| Chapter 9 |

Hungary: National Regulations in the Shadow of a Common Past

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ABSTRACT

Hungarian criminal legislation underwent substantial changes in the process of replacing the former socialist law enforcement principles with the rule of law. It is against this background that the new Criminal Code (Act C of 2012), Criminal Procedure Code (Act XC of 2017), and Penal Code (Act CCXL of 2013) were drafted. Accordingly, this study analyzes the provisions of the new Criminal Code, Criminal Procedure Code, and Penal Code in detail independently and in their context. After analyzing the general part of the Criminal Code, the study analyzes certain groups of crimes and the statistics associated with them. After addressing the criminal law questions, the main characteristics of Hungarian criminal procedure law are analyzed. Of these, it is worth highlighting the issue of the principles of criminal procedure law, the stages of the Hungarian criminal procedure, the possibilities of diversion in Hungarian criminal proceedings, and the characteristics of judgment. After the rules of the Criminal Procedure Code, the study describes the purpose and principles of penitentiary law and the Hungarian prison system in detail. The work concludes with a presentation of the main provisions of international criminal cooperation. In Hungary, the main sources of basic criminal science during the regime change in the 1990s were derived from the 1970s. Therefore, the sources of the criminal sciences require major revision. Nonetheless, legislation needs to change constantly to keep up with the challenges of a changing society.

KEYWORDS

Hungary, criminal justice, criminal law, criminal procedure, prison law

1. Criminal sources in Hungary after the regime change

In Hungary, the main sources of basic criminal science at the time of the 1990s regime change were derived from the 1970s: Act IV of 1978 on the Criminal Code[1], Act I of 1973 on Criminal Procedure[2], and Decree-Law No. 11 of 1979 on the Enforcement of

1 Old Criminal Code.
2 Old Criminal Procedure Code.

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Sentences and Measures.[3] Three important lessons can be drawn from these three sources of law: not only did the sources of all three basic sciences need major revision (as they date from the 1970s), but interestingly, the Criminal Procedure Code, which enforces the rules of substantive criminal law, predates the Criminal Code, and the rules on the execution of sentences, which entail substantial restrictions on fundamental rights, are not even regulated by law.

Prior to the regime change in 1990, the above legislation underwent substantial changes to replace the former socialist law enforcement principles with the rule of law. Accordingly, before being replaced by the new legislation, the old Criminal Code was amended in a total of 1,078 places, the old Criminal Procedure Code in 701 places, and the old Prison Law in 455 places (with several parts revised in some portions). This partly made the transition possible, but the large number of amendments anticipated the need for new legislation.

This was first done, somewhat thoughtlessly, by recasting criminal procedural law. This codification can be considered to have been ill-considered in two ways: on the one hand, the rules of criminal procedure must always be adapted to the substantive rules in force; that is, it was known at the time of the drafting of the next Criminal Procedure Code[4] that a new Criminal Code would require recodification of the procedural law. On the other hand, the text of the Criminal Procedural Code itself was unprepared. This is reflected in the fact that, in an unprecedented manner, when it entered into force on July 1, 2003, the text adopted by Parliament and published in the gazette of Hungary had already been amended in 877 places. In the meantime, the most important legal provisions and amendments of this Criminal Procedure Code had been incorporated into the text of the old Criminal Code, which was in force until that point; therefore, there was no justification for the drafting and enactment of this Act before the codification of the new Criminal Code.

2. The main sources of the Hungarian criminal justice system

It is against this background that the new Criminal Code (still in force) was drafted. Act C of 2012[5] explains that the old Criminal Code had been amended more than 90 times over the past three decades and had been affected by more than 10 Constitutional Court decisions. These changes had amended, introduced, or repealed more than 1,600 provisions by the time the new Criminal Code was enacted. However, it was not only this almost opaque and often contradictory dumping of amendments that led to the creation of the new Criminal Code but also the fact that since the regime change, different governments have been revising the criminal law provisions (often

3 Old Prison Law. This chapter does not intend to deal with the criminal sciences in detail; it only reviews the sources of criminal law. For those interested in the state of the criminal sciences at the time of the regime change, see Jakab, Takács and Tatham, 2007, pp. 191–252.

4 Act XIX of 1998.

5 Criminal Code, hereinafter referred to as CC.

contradicting each other) in line with different criminal policies, and the amendments have significantly altered the original system of the law (the sentencing system, the chapter on economic offenses,[6] and even the chapter on offenses against the person have been transformed). The requirements arising from scientific progress and the harmonization of the law in the context of accession to the European Union have also been taken into account, as have the challenges posed by the rise of organized crime, as the Explanatory Memorandum states.

