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The Gap Between Idea and Use

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Penal Law Sanctions

Hungary Country Report

Zsolt Szomora* and Krisztina Karsai**

Introduction

Hungarian criminal law is based on a dual system of sanctions: *penalties* and *preventive measures*. The Criminal Code (Act C of 2012; hereinafter referred to as CC) determines both the legal content of each penalty and measure, as well as the conditions of their application.[1] When entering into the particulars about the single sanctions, we will see that the Hungarian system of sanctions follows the so-called conjunctive dualism; that is, penalties and preventive measures can be applied to the same criminal offence at the same time.

The special rules on the enforcement of criminal sanctions are provided not by the CC but by a separate Act on the enforcement of penalties and preventive measures (Act CCXL of 2013; hereinafter referred to as CEP).

System of Sanctions in the Criminal Code			
Penalties		Preventive Measures	
Penalties	Secondary penalty	Including deprivation of liberty	Without deprivation of liberty

[1] Act XIX of 1998 on the criminal procedure; hereinafter referred to as CCP.

1. imprisonment 2. confinement 3.community service 4. fines 5. disqualification from a profession 6. disqualification from driving motor vehicles 7. a ban on entering certain areas 8. a ban on visiting sport events 9. expulsion	exclusion from participation in public affairs	1. compulsory psychiatric treatment 2. only against juveniles: special education in a reformatory institution	1. admonition 2. probation 3. compensational service 4. probationary supervision 5. forfeiture 6. confiscation 7. rendering electronic data irreversibly inaccessible [8. against legal persons: – liquidation of

	the legal person – limitation of the legal person's activity – fine as a measure]

I. Sanctions requiring guilt

A. Penalties

1. Death Penalty

The death penalty was abolished by the Constitutional Court on 31 October 1990 in Decision 23/1990 (X.31) AB. Although it was not the Parliament to make this indispensable decision, it entered later into international obligations aiming at the abolition of capital punishment. The Hungarian legislature ratified Protocol No. 6 to the ECHR in 1993 and the second optional protocol to the UN Covenant on Civil and Political Rights in 1995. The most important development was the 2004 ratification of Protocol No. 13 to the ECHR that concerned the abolition of the death penalty in all circumstances (ratified by Act III of 2004).

It has however to be noted that neither the Constitution (until 31 December 2011) nor the Fundamental Law (the new constitution in force from 1 January 2012) provide an explicit prohibition of the death penalty, unlike the constitutions of numerous other European countries. The prohibition follows only from the above mentioned decision of the Constitutional Court and the international treaties.

As for the provisions on death penalty and its application, the previous Criminal Code (Act IV of 1978) provided death penalty for twenty-six criminal offences, whereas imprisonment was also applicable alternatively to death penalty. Consequently, no mandatory cases for death penalty existed. The courts imposed the death penalty only in case of aggravated intentional homicide (military

offences not inclusive). During the last years before its abolition, death penalty was imposed only on one to five convicts a year. The last execution took place in 1988.[2]

2. Penalties Restricting Freedom: Imprisonment and Confinement

Imprisonment and confinement are the custodial penalties in the current Hungarian CC. Imprisonment is the central sanction *on the statutory level* as the great majority of the criminal offences, irrespective of being a felony or a misdemeanour, can be punished by imprisonment. However, in practice, courts usually impose other, alternative sanctions than imprisonment.[3]

The legislature regards imprisonment as a unified type of penalty, although there are important differences concerning its duration and levels of execution [on the levels of execution, see I.A.2.d)]. According to its duration, imprisonment can be divided into two groups:

- life imprisonment;
- imprisonment lasting for a determinate period (fixed-term imprisonment).

a) Life Imprisonment

Life imprisonment has become the most severe sanction in Hungarian criminal law due to the abolition of the death penalty. It can be imposed in the case of about thirty criminal offences but, in judicial practice, it is imposed only for qualified homicide (Art. 160, paragraph 2, CC). In the most relevant cases for which life imprisonment is provided by the CC, the sentencing judge also has the choice to impose a fixed-term imprisonment (that is, imprisonment ranging from five to twenty years or from ten to twenty years depending on the offence). But there are also cases in which life imprisonment is a mandatory sentence in Hungarian criminal law: the so-called "three strike rule" (on multiple violent recidivists, see II.B.5). Moreover, life imprisonment may be imposed *only if the perpetrator has turned twenty* at the time the criminal offence was committed (Art. 41 CC).

In terms of its substance, life imprisonment can be subdivided into two types under current Art. 42 CC: Regarding criminal offences punishable also by life imprisonment, it is at the discretion of the judge whether to grant or to exclude the possibility of conditional release a priori when imposing a life sentence. In case the possibility of release will not be excluded by the judge, then, the minimum period

[2] The ratio of probation amounts to 85 % among independently applied measures. Tóth M., 'A büntetőjogi jogkövetkezmények' in E. Belovics & F. Nagy & M. Tóth: *Büntetőjog I.* (Budapest: Hvgorac ²2014) 457.

[3] *Criminality and Criminal Justice 2005-2013*, Statistical report of the General Public Prosecutor's Office. (http://www.mklu.hu/repository/mkudok7865.pdf)

(before granting parole) must be ordered by the sentencing judge between 25 and 40 years (Art. 43 CC).

On the other hand, by the possibility of the 'a priori exclusion' of conditional release, Hungarian criminal law has created the so-called 'real life imprisonment' (in other words, whole life sentence) that was first introduced in 1998 into the CC of 1978 and, then, maintained by the CC of 2012. Furthermore, two mandatory cases are provided for by Art. 44 CC, in which the judge has to exclude the possibility of conditional release: first, when imposing life imprisonment for a criminal offence that was committed in a criminal organization [see I.A.5.b)], second, when imposing life imprisonment in case of multiple violent recidivists (see II.B.5).

After the *real life imprisonment* had been introduced in the system of sanctions, complaints were filed to the Constitutional Court in order to contest the constitutionality of this penalty. The Constitutional Court did not make a decision for a decade, and its proceedings were terminated in 2012 due to procedural reasons following from the new constitution, the Fundamental Law. Furthermore, the Fundamental Law affects the substance of this penalty as well: in order to prevent constitutional concerns, Art. IV provides that real life imprisonment may be imposed only in case of an intentional criminal offence involving violence. This provision has both a limitative and a legitimating function – that is, it restricts the state's penal power regarding the most serious penalty on the one hand, and aims at providing a constitutional exception to the constitutional prohibition of inhuman or degrading penalty (which prohibition is laid down in Art. III of the Fundamental Law).[4] In order to be in conformity with this constitutional provision, an exclusive list of violent offences, in case of which real life imprisonment may be inflicted, has been introduced in Art. 44 CC.

However, in view of the latest developments of the ECtHR case law, this aim of the Hungarian legislature seems to fail since the ECtHR stated in the Case of Vinter and Others v. the United Kingdom for the first time that imposing a life sentence without any possibility of revision and conditional release already violates Art. 3 of ECHR at the imposition of the whole life sentence.[5] In October 2014, the Case of László Magyar v. Hungary became also final. The ECtHR unanimously held that Hungary violated Art. 3 of ECHR by having imposed whole life sentence on the applicant László Magyar.[6]

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[4] Zs. Fantoly & A. E. Gácsi, *Eljárási büntetőjog. Dinamikus rész* (Szeged: Iurisperitus, 2014), 67.

[5] F. Nagy, *Anyagi büntetőjog. Általános rész II.* (Szeged: Iurisperitus, 2014) 244–245; *id. Intézkedések a büntetőjog szankciórendszerében* (Budapest: KJK, 1986).

[6] M. Hollán: „Art. 57 par. 4" in *Az Alkotmány Kommentárja* (ed. A. Jakab) (Budapest: Századvég ²2009).

In Hungary, the conclusions drawn from these ECtHR judgements are rather controversial. In April 2014, the High Court of Appeal of Szeged suspended a case and referred it to the Constitutional Court with regard to the judgement made in the Case of Vinter. The criminal court alleged the violation of international law and therefore proposed the annulment of the whole life rules in the CC. While this judge's proposal was pending at the Constitutional Court, the judgement in the Case of Magyar primarily adjudicating the rules of the Hungarian CC and stating the violation of Art. 3 ECHR was also passed. Consequently, the legislature amended the CEP and enacted the rules of the so-called "compulsory procedure for pardon" applicable to whole life prisoners in order to comply with the requirements following from the Magyar judgement.

