proper relationship among its members; certain forms of behaviour that are followed and kept by the majority are recurring and

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<sup>2</sup> Prof. Dr. Béla BLASKÓ police major general, CSc/PhD university professor at the Department of Criminal Law of the Faculty of Law Enforcement, University of Public Service.

Prof. Dr. BLASKÓ Béla r. vezérőrnagy CSc/PhD egyetemi tanár, Nemzeti Közszolgálati Egyetem Rendészettudományi Kar Büntetőjogi Tanszék.

<https://orcid.org/0000-0002-5607-0951>, [blasko.bela@uni-nke.hu](mailto:blasko.bela@uni-nke.hu)

Dr. Anikó PALLAGI PhD senior lecturer at the Department of Criminal Law of the Faculty of Law Enforcement, University of Public Service.

Dr. PALLAGI Anikó PhD. adjunktus, Nemzeti Közszolgálati Egyetem Rendészettudományi Kar Büntetőjogi Tanszék.

<https://orcid.org/0000-0002-4161-3220>, [pallagi.aniko@uni-nke.hu](mailto:pallagi.aniko@uni-nke.hu)

valid in the long run, thus ensuring the normal life of a community; these behavioural and communicative manifestations are connected to security.<sup>3</sup>

Researchers of law enforcement studies agree that law enforcement and the state condition each other. In every situation it is the task of the state to restore order in the case of the disruption of social peace in a given state or to safeguard the security of smaller or larger communities. This task is performed by an organisation – acting in the name of the state – which is the law enforcement body. ‘As a rule, law enforcement is part of the executive power, its tasks are given by the legislative power to which it owes constitutional responsibility.’<sup>4</sup>

## A brief overview of law enforcement activities

Law enforcement administration has a broad scope of activities, similar to organisations of the same profile. The integration of these activities into a given state organisation, the definition of their competence and scope of activity reflect the legal political philosophy of a given power structure. Undoubtedly, it can be said that members of the society associate law enforcement with the police. Scientists of administrative law have earned imperishable merits for revealing the public law character of the police.<sup>5</sup> Their elaborated research is based on the fact that law enforcement law is part of public law.

Nowadays it is beyond doubt that during the history of modern civil statehood the four well-known types of organisations (legislative, judicial, executive and controlling) can be found in every, albeit rather different, form of government, and the law enforcement organisations with their law enforcement activities can be placed in the relationship of these four.<sup>6</sup> Considering that the history of the notion of modern law enforcement goes back to little more than 300 years,<sup>7</sup> this ‘enterprise’ can be regarded as a significant development compared to the fact that ‘the police state prior to the civil revolutions was a state of legally not regulated administration, whose administrative bodies acted in the interests of »public welfare«, »public interest«, and »the happiness of the largest possible number of individuals«. But the meaning of public welfare and public interest were defined by them.’<sup>8</sup>

Especially 19<sup>th</sup>-20<sup>th</sup>-century scholars<sup>9</sup> have imperishable merits for revealing the public law character of the police. In our essay we do not intend to deal with analysing

<sup>3</sup> Zoltán Balla, *Monográfia a rendészetről* (Budapest: Rejtjel Kiadó, 2016), 9.

<sup>4</sup> Balla, *Monográfia*, 10.

<sup>5</sup> Géza Finszter, *A rendőrség joga* (Budapest: Nemzeti Közszolgálati Egyetem Rendéztudományi Kar, 2014), 15.

<sup>6</sup> Péter Szigeti and György Péter Szilvási, *Rendészet és emberi jogok* (Budapest: Rejtjel Kiadó, 2015), 9.

<sup>7</sup> Géza Finszter, ‘A rendészet jogi természete, rendvédelem – honvédelem’, in *Pécsi Határőr Tudományos Közlemények I.* (Pécs: Magyar Hadtudományi Társaság, 2002), 18.

<sup>8</sup> Lajos Szamel, *Az államigazgatás törvényességének jogi biztosítékai* (Budapest: Közigazgatási és Jogi Könyvkiadó, 1957), 19.

<sup>9</sup> For example: Otto Mayer, Ágoston Karvasy, Győző Concha, Károly Kmety, Móric Tomcsányi, Zoltán Magyar, Lajos Szamel, Géza Katona, Imre Ivancsics.

these disputes and the process in detail, but the views of Károly Csemegi, classical scholar of Hungarian penal law, are worth mentioning briefly. These can be regarded in a certain respect as the legal political foundations of his age: ‘For long years it has been a custom to look for remedy against several illnesses in the »division of powers«; which – according to our views – fails to reach its goal and only illustrates that the different forms of government and the bodies active in them must be dealt with separately and must be independent of each other’.<sup>10</sup> According to this summary opinion from the 19<sup>th</sup> century regarding the division of powers, ‘it fails to reach its goal’, but Csemegi adds that the division of ‘powers’ is not only desirable but is also an indispensable condition for a state to be able to accomplish its tasks according to the requirements of the age. But ‘with the personal, external division, excesses are not hindered’.<sup>11</sup> The above cited thoughts of Csemegi imply the spirit of the law on the exercise of judicial power, elaborated by him, Section 1 of which states that: ‘The administration of justice must be separated from public administration. Neither public administration authorities, nor judicial authorities may interfere into each other’s competence.’<sup>12</sup>