However, the CC did not represent a complete dogmatic break with the old Criminal Code, and accordingly, many basic institutions were not only retained but often literally adopted.

As in continental countries, the CC regulates the conditions for criminal liability, the penalties, and all punishable offenses in a single law. The only exception to this is Act CIV of 2001 on Criminal Measures against Legal Persons.[7]

A further change compared to the old Criminal Code was that while the previous Act also contained provisions of a penal enforcement nature (e.g., the subsequent determination of one more severe or one more favorable degrees of enforcement of imprisonment, the list of reasons for excluding the enforcement of the sentence, etc.), the new CC does not contain such provisions. Likewise, procedural issues have been removed (e.g., the rules of procedure for the criminal liability of diplomatic and other persons enjoying immunity under international law are contained in the Criminal Procedure Code, while procedures with an international dimension are dealt with in a separate law).

The CC retains the dual structure of the old Criminal Code: the general part deals with the scope, criminal liability (the subjects), and sanctions, while the special part lists the basic, qualified, and privileged cases of each offense as well as their punishable offenses. In addition, the Final Part of the CC contains provisions interpreting, enacting, repealing, etc.

As previously mentioned, the general part of the CC has not been conceptually revised, although there have been significant changes to the system of sanctions. Unfortunately, this law did not fully meet the need for a broad introduction of alternative sanctions, and the increase in sanctions in practice was rather a self-imposed extension of the previous forms.[8]

After the accept of the CC, there was also a demand for the creation of a corresponding code of criminal procedure and prison law as soon as possible. In the case of the Code of Criminal Procedure, the first codification attempt stalled, and after several years of preparatory work, a new Codification Committee was convened. Thus, the Prison Law preceded the new Code of Procedure. According to the

6 Elek, 2008, pp. 219–233.

7 Interestingly, under socialism, until 1961, the system was different, with the general part in a separate law, the individual offenses in separate laws, and even the framework provisions being supplemented by additional legislation.

8 According to some authors, the law of misdemeanors (petty offenses) is also part of criminal law, but I do not agree with this view.

Explanatory Memorandum, the aim in drafting Act CCXL of 2013 on the Enforcement of Penal Sanctions, Measures, Certain Coercive Measures, and that of the Procedure for the Execution of Offenses[9] was to create a law harmonizing the legal provisions introduced by the CC and creating a unified system with the CC, which would place the enforcement of sentences on new footing in line with the new sanctions and other amendments. In addition to the Code, the Explanatory Memorandum states that international documents had to be taken into account when drafting the Prison Law.

As it has been almost three and a half decades since the previous law on the execution of sentences was drafted, and it did not even contain the rules of the execution of sentences in a legal form, the drafting of a new law was almost more inevitable than the CC. However, it was not only the Prison Law itself that was not at the level of a law; certain institutions restricting fundamental rights in the context of the penitentiary system were often regulated by ministerial decrees (see, for example, certain provisions on the healthcare of prisoners or the fundamental rights of pupils in reformatories).

Finally, the third was the recodification of the provisions on criminal procedure. The Act XC of 2017 on criminal proceedings[10] has significantly altered criminal procedure in both its structure and its content. The Act XIX of 1998 on criminal proceedings followed the earlier (socialist) criminal procedure laws (in contrast with the basic concept), the traditional investigation (intermediate procedure) governed the criminal procedure within a judicial procedure system. However, effective laws allow for a great deal more leeway for criminal procedures based on agreement; confession by the defendant (acceptance of the facts) enables a number of simplifications. Through this, the progression of the criminal procedure (possible outcome) is significantly more complicated and diversified as in the earlier linear procedure.

The main reason for the drafting of the Criminal Procedural Code was also the need to create procedural law that was in line with the rules of the CC. However, the Explanatory Memorandum also highlights other aspects. Among the most important of these is the timeliness of the proceedings, and to this end, the Act contains numerous provisions to simplify and accelerate criminal proceedings. Most of these have been proven in practice, in particular the acceleration of the judicial process. In addition, the legislature has emphasized the more consistent enforcement of the requirement of the separation of functions, the creation of the possibility of cooperation in the enforcement of charges, and the greater enforcement of victims' rights as codification aspects.

In addition to the three main areas of criminal law (criminal law, criminal procedure, and penitentiary law), numerous other sources of criminal law exist.