It took the Constitutional Court nine months to decide about the criminal judge's proposal: referring to the aforementioned modification of the CEP, the Constitutional Court refused the examination of the proposal and stated that the reasoning given by the criminal court *became obviously frustrated* due the changes of law [AB ruling 3013/2015 (I. 27)]. In our view, this decision is more than critical since it, without giving a single reason, avoids examining the merits of the case and clearly disregards the obligations of the Constitutional Court concerning the review of Hungarian law's conformity with international law [following from Articles Q) and 24 of the Fundamental Law]. The Constitutional Court should have reviewed the "whole life rules" laid down in the CC in conjunction with the newest amendments made to the CEP on the "compulsory procedure for pardon" in the light of ECtHR case law. Also with regard to the fact that the ECtHR, unlike Constitutional Courts, is not entitled to annul domestic law provisions of the member states.

As for the so-called "compulsory procedure for pardon", its rules have been enacted in the CEP (Articles 46/A–46/H), while the rules on the real life sentence have remained untouched in the CC. This compulsory pardon procedure applies to convicts in case of which the possibility of conditional release has been excluded by the sentencing judge. After the whole life prisoner's having served forty years of imprisonment, the Minister of Justice shall launch the procedure of pardon provided that the prisoner consents to it. The possibility of a conditional release will then be examined by a clemency board composed of five criminal judges. This examination has to be carried out on the basis of a comprehensive documentation as set out in Art. 46/C CEP, and the prisoner has to be heard as well. The reasoned opinion of the clemency board has to be transferred to the President of the Republic who is not bound to the opinion of the clemency board and makes a discretionary decision about the release without any reasoning. Despite introducing this compulsory procedure for pardon, concerns under international

law still remain, since this procedure can take place only after serving forty years of imprisonment, which period significantly exceeds the 25-year period given in the Vinter and Magyar judgements of the ECtHR. Furthermore, the discretionary decision of the President of the Republic eventually annuls the guarantees, which are characteristic for the functioning of the clemency board.

b) Fixed-term Imprisonment

The general minimum of *fixed-term imprisonment* is three months (Art. 36 CC). This harmonizes with the regulation on confinement, the longest possible duration of which is 90 days [I.A.2c)]. In case of juvenile offenders, the overall minimum of imprisonment is one month, which is applicable to each criminal offence, even to the most serious crimes (Art. 109 CC).

The general maximum period of imprisonment is twenty years. The longest possible duration may exceptionally be twenty-five years as it is listed in Art. 36 CC:

- in case of an aggregate penalty or a subsequently aggregated penalty;
- if the criminal offence was committed in a criminal organization;
- in case of a multiple or special recidivist.

In case of juvenile offenders, the overall maximum of imprisonment may be five, ten or fifteen years, depending on the range of penalty applicable to the certain criminal offence and whether the juvenile defendant has turned sixteen at the time of the perpetration (Art. 109 CC).

The *conditional release* aims at a possibly effective re-socialization of well-behaving prisoners, in which case the aim of penalty can be achieved without serving the complete term of imprisonment. The rules of conditional release are laid down in the CC (Articles 38–40) and the CEP (Articles 57–60). The decision about the release of a certain prison inmate on parole falls within the competence of the penal executive judge.

A distinction must be made in respect of the rules on conditional release from a fixed-term imprisonment or life sentence. In case of an imprisonment lasting for a determinate period, the objective criterion for release on parole is that a certain proportion of the sentence, mainly dependent on the convict's criminal record, must have already been served. Therefore, prisoners must generally serve at least two-thirds of their sentences, while prisoners who are recidivists must serve three-fourths of their sentence. A minimum of three months must be served (according to the general minimum of prison sentence under CC).

Both the 1997 amendment to the CC of 1978 and the new CC of 2012 broadened the applicability of conditional release. According to Art. 38, when the court imposes a term of imprisonment of no longer than five years, the court may, in circumstances deserving special consideration, grant conditional release after half of the sentence has been served. This option is not available in case of multiple recidivists.

Under Art. 38, the possibility of conditional release is excluded if the convict has been sentenced to imprisonment for an intentional crime he/she perpetrated after he/she had been sentenced earlier to unconditional imprisonment and before the termination of the execution; if the prisoners serving his sentence in a high-security prison is a multiple recidivist; if the prisoner is a multiple violent recidivist; if the criminal offence was committed in a criminal organization; and if the convict has not begun to serve his/her sentence through his/her own fault.

c) Confinement

Confinement has its origin in administrative law and it was introduced in the new CC of 2012 as a new type of penalty, while its position in administrative law has also been maintained. This sort of parallelism is rather controversial and makes the differentiation between criminal offences and regulatory offences, and between criminal sanctions and administrative sanctions pointless.[7] Confinement actually is an extremely short imprisonment. Its duration has to be determined by the judge between 5 days to 90 days, and it has to be enforced in prison (Art. 46 CC).

d) Levels Of The Execution Of Imprisonment And Confinement

The penitentiaries are classified into three categories: high- (*fegyház*), medium- (*börtön*) or low-security (*fogház*) prison. Imposing a custodial penalty, the sentencing court also determines the level of prison security in according to the CC (Articles 35 and 37). The related legal criteria are fairly complicated as they take many aspects into account: the gravity of the offence (felony or misdemeanour), the character of the offence, the term of the imprisonment imposed and the offender's previous record. The prison levels differ in many aspects concerning the everyday life of the prisoners as follows:

- the separation of the prisoner from the outside world;
- the guarding, supervision and control of the prisoner;
- the prisoner's possibilities for movement inside the penitentiary;

[7] The legality principle applies to confiscation only and exclusively if the amount of the assets subject to confiscation is determined on the ground of the so-called 'gross principle'. Cf. M. Hollán, *Vagyonelkobzás* (Budapest: HVGORAC 2008) 152–159.; *id.* 'Bevétel versus jövedelem', *jog*, no. 1 (2009): 12–21.

- the prisoner's daily routine;
- the proportion of the working prisoner's wage the prisoner can dedicate to his/her individual needs;[8]
- the rewarding or punishing of the prisoner;
- the prisoner's possibility to participate in convicts' self-motivated organizations (Articles 100 to 102 CEP).

3. Fines

A fine is imposed on a day-unit basis, even according to the original provisions of the Criminal Code of 1978.[9] This explains why only few changes have been made to the provisions relating to fines; there was only a need to increase the sum of the fine because of inflation. The minimum number of days of fine is 30 days, and the maximum is 540 days. The minimum of daily units is HUF 1,000, and the maximum is HUF 500,000. The number of days must be multiplied by the amount of daily units to get to the total sum of fine. The absolute total sum of fines, HUF 270 million (about EUR 900,000), was laid down by the new CC of 2012 (Articles 50–51). If necessary, the judge may grant the convict the possibility to pay the fines in instalments for a maximum period of two years.

If the convict does not voluntarily pay the sum of the fine imposed on him/her, it must be converted into imprisonment of a low-security level at a rate of one day of the fine equal to one day's imprisonment.

In case of a juvenile offender, the range of fines is reduced, and a fine may only be converted into imprisonment if it is not recoverable. If the juvenile convict has already turned sixteen by the time the judgement is delivered, a not-recoverable fine may also be converted into community service (Art. 113 CC).

In case the defendant is convicted of a criminal offence he committed for the purpose of profit-making and he or she is sentenced to a fix-term imprisonment, the fine has to be inflicted by the judge in addition to imprisonment, provided that the convict has appropriate earnings (income) or property. Thus, the application of the fine is *mandatory* in this case (Art. 50 CC).

4. Other penalties

The following types of penalties can be applied independently and instead of imprisonment if conditions required by the CC are met. On these conditions see I.B.1.

[8] F. Nagy, *A magyar büntetőjog általános része* (Budapest: HVGORAC, 2008), 389.

[9] M. Hollán, *Vagyonelkobzás* (Budapest: HVGORAC, 2008), 152–159.; *id.* 'Bevétel versus jövedelem', *Magyar jog*, no. 1 (2009): 12–21.

a) Community Service

Community service must be performed at least one day a week, on the convict's day off work, and without remuneration. The minimum term of community service is 48 hours; the maximum term is 312 hours. If the convict does not voluntarily perform community service imposed on him/her, the community service shall be converted into imprisonment of low-security level at a rate of four hours of community service equal to one day imprisonment (Articles 47–49).

b) Disqualification from a Profession

A person may be disqualified from his/her profession if he/she has committed a criminal offence by violating the rules of a profession requiring special qualification *or* if he/she commits a criminal offence intentionally by using his/her profession. In connection with a criminal offence against sexual freedom or sexual morals, the victim of which is under the age of eighteen years at the time the offence was committed, the perpetrator may be disqualified from any professional activity that involves the responsibility for providing education, care, custody or medical treatment to a person under the age of eighteen years, or if it involves a recognized position of trust, authority or influence over such person.

