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## MAIN FEATURES OF THE HUNGARIAN SANCTION SYSTEM\*

**Abstract:** *The aim of this study is to illustrate the main features of the Hungarian system of criminal sanctions and to focus on some problematic issues of the current sanction system in relation to fix-term imprisonment and life imprisonment and also the punitive nature of criminal law.*

**Keywords:** *criminal sanction system, fix-term imprisonment, life imprisonment, recidivist, punitive criminal law.*

### 1. GENERAL REMARKS

The Hungarian criminal law is based on a dual system of sanctions: it regulates penalties and preventive measures, where penalties are considered as the main/primary criminal legal consequences. Penalties are imposed if the purpose of punishment is retribution, whereas measures are taken if the main goal is special prevention. The Hungarian penal system is a conjunctive and also an alternative dualistic sanction system, given that penalties and preventive measures can be applied to the same criminal offence at the same time or only one of the two criminal legal consequences. An example of the latter is that according to the law preventive measures like reprimand, probation, reparation work and compulsory psychiatric treatment shall be applied independently, in place of a penalty.

It also should be noted that the sanction system make distinction between (principal) penalties (punishments in strict sense of the term) and secondary penalty. While penalties in strict sense of the term can be imposed independently,

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the single secondary penalty the exclusion from participating in public affairs may only be imposed in addition to unconditional imprisonment.

The Hungarian sanction system is relatively determined and the determination of the range of punishment can happen by laying down general minimums and maximums in the General Part of the Penal Code<sup>1</sup> and special minimums and maximums in the Special Part of the Code in relation to fix-term imprisonment. Compulsory psychiatric treatment is the only undetermined penal sanction in the current palette of sanctions, given that the Criminal Code does not maximize the duration of the preventive measure. According to the law, compulsory psychiatric treatment shall be terminated if it is no longer necessary (art. 78, para. 2). This means that the penal execution judge shall review the necessity of compulsory treatment. If the preventive measure is maintained, the review shall be done every six months.

In Hungary imprisonment represents the one end in the scale of penal severity: on the statutory level, the strictest type of punishment in the Criminal Code is imprisonment (and within that, life imprisonment), and in the ranking order of punishments according to their severity it is followed by the (criminal law) confinement/ confinement as a penalty entailing deprivation of personal liberty, too.<sup>2</sup> Confinement as a penalty may be imposed for minor offences for the duration of 5-90 days (for juveniles 3-30 days), so it can be regarded as a short-term imprisonment. At present therefore there are two custodial penalties in the current Criminal Code.<sup>3</sup> Because of the custodial nature of confinement as a penalty in the “power ranking“ of the punishments confinement is more severe punishment than community service. Fine stands at the end of the invisible severity ranking of the punishments, because community service is more serious penalty than fine. The explanation for this is to be found in the fact that, community service restricts the freedom of the perpetrator in a way. It is also important to mention that community service and fine do not deprive the convict personal freedom, but the Criminal Code stipulates that if the community service is not completed voluntarily or the fine is not paid, then these punishments shall be transformed into imprisonment.

Disqualification from a profession, disqualification from driving a vehicle, ban on entering certain areas, ban on visiting sport events and expulsion are also punishments in strict sense of the term and can be imposed independently, but there is no hierarchy between them, they have equal status. That means, in other

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<sup>1</sup> The current Hungarian Criminal Code (Act C of 2012; hereinafter referred to as Criminal/ Penal Code) entered into force on 1 July 2013.

<sup>2</sup> The latter description shall be used, as confinement is also one of the misdemeanour sanctions in the law on misdemeanours.

<sup>3</sup> We also have to mention that the possibility of conditional release is excluded in the case of confinement as a penalty and the enforcement of a sentence of confinement also shall not be suspended.

words, that it must always be decided in the specific case whichever is more serious for the perpetrator.