9 The Prison Law, hereinafter referred to as PL.
10 Criminal Procedure Code, hereinafter referred to as CPC.

The international treaties and recommendations and the Fundamental Law[11] of Hungary have a vital influence. These set out the primary framework of criminal law (criminal procedure and enforcement) not only by specifying the primary human rights to be respected in criminal procedure (and enforcement) but also (especially in the international recommendations) by laying down some detailed requirements.[12]

In addition to these main rules, which provide guidance in principle, a number of criminal laws should be mentioned. The most important of these are the organizational laws, as the legal status of the main actors in criminal proceedings in Hungary is regulated by law. These include Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Act CLXIII of 2011 on the Public Prosecutor's Office, Act XXXIV of 1994 on the Police, and Act LXXVIII of 2011 on the Activities of Attorneys 2017. It can be seen that the codification wave of the 2010s (with the exception of the police) has also reached the main subjects of criminal proceedings.

In addition to organizational laws, there are also laws on other subjects related to criminal proceedings. Some are regulated at the statutory level (e.g., Act XXIX of 2016 on the activities of forensic experts), while others are regulated at a lower level (e.g., IRM Regulation 14/2008 [VI. 27] on the reimbursement of witnesses).

3. Authorities acting in criminal proceedings

The circle of the criminal procedure's subjects consists of authorities and natural or legal persons, respectively, as well as organizations without legal entity that in some quality partake in the procedure. The circle of subjects can principally be divided into two main groups:

Subject of the investigation		
Authorities	**Participants**	
	Main person	Subsidiary person
1. investigating authority 2. prosecutor 3. court 4. other organisations	1. defendant (person reasonably suspected of having committed a criminal offense) 2. defence counsel 3. victim (private prosecutor/substitute private prosecutor, private party) 4. representative of victim	1. relatives (e.g. of the defendant) 2. contributories in taking evidence (witness, expert) 3. interested parties: during criminal procedure and based on the decision and person that has become a participant in the procedure (e.g. party aggrieved by the investigation) 4. initiator of procedure (the denouncer)

11 It entered into force on April 25, 2011.
12 Bárd, 2008.

3.1. The investigating authority

During the preparatory procedure and the cleaning up, the investigating authority proceeds independently during the examining phase under governance of the prosecutor's office[13]. The head of the investigating authority is responsible for compliance with the instructions given by the prosecutor's office.

During investigation, we can differentiate general investigating authorities and special investigating authorities:

1. The general investigating authority is the police. The police proceed in all cases unless stipulated otherwise by legislative provisions.
2. Special investigating authorities can only proceed in case of particular crimes determined in the law. These extraordinary investigating authorities are the following:
   a) National Tax and Customs Office (e.g., tax fraud, violation of accounting order, bankruptcy fraud), which can also proceed as secondary investigating authority (i.e., for crimes committed within its competence, such as the forgery of official documents, the use of fake private documents, and money laundering)
   b) the captain of a vessel (aircraft) on a commercial vessel with Hungarian nationality insignia abroad or on a civilian aircraft can proceed in the case of a crime under Hungarian jurisdiction
   c) military commander: if the investigation is not carried out by the prosecutor's office, the commanding officer can be the investigating authority[14] by way of the investigating body or the representing investigating officer

A separate law determines which of the investigating authorities can proceed (e.g., local [urban or district] police stations, district [provincial or metropolitan] police headquarters, and National Police Headquarters) in a given case.

During the preparatory procedure and investigation, in addition to the investigating authority, the prosecutor, and the investigating judge, the following bodies can proceed a) during preparatory procedure: bodies authorized to apply covert instruments[15]; b) within the management of criminal assets, the body responsible for the handling of corpus delicti and criminal assets[16]; c) before indictment and upon request of the prosecutor's office (investigating authority), the body of the investigating authority responsible for the recovery of assets carries out the procedure for the reconnaissance and insurance of objects seized.[17]

13 Section 31 Subsection 2 of CPC.
14 Section 701 Subsection 1 of CPC.
15 Section 36 Subsection 1 of CPC.
16 Section 36 Subsection 2 of CPC.
17 Sections 353–354 of CPC.

3.2. The prosecutor's office

The prosecutor does not only carry out classic public prosecutor's tasks in the criminal procedure but also it carries out preparatory procedures and investigates; it supervises, directs, and instructs; it carries out prosecution representation tasks.

In addition, the prosecutor has important responsibilities in the execution of sentences.