The duration of the disqualification shall be determined from one year to ten years (fixed-term version); imposing a permanent disqualification is even possible if the perpetrator is unsuitable for the profession or he/she is unworthy of it. However, the court may exempt the convict from permanent disqualification if ten years have already passed and the convict is found suitable or worthy to engage in that profession. The period during which a possibly imposed imprisonment is being served shall not be included in the duration of this penalty (Articles 52–54 C).

c) Disqualification from Driving a Motor Vehicle

A person *may be* disqualified from driving motor vehicles if he/she has committed the criminal offence by violating the rules of driving a vehicle that is subject to licence, *or* if he/she has used a vehicle for the perpetration of criminal offences. A person *shall be* disqualified from driving motor vehicles if he/she is found guilty of drink driving or any intoxication in traffic (*mandatory* application). However, if there is a ground deserving special consideration, the court has the right to dismiss the application of the driving ban.

The duration of the disqualification shall range between one month and ten years (fixed-term version). A permanent disqualification can be imposed if the perpetrator is unsuitable for driving a motor vehicle. However, the court may, on the convict's request, exempt him/her from the permanent disqualification if ten years have already passed since the conviction and the convict is found suitable for

driving. The period during which a possibly imposed imprisonment is being served shall not be included in the duration of this penalty (Articles 55–56 CC).

d) A Ban on Entering Certain Areas

A ban on entering certain areas means that the convict may be banned from one or more localities or from a definite area of the country provided that his/her stay at these places endangers the public interest. This penalty can only be imposed if specifically provided for by the CC for a certain offence. This is the case for only a few criminal offences (e.g., violent breach of public peace under Art. 339 or living on earning of a prostitute under Art. 202). The duration of the ban shall be determined by the court for a period from one to five years. A permanent ban is not possible (Art. 57 CC).

A juvenile offender living within a normal family environment may not be banned from the locality where he/she lives with his/her family (Art. 118 CC).

e) A Ban on Visiting Sport Events

This type of penalty has been introduced by the CC of 2012. Any person having committed a criminal offence during a sport event, during the time of commuting to or from the sport event, or in connection with the sport event, may be banned from visiting any sport event held by any sports association, or from entering any sports facility where a sport event organized by any sports association is held. The minimum duration of the ban shall be one year, its maximum duration shall be five years (Art. 58 CC).

f) Expulsion

Perpetrators of non-Hungarian citizenship whose presence in the country is not desirable shall be expelled from the Hungarian territory. A convict expelled must leave the country and may not return for the duration of the term of expulsion. Thus, unlike a ban on entering certain areas, expulsion covers the whole territory of the country and *is applicable neither to Hungarian citizens nor to persons granted refugee status* (Art. 59 CC). Citizens granted the freedom of movement and residence or on persons acknowledged as immigrants may only be expelled with further restrictions provided by the CC .

The term of expulsion shall be determined by the court for a period ranging from one to ten years (fixed-term version). The application of a permanent expulsion is also possible if the convict has been sentenced to an imprisonment of at least ten years and his/her presence in the country is assessed by the court as posing considerable risk to public safety, considering his/her criminal connections, the actual way of perpetration and the significant gravity of his/her criminal offence.

g) Secondary Penalty: Exclusion from Participation in Public Affairs

This penalty may only be imposed *in addition to non-suspended imprisonment* if the perpetrator has committed an intentional criminal offence and is unworthy of participating in public affairs. A juvenile offender may only be excluded from public affairs if he/she has been sentenced to an imprisonment over one year. A person prohibited from public affairs may – *inter alia* – not participate in the election of the Parliament or local governments, or in plebiscites; may not be an official; and may not accept any function in social organizations, public corporations or public foundations.

The shortest duration of this penalty is one year; the longest duration may be ten years. The period during which the imprisonment is being served shall not be included in the duration of this secondary penalty (Articles 61–62 CC).

5. Determination and Individualization of Penalty

a) The General Principles

The framework for sentencing (meaning the imposition of a criminal sanction after declaring the defendant guilty) is laid down by the legislature in the CC in view of the maxim *nulla poena sine lege*, while the concrete criminal sanction has to be imposed by the judge within these frameworks. The Hungarian sanctioning system is *relatively determined*; that is, the CC determines the type(s) of penalty and the range of penalty applicable to a concrete criminal offence, and the judge chooses a penalty provided for by the legislature and imposes a concrete duration within the legal frameworks.[10] Before the new CC of 2012 came into force, Hungarian criminal law did not apply fixed – that is, absolutely determined – penalties, not even to the most serious criminal offences. The new CC however includes cases to which a mandatory life sentence shall be applied [see I.A.2.a)].

The determination of the range of penalty can happen by laying down general minimums and maximums in the General Part of CC and/or special minimums and maximums in the Special Part. The Hungarian sanctioning system is based on a combination of these two possibilities. Confinement, community service, fines and all other penalties not including the deprivation of liberty are determined only by general maximums and minimums, while imprisonment is either determined by special minimums and maximums (e.g., imprisonment from two to eight years in case of simple robbery under Art. 365 CC) or by general minimums and special maximums (e.g., imprisonment from three months to three years in case of causing serious bodily harm under Art. 164 CC). Furthermore, rules laid down in the

[10] 1/2008 BJE.

General Part may increase the special maximums (e.g., in case of multiple recidivists under Articles 89–90 CC) or may mitigate the special minimums (e.g., under Art. 82 CC); these provisions also belong to the legal framework of sentencing and must be considered by the judge.

The Hungarian CC includes a general provision for sentencing under the subtitle 'Principles of Infliction of Penalty' in Art. 80. In this Article, the legislature has *classified but not itemized the aggravating and mitigating circumstances* the judge must consider. According to Art. 80, the following aspects need to be considered by sentencing:

- the legal framework as the objective base for sentencing;
- the objective of penalty as determined by Art. 79;
- the concrete objective gravity of the criminal offence;
- the danger to society the concrete perpetrator represents;
- the degree of the perpetrator's personal guilt; and
- other aggravating and mitigating circumstances.

Within the *legal framework*, the judge has to consider aggravating and mitigating circumstances. These are not determined and listed by the CC; they fall within the judge's discretionary power to select a type of penalty and to impose its concrete duration. The judge can move the concrete penalty toward the maximum or minimum within the legal framework by consideration of aggravating and mitigating circumstances. The Supreme Court has laid down the discretionary aspects of sentencing in detail; the examples mentioned below have been taken from these guidelines. The Supreme Court emphasizes that the circumstances having an impact on sentencing usually have a *relative effect*. A fact may have an aggravating or mitigating effect in case of a certain offence and may be neutral in case of another one. That is, the facts to be considered in the course of the infliction of punishment can have a different or even inverse effect depending on the concrete criminal offence[11]

Another aspect to be taken into account by the judge is *the objective of penalty*. Art. 79 CC states that 'the penalty aims, in the interest of the protection of society, at preventing both the perpetrator and any other persons from committing criminal offences'. We can see that, first of all, *prevention* is mentioned by the CC, both in its special and general aims. However, general and special prevention can often be contradictory, which we call 'the antinomy of penal objectives'. For instance, in some cases, special prevention could be served sufficiently by a conditional

[11] Explanatory Notes to the CC of 2012.

sentence, which might not be suitable for general prevention. General prevention relates rather to the circumstances of the offence, while special prevention relates to the circumstances of the offender.[12] *Retribution* as such is not regarded as an objective of penalty, since it is an immanent and essential element of criminal penalties.

The concrete objective gravity of the criminal offence refers not to the statutory facts of the offence but to its concrete facts and circumstances brought about in real life, which can have either an aggravating or a mitigating effect. The objective gravity of the criminal offence primarily depends on its consequences. For instance, killing more than one person constitutes a qualified homicide (Art. 160 par. 2 CC); if the perpetrator kills four persons, this can be considered as an aggravating circumstance because the number of the victims exceeds the number at least required (i.e., two persons) for qualified homicide. Or, if the offender compensates for the damages he/she brought about by environmental pollution, this can be considered as a mitigating circumstance.