It is also important to point out that the Hungarian system of criminal law consequences focuses on imprisonment, considering that for all but 14 criminal offences the Criminal Code specifies imprisonment punishments. According to the Criminal Code these 14 criminal offences<sup>4</sup> are punishable by confinement as a penalty, i.e. by a punishment that entails deprivation of liberty as well. The imprisonment-centred nature of the Criminal Code is eased by para. (3) and (4) article 33 of the Criminal Code, which allow for individualization, as well as differentiated imposition of punishment. The point of this provision is that if criminal offences are lesser danger to the community (the upper limit of the penalty of the criminal act specified in the special part of the Criminal Code are does not exceed three years of imprisonment), instead of imprisonment the courts are allowed to impose one or more other punishments. So, according to the Criminal Code (art. 33, para. 4) confinement, community service, fine, disqualification from a profession or form driving a vehicle, ban on entering certain areas, ban on visiting sports events or expulsion may be imposed individually or in any combination, in place of imprisonment. However, while the Penal Code provides a wide range of possibilities to combine the punishments with each other, there are few exceptions: it is not possible to impose imprisonment simultaneously with confinement or community service and it is also forbidden to impose community service or fine with expulsion, or fine in combination with life imprisonment.<sup>5</sup>

According to the judicial practise, in the last few years the punishment, which was most frequently applied by the courts was fine. Statistical data shows that in 2018 the number of persons sentenced to fine increased by 3,5 % compared to the previous year (2017: 23.253; 2018: 23.790 ppl.) and the proportion of convictions in which fines have been imposed has been fluctuating between 40% and 43,55%<sup>6</sup>. Fines are imposed as day-fines, thus the number of day-fines an offender receives is based on the seriousness of the crime, and the amount of a day-fine depends on the personal income of the perpetrator.<sup>7</sup>

Unfortunately fix-term imprisonment represent the second most frequently used sanction in Hungary (2018: 20.465 – 37,46%)<sup>8</sup> and the largest group in terms

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<sup>4</sup> For example Violation of personal secrets (art. 223), Violation of the confidentiality of correspondence (art. 224), Unjustified refusal to testify (art. 277), Violation of epidemic control regulations (art. 361).

<sup>5</sup> See more on this Ambrus István, “Együttalkalmazási tilalmak, valamint valódi és látszólagos kógencia a büntetőjog szankciórendszerében“, *Belügyi Szemle*, 6/2018, 88-107.

<sup>6</sup> Legfőbb Ügyészség, “A büntetőbíróság előtti ügyészi tevékenység főbb adatai I. A 2018. évi tevékenység“, Budapest, 2019, 59-60.

<sup>7</sup> See more on this: Juhász Zsuzsanna, “Büntetőjogi szankciók és végrehajtásuk“, *Fundamenta Fontium Iuris Criminalis, Iurisperitus Kiadó*, Szeged 2020, 22-23.

<sup>8</sup> Legfőbb Ügyészség, 59-60.

of the length of sentences imposed is the population sentenced to 5-10 years of imprisonment, followed by 3-5 years and then to 1-2 years sentences. Short-term imprisonment (sentences of less than 1 year are not typical).<sup>9</sup> In view of the sentences imposed during the last years, it can be established that a sharp increase may be observed in respect of long-term imprisonments, regarding both 5 to 10-year, and more than 10-year imprisonment sentences. While in 2010 631, in 2011 707, in 2012 702, in 2013 757 and in 2014 824 detainees were serving their more than 10-year imprisonment sentences, in 2018 this number climbed to 1676! The number of to 10-year imprisonment sentences showed a similar trend, as illustrated by the table 1 below.

Table 1. Source: Hungarian Prison Service: Review of Hungarian Prison Statistics 2019 vol. 1. p. 11.

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2018</b>
<b>5 to 10-years</b>	631	707	702	757	824	1676
<b>more than 10 years</b>	1753	1985	2279	2522	2674	3440

## 2. THE LIFE IMPRISONMENT

With the abolishment of death penalty in 1990 the most serious punishment has become life imprisonment.<sup>10</sup> Worth mentioning that the imposition of it according to the Criminal Code is only a possibility in all cases. Therefore, there is no criminal offence punishable by life imprisonment exclusively, as this type of punishment is specified as an alternative to the 10 to 20-year imprisonment and the 5 to 20-year imprisonment. In the current Criminal Code life imprisonment can be imposed in the case of 22 criminal offences (24 cases).

As condition for imposing life imprisonment the Criminal Code stipulates that the convict shall be over 20 years of age at the time the criminal offence was committed.

In case life imprisonment is imposed, the court is obliged to include provisions on the conditional release of the convict in its judgement.<sup>11</sup> The Criminal

<sup>9</sup> Hungarian Prison Service, *Review of Hungarian Prison Statistics*, 1/2019, 11.