In connection with the tasks of law enforcement it can be stated – *expressis verbis* – that ‘the function of law enforcement is to enforce law, ensure law and order and public security’.<sup>13</sup> As a consequence, ‘law enforcement in a modern state is a public administration activity whose task is to avert danger resulting from unlawful human behaviour’.<sup>14</sup> In other words, law enforcement is the area of public administration whose task is to uphold law and order and public security against unlawful human behaviour. To declare certain forms of human behaviour as unlawful depends on the current criminal political programme of the public administrative power, that is, the government. The Constitutional Court has repeatedly pointed out in its resolutions that law enforcement is able to accomplish its social mission only in the possession of a wide mandate provided by the authorities. With regard to the fact that constitutional democracies consider lawfulness and success as a basic requirement concerning their own law enforcement, Finszter asks: How can law enforcement remain successful if it is regulated by detailed and strict rules during every process and these guarantees limit the freedom of activities of the authorities? Furthermore, how can law enforcement activities remain lawful if authorities, based on a general mandate, and without any formal constraint, by wide discretionary consideration are entitled to exercise a monopoly of legitimate force?<sup>15</sup>

<sup>10</sup> Károly Csemegi, ‘Közigazgatás és törvénykezés’, in *Csemegi Károly művei* (Budapest: Franklin Társulat, 1904), 96.

<sup>11</sup> *Ibid.*, 97.

<sup>12</sup> Act 1869, art. IV.

<sup>13</sup> Géza Finszter, ‘A társadalomtudományok és a rendészet’, in *Rendészettudományi gondolatok*, ed. by Gyula Gaál and Zoltán Hautzinger (Budapest: Magyar Rendészettudományi Társaság, 2014), 18.

<sup>14</sup> Finszter, *A rendőrség joga*, 27.

<sup>15</sup> Finszter, ‘A társadalomtudományok és a rendészet’, 18.

Giving a striking answer to the questions,<sup>16</sup> and not contradicting to the above mentioned ideas, Finszter's substantial definition states that 'law enforcement is law enforcement administration regarding its function, whose organisation consists of armed bodies and derives its mandate from law enforcement legal regulations.' In accordance with these it can be stated that law enforcement finds its right place in the sphere of political science and jurisprudence, although there are several topics – for example in connection with the police – that remain closed for law.<sup>17</sup>

Among the government agencies active in law enforcement, the police is the one whose activity is the most closely connected to criminal activities and criminal law regulations. The tasks and activities of the police are regulated by Subsection 1 of Article 46 of the Constitution, according to which the basic task of the police is to prevent and investigate criminal activities, and to safeguard law and order, public security and the borders of the country. As a result, when defining the tasks of the police, it is necessary to define those human activities criminal activities whose prevention and investigation is required by the Constitution. In this respect, based on Subsection 4 of Article 28 of the Constitution and the most important, centuries old basic principle of criminal law explicitly codified in Subsection 1 of Section 1 or Subsection 1 of Section 4 of the Criminal Code – that is, *nullum crimen sine lege* and *nulla poena sine lege* –, we believe that (among others) criminal law can be considered as the substantive law of law enforcement activities, whose source is the Criminal Code, which declares certain human forms of behaviour as a criminal offense.

## A brief overview of criminal policy

Criminal policy is a special policy dealing with creating, developing and evaluating successful and effective measures against activities classified as criminal activities.<sup>18</sup> Similar to other special policies, it reacts to a definite social problem (crime) and finds solutions to it by creating successful and effective measures. Its aim is to decrease the quantity of criminal activity or to divert it to less dangerous delicts.<sup>19</sup> It is not easy to choose successful and effective methods of law enforcement. Different views and theories belong to it<sup>20</sup> – some of them developed during long years, others developed scientifically –, and criminal policy tries to choose the best solution considering the actual situation of the society.

<sup>16</sup> Finszter, 'A társadalomtudományok és a rendészet', 19 et ad.

<sup>17</sup> Finszter Géza, *A rendészet elmélete* (Budapest: KJK-KERSZÖV, 2003), 12.

<sup>18</sup> Miklós Hollán and Anikó Pallagi, *Közrend és Közbiztonság, Kriminálpolitika: Válaszok a bűnözésre* (Budapest: Nemzeti Közszolgálati Egyetem, 2018), 7.

<sup>19</sup> László Korinek, 'A büntetőpolitika irányelvei Magyarországon', in *A magyar jogrendszer átalakulása 1985/1990-2005*, I. kötet, ed. by A. Jakab and P. Takács (Budapest: Gondolat – ELTE ÁJK, 2007), 473.

<sup>20</sup> These criminal political viewpoints were reflected first in different aspects of criminal law science and later in scientific arguments about the aims of criminal sanctions.