The social dangerousness of the perpetrator can never be separated from his/her conduct; instead, it must be examined by focusing on his/her conduct. The CC does not consider the personal characteristics of the offender, which have to be taken into account by the court according to the requirement of individualized sentencing. One of the most important aspects in this field is the 'criminal career' of the defendant. For instance, the penalty can be mitigated if this is the offender's first conviction or aggravated if the offender already has a criminal record or is a recidivist. The personal circumstances of the perpetrator can have significant influence on special prevention and must therefore be considered. For example, if the objective criteria for suspending a prison sentence are given [see I.B.2.c)], the personal circumstances may be grounds for the suspension (e.g., the perpetrator has not previously been convicted, he/she is appreciated at her workplace and he/she raises his/her three children carefully).

The *degree of the perpetrator's personal guilt* is already considered by the legislature as well when laying down different ranges of penalty for the intentional and the negligent type of the same criminal offence or when deciding about the impunity of commission by negligence. Thus, the court must examine the degree or intensity of the perpetrator's personal guilt within the intent or negligence. For instance, premeditation may constitute an aggravating circumstance in case of an intentional commission, or indirect intent may constitute a mitigating circumstance in case of intentional offences including a harmful result.

[12] E. Belovics: 'A büntetőjogi felelősségre vonás akadályai' in E. Belovics & F. Nagy & M. Tóth: *Büntetőjog I.* (Budapest: Hvgorac ²2014) 201.

In the end, *other mitigating and aggravating circumstances* are mentioned in Art. 80 CC. The word 'other' clarifies that the circumstances not named by the CC do not have a direct connection either with the objective gravity of criminal offence, the dangerousness of the perpetrator, or the degree of personal guilt. Nonetheless, these other circumstances may influence sentencing and fall within the discretionary competence of the court. If the incidence of a certain criminal offence, such as robbery, is on the rise, for example, the court may consider this fact as an aggravating circumstance following from the objective of general prevention. Or, if the criminal procedure lasts for a long time (for years, for example), this fact may have a mitigating effect.

There were many cases against Hungary before the European Court of Human Rights (ECtHR) in which the applicants objected to the length of the criminal procedure.[13] The alleged breach of the reasonable time of the proceedings was not stated by the ECtHR in every long criminal proceeding. The ECtHR did not establish the responsibility of Hungary upon the Convention if the Hungarian court took the length of the whole criminal proceeding into consideration as a mitigating circumstance when inflicting the penalty.

Finally, two other important sentencing rules relevant to imprisonment need to be mentioned. The so-called "*mid-range rule*" stipulates that the judge, when imposing fixed-term imprisonment, shall consider the average of the penalty range. The mid-range is the arithmetic average of the lower and upper limits of imprisonment applicable to the criminal offence concerned (Art. 82, par. 2 CC). Due to the "mid-range" provision as a general sentencing rule, the judge is obliged to give explicit reasons in case he or she wants to deviate from the average of penalty.

Art. 82, par. 4 CC determines a sort of sequence for the application of sentencing rules: the judge must not consider the possibility of the suspension of imprisonment when he or she determines the term of imprisonment to be served. The possibility of suspension [see I.B.2.c)] may first be considered after the judge has determined the term of penalty on the ground of the aforementioned sentencing rules.

b) Grounds for Increasing the Penalty

There are cases in which the special maximum of the penalty provided for a criminal offence shall be increased. It is important to stress that the judge has no general possibility for increasing the penalty but only if conditions explicitly prescribed in the CC are fulfilled.

[13] See more on this, K. Karsai, 'Hungary. Criminal Responsibility of Minors in National and International Legal Order', *International Review of Penal Law* 75 (2004): 379–399.

Regarding certain categories of *recidivist offenders*, the increase of the penalty range is provided for by the. On sanctions affecting recidivists, see II.B.5.

In case of *criminal organization*, the penalty range shall also be increased. The definition of criminal organization is laid down in Art. 459 CC: 'A criminal organization is a group of three or more persons, organized for a longer period of time cooperating with each other in order to commit intentional criminal offences punishable with imprisonment of five years or more.' The increased range of penalty is laid down in Art. 91 CC: If someone commits an intentional criminal offence in a criminal organization, the upper limit of the penalty shall be doubled but must not exceed twenty-five years [general maximum of fixed-term imprisonment; cf. I.A.2.b)]. If the perpetrator who committed a criminal offence in criminal organization has been sentenced to life imprisonment, he or she shall *ab ovo* be excluded from the possibility of conditional release (Art. 44 CC) (*mandatory application of real life sentence*).

In case of *a real concurrence* of offences, only one penalty shall be imposed that is called an *aggregated penalty*. The doctrine that is to be initially applied to the determination of aggregated penalty is called *'absorption'*, which means that the penalty range of the most severe criminal offence of those constituting a concurrence shall be taken for basis. After having chosen the range of penalty on the basis of 'absorption', *the most severe range of penalty shall be increased* provided that at least two criminal offences of those constituting a concurrence are punishable with a fix-term imprisonment (i.e. criminal offences punishable with confinement as a penalty are not relevant to this rule of increasing penalty). In this case, the upper limit of the most severe penalty *shall be increased by half* but it must not lead to the cumulation of the upper penal limits of the offences and must not exceed twenty-five years (Art. 81 CC).

If one of the offences constituting concurrence is punishable with life imprisonment as well, the infliction of life imprisonment absorbs each other penalty. That is, the rule of increasing the upper limit of the most severe penalty relates only to fixed-term imprisonment.

As we can see, the *prohibition of cumulation* of principal penalties prevails in Hungarian criminal law in order to avoid an unjust and unreasonable amount of penalty to be served. Moreover, the increased general maximum of twenty-five years [see I.A.2.b)] must not be exceeded.

In 2010, a sort of *"three strikes rule"* was introduced in connection with aggregate penalty in case of violent offences against persons. If a real concurrence of at least three criminal offences involving violence against persons occured, and

- this was a concurrence constituted by more acts carried out at different times, and

- each relevant violent offence was completed,

the upper limit of the most serious offence had to be doubled. In case this increased upper limit of imprisonment exceeded twenty years, or one of the offences constituting concurrence was punishable also with life imprisonment, the perpetrator had to be sentenced to life imprisonment (*mandatory application of life sentence*).

This provision was also maintained by the 2012 CC. In 2014, the High Court of Appeal in Budapest suspended a case and referred it to the Constitutional Court. The decision of the Constitutional Court Nr. 23/2014 (VII. 15) AB *annulled this sentencing rule* due to violating the constitutional requirements applying to the criminal sanctions, which requirements follow from Art. B) of Fundamental Law (the postulate of the "rule of law"). A constitutional system of sanctioning shall grant the judge the possibility of individualized sentencing, differentiating on the basis of evaluating various facts and circumstances occurring in single cases. Consequently, the CC shall make the judge possible to choose between fixed-term and life imprisonment, with regard to every circumstance relevant for the infliction of penalty. In view of this statement of the Constitutional Court, it is interesting to note that the other types of mandatory life sentence [see I.A.2.a)] have not yet been challenged before the Constitutional Court.

c) Grounds for Mitigating the Penalty

In other cases, the lowering of the penalty range might be necessary: some rare cases may occur, the sentencing of which cannot be just and equitable within the penalty range provided for the criminal offence. For such cases, a general possibility of mitigating the penalty has been enacted by the legislature; the application of the mitigation rules under Art. 82 falls within the discretionary power of the court.

The condition for mitigation is laid down as follows: 'a penalty, which is milder than the penalty range provided for the criminal offence, may be imposed, if the lower limit of the penalty range is too stringent in view of the purpose of penalty under Art. 79'. In Art. 82, an itemized scale of decreased minimums is determined; for example, if the lower limit of imprisonment provided for the criminal offence is ten years, this can be decreased to five years. Or, if the lower limit is one year, a confinement, a community service or a fine may be imposed instead. The general possibility of mitigation means *mitigation by one degree* on the statutory scale.

In case of attempt and abetting even *mitigation by two degrees* is possible, should the minimum of penalty determined by way of mitigation by one degree be too stringent. Furthermore, the Hungarian Btk provides the possibility of a so-called *unlimited mitigation* for some exceptional cases (Art. 82, par. 5 CC). This means that the general minimum of any type of penalty may be imposed. Some examples of the General Part of CC include attempting the impossible (unsuitable attempt – Art. 10, par. 3 CC) and a limited capacity to be adjudged guilty (Art. 17, par. 2).

B. Alternatives For Minimizing Possible Adversities Of The Imprisonment

1. Imposing Alternative Sanctions Instead Of Imprisonment

As mentioned above the penalties are imprisonment, confinement, community service, fines, disqualification from a profession or from driving motor vehicles, a ban on entering certain areas, a ban on visiting sport events and, finally, expulsion (Art. 33 par. 1 CC). The only secondary penalty currently existing in Hungarian criminal law is exclusion from participation in public affairs (Art. 33, par. 2 CC).