<sup>10</sup> With the abolishment of death penalty in 1990 the most serious punishment has become life imprisonment. Since Hungary joined the European Union in 2004 application of death penalty has been prohibited in all circumstances owing to that the EU Charter of Fundamental Rights (Art. 2, point 2) expressly bans it with no exception. See Horváth Tibor, "Abolition of Capital Punishment in Hungary", *Acta Juridica Hungarica, Hungarian Journal of Legal Studies*, 3-4/1991, 153-166.

<sup>11</sup> This legal instrument has both substantive law and enforcement aspects: on the one hand the sentencing court is obliged to specify the earliest date of conditional release in the operative part of the court's judgment, on the other hand, the conditional release is also a law enforcement

Code provides two decision possibilities to the court. The court may decide that the convict may be released conditionally, or the court may exclude (art. 44, para. 1) or shall exclude (art. 44, para. 2) conditional release if the court finds that it is necessary to isolate the convict from society permanently. In addition to the options described in the paragraph above, there is another case when the possibility of conditional release is excluded by law: according to the paragraph (7), Article 45 of the Penal Code a convict shall not be released on parole if he is sentenced to life imprisonment once more. If his/her previous life imprisonment has not yet been enforced, the latter life imprisonment shall not be enforced.

If the sentencing court decides that the convict may be conditionally released, then the court shall specify the earliest date of the release in its judgement. Pursuant to the current regulation the earliest date is 25 years. As a result of this provision, the prisoners sentenced to life imprisonment with parole have to spend at least 25 years in the penitentiary institution in order to become eligible to parole at least in principle. Under paragraph (1) Article 43 of the Criminal Code the latest date of parole shall be 40 years. The sentencing court shall specify the earliest date of parole in years and between this 25 to 40-year period.<sup>12</sup> In course of deciding in this matter the court shall (should) take into account, among others, the age of the offender at the time of the adjudication as well, as in case of a convict in his thirties, specifying a parole date later than 30 years could essentially mean the exclusion of the possibility of parole.<sup>13</sup>

The release on parole of prisoners sentenced to life imprisonment – similar to the fix-term imprisonments – is not automatic in the Hungarian legislation but depends on two conditions. Firstly, the earliest date of parole specified in the judgement of the court shall arrive, secondly, the convict may be released on parole

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legal instrument, as making the final decision on conditional release belongs to the scope of competence of the penal execution judge as a single judge. The rules of conditional release are laid down in the Criminal Code (arts. 42-45) and also in the Law Enforcement Code (Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour, arts. 57-59).

<sup>12</sup> According to the former Criminal Code the earliest date was at least 20 years and in case of crimes without statutory limitation at least 30 years. This regulation does not comply with the principle of *nullum crimen/nulla poena sine lege certa* that is the requirement of the exactness of law. Because the practical significance of applying life imprisonment is with respect to the qualified cases of homicide, which are without statutory limitation, thus the court defined the earliest date of parole in at least 30 years.

<sup>13</sup> It shall be noted that in Tibor Törköly's case against Hungary the European Court of Human Rights (*Tibor Torkoly v. Hungary* – application no. 4413/06, judgment of 5 April 2011) declared that the life imprisonment punishment of which the convict may be released on parole after 40 years – when he is 75 years old – does not constitute the violation of the prohibition of torture specified in Article 3 of the European Convention on Human Rights. In its decision the court explained that considering that in principle the convict can be released on parole, he had not been deprived of all hopes of being released, therefore his sentence does not qualify as inhumane punishment.

only if there are reasonable grounds to believe that the purpose of the punishment may be achieved without further imprisonment as well. The basis of this assumption is the behaviour shown by the convict during the detention, which allows for the conclusion if the convict will be able to successfully fit in/back to society.

If the parole date specified in the judgement sentencing the defendant to life imprisonment arrives, the decision on parole is made by a penal execution judge based on the proposal of the penitentiary institution. If the judge's decision is negative, then the question of parole shall be reviewed *ex officio* two years later at the latest, and annually in case of repeated dismissals (Act CCXL of 2013; hereinafter referred to as Law Enforcement Code, art. 57, para. 8].

