GÁBOR MÁTHÉ

Fundamental Sources of Hungaryan Administrative Penal Law

Introduction

"Namely, the old penal law had really held the theoretical view until the end of the previous (18th) century that all kinds of fines, including police-fines, had fallen outside its field. It will suffice to take a glance at the Carolina to be convinced of this fact"[1] – Lorenz Stein states concerning the situation of minor offences. The judgement of acts verging on criminality is always a function of the actual historical processes It was this theoretical approach also that permeated the statements of the only synthesis of this topic in the socialist legal literature.[2] According to the author's statement, the concept of trespass as an independent group of criminal acts was introduced in the system of penal law by the French *Code Penal* of 1791 and also by the *Code Pénal* of 1810. The *Code Pénal* was based on the tripartite system. The 19th century codification generally adopted this division (the Bavarian penal code in 1813, the Dutch in 1840, the Austrian in 1852). In codes based on the dichotomous system also trespass appears as a concept complementary to criminal acts. This approach is characteristic of the draft penal codes of 1843 just as well as of late 19th-century Italian regulation (The 1889 Italian Penal Code).

Thus, clarifying *the relationship of minor offences to criminal acts* forms one of the significant issues of their deliberation. Hence it follows that minor offences substantiate a form of responsibility milder than criminal liability. If this is an effect, then what poses further questions is that in such cases what organisations (judicial, police), what procedure should be adopted in their proceedings. Moreover, what purpose (preventive, repressive) should the related punishments serve, and in what way the forms of punishment should be related to penalties in criminal law. Posing another, more ramified problem is that minor offences are not homogeneous in nature. In other words, there is a wide range of such offences within which the offences will not appear in a form assessable in penal-law terms, but as a consequence of an infraction of some norm or rule. The questions that have tormented jurisprudence for a century and a half now included such issues as to define these offences clearly, compare them with acts verging

[1] Lorenz STEIN: *Verwaltungslehre.* Stuttgart, 1887. IV, p. 37.

[2] Tibor Király: *„Kihágások a magyar jogban." Tanulmányok az Állam- es jogtudományok köréből* [Treatement of trespasses in the Hungarian law. *Studies in Legal and Political Sciences*]. Budapest, 1953. pp. 87–128.

on the border of criminality to solve the responsibility-penalty-problems raised by them. The mixed character of minor offences, furthermore, also raises the question of whether the judicial organisations should or the administrative authorities may also conduct the proceedings in cases of trespasses or infractions of rule.

In the course of institutional development, however, the mentioned delicts of complex nature also made it necessary to „reconcile" them with the fundamental principles of penal law as well as with the doctrine of the distribution of power. To enforce the tenets of *nullum crimen sine lege* and *nulla poena sine lege,* jurisprudence had also to develop the „tenet" of minor offences. However, it was raised as an issue of constitutional law whether or not administrative bodies may take penal measures and mete out penalties, that is, whether or not they might violate the postulate that justice might only he administered by courts of law.

The Supplements

The bills proposed in 1840 were of a decisive importance in the history of Hungarian penal law. They had been prepared by 11 March 1843 by the National Delegation sent out under Act V of 1840. The bills contained proposals concerning infractions of policing rules liable to public punishment.[3]

The proposed *Supplement* forms an integral part of the penal-code bill's *first section* on criminal acts and penalties. The penal-code bill divided the criminal acts into two parts: criminal acts and trespasses. The Supplement also took Over the usual division of penal law into a general and a particular part. The Supplement – with minor modifications – extended general part of penal law to trespasses, too. The individual chapters laid down rules for such things as the scope and effect of the law (I), forms of punishment (II), delicts committed wilfully or through negligence (carelessness) (III), attempts (IV), accomplices. instigators, accessories (V), reasons for exclusion from culpability (VI), relapse (VII), and limitations (pardon) (VIII). The rules listed above strongly and unambiguously underlined the principle of *nullum crimen sine lege — nulla poetic sine lege* both for criminal acts and for trespasses. The Supplement's general part (article 1) made some exceptions in concerning the scope of the law, forms of punishment, infliction of punishment and the limitation. As to the territorial scope of the law, the proposal aimed to punish only offences committed on the territory of Hungary. The personal scope, the proposal laid down that in case of minor offences – as against criminal acts – committed abroad. the offender could not be called to account for that offence. In case of trespasses and other minor offences committed by foreign citizens, to which the penal-law section also made a reference, the judgement of such offences should be based the related provisions of the Supplement. Within the personal scope the proposal made only one restriction, namely that high ecclesiastical officials were removed from the personal scope. However, this legislative view was in contradiction to the bourgeois principle of equality before the law, so much so that it