Originally, the former CC of 1978 defined only three (four) of these penalties as a principal penalty: imprisonment, fine and community service (and death penalty until its 1990 abolition). The other ones were provided for as secondary penalties, which categorization became outdated by the time, since amendments to the CC broadened the possibility of independent imposition of secondary penalties. That is, the legislature aimed at allowing a more effective individualization of sentencing in case of non-serious offences. Defining independently applicable penalties as secondary penalties was no longer correct, so the 2009 amendment to the previous CC corrected the categorization of principal and secondary penalties. Based on this amendment, the 2012 CC follows now a coherent concept by defining exclusion from participation in public affairs as the only secondary penalty since it is the only penalty under current law that cannot be imposed independently.

Imprisonment is the central sanction *on the statutory level* as the great majority of the criminal offences, irrespective of being a felony or a misdemeanour, can be punished by imprisonment provided by the Special Part of the CC. A few offences of lesser gravity can be punished with confinement under the Special Part of the CC. In some cases, *other penalties not involving deprivation of liberty* can be inflicted too (Article 33, paragraphs 3–6). Indeed, if the criminal offence is punishable with imprisonment not exceeding three years, penalties other than imprisonment may be inflicted either *independently* (that is, instead of imprisonment) or *in addition to imprisonment, or* – with a few limits – *they can be accumulated.* If the criminal offence is punishable with confinement under the Special Part of the CC, other penalties (except for imprisonment) can also be imposed as an alternative for confinement.

Eventually, through these provisions, the Hungarian CC provide a wide scope of alternative sanctions instead of imprisonment for non-serious criminal offences.

2. Suspensions

a) The Postponement of the Indictment

The public prosecutor is entitled to postpone the indictment in case of criminal offences that are not serious. The postponement means that the suspect will conditionally not be indicted for a probationary period.[14] The indictment can be postponed only if the conditions to file the indictment exist and no grounds for the termination of the procedure have occurred. If the suspect pleads innocent or disagrees with the postponement of the indictment due to any other grounds, he/she may file an objection; this obliges the public prosecutor to file the indictment. This possibility to objection follows from the basic principle of the right to a fair hearing in court (Art. 3 CCP)[15]; that is why the defendant can oblige the public prosecutor to launch the court procedure.

The postponement of the indictment has three cases laid down in Art. 222 CCP: 1) the general type, 2) in case of omission of the payment of alimony and 3) in case of certain drug offences.

The conditions of the *general type* of the postponement are as follows:

- the criminal offence is punishable with imprisonment up to three years;
- the gravity of the criminal offence and the extraordinary mitigating circumstances shall be considered; and
- the postponement of the indictment is likely to have a positive impact on the future conduct of the suspect.

If all these circumstances are given, the indictment may be postponed for a period between one and two years.

A *special ground* for the postponement of the indictment for a one-year period is when the suspect has omitted the payment of alimony (a criminal offence under Art. 212 CC), provided that the postponement of the indictment may result in meeting the defaulted obligation.

Another *special ground* for the postponement of the indictment relates to drug offences. Some conditional obstacles of criminal liability are provided in Art. 180 CC: first, for the person who acquires, produces or holds a small quantity of drugs

[14] BKv 60 (Opininon of the Penal Board of Supreme Court).
[15] Minister of Justice's Explanatory Notes to Act LXXX of 2009 on the Amendment of the CC.

for own use; second, for the person who consumes drugs. The condition for the impunity is that the perpetrator is able to produce an official document to verify that he/she has been treated for drug addiction for at least six consecutive months or that he/she has participated in a drug addiction program or a preventive consulting service. In order to grant the suspect this possibility under the CC, the public prosecutor may postpone the indictment for one year provided that the suspect agrees to undergo the treatments listed (Art. 222 CCP).

In line with the postponement of the indictment, the public prosecutor may order the probationary supervision of the suspect and may set behavioural rules or other obligations for him/her (see I.B.5). Before setting these behavioural rules and obligations, the public prosecutor must hear the suspect and also the victim if the obligations affect the rights of the victim as well (e.g., the suspect has to compensate the victim for the damages). It must be clarified in the course of the hearing whether the suspect is willing and able to meet the rules and obligations the public prosecutor plans to set. In case of the relevant drug offences, the obligation to undergo the treatments and/or services listed above shall be set.

After the *probationary period* of the postponement of the indictment has expired, the public prosecutor either terminates the procedure or files the indictment. If the probationary period has been served successfully (the suspect has not committed new criminal offences and has fulfilled the rules and obligations set for him/her), the procedure shall be terminated by the public prosecutor.

The probationary period cannot be regarded as successful – and therefore, the public prosecutor has to file the indictment – if:

– the suspect filed an objection against the postponement and no ground for the termination of the procedure exists;

– an indictment was filed against the suspect due to an intentional criminal offence committed during the postponement period of the indictment; or

– the suspect gravely violates the rules of conduct or fails to meet his/her obligations.

b) Probation

In case of probation as a preventive measure (on measures, see II.B), the sentencing court establishes the liability of the defendant for committing a criminal offence and pronounces his/her guilt in procedural sense but does not impose penalty on

him/her; the imposition of penalty will be delayed for a certain term. Probation is the measure used most often by Hungarian courts.[16]

When ordering probation, the judge considers the abstract gravity of the crime. In case of a misdemeanour, sentencing may be delayed for a term of one to three years provided that the aim of penalty may be achieved in this way. In case of a felony, probation may be ordered only if the offence is to be punished by imprisonment not exceeding three years (Art. 65, par. 1 CC). In case of juvenile offenders, applying probation is possible to all criminal offences irrespective of their abstract gravity. Probation is excluded for multiple recidivists as well as for perpetrators who have committed their criminal offences in a criminal organization.

The period of probation has to be determined by the court for a period of one to three years. Probationary supervision (see I.B.5) is mostly applied in addition to probation. If the probationary period has passed successfully, the punishability of the convict will be terminated. If the convict under probation has seriously infringed the behavioural rules prescribed for him or has committed a further criminal offence, probation is revoked and a penalty is imposed upon him/her (Articles 65–66 CC).

c) The Suspended Penalty

In case of a suspended penalty, the sentencing court establishes the liability of the defendant for committing a criminal offence, pronounces his/her guilt in procedural sense and imposes a penalty on the defendant, but the execution of the imposed penalty is suspended. According to statistics of judicial practice, about 60%–65% of prison sentences are suspended, so only a third of prison sentences are actually enforced.[17]

The execution of a prison sentence not exceeding two years may be suspended (objective criterion) if there is reason to believe, especially considering the personal circumstances of the perpetrator, that the aim of penalty may be achieved also without its execution (subjective criterion). The term of suspension may be one to five years, which period shall be determined in years and/or months. The term of suspension may not be less than the term of the imprisonment imposed (Art. 85 CC). Probationary supervision is often applied in addition to suspended prison sentence. Multiple recidivists and perpetrators who have committed criminal

[16] Cf. M. Tóth, M. Tóth, 'Az új Btk. bölcsőjénél', *Magyar Jog* no. 9 (2013) 533; . G. Finszter 'Hogyan írják a büntetőtörvényeket? Elmélkedés a „három csapásról"…', *Magyar bűnüldöző* no. 1 (2011) 38; E. Bócz, 'A bíráskodás tekintélye és a jogpolitika' *Magyar Jog* no. 8 (2011) 465.

[17] See more on this topic, F. Sántha, *A jogi személy büntetőjogi felelősségéről* (Budapest: KJK 2004); Zs. Fantoly, *A jogi személyek büntetőjogi felelőssége* (Budapest: HVGORAC 2008).

offences in a criminal organization are excluded from the possibility of the suspension of prison sentence (Art. 86 CC).

If the period of suspension has passed successfully, the execution of the penalty will be *ex lege* excluded. On the contrary, if a convict under suspended penalty has seriously infringed the behavioural rules prescribed for him/her or has been sentenced for committing a further criminal offence, the originally suspended penalty must be executed (Art. 87 CC).

3. Conditional Release

On conditional release regarding life imprisonment, see I.A.2.a); regarding fixed-term imprisonment, see I.A.2.b).

4. Mediation Procedure

The institution of mediation in criminal proceedings was enacted in 2006 by the modification of the CC and CCP. The mediation procedure aims at being conducive to the compensation of the consequences of the criminal offence and to the perpetrator's behaving legally in the future. In the course of mediation, the persons concerned have to aim at reaching an agreement between the suspect and the victim; this agreement serves as the basis for the active repentance of the suspect.