Specifying the duration of the parole is also an important factor, considering that during the duration of this period the convict is subject to the judgement, and if the parole is terminated, the convict shall spend a period equal to the entire duration of the parole in a penitentiary institution. Therefore, the concrete duration of the parole is not a matter of indifference for neither the convict, nor the law enforcement. The current Criminal Code specifies this duration as “at least fifteen“ years. This wording shows that the act currently in force does not specify an upper limit in this regard; the fifteen-year period is specified as the minimum duration. Therefore, determining the concrete duration of the parole is the task of the court imposing the life sentence. Considering the lack of upper limit, this regulation precludes the requirement of legality, and is of concern.

If the court does not see any possibility of parole, or the exclusion of parole is stipulated by law, then imprisonment may actually last until the end of the offender's life. Therefore, the life imprisonment excluded from the possibility of parole, i.e. the actual or real life imprisonment, constitutes the most severe legal consequence of the Hungarian regulation.

Regarding the exclusion of parole, paragraph (1) Article 44 of the Criminal Code includes an exhaustive list of criminal offences in case of which the exclusion of parole depends on the decision of the court (e.g. aggravated cases of homicide, kidnapping, human trafficking, destruction, prison riot, acts of terrorism), while paragraph (2) specifies the cases of mandatory exclusion. The sentencing court is obliged to exclude the possibility of parole if, on the one hand, if the offender sentenced to life imprisonment is a violent multiple recidivist,<sup>14</sup> and on the other hand, if the offender committed the criminal offense defined in paragraph (1) Article 44 of the Criminal Code in the framework of a criminal organization.<sup>15</sup> Thus, in

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<sup>14</sup> A multiple recidivist shall be considered a violent multiple recidivist if he committed a violent criminal offence against a person all three times (Penal Code, art. 459, para. 1, it. 31. c).

<sup>15</sup> A criminal organization is a group that consists of at least three persons, is established for a longer period, is organised hierarchically and operates in a conspiratorial manner for the purpose of committing intentional criminal offences punishable by at least five years of imprisonment (Penal Code, art. 459, para. 1, it. 1.).

such cases the requirement of differentiated sentencing does not prevail, as the act does not provide any opportunity of discretion to the court regarding parole.

The Fundamental Law of Hungary (art. IV, para. 2), also disposes of life imprisonment without parole where it stipulates that life imprisonment without parole may only be imposed when an intentional and violent criminal offence had been committed. The inclusion in the Fundamental Law therefore guarantees that life imprisonments without parole could be imposed only in case of intentional and violent criminal offences. However, this wording does not justify the applicability of life imprisonment without parole, especially because the condition of imposing life imprisonment without parole was that an intentional and violent criminal offence had been committed. It also means that the Hungarian Constitutional Court cannot examine the constitutionality of the provisions allowing actual life imprisonment.<sup>16</sup>

In respect of life imprisonment without parole several legal academics have voiced their concerns, referring to the inhumane, cruel character of this type of punishment, and that it opposes the principle of human dignity.<sup>17</sup> The Hungarian regulation was brought before the European Court of Human Rights (hereinafter: ECtHR) after László Magyar, who had been sentenced to life imprisonment without parole, referred to the Strasbourg Court. In László Magyar's case against Hungary<sup>18</sup> the ECtHR found the Hungarian regulation is in violation of the European Convention on Human Rights (hereinafter: Convention) because it failed to provide any possibility of parole even in principle for the convict sentenced to life imprisonment excluded from the possibility of parole. In its decision the ECtHR indicated that the pardon that may be granted by the head of state (President of the Republic) cannot be considered as a review procedure acceptable by the Convention, as it cannot be established what factors the President of the Republic takes into consideration in course of his decision. For this reason, the Strasbourg Court found that a review system shall be introduced, which unambiguously establishes when and under which conditions the convict may be released.

Resulting from the ECtHR judgement the mandatory procedure of clemency for convicts sentenced to life imprisonment and excluded for the possibility of parole was added to the Law Enforcement Code. It shall be noted here that in principle this mandatory procedure does not prevent the convict sentenced to life

<sup>16</sup> Juhász Zsuzsanna, "A büntetések", Nagykommentár a Büntető Törvénykönyvhöz (Karsai szerk.), Wolters Kluwer, Budapest 2019, 118-178.

