EÖTVÖS LORÁND UNIVERSITY

DOCTORAL SCHOOL OF LAW

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SIMPLIFICATION AND ACCELERATION IN THE NEW CRIMINAL PROCEDURE CODE

Aspirations and obstacles in practice

Summary of Doctoral Thesis

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I) Introduction, objectives of the research

In the past years, criminal policy changes have accelerated in Hungary, which have also affected criminal procedure law at the systemic level. The aim of the legislator is to increase the efficiency of criminal proceedings, in order to encourage the defendant to cooperate. Cooperation with the defendant is embodied in the confession, which accompanies the criminal procedure law throughout. The procedural law currently in force introduced several new simplifying and accelerating legal institutions in order to increase efficiency, expediency and speed. The law has moved in the direction of settlement between the parties, which can serve both procedure economy and efficiency. The law encourages the participants of the criminal procedure to cooperate with the newly introduced plea agreement and the preparatory meeting that promotes trial concentration.

Based on the experience of the past approximately four years, it can be assumed that the application of the plea agreement (also referred to Hungarian plea bargain) that entered into force in 2018 is not significant in Hungarian law enforcement, similar to the inoperative legal institution of trial waiver, which in a certain sense can be considered the predecessor of the plea agreement. On the other hand, the confession at a preparatory session, which also entered into force in 2018, is often used in criminal proceedings, so the legislator has achieved its goal in this regard. At the preparatory session the prosecutor may file motions regarding the value or period of a penalty or measure, should the defendant confess to the commission of the criminal offence during the preparatory session.

Based on the research report of the Hungarian Helsinki Committee completed in 2021,[1] before the entry into force of the new Criminal Procedure Code,[2] the duration of criminal proceedings increased, especially the average duration of investigations, since between 2007 and 2016 the average duration of investigations increased from 162,9 days to 244 days, despite the fact that in the same period the number of crimes committed decreased by a total of 25% and the number and budget of the police and the prosecutor's office increased in a similar proportion.

In my thesis, I tried to find an answer to the following questions:

[1] NOVOSZÁDEK Nóra - SZEGŐ Dóra: "Az egyezség és az előkészítő ülésen való beismerés." *Magyar Helsinki Bizottság*, 2021, 11. https://helsinki.hu/wp-content/uploads/2022/01/MHB_TWSE_kutatasi_jelentes_2021.pdf
[2] Act XC of 2017 on the Code of Criminal Procedure. Entry in force: 1. July 2018.

- why the plea agreement could not break through from 1998 to the present day,

- whether the agreement can be compared to the plea bargain, and what relationship the 'confession at the preparatory session' has with the plea bargain,

- is the plea agreement really necessary or do the other simplifying and accelerating legal institutions actually serve the participants of the criminal proceedings,

- have the legal institutions of consensual procedure brought a real paradigm shift in the Hungarian criminal procedure or whether a new paradigm can already be observed in the current system of consensual procedures in criminal procedure,

- the number of anomalies or the intensity of the anomaly causes the paradigm crisis in the system of consensual procedures of the current criminal procedure,

- if the consensual procedure system complies with the international standards**,**

- what is the effect of the simplification and acceleration of the criminal procedure on the basic principles,

- is the goal to reduce the criminal procedure to an informal agreement, and where is the limit of what is still acceptable,

- in connection with this, the question also arises as to whether, if there is informality, and if there is, does it conflict with the remaining basic principles of the criminal procedure, further weakening them.

II) Research Methods

During the preparation of the study, I primarily analyzed Hungarian and foreign literature, such as monographs, technical articles and studies, in order to get a comprehensive picture of the matter. The foreign literature used is basically based on the works of American and German authors, with regard to the presentation and comparison of the American plea bargain and the German plea agreement.

The literature used consists of library, online library and online sources. In addition to the literature, the analysis of both previously and currently applicable, relevant legislation, court decisions, international and EU legal sources also played an important role. The analysis of the legal sources is essential for the historical presentation and comparison of

the topic and for the normative and dogmatic analysis. Considering the description of American and German jurisprudence, in addition to the literature and legislation, I also used the most important American and German court judgments, which contributed to the development of law.

Court practice does not only play a role in the analysis of foreign examples, as the development of Hungarian jurisprudence can also be traced in court decisions, therefore I used the decisions of the Hungarian Constitutional Court, the decisions of the Hungarian Supreme Court, and also more important other court decisions.