Ad. a) In certain cases, the prosecutor carries out the preparatory procedure. The prosecutor also investigates the following: the prosecutor can take over investigation in any case[18]; in certain cases, only the prosecutor can investigate (crimes that fall under the scope of the investigative competence of the prosecutor's office, such as certain crimes committed by or affecting certain judicial employees, cases in connection with immunity, and certain crimes of corruption[19]).

Ad. b) In certain investigative phases, the prosecutor's supervision-direction-instruction scope of activities are governed differently in the CPC: during cleaning up, the prosecutor oversees legitimacy[20]; during examination, the prosecutor now not only supervises but directs as well[21]; apart from the above-mentioned, the prosecutor also has the right to instruct if they carries out the investigation themselves.

Ad. c) The prosecutor's office may modify the charge before making the final decision at the latest[22] according to the following: the prosecutor's office can amend the charge if it suspects that the accused is guilty in other crime or the classification in the indictment needs to be modified (at that point, the trial may be adjourned at the motion of the prosecutor or the defense); the prosecutor's office can expand the charge if it suspects that the accused is guilty in other crime in addition to the one they are charged with (at that point, the trial must be adjourned at the motion of the defense for at least eight days unless the procedure with respect to the expanded crime is compensated).

The prosecutor may drop the charge (before adoption of the final decision at the latest;[23] if the object of the charge is not a crime; the crime wasn't committed by the accused; the crime is not indicted by the public prosecutor.

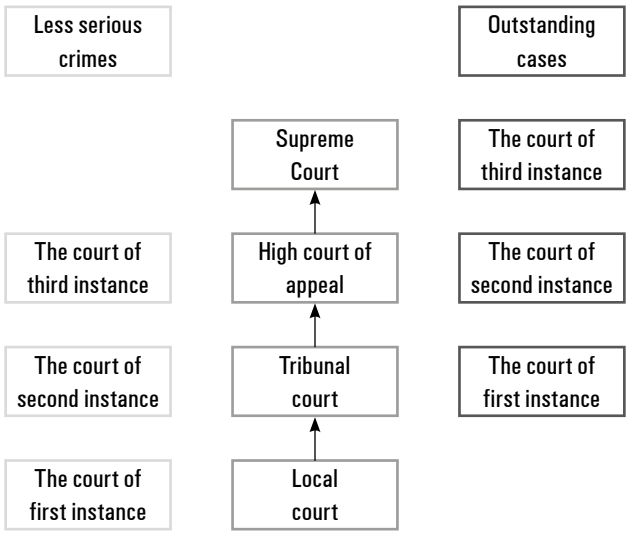
3.3. The court

According to Section 11 of CPC, the main task of the court is to provide justice (i.e., ruling in criminal cases and decisions on criminal liability). At the same time, the court also carries out other tasks determined in the CPC in connection with criminal proceedings (e.g., as investigating judge), and the court has a special role to play in enforcing the sentence.

18 Section 26 Subsection 5 of CPC, Section 349 of CPC.
19 Section 30 of CPC.
20 Section 25 Subsection 2 of CPC.
21 Section 25 Subsection 2 of CPC.
22 Section 538 of CPC.
23 Section 539 of CPC.

In the course of the pre-trial, the court with the same competence and jurisdiction shall proceed as that which later makes a decision on the merits of the case. The court entitled to proceed is defined in three aspects: a) legal authority: the Hungarian courts can proceed in cases falling under Hungarian authority, the rules of which are determined by Section 3 of the CC; b) competence: subsequently to legal authority (that is, if a Hungarian court may proceed in the case), what organizationally structured court should proceed must be clarified (the local court, tribunal court, high court of appeal, or Supreme Court); c) jurisdiction (territorial competence): finally, if the question of competence has been clarified, the final question is which of the courts with the same organizational structure (that is, more than 100 local courts, exactly 20 tribunal courts, and five high courts of appeal) should proceed.

The competence of the proceeding courts is illustrated in the following diagram:



The local court disposes of the general competence of first instance[24]. As the diagram shows, the tribunal court proceeds in the first instance in outstanding cases. The definition of the court of first instance appoints the court proceeding in the second and, contingently, the third instances, and there is no departure from that (prohibition against secession).