The conditions laid down in Article 29 CC and in Article 221/A CPE must be applied jointly. Beyond these conditions, no grounds for the termination of the investigation may exist. As for the requirements under substantive criminal law: mediation procedure and active repentance covers only offences against a person's physical integrity, freedom or honour, offences against property (including intellectual property) and traffic offences that are punishable with a maximum imprisonment of three years. If the criminal offence is punishable with maximum five years' imprisonment, the punishability will not be terminated but the penalty may be mitigated without limits

The procedural prerequisites of mediation are as follows:

- the conditions under substantive criminal law are fulfilled;
- the suspect has confessed the commission of the criminal offence prior to the filing of the indictment and has declared to be ready and able to compensate the victim in such a way for the damages or other harmful consequences caused by the criminal offence that the victim will feel satisfied by that compensation; and
- both the suspect and the victim have consented to the mediation procedure.

In case of a relevant criminal offence punishable with imprisonment not exceeding three years, the court procedure can be dispensed with in consideration of the

character of the offence, the mode of perpetration and the person of the suspect; or in case of a relevant criminal offence punishable with imprisonment not exceeding five years, there is a reasonable ground to believe that the court will take the active repentance into account while imposing the penalty.

If the requirements written above are met, the public prosecutor shall *suspend the investigation for six months* at most and institute a mediation procedure. The mediation procedure can be instituted only once during the criminal procedure and is conducted by the probation officer or an attorney. The detailed rules of this procedure are laid down in Act CXXIII of 2006 on the mediation activity in criminal proceedings.

Should the mediation be unsuccessful, the procedure shall be continued, which usually means that the public prosecutor files the indictment [or eventually postpones the indictment if the conditions are given, see I.B.2.a)]. In this case, it is an important guarantee both for the suspect and the victim that their statements in connection with the mediation procedure may not be used as means of evidence during the trial and that the failure of mediation may not be considered as a circumstance to the detriment of the defendant.

If the mediation procedure is successful, the public prosecutor, depending on the conditions, can make three types of decision:[18]

- The investigation shall be terminated in case of a criminal offence punishable with imprisonment not exceeding three years.
- If the suspect has started to comply with the duties following from the agreement but he/she has not completely fulfilled the duties yet, the public prosecutor may postpone the indictment for one to two years.
- The indictment shall be filed if the criminal offence is punishable with imprisonment not exceeding five years.

5. Probationary Supervision

Probationary supervision is a measure of educational-preventive function and of an accessory character (on measures, see II.); the latter means that this preventive measure cannot be applied independently but only in addition to imprisonment (penalty) or other measures. According to Article 69 CC, probationary supervision can be applied:

- if the indictment has been suspended;

[18] Sources: Statistical reports of the Central Statistics Office (Központi Statisztikai Hivatal) (www.ksh.hu) and the General Public Prosecutor's Office (http://www.mklu.hu/cgi-bin/infoszabdok/doktar.pl?focsoport=2&csoport=14#open).

- for the duration of conditional release;
- for the duration of probation;
- for the duration of compensational service, and
- for the duration of the suspension of imprisonment.

If the perpetrator is juvenile or recidivist, the application of probationary supervision is obligatory in the cases mentioned above. The same mandatory rule apply to convicts having conditionally been released from life imprisonment.

In addition to the obligation of regularly contacting the probationary officer, substantial prescriptions, which are called 'behavioural rules', may also be included in this measure. For instance, the perpetrator may not be allowed to contact concrete persons. Among other requirements, he/she must keep away from the victim, carry on with his/her studies and register for job search. Art. 71 CC contains a long list of examples for behavioural rules, but, on the top of that, it entitles the court and the prosecutor also to determine and prescribe further behavioural rules the circumstances of the case require in order to support the re-socialization of the perpetrator.

II. Preventive And Security Measures

A) Generally

As explained above, the dualist system of criminal sanctions consists of penalties and preventive measures. The main differences between penalties and preventive measure can be summarized as follows:[19]

- The aim of preventive measures is – following from their name – primarily to prevent the perpetrator from further commission of criminal offences. That is, the so-called *special prevention*. Criminal measures usually do not have either a general preventive effect or a repressive function that is mainly characteristic of penalties.

- The application of some preventive measures does not presuppose the personal guilt of the perpetrator, which is not conceivable in case of penalties. The maxim *nulla poena sine culpa* relates only to penalties, not to preventive measures. The preventive measures applicable without the subjective guilt of the perpetrator are the following: compulsory psychiatric treatment, forfeiture, confiscation and rendering electronic data irreversibly inaccessible.

- Some rules of sanctions do not apply to preventive measures. For instance, independently applied preventive measures are not registered in the convict's

* *Prof. Dr.*

criminal record. In addition, the enforcement of preventive measures, unlike that of penalties, is usually not limited by the lapse of time.

– The *nulla poena sine lege* principle, i.e. the principle of legality applies to preventive measures only if they have – beyond preventive, educational, security goals – also a retributive character. For example, this principle shall prevail concerning admonition, probation and probationary supervision.[20] In contrast, it usually does not apply to forfeiture or confiscation.[21]

The *preventive measures* listed in Art. 63 CC have the function of special prevention of crime and providing a wider variety of criminal sanctions. Admonition, probation and compensational service are educational measures, while compulsory psychiatric treatment (which is applicable to mentally disordered offenders who cannot be punished because of insanity) is a remedial measure. There are provisions for probationary supervision, which is mostly applied in addition to probation or conditional release. A confiscation order is to be applied against the offender or any other person who has gained financially from the offence. Finally, forfeiture and rendering electronic data irreversibly inaccessible are defined as security measures by the Criminal Code.

In addition to these measures, special education in a reformatory institution is provided for as a special measure against juvenile offenders. And there are three measures against legal persons under Act CIV of 2001: the liquidation of the legal person, the limitation of its activity and a fine. Important to note that all these three sanctions are provided for as criminal measures, i.e. Hungarian criminal law provides for no criminal penalties applicable against legal persons.

The possibilities of the independent or additional application of preventive measures to other sanctions provide a significant variety for sanctioning, which can thereby serve the aims of individualized sentencing and a possibly effective special prevention. Admonition, probation, compensational service and compulsory psychiatric treatment can be applied independently – that is, substituting a penalty or in addition to other preventive measures. Forfeiture confiscation and rendering electronic data irreversibly inaccessible can be applied independently, or even in addition to a penalty or other preventive measures. Probationary supervision is always linked to a penalty or a preventive measure; that is, it cannot be applied independently (cf. Art. 63 CC).

B) Types Of Preventive Measures

[20] . Basically, punishment of the mentioned crimes (carry maximum 2 years imprisonment), unless in cases it relates to the security of the country, organized crimes, sabotage in gas, oil, electricity, water and communications.

[21] . Crimes which carry 15 years imprisonment or lesser.

1. Deprivation Of Rights

Under the Hungarian Criminal Code, sanctions including the deprivation of certain rights are mostly considered penalties (see I.A.4.)

2. Confiscation and Forfeiture

a) Confiscation

Confiscation had been regulated as a secondary penalty in Hungarian criminal law for a long time. Its legal concept was significantly changed in 1998 by restricting confiscation to the proceeds that have been obtained by way of committing a criminal offence. Consequently, confiscation had no penal character anymore. The systematic consequence of this conceptual change was drawn by the 2002 amendment to the CC of 1978 that redefined confiscation as a preventive measure.[22]

The following shall be confiscated under Article 74 CC:

– any proceeds from a criminal offence, obtained by the perpetrator during the perpetration of a criminal offence or in connection with it;

– any property replacing the initial proceeds listed before;

– any property obtained by the perpetrator during the time of taking part in a criminal organization;

– any property obtained by the perpetrator during the commission of drug trafficking;

– any property that was given in order to enable or facilitate the perpetration of a criminal offence, or that was intended to be given with this purpose;

– any property that has been subject to the financial advantage given in connection with bribery.

Any kind of profit from the property, pecuniary rights and claims, and any advantages of financial value shall also be deemed criminal proceeds. The CC makes confiscation possible when a property listed above has served the enrichment of a person being different from the perpetrator or that of a business entity; or even in the case of successors to all of these. However, an important restriction is that the property reserved to cover any civil claim during the criminal proceedings and the property obtained in good faith for consideration may not be confiscated (Art. 74, paragraphs 2–5).