For the paper, I used secondly the comparative legal method and the normative and dogmatic analysis, which methods were applied in parallel with the study of the literature during the research.

I preferred the comparative legal method to outline the similarities and differences between the American plea bargain, the German settlement and the Hungarian plea agreement. I also used the comparative method to compare legal sources that are no longer in force and those that are currently in force. During the comparison, I tried to highlight the similarities and differences - both in international terms and in historical terms.

I used the normative and dogmatic analysis to systematize and present the current international and domestic legislative environment, which I expanded with my own experiences and knowledge gathered from the literature, applying the methods of logical and critical analysis. The international outlook justified the presentation of international and EU documents, as their transposition into domestic law sets the direction and framework for the regulation of simplifying and accelerating legal institutions.

The issue also has a past of legal history, so in addition to the analysis of the literature, I also presented the historical development of simplification and acceleration.

I thought it was important to present at times different opinions on the subject and to take side in favor of one of them, such as the issue of material truth.

For the empirical research, I used the statistical data available and accessible to anyone, which show the application of the law in the last four years (2018-2022) and with the help of which the contents of the theoretical part were supported or even refuted.

For the paper, I also wanted to do my own empirical research, therefore I turned to the National Court Office with my research plan in 2022. The National Court Office referred me to the Hungarian Courts. Since I am a resident of Budapest, I submitted my research request to the Budapest-Capital Regional Court, but it was rejected (2022.EL.XI.F.26/7.), so I could not fulfil the data collection indicated in my research plan.

I also used the file study method for the practical presentation of the plea agreement and preparatory meeting. Although file research cannot replace empirical research, in addition to the theoretical presentation of the topic, it brought me closer to understand the development of practice and gave a slightly more comprehensive picture of the issue.

III) The results of the research and their practical benefits

Based on the results of the thesis, I tried to derive and name the points that justify the ineffectiveness of the Hungarian plea agreement and make suggestions to improve the effectiveness, which can help the legislation. In this context, I also referred to the confession at the preparatory meeting, the application of which is effective, but in my opinion, its regulation could be changed.

The criminal procedure models stemming from a common root with consensual legal institutions are repeatedly heading towards each other, simply for different reasons. In accordance with the (R) 87 Recommendation of the Council of Europe, the Hungarian criminal procedure has moved in the direction of consensual procedures and the legislator allows more and more in order to speed up (simplify) the procedures, meanwhile the social demand for consensual procedures and the agreement is also increasing.

On the grounds of data presented in the paper, it can be concluded as well that the amendments to the system of consensual procedures that entered into force in 2018 only partially fulfilled the expectations attached to them. The duration of the court stage has decreased overall compared to previous years, however, as the duration of the trial phase decreased, the duration of the investigation increased.

Based on the experience of the plea agreement so far, in my opinion, the legislator must decide whether the plea agreement is necessary. According to the current situation, three answers can be given to the question: on the one hand getting to the conclusion that the legal institution is not needed. On the other hand, it can also be said that the plea agreement serves its purpose properly in this form and no amendment is necessary (after all, it is used

successfully in approximately 100 cases per year), and thirdly, it can also be concluded that the plea agreement could be applied in several more cases and for this purpose changes are necessary in practice and possibly also in regulation.

In my opinion, the plea agreement is necessary, because during the investigation phase there is no other legal institution of a similar nature and if it was more effectively applied, it could help to reduce the duration of the investigation phase, similar to the motion at preparatory session, which significantly accelerated the court phase. The plea agreement is not only necessary, but also a demand, since the motivations for the guilty plea include the fact that the prosecution success rate was 98.3% in Hungary in 2022. From the high prosecution success rate, the conclusion can also be drawn that the investigation actually decides the outcome of the case, which even more justifies the fact that the plea agreement shall be used more during the investigation.

The legal institutions of consensual procedure did not bring a real paradigm shift in the Hungarian criminal procedure, and as a result, no new paradigm can be observed in the current system of consensual procedures in criminal procedure. The current criminal procedure regulations were born as a result of a long process of change, as efforts to simplify could already be observed in the 1998 law. The goals for simplification and acceleration have strengthened both internationally and domestically in the last 25 years, which is also facilitated by the zeitgeist. Based on Kuhn's conceptual philosophy, anomaly can be observed in the Hungarian system for consensual procedures, as the legislator brought new institutes with which both practice and theory are constantly changing, but based on current experience, the problem can be solved within the framework of the old paradigm. In my opinion, the paradigm crisis is caused by the intensity of the anomaly, since the effective Code's changes for consensual procedures is a central topic in the field of legislation and law enforcement, and the introduction of the motion at preparatory session brought a striking change.