[3]Az 1840. évi 5. tc. által a büntetőtörvénykönyvvel válhatatlan kapcsolatban lévő büntető, s javító rendszer iránt kimerítő véleményadás végett kiküldött Országos Választmány jelentése. [Report of the National Delegation set up under Act 5 of 1840 to give a detailed expert opinion about the Introduction of a penal and corrective system concerning minor offences inseparable from the Penal Code]. Buda, 1843. pp. 104–109. (hereinafter: Report)

provoked severe criticism and strongly dissenting opinions during the sessions of the Delegation.[4]

The proposal instituted six forms of punishment for criminal acts and three for trespasses and other minor offences. Perpetrators of the latter would be punished with captivity (short-term), fines and judicial censure. In case of criminal acts, offenders would be punished with additional, more sever, punishments such as imprisonment for a fixed term and deprivation of public office. This penal-law proposal prohibited the commutation of certain forms of punishment to others; thus the commutation of captivity to imprisonment was not permitted. However, (short-term) captivity could be commuted to fine, and to this even a was developed: one-day captivity was equivalent to a fine of 5 forints (the 19th-century Hungarian currency was also called forint), consequently, this applied to trespasses and other minor offences as well. The Supplement regulated the way of meting out punishments separately. It is an interesting trait of this regulation is that it stood near our present-day legal solutions as it aimed to introduce absorption, asperation and cumulation in a mixed form.

One and the same judicial body – when judging one and the same or different kinds of minor offences committed by one and the same offender (single procedure) – was to mete out the punishment on the basis of the sum total of punishments for each separate offence committed. Such punishments, however, were not permitted to exceed a penalty of 1800 forints and a confinement (captivity). Finally, the general part of the Supplement regulated he terms of limitation. As a general rule, the term of limitation of trespass was rixed at three months, while that of the punishment for trespass at one year. The Supplement determined only part of trespasses liable to police measures articles 2–36). In its evaluation introducing the proposal, the Delegation also referred to the consciousness of codification. Trespasses were examined from the viewpoint of whether or not they fell within the competence of the policy. As the proposal regarded the policing (administrative) tasks as a field difficult to survey, it qualified their regulation as technically unrealisable, it punished my those trespasses which were of a general validity and so – on the basis experiences gained thus far- could be punished on good grounds. In this context, references to deficiencies in the contemporary social welfare are worthy of attention. Thus, for example, the proposal held it unjust to punish beggars, as „it would offend the whole Mankind to put ban on begging as long as [...] provisions would have not be made that the poor, who is able to cork but is unable to find job, should not be in need even without a regular earning [...]"[5]

On the other hand, abstaining from any prejudice, the Delegation did not undertake to bring together all penal consequences of offences committed under living condition that had not been regulated legally yet, and to revise those of offences which had already been covered by legal rules, e.g. Act IX of 1840 on the field police. The latter act was revised only from the aspect of punishments and brought them into harmony with the proposal. Article 33 of the Supplement corrected the general maximum of punishments, prescribing that in case of certain trespasses should carry a maximum

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[4] Cf. János VARGA: *„Deák Ferenc és az első magyar polgári büntetőrendszer tervezete"* [Ferenc Deák and the first draft of a Hungarian civil penal system]. *Zalai Gyűjtemény* No. 15., Zalaegerszeg, 1980. p. 109.

See also: *"Különvélemény a kath. egyházi hatóságoknak a papi személyeknek a büntetteik feletti bíráskodás iránt"* [Dessenting opinion of the Roman Cathokic church authorities concernining the punishmnt of offences committed by clergymen]. *Report, op. cit.,* pp. 230–231, 273.