<sup>17</sup> See, for example Balázs Péter, "Kegyetlen kegyelem? – A tényleges életfogytig tartó szabadságvesztés, avagy egy roskadozó jogintézmény kritikája és jövője", *Büntetőjogi Szemle* 2/2018, 24-38.; Blutman László, "Büntető jogegységi határozat a tényleges életfogytig tartó szabadságvesztésről", *Jogesetek Magyarázata*, 3/2017; Lévy Miklós, Kovács Krisztina, Doszpoth Anna, "Ha már a kiszabáskor életfogytig szól, akkor embertelen a büntetés", *Fundamentum*, 3/2014, 73-84.; Nagy Ferenc, "Gondolatok az életfogytig tartó szabadságvesztésről", *Magyar Jog*, 5/2013, 265-271.

<sup>18</sup> Application no. 73593/10, judgment of 20 May 2014



imprisonment without parole to submit a request for pardon to the President of the Republic either. Therefore, currently it is mandatory to conduct a procedure of clemency in case of convicts sentenced to real life imprisonment. However, it is important to note that the mandatory procedure of clemency simultaneously does not constitute obligation to release such convicts. However, on the other hand, if the clemency decision is negative, then 2 years later another mandatory procedure of clemency shall be initiated.<sup>19</sup>

The mandatory procedure of clemency may be started if the convict grants his/her consent. Therefore, if the convict does not grant his/her consent, or he/she refuses to make a statement, then the procedure cannot be conducted. Another significant condition of starting the mandatory procedure of clemency is that 40 years of the imprisonment punishment shall elapse. Due to the wording of the act, the time spent in pre-trial detention shall be disregarded in the calculation of the 40 years.<sup>20</sup> Thus, this provision also means that convicts sentenced to life imprisonment without parole have to spend at least 40 years in penitentiary institution.<sup>21</sup>

Finally, it is also important to note that in addition to convicts sentenced to life imprisonment with parole, the number of convicts sentenced to life imprisonment without parole has been increasing year by year as well: while in 2013 46 persons were completing their life imprisonment without parole, at the end of 2018 there were 57 prisoners (0,43 % of the total prison population) sentenced to real/ actual life imprisonment as the most severe legal consequence of the Hungarian regulation.

### 3. THE FIXED-TERM IMPRISONMENT

As a preliminary point we shall mention that the current Criminal Code compared to the previous Penal Code (Act IV of 1978) brought about stricter regulations in respect of fixed-term imprisonments as well. Thus, the Criminal Code increased the general minimum term from two to three months in case of adult offenders,<sup>22</sup> while the general upper limit of fixed-term imprisonments increased

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<sup>19</sup> Art. 46/H of the Law Enforcement Act

<sup>20</sup> [art. 46/B, para. 1 of the Law Enforcement Act], i.e. 40 years shall elapse of the imprisonment punishment.

<sup>21</sup> In the case of T. P. and A. T. v. Hungary (Applications nos. 37871/14 and 73986/14, judgment of 4 October 2016) the Court found that, in view of the lengthy period the prisoners were required to wait before the commencement of the “mandatory clemency procedure“ (i.e. 40 years), coupled with the lack of sufficient procedural safeguards, the prisoners’ life sentences could not be regarded as de facto reducible as required under Article 3 of the Convention.

<sup>22</sup> The general minimum of fix-term imprisonment is harmonized with the maximum duration of confinement as a penalty (90 days). I would also mention here, that in case of juvenile offenders (those who have not attained the age of 18 years when committing the criminal offence) the overall



from 15 to 20 years.<sup>23</sup> In addition, the act continues to ensure the possibility to increase the upper limit, but the insurmountable maximum duration is currently 25 years. Pursuant to the current legislation the act allows the upper limit of the 20-year imprisonment to be increased in case of crimes committed as part of a criminal organization; special<sup>24</sup> or multiple recidivist<sup>25</sup>; aggregate penalty<sup>26</sup> and subsequent aggregated penalty<sup>27</sup>.

In Hungary there are three different basic enforcement degrees of the severity of imprisonment in the Hungarian penal system. According to the Penal Code (art. 35, para. 1), if the court imposes a sentence of imprisonment, it shall be enforced in low-security, medium-security or high-security penal institution.<sup>28</sup> For example, in case of life imprisonment a sentence shall be served in a high-security penal institution, or imprisonment imposed for a misdemeanour shall be enforced in a low-security penal institution, unless the convict is a recidivist<sup>29</sup>. In line with the relevant criteria of the Penal Code, the enforcement degrees of the imprisonment are determined by the sentencing court.<sup>30</sup> An important factor is, that with

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minimum of fix-term imprisonment is one month, which is applicable to each criminal offence and this minimum also harmonized with the maximum duration of confinement as a penalty (30 days).