In the event that the application of the plea agreement could break through in practice, I would give an affirmative answer to the question of whether consensual legal institutions can bring a real paradigm shift in Hungarian criminal proceedings. If, instead of the current regulation, we were to adopt the American plea bargain system in its entirety and it would work successfully, the framework, basic principles and historical traditions of the criminal

procedure would be fundamentally damaged and would not be able to be adjusted within the framework of the old paradigm, so it would lead to a paradigm shift.

In my opinion, the main obstacle to the application of the plea agreement is the competing consensual legal institutions, since the speeding up of the procedure, with other simplifying solutions is easier and more convenient for the authorities. Also, the legal regulation of the plea agreement is further complicated by mistrust between the parties, immature legal practice, and sometimes contradictory application of the law, as well as relatively often modified regulations.

The most commonly used form of prosecution is the punishment order. The majority of criminal cases are concluded with a punishment order, which, in terms of the regulation of the legal institution, can be used in the case of crimes of lesser material weight. In the thesis, I highlighted the fact that confession based on a motion is more common in cases with one or at most two defendants, and it does not provide a real solution for cases with multiple defendants. On the other hand, the plea agreement could typically be used in multi-accused or more complicated cases, but even - if it were legally possible - a preliminary agreement on the content of the motion could do the same. In this regard, it is worrisome that if the plea agreement were really applied in cases with multiple defendants, then the agreements would be made precisely for more serious crimes and the reduced penalties negotiated in this way could be grounds for social disapproval, as such agreements would give the impression that more complicated cases could be "got away with" more than less serious cases.

In addition to the above-mentioned argument, it would help the more frequent application of the plea agreement if the legislator dispensed with the full disclosure of the facts, which is also an obstacle in German law practice. In my opinion, a full investigation of the facts is not necessary when having a plea agreement, which would bring us one step closer to the Anglo-Saxon plea bargain and more consistently enforce formal justice, to which the legislator is giving more and more space anyway. A plea agreement should be concluded with the defendant who fully confesses, as it is cheaper than conducting the procedure.

In my thesis, I also wrote about the informal American and German plea bargain which is present to a significantly lesser extent in Hungary as well (there is no empirical research available on its extent). The informal application of law conflicts with the remaining principles of the Criminal Procedure Code, weakening them even further. Since the basic

principles determine the framework of the criminal procedure, there is no room for circumventing them, however, simplification and speeding up also bring harm to some of the basic principles, since the basic principles actually represent a barrier to the requirement of a reasonable time for a fair procedure.

The goal cannot be reducing the criminal procedure to an informal settlement process, and the legislator has also defined the limits of permissible informality when regulating the plea agreement. However, if the answer to the question asked in the thesis, whether the plea agreement is necessary, is that a wider application of the plea agreement is necessary, then one of the solutions to this could be that the legislator broadens the subject of plea agreement (what can be agreed upon) of the Criminal Procedure Code within the framework of its basic principles. A preliminary agreement on the content of the motion could also be allowed, since this phenomenon sometimes occurs anyway and enshrining it in the law does not violate the basic principles of the effective criminal procedure more than the current regulation.

Both the German and Hungarian criminal proceedings basically aim to achieve material justice. The primacy of material justice does not fundamentally affect the application of consensual legal institutions, since in addition to the German and the Hungarian plea agreement, in both systems we find other consensual legal institutions that are often applied (e.g. penal orders). The principle of immediacy, orality and publicity can also be justified in the same way: as long as the other accelerating legal institutions are popular, the failure of the plea agreement cannot be traced back to the basic principles. According to my point of view, the legislator could more courageously and consistently implement the theory of formal justice in the law.

In addition to the principled opposition, in order to reduce the workload and costs of the criminal justice system and to complete the proceedings within a reasonable time, it is necessary to use acceleration tools, which corresponds to the principle of opportunity in a broad sense. Legal and political aspects, as well as both international and EU expectations, include the conclusion of criminal proceedings within a reasonable time and the introduction of acceleration institutions. Simplifying and speeding up criminal proceedings is one of the objectives of European countries, one of the means of which is to motivate the accused to admit their guilt and waive their right to a trial, with which the trial - and thus the longer evidentiary process - can be avoided. The Hungarian regulations comply with

international standards, since, keeping in mind its constitutional and legal traditions, it makes room for the principle of opportunity and applies a number of simplifying procedures, which really speed up the criminal procedure.