[5] *Report, op.cit, p. 4.*

punishment of three or six months' confinement (captivity) The above mentioned rate of commutation (a fine of 5 forints equals one-day captivity) – in addition to its general interpretation in the general part – was concretised in this article with reference to article 36 of the penal-code bill.

The origins of difficulties arising from the delineation of the conceptual framework of minor offences can be found already in expert opinion of the Delegation. Namely that this *framework included not only acts verging on criminality together with their penal law relevance, but also such behaviours as arose from administrative (police) relations.* For such behaviours, however, no rules of general validity can be given, nor can they be incorporate into a law, instead some special norms must also be set that affect the minor communities. This conception came to prevail in the concluding article 39 of the Supplement that listed the individual acts that are trespasses in nature. Some examples for such acts: defects in fire and water policing, too fast galloping on bridges and streets that may be hazardous to the traffic, infraction of rules for building, veterinary hygiene (epidemics, diseases, cattle-plague. etc.), weights and measures (fraudulent measuring) and the like. The formulation of such unlawful behaviours and trespasses was left to the municipal authorities working under the general supervision of the Council of the Locumtenens *(Consilium locumtentiale Hungaricam).* For the listed cases, the requirement of making corresponding „government-level" rules was also underlined. There for in the Hungarian legal development the above-discussed first attempt at the codification of trespasses can be regarded as the antecedent of our present-day legal solution. Law on infraction (trespasses), „government-level decrees" and municipal statues were instituted.

At the same time, the penal-law bill (Supplement-proposal) also fixed the general maximum of punishments to be imposed on those acting in contravention of administrative rules, that is, a maximum fine of 600 forints and imprisonment (captivity) for not more than three months. In connection with the mentioned article 39, a dissident opinion of the Delegation also dealt with the content of the right of control. To this only a brief reference can be made here. Holders of this dissident opinion wanted to have it included in the text of the law that the rights of control and cassation of the Council of the Locumtenens could be extended only to those trespass rules of municipal authorities which would go against the intentions of the law. The Council could not require the municipal authorities to submit their local statutes for preliminary approval in general, only in case of municipal statutes violating the proposed bill.[6] Thus the legal outlines of the obligation of submitting local (municipal) statutes for preliminary approval had become visible already in legislation of the Reform Era (early 19th century), anticipating the bourgeois development.

The particular part of the Supplement (articles 2–37) contained the individual kinds of trespasses and the relevant punishments. Although it did not systemise the same kinds of such acts, but the individual facts of cases – *mutatis mutendis* – can be found almost without exception in the present-day regulation as well. To sum them up with some terminological (actual content) exaggeration: to be found are trespasses against rule in such fields as health- and pharmaceutical policing (articles 2–9, penalty: 100 to 200 forints); labour (articles 11–22, penalty: 200 forints); food administration (articles 11–16, penalty: 200 to 600 forints or imprisonment of 3 to 6 months); traffic and road

[6] *Report, op.cit., p. 115.*

administration (article 25, penalty: 50 to 100 forints); water management (article 17, penalty 100 forints); illegal gaming (penalty: 600 forints), and so forth. However, a trespass typical of that age was „trampling down by fast gallop" (article 35) which was liable to punishment in any way, even in the absence of bodily injury and even if the injured party abstained from lodging a complaint (request for prosecution).

The penal-law proposal of 1843, besides taking a stand for the unity of crime-trespass, also contained a parallel regulation of police procedure.[7] Thus the judgement of all trespasses laid down in the Supplement were reduced to police procedure unless those offences were related to crimes subject to the Penal Code. In the latter case, to wit, a judicial process (at a law-court) was required. On the other hand, the so-called minor thefts, which the penal-law proposal bound to a value limit (10 forints) as well as cases of minor injuries caused in brawls were exempted from penal procedure to be reduced to simple trespass procedure.