<sup>23</sup> In case of juvenile offenders the longest possible duration of fix-term imprisonment depending on the range of penalty applicable to the certain criminal offence and whether the perpetrator has turned sixteen at the time of the perpetration (Penal Code, art. 119, para. 2-3).

<sup>24</sup> A recidivist shall be considered a special recidivist if he committed the same criminal offence or similar criminal offences both times (Penal Code, art. 459, para. 1, it. 31. a)].

<sup>25</sup> According to the Penal Code (art. 459, para. 1, it. 31. b) a person shall be considered a multiple recidivist, if he/she has already been sentenced to immediate imprisonment as a recidivist prior to committing the intentional criminal offence, and the period between his last sentence being served or its enforceability being terminated and the perpetration of the new criminal offence punishable by imprisonment is shorter than three years.

<sup>26</sup> If the perpetrator realizes more than one criminal offence by more acts that are adjudged in the same proceeding and only one penalty shall be imposed (concurrence of criminal offences).

<sup>27</sup> If the offender had realized criminal offences that were not adjudged in the same proceeding although the possibility to do so would have been given, the aggregated penalty shall be imposed subsequently. According to the Penal Code (art. 93, para. 1) if the perpetrator is subject to multiple sentences of fixed-term imprisonment, the final and binding sentences shall be accumulated in line with the provisions of the Act if the perpetrator committed all criminal offences prior to the announcement of the earliest first instance conclusive decision.

<sup>28</sup> According to the enforcement degrees of the imprisonment the majority of the prisoners held in medium-security prison (54%), 36% of the convicts belonged to the strictest category (high-security prison) and the number of those under low-security regime represented the smallest proportion in 2018. Source: The Yearbook of Hungarian Prison Service, 2018, 12.

<sup>29</sup> In legal terminology the perpetrator of an intentional criminal offence shall be considered a recidivist if he/she has already been sentenced to immediate imprisonment for committing an intentional criminal offence, and the period between his/her sentence being served or its enforceability being terminated and the perpetration of the new criminal offence is shorter than three years (Penal Code, art. 459, para. 1, it. 31).

<sup>30</sup> The different enforcement degrees of the imprisonment are determined by the court, but the concrete penal institution appointed by the law or by a measure of the national commander.

regard to the circumstances, which are taken into account at sentencing, the penalty may be ordered to be enforced in a penal institution one level below or above the security level specified in the Penal Code.<sup>31</sup>

However, it shall be considered as a positive aspect that the current Criminal Code discontinues the regulation of the former Criminal Code which specified the earliest date of conditional release corresponding to the type of incarceration, namely by stipulating an objective condition, namely that in case of high-security penitentiaries at least four fifth, in medium-security penal institution at least three quarters, and in low-security penal institutions at least two thirds of the sentences had to be completed.

According to the current regulation (art. 38, para. 2 of the Criminal Code) convicts who are not recidivist offenders completing fixed-term imprisonment sentences shall serve two thirds of their sentences, while recidivist offenders – considering their criminal history – shall serve three quarters of their sentences, but at least three months. In addition, in cases deserving special consideration the sentencing judge may allow conditional release after completion of half of the sentence as well. While the former Criminal Code allowed this kind of parole in case of fixed-term imprisonments of less than three years, the current Code increased the duration of the imprisonment imposed to fixed-term imprisonments of less than five years, thereby expanding the scope of application. At the same time this provision shall not apply if the convict is a multiple recidivist.

In addition to the objective criteria of granting conditional release there is a subjective condition, namely a particularly good prognosis for the future life of the convict. Hungary has a discretionary early release system and the decision to conditional release falls within the competence of the penal execution judge. When taking the decision, the penal execution judge may primarily take into account the opinion of the penal institution, while examining the statement of the prisoners and also other objective circumstances (such as family circumstances of the inmate, the possibilities of employment).