The Hungarian legislature did not intend to introduce plea bargaining. The plea agreement is used to be compared to the plea bargain, since there is a possibility to make a real deal on the criminal sanction (sentence bargain). Which is more interesting is that the legislator introduced two new, different institutions for speeding up proceedings and despite this, the plea agreement was essentially replaced by the confession at the preparatory meeting. If the prosecutor uses a motion at the preparatory session and the accused confesses in accordance with the indictment, then he actually accepts the prosecutor's offer, i.e. an agreement is reached between the parties. A big difference between the two legal institutions is that, according to the law, the defendant no longer has a bargaining position at the preparatory meeting (the prosecution has stronger powers even during a plea agreement).[3] This feature also distinguishes the confession made at the preparatory session from the classic type of plea bargain. At the same time, in my opinion, there is a gray zone between the two institutions: when the parties agree on the content of the motion. Due to the lack of research materials, I can only confirm this with my own practical experience, but I think that even the few examples can prove that this practice occurs during law enforcement. With this turn of events, the classical plea bargain type, the sentence bargaining, is fully realized in Hungarian law enforcement, since in this case both the accused and the defense lawyer are in a bargaining position.

Getting back to the list of reasons related to the failure of the plea agreement, as another reason I would mention the prosecutorial profession with different historical roots, which is structured differently in the common law and continental legal systems. In the Anglo-Saxon legal system, the prosecutor's office developed from the prosecutor model, and the prosecutor is one of the disputing parties in accordance with the accusatory model, and in addition, the chief prosecutors are elected every four years and have an obligation to report. On the other hand, the legal systems based on inquisitorial foundations follow the procurator's system, according to which the prosecutor is part of the judiciary (from the 19th century, due to the division of functions, this moved in the direction of adversarial proceedings) and the prosecution organization is hierarchical. Accordingly, the prosecutor's

[3] When the court deviates from the content of the motion in favor of the defendant, then it also influences the agreement.

office in Hungary is a hierarchical organization, and the chief prosecutor is responsible for establishing the plea agreement. Given the hierarchical organizational structure, prosecutors' decision-making powers depend on their superiors, so they cannot act independently even in the event of a plea agreement. In my opinion, it would mean a reduction in the workload of plea agreement, if not only the chief prosecutor could act substantively during the conclusion of the plea agreement, and also, if at least internal regulations were drawn up regarding what the individual prosecutors can decide on freely, without the consent of their superior.

IV) List of publications

1. Kelemenné Csontos Laura (2023): A német vádalku, in Dornfeld, László (ed.): Kriminológiai Közlemények 83, 37-48.

2. Kelemenné Csontos Laura (2023): Die Verständigung im Strafprozess, in Jámborné, Róth Erika (ed.): Doktoranduszok Fóruma 2022, 85-89.

3. Kelemenné Csontos Laura (2023): The Historical Development of the Hungarian Plea Bargain, in Csoknya, Tünde Éva (ed.): Essays of Faculty of Law University of Pécs Yearbook of 2021-2022, 59-73.

4. Kelemenné Csontos Laura (2023): Egyszerűsített eljárások, in Jakab, András; Könczöl, Miklós; Menyhárd, Attila; Sulyok, Gábor (ed.): Internetes Jogtudományi Enciklopédia, 1-25.

5. Kelemenné Csontos Laura (2022): A magyar vádalku történeti fejlődése, in Fazekas, Marianna (ed.): Jogi Tanulmányok 2022, 66-80.

6. Kelemenné Csontos Laura (2022): Egyezség és előkészítő ülés a módosító novella tükrében, in Kiss, Tibor (ed.): Kriminológiai Közlemények 82, 11-20.

7. Kelemenné Csontos Laura (2021): Vádalku az Egyesült Államokban és Magyarországon, in Fazekas, Marianna (ed.): Jogi Tanulmányok 2021, 207-221.

8. Csontos Laura (2020): Igazságelméletek: Egyszerűsítés és gyorsítás az új büntető eljárásjogban, in Kiss, Tibor (ed.): Kriminológiai Közlemények 80, 165-178.

9. Csontos Laura (2019): Az előkészítő ülés kérdései ügyvédjelölti szemmel, in Zséger, Barbara (ed.): Kriminológiai Közlemények 79, 125-135.