In Hungary in the first half of the 19th century the separation of public administration from the administration of justice had not been put yet on the agenda of the national assemblies of the Reform Era. Thus in judging the minor offences no distinction had been made between the judicial and administrative bodies either. This explained the provisions of the Supplement that included the procedural rules, which established that task of exercising the rights of the police authority also fell on the municipal authorities. Accordingly, it was the district administrator *(iudex servientium)* or the juror in the counties and the authorised members of the local magistracy in nobiliary villages and in rural communities with regular local council who were entitled to proceed in such matters. The county criminal courts also acted as courts of second instance for the above-mentioned forums. An authority judging on trespasses acted not as sole court, but as an „collegiate body". It was the local council or magistracy that appointed the person who was to act as policeman (constable) and this appointment had to be submitted for approval by the Council of the Locumtenens. The „police justice" was to sit in judgement together with two other persons delegated by the local council in the form of a council. The police magistrate was required to keep records of the proceedings and to sent the records every quarter-year for filing and control by the given district administrator who – in case of accidental formal defects – would further the case to the public prosecutor for legal remedy, if needed. It is to be noted here that to increase the public safety and order, the procedural Supplement also granted the local bodies a right to make local rules (article 12) which, however, were subject to supervision by the competent municipality. It was also the municipality that fixed the salaries of officials engaged in the procedure. The venue in a case was generally the place where the offence was committed. In case of a concurrence of trespasses that body was entitled to proceed which was the first to proceed against the given offences. To decide on cases of conflicts of positive jurisdiction fell within the competence of the Council of the Locumtenens.

Consisting of 85 articles, the sizeable procedural proposal of the Supplement discusses the police investigation, devoting special attention to each part: thus the defendant's interrogation, the judgement, appeal and execution of the punishment, finally made provisions for the renewal of the procedure. A detailed analysis of the

[7] *Supplement* – „ A rendőri eljárásról általában" [On the police procedure in general]. *Report, op.cit., pp. 186–198.*

former will be omitted here, we only call the attention to some typical solutions.

The prosecution of trespasses may have taken place upon denunciation, either oral or written, or ex officio. The related articles of the proposed penal procedure had to be applied to the whole procedure. In the phase of investigation, prescriptions for inspection, house search, the defendant's apprehension and interrogation, oral evidences, possibility for choosing defence counsel were identical with those for penal procedure. In the phase of proceedings, the oral summation of the subject matter of accusation and the evidences were followed by the delivery of judgement. The proposal was unable to rid itself of the jury system, planned to be introduced, as it prescribed the introduction of the „judicial withdrawal" and the order of questions to be settled. The latter were identical with those arising in trials by jury.

Article 62 of the proposal on police procedure included further important provisions concerning the punishments that could be imposed. It stated *expressis verbis* that those committing trespasses and other minor offences could be punished only with what were prescribed by law or by decrees and statutes of the Council of Locumtenens and municipal authorities, respectively. The emergence of the principle of *nullum crimen sine lege* and *nulla poena sine lege* in cases of offences of minimum weight can be seen as an expression of relationship with penal law.

The proposal admitted the possibility of removing certain cases to criminal courts. If the given offence had demonstrably (in written form) proved to be a criminal act, the „police magistrate" could remove the case through the public prosecutor to the criminal court.

The proposed system of legal remedy aimed to introduce a single-instance appellate procedure. The procedure through courts was generally recognised for cases of both formal and substantive infractions. In the procedure of second instance, the court could change (revise) the case appealed, deliver a sentence and obliged the court of first instance to execute that sentence. The annulment of the sentence of first instance and the institution of a new procedure could take place in case of infringing the formal rules.

Appeals generally had no delaying force on execution, except three cases: if the fine exceeded the amount of 12 forints; if the offender was sentence to imprisonment; if the damage caused exceeded the value limit of 200 forints. The imprisonment sentence had to be served in the prison of the municipal authority or of the given locality.

In addition to the single-instance appellate procedure, the proposal also admitted that the institution of re-opening a case might be introduced in the criminal procedure. Cases of the extension of the related rules for penal procedure to police procedures were the same as before. Re-opening of the given case was possible not only after the conviction, but immediately after the delivery of sentence also. The list of possible cases permitting the reopening of a case included such offences as conscious distortion of evidences leading to the sentence contested through the current legal remedy, bribing the judges; the evaluation of new evidences also came under this group of cases permitting the re-opening of the case. Finally, unlawful behaviours qualified as minor offences committed during the penal procedure could also be removed to police procedure through a new trial. This legal remedy fell within the competence of a criminal court, and in case of adopting the plea, the court could order the court of first instance to conduct a new procedure. The revision of such a new trial was not made possible by the proposal.