Criminal political attitude is one of the scientific approaches to crime and criminal activities. Criminal law was the earliest law dogmatically analysed with the aim to reveal the semantic content of legal notions, to analyse and interpret effective legal regulations and to create a system of notions of criminal law so as criminal law can fulfill its social role as effectively as possible.<sup>21</sup> Criminology can be considered as a second viewpoint in this respect. It examines crime as a social phenomenon, the efficiency of criminal justice and the situation of the injured party (empirically, mainly based on data collection). The third scientific approach to criminal law is criminal policy (including penal policy), which is situated on the border of the two previous policies, and conducts research into the effective legislative and other measures taken to decrease crime.<sup>22</sup>

The above mentioned three attitudes are in a close, functional connection with each other, as it is pointed out in the monograph by Földvári. Referring to the connection of criminal policy with criminal law science, he highlights that the aims worked out by criminal policy must be legally formulated, and must be embedded in the legal dogmatic system, which is the task of the scientists of criminal law.<sup>23</sup>

If we examine the system of criminal policy according to modern concepts, we find three distinct areas; that is, criminal justice policy, crime prevention policy and victim policy. Criminal justice policy contains theories (principles, arguments and decisions) that refer to criminal substantive law, criminal procedure law and penal law. Criminal policy must be placed and defined in this category, which contains issues in connection with criminal substantive law. It tries to find answers to the question which human forms of behaviour must be punished in a given era and which are the appropriate punitive sanctions.<sup>24</sup>

## The influence of criminal policy on law enforcement

When examining the connection between criminal policy and law enforcement science, we must answer the question concerning the relationship between criminal policy and law enforcement activity. Is there any connection between criminal law regulations and law enforcement, and if so, what kind of relationship?

According to the above mentioned facts and the regulation of the Constitution referring to the basic task of the police, it is easy to see that the police, as the law enforcement body of the state, is one of the executive branches for criminal political decisions. Its activity is defined by criminal policy and criminal law policy, while during its activity it also shapes the whole criminal policy system as well.

<sup>21</sup> Imre Békés, József Földvári, Gyula Gáspár and Géza Tokaji: *Magyar büntetőjog. Általános rész* (Budapest: BM Könyvkiadó, 1980), 31.

<sup>22</sup> László Fayer, *A magyar büntetőjog kézikönyve* (Budapest: Franklin Társulat, 1905), 3.

<sup>23</sup> József Földvári, *Kriminálpolitika* (Budapest: KJK, 1987), 27–29.

<sup>24</sup> Andrea Domokos, *A büntetőpolitika változásai Magyarországon* (Budapest: Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 2008), 15.

As to the criminal political regulations of law enforcement activity, we mentioned earlier the tasks codified in the Constitution and its relationship to the actual criminal law system. It is easy to see why the substantive law of law enforcement is criminal law: only criminal law can declare certain human forms of behaviour to be a criminal offence, thus the effective Criminal Code is the basis of crime prevention and investigation activities of the police.

But the Constitution also codifies as the task of the police to safeguard law and order and public security, and to defend the border of the country – besides preventing and investigating crime –, all of which belong to the tasks of law enforcement,<sup>25</sup> since in their content they are closely connected to it. The notion of law and order is not yet fully interpreted even now; according to Finszter, law and order is the subject of the defence, which the police must safeguard, but it is also the form of the defence, which the police and all of its active bodies must comply with.<sup>26</sup> According to the theory of criminal law, the notion of law and order means the order of government and social relations in accordance with the norms of social coexistence, as defined in the Constitution and by other laws and regulations.<sup>27</sup> The fundamental component of law and order is public security, which – according to the general definition by criminal law – is ‘a kind of general conditions when the lives of citizens, their physical integrity, personal freedom, tangible assets and the reputation and assets of social, economic and government organisations are respected by everybody and this social order is guaranteed by the state through its dedicated institutions based on the Constitution.’<sup>28</sup> Most activities that violate the general conditions, that is, public order, are criminal activities defined by the Criminal Code or infringements defined by the Infringements Law.

When studying the connection between law enforcement activity and criminal policy, we can make good use of the Law on Police, whose Paragraph 1 of Subsection 2 of Section 1 states that the responsibilities of the police include investigative authority, the prevention and investigation of crime and retrieving assets resulted from crime. Starting from the complete area of criminal policy, the police have their place within government tasks that are not included in criminal justice policy. It is especially palpable in the area of crime prevention, but it is also present at victim defence, as it is defined in Subsection 1 of Section 2 on the tasks regarding defence against criminal activities directly threatening life, physical integrity and property.

<sup>25</sup> Finszter, ‘A társadalomtudományok és a rendészet’, 18.

<sup>26</sup> Finszter, *A rendőrség joga*, 35.

<sup>27</sup> Béla Blaskó, Zoltán Hautzinger, Sándor Madai, Anikó Pallagi, Péter Polt and László Schubauer, *Büntetőjog. Különös Rész II* (Budapest–Debrecen: Rejtjel Kiadó, 2015), 13. Similarly: Tibor Horváth, Béla Kereszty, Mrs. Vilmos Maráz, Ferenc Nagy and Mihály Vida, *A magyar büntetőjog különös része* (Budapest: Korona Kiadó, 1999), 417. Cf. also Finszter, *A rendőrség joga*, 34.

<sup>28</sup> Blaskó et alii, *Büntetőjog*, 13.