The Hungarian legal concept of confiscation is based on the so-called 'gross principle'; that is, not only the property that constitutes a real enrichment of the

[22]. crimes which carry more than 15 years imprisonment

perpetrator shall be confiscated but also the property that has been invested to enable the perpetration.[23] This principle has a practical importance concerning illegal trade of goods and has been confirmed by the Supreme Court in connection with drug offences.[24]

b) Forfeiture

Forfeiture has a preventive character and a function of security. Despite the fact that forfeiture can mean a significant disadvantage to the perpetrator (or even to other persons), it still cannot be regarded as penalty since its function of security requires the possibility of its application even in case of infants or insane persons, or if the perpetrator's punishability has been terminated due to any legal grounds, or even in addition to admonition (cf. Art. 72 par. 4 CC).

The following objects shall be forfeit according to Art. 74 CC:

– objects actually used or intended to be used as an instrument for the commission of a criminal offence (*instrumenta sceleris*);

– objects created by way of a criminal offence (*producta sceleris*);

– objects on which the criminal offence has been committed or objects used for their delivery after the criminal offence has been completed;

– objects that are illegal to possess or that endanger public safety, and

– media products in which a criminal offence has been realized.

The CC provides an important restriction on forfeiture to prevent inequitable disadvantages. The objects used as instruments for the perpetration or the objects on which the criminal offence has been committed may not be forfeited if they are not owned by the perpetrator, unless their owner was aware of the criminal offence before the perpetration (Art. 72 par. 3 CC).

c) Rendering Electronic Data Irreversibly Inaccessible

Rendering electronic data irreversibly inaccessible as a security measure is provided by Article 77 CC. Data that are available in electronic information systems shall be rendered irreversibly inaccessible, first, if making them available for others constitutes a criminal offence, second, if they were used as an

[23] . Muharebeh is a kind of Islamic crime in which the offender uses weapon to threaten the people. Efsad Fel Arz is also an Islamic crime in which the acts of the offender deteriorates the life, property, reputation of the people so widely.

[24] . economic crimes include fraudulent, bribery, embezzlement, using influence on the officials in case the offender acquires money, interfere in governmental transactions by ministers and members of parliament, conspiracy in governmental transactions, getting percent in foreign transactions, encroachment of officials against the government, taxation crimes, customs crimes, trafficking of goods and currency, money laundry, intriguing in economic order of the country and illegal possession in public and governmental properties.

instrument for the commission of a criminal offence, and third, if they were created by way of a criminal offence. Since this measure has a security character, it can be applied even in case of minor or insane offenders who are not punishable, or if the punishability of the perpetrator has been terminated on other legal grounds.

3. Sanctions Specific to Juveniles

The 1978 CC laid down the age of *minority* below fourteen years with no exception. By contrast, exceptions to this rule have been introduced in the 2012 CC: the legislature's explanation on lowering the age of punishability from fourteen to twelve years in a few cases refers to the fact that violent offences started to become more prevalent also among children under the age of fourteen. In the legislature's opinion, the aims of special prevention require criminal law sanctions to be applicable also to younger children, between the ages of twelve and fourteen.[25] The necessity of lowering the age limit is however heavily criticized in the legal literature.

According to Article 16 CC, the person who has not turned fourteen at the time the offence was committed shall not be punishable for the commission of an offence; unless the perpetrated offence is homicide, homicide committed under the influence of sudden or extreme passion, causing bodily harm with life-endangering or fatal consequences, robbery or qualified plundering (objective criterion), and provided that the perpetrator of these listed offences has turned twelve at the time that theses offences were committed and is capable of recognizing the consequences of his/her conduct (subjective criterion: 'mental-moral maturity'). The examination of this capacity requires special expertise; the investigating authorities shall order a special expert to investigate whether a child could be regarded as a liable person in relation to the listed offences.[26] However, this new rule has been in force only since July 2013; therefore, there are no remarkable cases yet that would describe to us how this rule works in every day practice. The evaluation of the mental-moral maturity itself is an innovative element of establishing criminal responsibility, but, as mentioned right above, the

[25] . Crimes degree 7 require 91 to 180 days imprisonment, 10000000 to 20000000 Rials fine , whipping 11 to 30 slashes and deprivation of social rights up to 6 months. Crimes degree 8 require imprisonment up to 3 months, up to 10000000 Rials fine and whipping up to 10 slashes. (1 Euro equals to 42000 Rials fine).

[26] . effective convictions include death penalty, life imprisonment, cutting the member of the body and physical retaliation if the amount of blood money is more than the half of the total blood money, exile and imprisonment from 5 to 10 years, whipping as Hadd, (some crimes which arise from Sharia have fixed whipping like drinking alcohol, having sex without marriage , ...) physical retaliation if the blood money equals to half or less than the total blood money and imprisonment from 2 to 5 years.

decrease of the age limit has faced general rejection both in academic debates and among practitioners until now.

A *juvenile* is a person who has turned twelve but has not yet reached the age of eighteen at the time the crime was committed (Art. 105 CC). The special provisions for sanctioning juvenile offenders are included in Chapter XI of the CC. These special provisions of Hungarian criminal law do not establish special rules for their criminal liability, only different provisions for the applicable penalties and measures. As to the sanctions, the special provisions have primacy to the general rules. Therefore, the latter can be applied in the absence of special provisions or with their appropriate alteration.[27] Except life imprisonment, every type of penalties and preventive measure is applicable to juvenile offenders; however the duration of them is generally lower and the application of alternative sanctions is significantly broader compared to adult offenders. Under Article 106 CC, the application of preventive measures in case of juvenile offenders has priority over penalties, and in case the juvenile offender has not turned fourteen at the time the criminal offence was committed, no penalties can be imposed, only preventive measure can. A penalty or measure including the deprivation of liberty shall be regarded as the ultima ratio for juvenile offenders.

Special education in a reformatory institution is a preventive measure including deprivation of liberty that is applicable only to juvenile offenders. This preventive-educational measure shall be ordered by the court if the successful education of a juvenile requires his/her placement in an institution (Article 120 CC). In case the perpetrator has turned eighteen by the time the judgement is delivered, special education in a reformatory institution can no longer be applied though. The special education in a reformatory institution may last from one year to four years, and the concrete duration shall be determined by the court within these limits. The CC also provides rules for a temporary release from the institution (Art. 121).

In the Supreme Court's opinion, if a juvenile had been sentenced to suspended imprisonment and committed a criminal offence during the period of suspension, then there is a legal possibility to apply special education in a reformatory institution to the newly committed criminal offence, which does not lead to the termination of the suspension and to the enforcement of imprisonment.[28]

4. Sanctions Specific to Mentally Disordered and Addicts

a) Compulsory Psychiatric Treatment

[27] . Crimes which carry more than 6 months imprisonment.

[28] *Prof. Dr., University Farhat Hached-Tunis, Faculty of Law and Political Sciences- Tunis, Lawyer at the Court of Cassation-Tunisia.*

Compulsory psychiatric treatment serves a healing purpose in case of mentally disturbed perpetrators who do not have the capacity to be adjudged guilty. The application of this measure has strict conditions in Article 78 CC, as follows:

- The perpetrator may not be punished due to mental disorder under Art. 17 par. 1 CC (subjective condition).

- The perpetrator has realized the objective elements of a criminal offence involving violence against person or causing public danger (objective condition).

- It is likely that he/she will perpetrate a similar offence (prognostic condition).

- In case of his/her punishability, an imprisonment exceeding one year would have to be imposed (hypothetic condition).

This preventive measure shall be enforced in a special national institution named Forensic Observational and Psychiatric Institute that has an exclusive competency in this field. The CC does not maximize the duration of psychiatric treatment; however, it provides that the treatment has to be immediately terminated if it is no longer necessary. This kind of uncertainty of this sanction evoked constitutional concerns, which resulted in the modification of the CC of 1978. As of May 2010, the longest possible duration of compulsory psychiatric treatment was made equal to the maximum of imprisonment that could be imposed on the perpetrator in case of his/her punishability. If the criminal offence can be punished with a life sentence, the longest possible duration of compulsory psychiatric treatment was twenty years. It is an unfortunate step back by the legislature that the new CC of 2012 has abolished the upper limit of compulsory psychiatric treatment; this measure has again been indeterminate since 1 July 2013. As a reason for this modification, the Explanatory Notes to the CC refer, without further explanation, to experiences of the legal practice after 2009.

b) Compulsory Treatment of Alcohol Addicts

This preventive measure had also a healing character and was applied to a perpetrator who has committed a criminal offence in connection with his/her alcoholic lifestyle. The objective criterion for the application of this compulsory treatment is that the perpetrator has been sentenced to a non-suspended imprisonment, the duration of which exceeds six months. However, this preventive measure was *eliminated in May 2010* due to the Amending Act to CC. The legislature has given the reasons for its abolishment by both theoretical and practical aspects. Forensic medicine regards alcoholism as an addiction that cannot be healed without the cooperation of the alcohol addict; that is, a compulsory treatment cannot be successful in most cases. If an alcoholic prison inmate has the motivation to overcome his/her addiction, then he/she can receive sufficient help

by voluntarily attending the healing-educational groups in the prison and without being obliged to participate.[29]

5. Sanctions Specific to Repeat Offenders

First and foremost it is to note that Hungarian criminal law *does not provide any special security measures* for repeat offenders. More severe sanctions can though be applied against them, but this more stringent sanctioning has its basis in the *rules of sentencing*, i.e. the *infliction of penalty*.