Acts of endangering — Act IX of 1840

In what has been discussed above concerning the proposals for trespasses, reference has been made to the fact that the plan did not affect offences other than those having been formerly regulated, it only harmonised the act on the field police with punishments as defined by the proposal. From this point of view, too, Act IX of 1840 deserves special attention. Party because this law was the first to attempt to bring together and impose punishments on acts of endangering in a well-defined group of cases. This way the act and the discussed proposal form one unit. And partly because – while unfortunately the Supplement – proposals have never been sanctioned, – the law on field police had remained effective for a century even after the Trespasses Penal Code (TPC) had entered into force – though only among the rules of particulars of the latter.[8]

The field police act synthesised acts of endangering and damaging committed in agriculture and forestry, veterinary health, fire policing and in connection with wage contracts. The act specified the organs and persons who were competent in such matters. Moreover, to the judgement of such cases the act extended the rules of summary proceeding (Act XX of 1836), and also the forms of legal remedy.

A general characteristic of acts of endangering occurring in the sphere of complex protection was that the given act or default would cause damage. The degree of responsibility results from subjective accountability (imputation). The act determined degrees. The categories quite obviously do not cover our present-day penal-law concepts, however, the fact is that they made a differentiation, therefore, we can describe that situation – for lacking better solution – by interpreting the elements of our present terminology. The basic case of accountability could be clearly defined. One who caused damage out of negligence should be liable for damages and costs (responsibility for damage). The terms for the untended and unintended forms of committing the offence showed a marked difference. What can be inferred from this is that the law distinguished conscious (culpable) negligence, incidental negligence and direct (deliberate) intent. In these three formations of accountability, offenders in case of certain acts – over and above the obligation of compensation – were also made responsible for violating policing rules, that is, a second damage compensation (fine) was complemented with corporal punishment. It is not difficult to perceive the symbiosis reparative and repressive accountabilities, both arising from subjective responsibility.

Although in defining the individual acts of endangering the law also defined the related punishments, yet in its general interpretation it was underlined that fine and corporal punishment might be mete out only in case of deliberate offences (direct intent). (The 1843 penal code proposal qualified only that act or default as deliberate offence, the result of which had already been premeditated by the offender.) The degree of the responsibility of the offender was to be considered by the judge on the basis of the following viewpoints:

- „responsibility for violating policing rules" the three degrees of accountability were considered especially in case of relapse,
- liability for damages was influenced by the property protection,
- subjective responsibility was also influenced by the place and time of commission as aggravating circumstance.

[8] Act IX of 1840 on the field police was abrogated in its enitery only by Act XII of 1894.

Hence it follows that the acts of endangering cannot be regarded as delicts,[9] but as minor offences separated according to a well-defined group of cases. In the law's terminology, the use of the word „delict" was meant to be a comprehensive term for all forms of accountability. It establishes – and in connection with some actual circumstances very concretely – the forms of punishments which should be in proportion to the degree of responsibility in the individual cases. As to the legal facts of such cases, the act gives a full list of punishments: obligation of compensation for damages, fine, and corporal punishment, and for some acts even imprisonment. Therefore,it is very reasonable that the act recurrently adds the phrase „in proportion to the degree of delict" to each punishment, giving a guide to judicial discretion.

The question of responsibility (accountability) – „in proportion to the degree of delict" – becomes an important issue particularly in those cases (or groups of cases) when the act might also entail penal-law consequences. Par. 9 of the field police act gives an overall picture of the range of punishments according to the degree of accountability. Compensation for damage shows a close connection with fine Acts of endangering committed out of culpable (conscious) negligence was punished – in addition to compensation for damages – with double compensation (fine) and in case of a repeated culpable negligence even with imprisonment. Compensation for damages and fine were generally characteristic of almost all of such cases. Thus fine as punishment stood in itself. Prison and corporal punishment were related to fines concurrently. In imposing the mentioned punishments, it was the character and weight of the act as well as the degree of responsibility that really counted. So far as the perpetrator deliberately committed act that was to be penalised by the penal code also (e.g., with lifting cattle and other animals, or with acts of brute force), over and above the compensation for damage and costs, he was also to be punished in proportion to the degree of delict according the penal code.