## **The influence of law enforcement on criminal policy**

How can law enforcement play an active part in shaping the system of criminal policy? When this issue is examined we must not forget that, as a result of police activities, the government can get information about the actual situation of crime, the number of criminal offences, their increasing or decreasing tendency, the types of crime, the circle of perpetrators; and the aggregate of all these statistical data can provide a feedback to criminal policy. Further connections can be revealed if we consider that law enforcement authorities can have immediate influence on the state of crime by accomplishing their crime prevention and law enforcement tasks defined first of all by Paragraphs 1 to 5 of Subsection 2 of Section 1 of the Law on Police. It can be concluded that the quality of accomplishing law enforcement tasks has an influence on the criminal policy of the government.

But law enforcement activities do not have an effect on criminal policy only by accomplishing its crime prevention and crime inhibitive tasks and providing information on crime. There is also another, hidden influence, which results from the constitutional requirements regarding law enforcement, and which is directly connected to criminal legislation; thus it is a force shaping penal policy, that is, criminal policy. As it has been mentioned earlier, the most important task of law enforcement bodies is to prevent, inhibit and investigate crime. But what is the mandate of the police in those cases when they are only informed about the preparations for a criminal activity or have information hinting at it? The philosophy of a constitutional state requires from law enforcement bodies to work according to the Constitution, thus law enforcement agencies can only act against perpetrators of crime or infringement. The behaviour of the state against crimes heavily threatening law and order and public security is more and more focused on crime prevention according to its criminal policy. As a result, in criminal regulations the principle of *ultima ratio* is no longer decisive and it gives way to the principle of preventive activity to defend the society. This tendency is most palpable in the criminal regulations concerning the fight against terrorism and organised crime, in which cases the legislative power aims at ensuring the legal framework of law enforcement activities with establishing *sui generis* preparatory and accomplice of a crime conclusions well before the start of the given, actual criminal activities. It implies that law enforcement and the requirement of legally supported law enforcement activity also shapes criminal regulations, thus exercises immediate influence on criminal policy.

## **Trends in criminal policy between 1990 and the codification of the new Criminal Law**

In Hungary the end of the communist rule resulted in a dramatic increase in crime: the number of registered criminal offences tripled until 2000. It reached its peak in 1998 with more than 600,000 offences. In the following two years it decreased by 25 per

cent, and between 2000 and 2012 the number of registered criminal offences fluctuated between 400,000 and 450,000. During the last five years, the number of registered criminal offences decreased permanently under 400,000, and in 2015 and 2016 the number decreased below 300,000, a limit unimaginable earlier.<sup>29</sup>

Neither the efficiency of law enforcement activities nor the consequences of the changes in criminal policy can be deduced unambiguously from the examination of statistical data, since the number of registered criminal offences is a result of several parallel influences.<sup>30</sup> Nevertheless, it is necessary to draw conclusions since the change (increase or decrease) in the number of criminal offences is of limited significance in itself, its real significance is how and to what extent it influences public security. The actual increase in the number of registered criminal offences may prove the efficiency of law enforcement, and the sufficient level of social control on criminal activities, while the decrease in the number may be caused by the possible impotence of social control. The data of criminal statistics, when they refer to the number or registered criminal offences, show the product of the operation of an institutionalised system, the state of public security, the failure or success of the institutionalised social control of crime.<sup>31</sup>

Violent crime significantly influences law and order and public security, the increase in the number of violent criminal offences goes parallel with the deterioration of public security, has a negative effect on the public feeling of society and results in the decline of faith in the administration of justice and in law enforcement agencies.<sup>32</sup>

Due to the increase in the number of criminal offences, public security significantly deteriorated in Hungary around 2000, thus penal policy and criminal policy focused on the decrease of criminal offences. Act LXXXVII of 1998, amending the Criminal Code effective at that time, gave preference in its criminal policy to the restrictive and intervening system and can be considered as the novel ‘law and order’ of Hungarian criminal law.<sup>33</sup> It was emphasised in the explanation that ‘claims to a criminal law do not only relate to the responsibility of the legislator, but they set tasks for all the parties contributing to the functioning of the government, and their execution must be legitimised by the general public and must coincide with the general feeling of the society’.<sup>34</sup>

<sup>29</sup> *Tájékoztató a bűnözésről* [Report on Crime], 2008, Igazságügyi és Rendészeti Minisztérium Büntetőpolitikai Főosztály; Legfőbb Ügyészség Számítástechnika-alkalmazási és Információs Főosztály, <http://ugyeszseg.hu/repository/mkudok5274.pdf>; *Tájékoztató a bűnözésről* [Report on Crime], 2014, Legfőbb Ügyészség, <http://ugyeszseg.hu/repository/mkudok6797.pdf>; *Criminality and Criminal Justice*, Repository 2007–2016, Office of the Prosecutor General, 2017, <http://ugyeszseg.hu/repository/mkudok4074.pdf>.

<sup>30</sup> It is beyond doubt that the activity of criminal justice has an effect on statistical data; first of all I must mention decriminalisation, for example the increase of the value limit of crimes against property, which happened in 2012 and had a beneficial effect on statistical data.

<sup>31</sup> András Szabó, *Bűnözés – ember – társadalom* (Budapest: Közigazgatási és Jogi Könyvkiadó, 1980), 139.