According to the Penal Code (art. 38, para. 4) several groups of offenders are excluded from conditional release, such as multiple recidivist, who serve their fix-term imprisonment in a high-security penal institution; violent multiple recidivists; convict who committed the criminal offence in a criminal organisation; and also a convict who was sentenced to imprisonment for an intentional criminal offence committed after being previously sentenced to immediate fix-term imprisonment, but before the enforcement of the sentence was completed or its enforceability ceased.

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<sup>31</sup> The types of basic enforcement degrees among others differ by the degree of the severity of detention and supervision; segregation from the outside world; movement within the premises of the prison; life regime, amount of money allotted for personal needs; rewards and disciplinary sanctions, participation in the prison activities, reintegration's programs. The strictest rules are applied in high-security penal institutions and the most lenient rules in low-security prisons.

A provision influencing the duration of fixed-term imprisonments, which evidently has a negative influence, is the so-called rule of median sentencing (art. 80, para. 2 of the Criminal Code). The point of this rule is that where a sentence of imprisonment is delivered for a fixed term, the median of the prescribed scale of penalties shall be applicable for the court, with that the median constitutes half of the sum of the lowest and highest limits of the punishments to be imposed. Therefore, the body applying the law shall start from this median, which targets the judges' room for decision-making. With this rule the legislator intended to change the sentencing practice the legislator deemed lenient, considering that the courts imposed punishments close to the lower limit of the punishments if in case of the criminal offence committed mitigating and aggravating factors were equally prevalent. The median causes uniformly stricter adjudication, as it is applicable in all criminal offences, therefore, among others, it bears no significance whether the criminal act is negligent or intentional. Thus, the judge shall base the sentencing on the median of the punishment and not the minimum thereof, and judges are obliged to provide reasoning in respect of the reasons and circumstances in case of any deviation.

#### 4. PROVISIONS ON RECIDIVIST

As a preliminary point we shall mention again that several provisions of the current Criminal Code brought about stricter regulations in respect of recidivist offenders. Thus, for example, the possibility of conditional release is now excluded in case of not only violent multiple recidivist but also in case of multiple recidivist, provided that their imprisonment is to be executed in a high-security correctional facility. The same applies to the suspension of execution of imprisonment<sup>32</sup>: currently all multiple recidivists are excluded from this advantage, and the probation and reparation work<sup>33</sup> as preventive measures shall no longer be used in respect of any recidivist categories.

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<sup>32</sup> According to the law the enforcement of a sentence of imprisonment of not more than two years may be suspended for a probationary period if, with special regard to the personal circumstances of the perpetrator, there is a reasonable ground to believe that the objective of punishment can be achieved even without enforcing it (Penal Code, art. 85, para. 1).

<sup>33</sup> Reparation work is a relatively new preventive measures of the Hungarian sanction system. This preventive measure is may be considered as special type of conditional discharge, because the court may postpone sentencing the perpetrator of a misdemeanour or a felony punishable by not more than three years of imprisonment for a period of one year and order the performance of reparation work if there is a reasonable ground that the objective of punishment can also be achieved in this way. See more on this Hegedűs István, "A jóvátételi munka elméleti és gyakorlati problémái", A jogegység szolgálatában, Kónya István ünnepi kötet (Varga Zoltán szerk.), HVG-Orac, Budapest 2014, 93.

Violent multiple recidivists shall be considered separately, which category is the most strictly regulated by the Hungarian legislation.<sup>34</sup> Multiple violent recidivists are repeat offenders who have committed crimes against the person on all three occasions previously. The basis of the violent multiple recidivist classification is the violent criminal offence against a third person which the offender had committed within three years of the sentence imposed on him as recidivist offender due violent criminal offence against the person being served or the enforceability of such sentence expiring. Violent multiple recidivist is multiple recidivist and shall be considered a special recidivist also, because as recidivist committed the same or similar violent criminal offence against the person both times.

The rigour of the law shows, for example, in that in case of violent multiple recidivist there is no possibility to apply any other punishment instead of imprisonment imposed due to criminal offences punishable by up to three years of imprisonment, meaning, that the court is obliged to impose imprisonment sentences in case of such criminal offences of lesser gravity as well (Penal Code, art. 90, para. 1). In addition, violent multiple recidivist sentenced to fixed-term imprisonment or life imprisonment cannot be released on parole [Criminal Code, art. 38, para. 4, it. b) and art. 44, para. 2, it. a)].