Subject to judicial discretion, the degree of responsibility corresponded with such penalties as corporal punishment and imprisonment (captivity). It is to be noted that corporal punishment was never imposed alone. Imprisonment as punishment was restricted to seven cases. Accordingly, this punishment could be applied only if those acts (pars. 8, 9, 13, 18, 19, 23, 25) had not established criminal liability. To illustrate this a passage is cited the law's text: if this action „theft, robbery violent assault on a person would have not been included in those category of delicts that are generally prohibited by penal laws".[10] That is, in this circle, when speaking of criminal liability, we refer to responsibility (accountability). This is akin to the former in that as endangering behaviours which violated some legal norms (policing responsibility) would be assessed according to the degree of their accountability, but would not require penal-law repression. If the act of endangering included in the text of law had from the onset constituted criminal liability, that is, it was committed by a criminal act, the

[9] Tibor Király: *op.cit.*, p. 100: „Act IX of 1840 on the field police that used to be regarded as a legal rule establishing trespasses – uses the term „delict" rather than „trespass" for acts remitted both to the court and to the district administrator" (...) Cf. „According to the Penal Code, the category of delict should be regarded as a quite new one in Hungarian law."– p. 108. For the forms of accountability (responsibility), see: par. 41 of Chapter 11 of the 1843 Penal Code proposal which thus provided: „If an injury arises from an act or from some kind of dereliction of duty which the actor or the party in default did not intend, but eithefrom experience or due to his particular knowledge of facts could have foreseen, and so could have averted it, in the cases as provided by law should be punished for the delict of negligence".

[10] Magyar Törvénytár [Hungarian Law Records]. Acts of the period 1838–1868. Budapest, 1896.

punishment – in addition to compensation for damages and cost – would be complemented with other punishments as defined by the related penal rules. Thus the cited provisions of the punitive (disciplinary) statute and those of the statute on minor acts of endangering came into collision.

Five paragraphs of the act on field police (9, 10, 12, 20, 31) referred to the above mentioned solution. Most of them related to damage, public theft, arson, bloodshed, brawl committed within the framework of criminal liability. Here, too, it is highly justifiable to refer to the fact that Act IX of 1840, even if indirectly, essentially contained the principle of *nullum crimen sine lege* for minor acts of endangering as well. Provisions of former laws in connection with damage were annulled inasmuch as they came into conflict with this regulation. (par. 39). The same applied to the facts of the legal framework that contained concrete references to laws which had formerly regulated protection-related matters (e.g. game law). Otherwise, this was justified by the liability-punishment system.

As to punishments, two further characteristics must be underlined. These are related with such punishments as fine and imprisonment.

The law made mentions of fine in some of its paragraphs (11, 30, 38, and 42). It is to be noted beforehand that from the aspect of the intent of their application distinction must be made between penalty (mainly for delicts and infractions carrying higher fines) and fine (for trespasses that carry minor fines). However, according to the law, they might also be conceived as synonymous concepts. Perhaps it would the most appropriate to describe fine as a particular kind of penalty. The value limit of penalty has relevance from such aspects as procedure, jurisdiction and legal remedy. As a matter of fact, penaltyhad changed as a function of the degree of damage, and its degree is the amount of the loss that the damage committed for the second time has caused.

The so-called non-returning, compensation for damage was due to the offended party. Compensation for a second damage as penalty was to be paid to the county or municipal cashier's office. The amount of penalty ranged from 12 up to 200 forints. Fine was partly based on uniqueness (kind, character, etc.), in case of breaking the rules of veterinary hygiene, it was the number of cattle or other animals put on common pasture that served as a basis for defining the „independent" fine (one forint per animal). Fine with cost compensation, but without damage compensation, might serve a substitute for the latter. (E.g., retting of hemp at a forbidden place carried a fine of one forint per sheaf alone with the refunding of the expenses of removing the hemp by the local authority.