<sup>32</sup> Antal Bakóczi and István Sárkány, *Erőszak a bűnözésben* (Budapest: BM Kiadó, 2001), 242.

<sup>33</sup> Ferenc Nagy, ‘A magyar anyagi büntetőjog (át)alakulása a rendszerváltozás óta’, in *A magyar jogrendszer átalakulása, 1985/1990 – 2005: Jog, rendszerváltozás, EU-csatlakozás*. ed. by András Jakab and Péter Takács (Budapest: ELTE ÁJK, Gondolat Kiadó, 2007), 437.

<sup>34</sup> The argument of Act LXXXVII of 1998.



Since 2002, political changes – due to a decrease in the number of criminal offences – has brought about a significant turn in the criminal political concept, and this comprehensive reform was expressed not only in the *ultima ratio* use of the measures of criminal law – that is, a return to the criminal law regulations before 1998 – but it also resulted in significant measures in other areas of criminal policy. This concept was based on the presupposition according to which criminal policy is considered an integral part of social policy, which *sui generis* exceeds the area of criminal jurisdiction; it defines the tasks connected to the execution of punishment: supervision by the probation officer, the tasks of the government in crime prevention, and the mitigation of the grievances of victims.<sup>35</sup> As a part of these reforms, the Hungarian Parliament accepted the national strategy of social crime prevention, which aims at decreasing crime, increasing the self-defence capacity of the society and improving the sense of security of citizens.<sup>36</sup> It was formulated in the resolution that creating the basic operational conditions of crime prevention is the task of the state and especially that of the government. In 2006 the so-called two-lane penal policy was formulated in a government programme. In essence this means that, on the one hand, strict and long prison sentence can be applied against perpetrators of serious criminal offences that are seriously dangerous to the society, but on the other hand, in the case of perpetrators of criminal offences that are less dangerous to the society, alternative – other than penal jurisdiction – means can be used in order to reach the preventive goal.<sup>37</sup>

Since 2008, violent criminal activities showed an increasing tendency, and this time anti-minority campaigns became stronger, which resulted in crimes against human life, criminal assaults and batteries in some cases. These changes in society had an effect on criminal legislation first. Although criminal policy still kept its basic principle of the above mentioned two-lane policy, Act LXXIX of 2008 on certain amendments was passed in order to ensure a more effective answer to certain activities seriously jeopardising the peace of the citizens and public security, and to defend the activity of jurisdiction and law and order. The act modified the relevant statutory provisions of certain delicts against public security and law and order, and declared the preparation for several criminal offences punishable in order to widen and bring forth criminal defence. On 17<sup>th</sup> February 2009, Bill T/8875 – known as three strikes law – was submitted as a result of a popular demand on stricter criminal laws. It resulted in a new novellar modification of the then effective Criminal Code by Act LXXX of 2009. The act contained new resolutions ensuring more effective and stricter sanctions, especially against perpetrators of serious, violent offences; it focused on widening the detrimental legal consequences for different recidivists. The other part of the modifications was formulated to increasingly defend the interests of the injured party. Thus a very significant modification was carried out referring

<sup>35</sup> Ferenc Kondorosi, 'A büntetőpolitika reformja', *Börtönügyi Szemle* 25, no 1 (2006), 12.

<sup>36</sup> Parliament resolution 115/2003. (X.28) on the national strategy of social crime prevention.

<sup>37</sup> Andrea Domokos, 'A büntetőpolitikai koncepcióról', *Rendészeti Szemle* 55, no 7–8 (2007), 99.

to the rules of legitimate defence. As a result of the new criminal political attitude, the perpetrator is to bear the risks for the defence against unlawful attack, but the defensive activity of the injured party must be considered just.<sup>38</sup>

## **Criminal political changes from the new Criminal Code until now**

After the parliamentary elections in 2010, codification work started, and as a result, the Parliament voted for the new Criminal Code – Act C of 2012 – on 25<sup>th</sup> June 2012, which entered into force on 1<sup>st</sup> July 2013.

Although the explanation emphasises the ‘dual track’ attitude in connection with criminal policy, the policy of ‘strong hand’ – started in 1998 – dominates primarily the regulations of penal policy. The selective decrease of the age limit of criminal liability is a good example of it, similar to the modification of the regulations of just defence, the cornerstone of the fight against violent criminal offences, and the further strengthening of the rights of the injured party. The system of sanctions was extended by new types of punishments and measures, and the use of explicitly stricter rules were made possible by the legislator against recidivists, repeat offenders and criminal organisations. The new Criminal Code introduced the definition of the obligatory sanction of *de facto* life imprisonment and maintained the ‘three strikes law’ introduced in the previous Criminal Code by Act LVI of 2010.<sup>39</sup>

The new Code brought significant changes in the Special Division, for example the grouping of the content of the Special Division into several smaller chapters and the placement (ranking) of statutory approaches within a chapter. As to the sanctions of different criminal offences, significant aggravation was not aimed by the legislator, but in the case of more serious, violent criminal offences, the aggravating circumstance consequently appears in order to defend children, juveniles under 18 years, and people with diminished capacity to realise and prevent criminal activities due to their old age or impairment.