In case of special recidivists, multiple recidivists and violent multiple recidivists the upper limit of the fixed-term imprisonment is increased at a specific rate. In respect of special recidivists and multiple recidivists the upper limit of the punishment of the additional criminal offence shall be increased by half in case of imprisonment, meanwhile in respect of violent multiple recidivists the upper limit of the punishment of the criminal offence substantiating the violent multiple recidivist status shall be doubled. In addition, if the upper limit of the punishment so increased reached 20 years, then without allowing discretion, the court shall impose a life sentence (Criminal Code, art. 90, para. 2). The same rule applies if the criminal offence concerned is also punishable by life imprisonment, meaning that it is mandatory to impose life imprisonment in such cases as well. Therefore, by not allowing discretion for the court and making it mandatory to impose the most severe punishment, the current regulation seriously violates the principle of judicial independence and at the same time substantially contributes to the increase in the number of life imprisonment punishments.

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<sup>34</sup> See Nagy Ferenc, “Alkotmányosan megkérdőjelezhető szabályokról az új Btk. kapcsán“, *Emberek őrzője, Tanulmányok Lőrincz József tiszteletére* (Hack Péter, Koósné Mohácsi Barbara szerk.), ELTE Eötvös Kiadó, Budapest 2014, 129-130.; Márok Soma, “Sanctions against Recidivists in the Hungarian Criminal Code – the Three Strikes Law“, *Bosphorus Seminar, Papers of a bilingual seminar on comparative criminal law* (Karsai Krisztina, Szomora Zsolt szerk.), SZTE-ÁJTK, Szeged 2015, 84.

In respect of re-offending more than half of the inmates was first time offenders in 2018, 6% was repeat offender not classified as recidivist, while recidivists represented approximately 42% of the prison population, of whom 8,58% was recidivist, 18,33% was multiple recidivist, 12,4% was special recidivist and 2,71% was violent multiple recidivist.<sup>35</sup>

At the end worth mentioning that the strictness of the substantive law act shown towards convicts sentenced to life imprisonment and multiple violent recidivists is also represented in several regards in the provisions of the current law enforcement code, which entered into force on 1<sup>st</sup> January 2015. Thus, for example, for important reason – in particular the personal or family circumstances, health condition of the convict – the Hungarian regulation provides opportunity to interrupt the execution of imprisonment *ex officio* or upon request. However, this legal instrument shall not be applied in case of those defendants sentenced to life imprisonment without parole (Law Enforcement Code, art. 116, para. 3).

The so-called change of the enforcement degree also shall not apply to convicts sentenced real life imprisonment.

Another important law enforcement instrument and educational tool is the so-called change of the incarceration type, the point of which is upon the decision of the judge in charge of overseeing the conditions and enforcement of sentences the type of incarceration the convict is sentenced to may be prescribed one degree up or down. The educational character of the incarceration type change is manifested in that the possibility of being placed under a more lenient or stricter regime may motivate convicts to show appropriate behaviour during their detention. At the same time the Law Enforcement Code excludes violent multiple recidivists, offenders who had committed the criminal offence as members of a criminal organization, as well as convicts sentenced to life imprisonment without parole from the possibility of being subjected to a more lenient type of incarceration. [art. 115, para. 2, it. d), f) and g)]. Therefore, in case of convicts as listed above, the type of incarceration cannot be changed from high-security penitentiary to medium-security prison, or from medium-security prison to low-security prison, even despite impeccable behaviour.

Finally, it shall be mentioned that the Law Enforcement Code excludes violent multiple recidivists from those forms of rewards as well, which ensure leaving the penitentiary institution. Therefore, day parole, temporary absence, and hosting guests in the penitentiary institution cannot be permitted to this detainee category [art. 180/A., para. 1, it. d)].

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<sup>35</sup> Hungarian Prison Service, *Review of Hungarian Prison Statistics 1/2019*, 11.

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## Главне карактеристике система кривичних санкција у Мађарској

**Сажетак:** Циљ ове студије је да илустрира главне одлике система кривичних санкција у Мађарској, иако је са фокусом на нека проблематична питања иренуитној система санкција у вези са завором на одређено време и доживотним завором, као и на казнену природу Кривичног закона.

**Кључне речи:** систем кривичних санкција, завор на одређено време, доживотни завор, поворник, казнено кривично право.

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