Five different kinds of previous conviction are known in Hungarian criminal law as follows: having been previously convicted without becoming recidivist, recidivism, special recidivism, multiple recidivism and multiple violent recidivism. The first category mentioned applies to someone who has been convicted before committing another criminal offence but he/she does not realize the conditions of recidivism; however, the fact of the previous conviction is usually regarded as an aggravating circumstance.

The following requirements are laid down in Art. 459 CC for *recidivism*:

– Both criminal offences of the perpetrator – that is, the offence for which he/she had previously been convicted and the offence committed thereafter – must be intentionally committed.

– The perpetrator must have been sentenced to a non-suspended imprisonment for his/her previously committed criminal offence.

– The previous imprisonment was served or its executability was terminated within the past three years.

Recidivism usually constitutes an aggravating circumstance in the course of the infliction of penalty. Moreover, if a recidivist is sentenced to imprisonment, the execution of the imprisonment in a low-security prison is excluded (Art. 37 CC). If a recidivist is sentenced to probation [see I.B.2.b)] or suspended imprisonment [see I.B.2.c)], the additional application of probationary supervision is compulsory.

Special recidivist is a recidivist who commits the same criminal offence or similar ones both times. A *multiple recidivist* is a person committing a criminal offence punishable with imprisonment who has been sentenced to a non-suspended imprisonment as a recidivist and three years have not yet passed since the last imprisonment was served or its executability was terminated. A general consequence of these two types of recidivism under Article 89 CC is that the upper limit of the imprisonment applicable to the criminal offence newly committed *shall*

[29] *Associate Professor of Department of Criminal Law and Criminology at Ivan Franko National University of Lviv*

be increased by half but must not exceed twenty-five years [general maximum of fixed-term imprisonment; see I.A.2.b)]. Multiple recidivists are excluded from the possibility of probation and suspended imprisonment as well as the possibility of mediation procedure.

A *multiple violent* recidivist is a multiple recidivist who committed a criminal offence involving violence against person at least three times. The relevant criminal offences involving violence against person are exclusively listed in Art. 459 par. 1, number 26 CC (e.g., homicide, causing bodily harm, kidnapping, rape or robbery). The most significant stringency prevails for multiple violent recidivists, in case of which the upper limit of imprisonment applicable to the criminal offence that serves as the ground for multiple violent recidivism *shall be doubled*. Moreover, in case this increased upper limit of imprisonment exceeds twenty years or the criminal offence concerned is punishable also with life imprisonment, the multiple recidivist shall be sentenced to life imprisonment (Art. 90 CC), and he or she shall *ab ovo* be excluded from the possibility of conditional release (Art. 44 CC). As it can be seen, this sort of "three strikes rule" leads to *mandatory application of real life sentence*. This sentencing rule is rather controversial and, among legal scholars, it is deemed unconstitutional because of the inacceptable exclusion of judicial discretion on the one hand, and because it violates Article 3 of ECHR on the other.[30]

For multiple violent recidivists who are sentenced to a fixed-term imprisonment, there is no possibility of conditional release nor a possibility of mitigating the penalty under Article 82 CC. In recent years, since 2009, a continuous tendency of more stringent sanctioning of qualified recidivists can be observed. The effectiveness of this stringency and the exclusion of judicial discretion, i.e. the possibility of the individualization of sentencing, is pretty doubtful.

6. Sanctions Specific to Foreign Offenders

The only sanction in Hungarian Criminal Law, which shows specificity to foreign offenders, is compulsion. Compulsion can only and exclusively be applied against offenders who do not have Hungarian citizenship. See in detail, I.A.4.f).

7. Sanctions Specific to Legal Entities

[30] Kryminalny Kodeks URSR, 1960 (=Criminal Code of USSR) // http://zakon2.rada.gov.ua/laws/show/2001-05 (in Ukrainian).

Act CIV of 2001 introduced criminal sanctions applicable to legal persons.[31] The provisions of this Act came into force on 1 May 2004, the day Hungary was admitted to the European Union.

The Hungarian regulation has been elaborated on the basis of the so-called 'measure model', by which measures are imposed on legal persons without establishing their criminal liability but only if a certain natural person was found guilty. Furthermore, the offence must have been committed intentionally by the natural person and that person must have been punished with a penalty or certain measures including probation, admonition, forfeiture or confiscation for that offence.

Three different measures are applicable to legal persons as the following ones: the liquidation of the legal person, the limitation of its activity, and the fine (considered to be a measure too).

Without entering into a theoretical debate, it seems fair to label these criminal measures as a 'foreign body' in the Hungarian system of criminal sanctions. This opinion can be supported, for instance, by the facts that the related provisions have not been incorporated in the Criminal Code, and criminal sanctions against legal persons are not at all applied in courts practice.

[31] Kryminalny Kodeks Ukrayiny, 2001 (=Criminal Code of Ukraine) // http://zakon4.rada.gov.ua/laws/show/2341-14(in Ukrainian).

STATISTICAL DATA[32]

HUNGARY	Adult (specific data on juveniles *as requested in this chart* are not available; all numbers indicated below refer to every offender, *including juveniles*)	Juvenile (age: between 12 and 18 years)
Population	total population (general census 2011): 9,937,628 juvenile population (general census 2011): 763,851	
Total number of investigations initiated in 2012	258,412	not available (10,418 juvenile offenders were registered but this number does necessarily not correlate to the number of the initiated investigations in case of

[32] Rishennya Konstytutsiynogo Sudu Ukrayiny No. 11-pn/99 vid 22.12.1999 (sprava pro smertnu karu) (=Resolution of the Constitutional Court of Ukraine No. 11-pn/99 in the case regarding the death penalty) // http://zakon2.rada.gov.ua/laws/show/v011p710-99. (in Ukrainian)

		juvenile offenders)
Total number of investigations finalized due to mediation procedure or suspension of the indictment in 2012	10,926 (4,2%)	n.a.
Total number of criminal actions registered in 2012	472,236	n.a.
Total number of the accused whose case has either been dismissed or suspended due to alternative dispute resolution in 2012?	Alternative dispute resolution (i.e. mediation procedure) is no longer available after the filing of the indictment, only prior to it.	
Among the convicts who are sentenced to imprisonment, what is the ratio of the first-time offenders to those who previously committed an offence? (year 2012)	73,9% first time offenders (26,1% repeat offenders)	n.a.
For each imprisonment length stated below, what is the average minimum period of time that convicts have to stay in prison? Please indicate if this period depends on the age of the convict, sentence length and the type of the offence committed?		
1 year	Data as requested are not available. The general rule in CC for the earliest possible time of conditional release from fix-term imprisonment: 2/3 for non-recidivists and 3/4 for recidivists. Conditional release from life	
5 years		
20 years		
Life imprisonment		

	imprisonment (if not excluded): between 25 and 40 years.	
What is the total number of convicts whose imprisonment is suspended? (year 2012)	19,119	n.a.
Among all convicts whose punishment is suspended within the specified year, what is the number/ratio of convicts who are sent back to prison either because they committed an offence or did not fulfil the obligations conferred upon by the judge during the supervised period?	n.a.	n.a.
What is the total number of convicts who are on parole and whose supervised period has not ended yet?	n.a.	n.a.
Among all convicts who were on parole, how many of them were sent back to prison within	n.a.	n.a.

the specified year either because they committed an offence or did not fulfil the obligations conferred upon by the judge during the supervised period?		
Of the convicts sentenced to fine, how many are paying this fine to the State?	n.a.	n.a.
What is the total number of suspects within the cases brought during the specified year at the investigation stage due to either using or carrying drugs? What kinds of measures are imposed on these suspects?	5,214 (note: the number also includes drug trafficking, not only use or carrying)	n.a.