Since 2015, another change can be seen in criminal policy, whose immediate effect is palpable in the regulations of criminal law. During this time Hungary was also affected by the rapid increase in the number of refugees arriving at the European Union from war zones in Afghanistan, Syria and other countries. The number of illegal border crossings increased dramatically, significantly challenging the capacities of law enforcement agencies, especially the police. The actual legal regulations did not provide the opportunity necessary to tackle illegal immigrants and as a result, Act CXL of 2015 was passed, amending several laws and regulating the treatment of mass migration.

<sup>38</sup> Béla Blaskó and Anikó Pallagi, ‘Az állami büntetőhatalom érvényesülésének tendenciái, különös tekintettel az új Büntető Törvénykönyv megalkotásának két évtizedes folyamatára’, in *Tendenciák és alapvetések a bűnügyi tudományok köréből*, ed. by Péter Ruzsonyi (Budapest: Nemzeti Közszolgálati Egyetem, 2014), 34–35.

<sup>39</sup> Parts of this resolution were declared unconstitutional by the Constitutional Court in its resolution 23/2014. (VII. 15.) annulling it.

According to its explanation, the modifications enable the relevant Hungarian laws to offer solutions to the emergency situation caused by the dramatically increasing mass immigration. In order to create an efficient defence of the borders of the country, the government sealed the borders and employs criminal sanctions against evasion of facilities and instruments, and vandalism of facilities.

2015 was not characterised only by the emergency situation of mass migration. In this year, several big cities in Europe suffered terrorist attacks with hundreds of casualties, many of them fatal. These terrorist attacks highlighted the case that European states must be prepared for being attacked and must do their best to avert and prevent terrorist attacks and be ready to defend their citizens, public order and public security.

Since 2001, terrorist activity has been categorised as one of the most serious criminal offences in the Hungarian Criminal Code. As a result of the events in 2015 and 2016, Act LXIX of 2016 amending certain laws was codified, similarly to Act XXXIX of 2017, enabling Hungarian authorities to carry out effective preventive and reconnaissance activities against terrorism. These laws amended among others the Act on Police, the Act on National Security Services, and certain regulations of the Criminal Code. As for criminal regulations – as it was discussed earlier in the part about the influence of law enforcement activities on criminal policy –, by penalising several new independent preparatory and coactor activities, the legislator brought forth and broadened criminal defence, thus creating a possibility and fundament for law enforcement agencies to act more effectively regarding crime prevention.

## **The connection between law enforcement studies and criminal policy**

First the legal studies of public administration ‘embarked on’ revealing regularities that made it possible to understand the inner regularities of such a separate area of social phenomena as law enforcement administration.<sup>40</sup> Constitutional law enforcement can be realised only if the rights of law enforcement, the structure of law enforcement agencies, the division of their tasks and competence, their position in the system of public administration, their role in the preparatory process of criminal jurisdiction and the control of jurisdiction over law enforcement are in accordance with the requirement of the Constitution. One group of law enforcement regulatory measures is the physical defence of the holders of endangered values, while the other group contains coercive law enforcement measures which deprive perpetrators of the possibility to start, continue or finish the criminal offence and ensure impeachment. Law enforcement regulatory measures are capable of revealing past violations of law, defending endangered values

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<sup>40</sup> Géza Finszter, ‘A változó rendészet és a rendészettudomány’, in *Pécsi Határőr Tudományos Közlemények XIV.* (Pécs: Magyar Hadtudományi Társaság, 2013), 6.

of the present and preventing future violations of law, bringing perpetrators under control and enforce the punitive right of the state.<sup>41</sup>

In a constitutional state law, enforcement administration is part of public administration – sharing its basic features like meeting collective social demands –, and public administration is an administrative activity regulated by public administration laws.<sup>42</sup> In civil public administration – regarding the position of law enforcement – the amendment of Finszter with the above mentioned definition is of essential significance.

Studying law enforcement as an independent – interdisciplinary – discipline, the closely related research areas of criminology and criminal law are of great importance. Our present viewpoint presupposes that law enforcement studies – *sui generis* – overlap with the research areas of several disciplines. Law enforcement, which is applied in law enforcement administration,<sup>43</sup> is in interaction with criminal law. The relationship between current criminal policy and criminal law – the regulations of which define those human activities that are criminal offences – is palpable in every state. Based on this, we emphasise the above mentioned thought that criminal policy is a special policy aimed at creating, developing and evaluating successful and efficient measures against activities defined as criminal ones.<sup>44</sup>

We accept the standpoint of law enforcement valid in the first decade of the 21<sup>st</sup> century, which states, based on the essential criterion of administration, that the tasks of public administration can be derived from those public demands that cannot be met by individuals and their civil associations without the support of the executive power and whose most typical case is the assurance of public order by the government. As we can see, law enforcement is undeniably a part of public administration, that is, the general features of public administration can be recognised in law enforcement administration.

Regarding the activities of public administration agencies, they have to comply with the constitutional requirement of being subordinated to public administration law. Public administration agencies, when they interfere with social relations based on their executive power, must make their decisions within the framework defined by law, during a procedural order regulated by law, in a framework defined by substantive law.<sup>45</sup> It does not need to be explained that, when according to the legislator's definition (realisation) any human activity is classified as dangerous to the society, the state starts to take the necessary measures to declare that activity punishable (or codifies more severe punishment) according to its legal political and – as a part of this greater field – criminal political principles.