Finally a brief reference is made to the „reward intent" of imposing fines. This means nothing else but the „rewarding" of a third party who – while he was under no obligation – denounced the damaging person or prevented the damage. The amount of this „reward" was determined by that of the damages, which functioned as a second financial penalty, though the law termed its fine. This distinction was made for practical reasons since this penalty was not to be paid to the organ that proceeded *ex officio,* but was due to a third person as a reward – thus it was a fine.

As has been mentioned above, confinement (captivity) as punishment was applied as an independent form of punishment. However, the law permitted the commutation of financial penalty to confinement (captivity). A „commutation rate" was also worked when one-day captivity was made equivalent to a fine of 5 forints, but the term of captivity was maximised at six months.

Then action bodies, jurisdiction, competence

Under the act on field police, the task of supervising the judgement of acts of endangering was assigned to district administrators the counties, and to the municipal police chiefs in free royal towns and privileged country towns. The related jurisdiction and competence were determined – bound to value limits – on the basis of sums of damages (financial penalties). In lawsuits conducted with summary proceedings, when the value limit did not exceed 200 forints, proceedings had to be instituted within 15 days from the reception of the written complaint. In such cases the judge would look after the handling of sums of compensations, their remittance to the injured party or to the county cashiers office as the case might be. In case of corporal punishment, the investigation records would be submitted to the law-court (municipal council) which after a regular procedure would decide on imposing the punishment. This was also he regular way open to legal remedy, in case of appealing against fustigation.

In case of rural communities, the local board was competent to impose a fine in matter with a value limit of 12 within 3 days from the committing of the offence. Managing of the sums received in this way was carried out at the level of the district administrator. Appeal could be implemented along the same lines. The local board, however, was not empowered to proceed in the petty affairs of noblemen, to which the district administrator had competence as first instance, also in cases when the mentioned three-day term ended without result. In case of nobiliary communities and commonages the local competence was extended dp to a value limit of 24 forints. However, damages caused by serfs among themselves or to the landlord – in case of the mildest degree of accountability – continued falling within the competence of the manorial court, provided the damage did not exceed 60 forints. If the three-day term was not kept, the district Administration would have to institute proceedings.

The law on summary proceeding prescribed the obligation of keeping records. hich were submitted to the quarterly county assembly, and the sums of penalties ere controlled by the financials officials.

The first developmental stage of the institution of trespass was linked up with the universal results and of Hungarian attempts at the codification of penal law. Characteristics of the Hungarian development were as follows: a dualism of criminal act and trespass, and within the latter, a differentiation of the forms of responsibility. The 1843 proposals synchronised the individual degree of accountability. The first „trespass law" (Act IX of 1840) and the 1843 proposals contained a revision of the penal system. To be qualified as sources of minor offences and minor acts of endangering as trespasses are the act on field police and the above-discusses supplements. The mentioned regulations and proposals revealed all the problems that the bourgeois codes and laws had intrinsically carried. They had offered such solutions and responses to raised problems from which even the later codification was unable to cut free. Despite this fact, the intermediary phase of the development of the institution was characrised by a compromise between the overweight of foreign legislation and the first period of Hungarian development.

MÁTHÉ GÁBOR

A KÖZIGAZGATÁSI BÜNTETŐJOG ALAPTÖRVÉNYEI

(Összefoglalás)

A tanulmány a kisebb súlyú bűncselekmények és az igazgatásellenes magatartások hazai szabályozásának kezdeteivel foglalkozik. A kriminalitás határán mozgó cselekmények: a kihágások első klasszikus kodifikálása az 1843/44. évi büntetőjogi javaslatokhoz kötődik. Az ún. Toldalék: a közfenyíték alá tartozó rendőrségi kihágásokat és azok szankcióit tartalmazza. Az 1840:IX. törvény pedig a mezőrendőri kihágásokról szól, s valójában az első normatív formája e jogellenes magatartásoknak.

A dolgozat a két pozitív normacsoportot alaptörvénynek tekinti, s ezeket összehasonlító módszerrel jellemzi, utalva a későbbi vonatkozó szabályozással összefüggő viszonyukra.