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<sup>41</sup> Finszter, *A rendőrség joga*, 28.

<sup>42</sup> Balla, *Monográfia a rendészetről*, 48.

<sup>43</sup> Finszter, *A rendőrség joga*, 14.

<sup>44</sup> Hollán and Pallagi, *Közrend és Közbiztonság*, 7.

<sup>45</sup> See for example Constitutional Court Resolution 56/1991. (XI. 8), Constitutional Court Resolution 6/1999. (IV. 21), Constitutional Court Resolution 2/2000. (II. 25), Constitutional Court Resolution 13/2003. (IV. 9).

It is more of theoretical importance, but it makes topical the above mentioned statement that the criminal political viewpoint of the government (that is, of ‘public administration’<sup>46</sup>) resulted in an amendment of the regulations of the Criminal Code in connection with sexual abuses (interestingly with the cooperation of the Supreme Court of Justice, the Constitutional Court and the legislator).

According to Resolution 19/2017. (VII. 18.) of the Constitutional Court, the Supreme Court of Justice took over the authority of the legislative power in its Resolution 26/2016 BJE, when it drew an act without duress into the scope of acts with duress regulated by Section 197 (2) of the Criminal Code, and as a result, courts would have had to assess an act with the existence of an aggravating circumstance a qualified case. The Constitutional Court stated that the actual BJE is controversial to the Constitution and annulled it.

In general it can be stated that the scope of activity – albeit different in its scale – of the Special Division of the Criminal Code and of law enforcement manifested in the different branches of public administration are parallel. The relevant areas – with special regard to the interdisciplinary nature of law enforcement studies – are the subjects of separate research. The above mentioned parallel can be deduced from the names of the structural units of the Special Division of the Criminal Code divided into chapters, and names of certain special statutory approaches.<sup>47</sup>

The examination of the connection (or interaction) between criminal law and public administration is not a new phenomenon. According to the views of Elemér Balás P., the connection between criminal law and public administration ‘undoubtedly exists’. The validity of substantive criminal law is a necessary prerequisite of successful public administration; there are some cases that cannot be settled with force or by immediate acts of the authorities. The importance of public administration is also decisive in the practical success of substantive criminal law.

Due to the criminal resolutions concerning public administration, criminal law and public administration have several common issues. Balás P. emphasises that there are several criminal regulations that defend public administration from unlawful attacks. There are also a number of criminal regulations that ‘aim to ensure the lawful activity of the employees in public administration by threatening them with detrimental legal consequences.’<sup>48</sup>

The phase of law enforcement activities that begins after terminating the unlawful condition and the capture of the perpetrator is different – not only in its measures but also in its goals – from other types of functions of law enforcement agencies. In this case the aim of the activity is not to restore public order but to enforce the

<sup>46</sup> According to Subsection (2) of section 15 of the Constitution: ‘The government as the supreme body of public administration may create public administration agencies according to the definition of the law.’

<sup>47</sup> See for example delicts against health (including in connection with drugs), human dignity, fundamental rights, traffic (including railway, air, water), the environment and nature, administrative, public order, public tranquility, the order of public administration, and information system (forbidden data gathering).

<sup>48</sup> Elemér Balás P., ‘A büntetőjog és a közigazgatás kapcsolatai’, in *A mai magyar közigazgatás. Az 1936. évi közigazgatási továbbképző tanfolyam előadásai* (Budapest: Magyar Királyi Állami Nyomda, 1936), 278.

punitive claim of the state. The matter of these procedures is misdemeanor or criminal offence, the form of these is misdemeanor proceedings or criminal procedure, and their means is evidentiary procedure.<sup>49</sup> An inevitable element of law enforcement activities – either during prevention or during terminating unlawful activities and their reconnaissance – is cooperation among law enforcement agencies.<sup>50</sup>

The behaviour of anyone who fulfills his/her duty cannot be regarded unlawful – even if it is qualified as a criminal offence in the Criminal Code – due to the unity of legal order.<sup>51</sup> Judicature enforces that legal political evaluation according to which if somebody fulfills his duty codified in law and causes any kind of harm, he/she cannot be punished.

The connection between criminal law and public administration criminal law does not need to be proved specifically. ‘Public administration criminal law is the complex entirety of those norms that define the conditions of the use of punitive sanctions belonging to the competence of public administration agencies.’<sup>52</sup> Public administration criminal law is connected to public administration law, but impeachment and sanctioning are codified by substantive criminal law. Public administration criminal law – also sharing some features with public administration law (including one of its subsystems, law enforcement law) and criminal law – functions with several legal specialties. It is worth mentioning their well-foundedness in connection with misdemeanour law as part of the bigger system of public administration criminal law. The provisions of Act II of 2012 (on misdemeanours, misdemeanour procedures and the misdemeanour registration system) (hereinafter Sztv.) borrow the categories of deliberateness, negligence, abettor, coactor, and grounds for the preclusion of punishability – almost identically – from criminal law.

With special regard to the fact that law enforcement administration is an executive-regulatory activity containing regulatory measures with the aim to prevent, stop and repel dangers resulting from the deliberate or negligent violation of the law,<sup>53</sup> it can be stated – from the above list of examples – by referring only to the dogmatical points of criminal substantive law that its domain of interpretation is partly identical to the – earlier mentioned – deliberateness and negligence codified for example in the Sztv. It means much more than a simple definition of these notions in the Criminal Code. These legislatures do not dispose of the deliberateness of the misdemeanour but that of a criminal offence, similarly to negligent acts.

In other words, negligence and deliberateness must be interpreted in the operative construction of misdemeanour law according to criminal law science. The specialty

<sup>49</sup> Finszter, ‘A rendészet jogi természete’, 15.

<sup>50</sup> In connection with the possibilities of cooperation and law enforcement activities see Sándor Madai, ‘A rendészeti közszolgáltatások helyzete’, in *Gyűrűk és sugarak – Mit nyújt egy magyar város?* ed. by Tamás Horváth M. and Ildikó Bartha (Budapest–Pécs: Dialóg Campus, 2014), 281–294.

<sup>51</sup> Béla Blaskó, *Magyar büntetőjog. Általános rész*, (Budapest–Debrecen: Rejtjel Kiadó, 2017), 252–254.

<sup>52</sup> Norbert Kis and Marianna Nagy, *Európai Közigazgatási Büntetőjog* (Budapest: HVG-ORAC Lap- és Könyvkiadó Kft., 2007), 7.

<sup>53</sup> Finszter, *A rendőrség joga*, 27.

of this situation is palpable in the fact that misdemeanour law uses that couple of notions – namely negligence and deliberatedness – in connection with culpability which are also conceptual elements of criminal offences. The situation is further tinged by the fact that ‘in modern criminal law, dogmatic philosophy and – according to different authors – the problem of culpability appears in two relations. On the one hand, it is an independent criterion in different views in connection with criminal offence science, on the other hand in the notional system of general statutory provisions it is on the substantive side as the collective term of negligence and deliberateness.’<sup>54</sup>

The criminalisation of certain types of behaviour – like violent offences – is a quasi fundamental resultant of law enforcement activity, which may provide criminal policy with a guideline by realising activities dangerous to society, or antisocial during its operation. It is undoubtedly true that – as we referred to it earlier – the complete substantive law system of law enforcement is not included either in the Criminal Code or in the Sztv. The legal control of any activities of a government is a necessary criterion of a constitutional state, similarly to the rule of law. With special regard to the earlier mentioned theoretical and practical aspects, we fully agree with the standpoint that the tasks of law enforcement agencies – such as defending the prohibitive norms, persecuting their violations, reconnaissance, and arresting perpetrators and delivering them to sanctioning authorities – must be codified first of all in the Criminal Code and the Sztv. ‘Most of the law enforcement substantive laws are *sui generis* criminal substantive law and misdemeanour substantive law.’<sup>55</sup> Our viewpoint is fully identical with Lajos Szamel’s arguments and his cited standpoint. We consider criminal substantive law and misdemeanour substantive law the substantive law of law enforcement.

## Closing remarks

We believe that during our research into the topic given in the title of this article we managed to reveal and formulate some statements – in connection with public administration, public administration law, law enforcement and its science, criminal law and criminal policy – that undoubtedly prove, according to our view, the connection and interaction between law enforcement activities, law enforcement science and the scientific system of criminal policy. Our present study (within the limits of its extent) belongs to those special scholarly works that undoubtedly state that these scientific disciplines inevitably require a multi- and interdisciplinary, and a complex approach, and their elements and parts overlap and interact with each other, and require further scientific study in the future.

<sup>54</sup> Béla Blaskó, *A bűnösség büntetőjogi, büntetőjog-tudományi problémái* (Budapest: BM Kiadó, 2001), 47.

<sup>55</sup> Lajos Szamel, ‘Jogállamiság és rendészet’, *Rendészeti Szemle* 30, no 3 (1992), 11.

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## ABSZTRAKT

### **A kriminálpolitika és a rendészettudomány összefüggései**

BLASKÓ Béla - PALLAGI Anikó

A szerzők a rendészeti tevékenységnek és a rendészettudományának a kriminálpolitika tudományos rendszerével való összefüggését, egymás feltételezését és kölcsönhatását vizsgálják. A rendészeti tevékenység feladataként fogalmazható meg a közrend és a közbiztonság megóvása a jogellenes emberi magatartásokkal szemben. Az egyes magatartástípusok kriminalizálása quasi alapvető eredője a rendészeti tevékenységnek, amely a működése során észlelt társadalomra veszélyes, közösségellenes cselekmények felismerésével iránymutatásul szolgálhat a kriminálpolitikának. Mindezeket túl azonban többirányú a kapcsolat, hiszen a rendészeti feladatok megvalósítása során kap az állam információt a bűnözés mindenkori helyzetéről, a rendészeti feladatok ellátásának minősége pedig alapvetően befolyásolja a bűnözés alakulását.

**Kulcsszavak:** rendészet, rendészettudomány, kriminálpolitika, büntetőjog, Büntető Törvénykönyv