The court adjudicates in the first instance on the merits as a single judge or in council, while in a legal remedy procedure is always adjudicated in council[25]:

24 Section 19 of CPC.
25 Section 13 of CPC.

In the first instance	In the second and third instance
• single judge (generally) • three professional judges (if the single judge remitted the case to the council of the court) • special council (economic and business case, criminal procedure against juvenile offenders, militarv criminal orocedure)	• small council (3 professional judges) • large council (5 professional judges)

During investigation (before indictment) the investigating judge decides on questions that were referred to the jurisdiction of the court. This is the local court judge that is appointed by the head of the tribunal court[26]. In the case of military criminal procedures, this is the military judge of the tribunal court[27].

The investigating judge's decision can have two forms[28]:

1. Session for priority questions:
   a) ordainment of coercive measures bound to judicial consent concerning personal freedom (except if a milder measure than the earlier one is motioned)
   b) prolonging detention (based on new circumstances or following six months)
   c) ordainment of the monitoring one's of mental state
   d) ordainment of continuation of procedure due to a breach of cooperation (except if the person breaching cooperation resides in an unknown place or if the prosecutor does not motion for a session)

2. Passes the decision based on the documents in all other questions referred to its jurisdiction:
   a) excluding the defense counsel
   b) special protection of witness
   c) obliging the person that denies testimony to disclose the identity of the person providing information
   d) issue and recall of European and international arrest warrants
   e) judging motions of revision
   f) changing a fine into incarceration
   g) ordainment of the continuation of a terminated procedure (except if a session is to be held)
   h) tasks regarding the application of covert instruments that are bound to judicial permissions
   i) in other cases specified by law

26 Section 463 of CPC.
27 Section 713 of CPC.
28 Sections 464–467 of CPC.

4. Main features of Hungarian criminal law

4.1. Basic principles of criminal law

In the context of the principles of criminal law, Mészáros first mentions that criminal law is permeated[29] not only by fundamental principles but also by the so-called fundamental principles of law. Such fundamental legal principles are the rule of law (legal certainty and justice[30]) and the principle of humanity (the sanction imposed on the offender must not violate human dignity).

The specific principles of criminal law are as follows: a) the principle of legality (legality); b) the principle of responsibility for action (principle of individual responsibility for action); c) the principle of liability based on fault (principle of liability based on individual fault) d) the ultima ratio nature of criminal law; e) the principle of proportionality; f) the prohibition of double assessment (ne bis in idem); g) the principle of in dubio mitius.[31]

The principle of legality is enshrined in Section 1 of the CC. Accordingly, the criminal liability of the accused may only be established for an act that was punishable by law at the time that it was committed (nullum crimen sine lege). An exception to this general rule is made for acts punishable under generally recognized rules of international law. In essence, the same is stated in Article XXVIII Subsection 4 of the Fundamental Law, according to which no one shall be held guilty or punished for an act that, at the time it was committed, was not a criminal offense under Hungarian law or the law of another State (within the scope of an international treaty or an act of the European Union). At the same time, Article XXVIII Subsection 5 of the Fundamental Law also allows for criminal liability for an act that, at the time that it was committed, was a criminal offense under the generally recognized rules of international law even if it did not constitute a criminal offense under the Hungarian CC in force at the time that the offense was committed.

No penalty may be imposed or measure taken for the commission of a criminal offense that was not provided for by law at the time that it was committed (nulla poena sine lege). Here as well, there is an exception because according to Section 2 of the CC, although, as a general rule, an offense must be judged in accordance with the criminal law in force at the time of its commission, if the new criminal law in force at the time of the judgement of the offense provides that the offense is no longer a criminal offense or is to be judged more leniently, the new criminal law must be applied. In the latter case, a sanction may be imposed that was not provided for in the law at the time

29 Mészáros, 2005, p. 6.

30 Others argue that the rule of law itself and equality of rights are part of the rule of law; see A büntetőjog alapelvei.

31 This principle (like the ne bis in idem principle) is considered by many to be more of a criminal procedural requirement embodied in the principle of in dubio pro reo (the obligation to rule in favor of the accused in case of doubt); see Fenyvesi, Herke and Tremmel, 2004, p. 81.

of the offense but was provided for in the law at the time of the conviction, and this means a lighter sentence for the accused.

The principle of responsibility for the act, the principle of liability based on guilt, and the principle of proportionality are reflected in Chapter IX of the CC on the imposition of penalties. Section 79 of the CC states that the purpose of punishment is to prevent either the offender or another person from committing a crime to protect society. Accordingly, within the limits set by the CC and bearing in mind its purpose, the penalty must be imposed in such a way that it is commensurate with the material gravity of the offense, the degree of culpability, the offender's danger to society, and other mitigating and aggravating circumstances[32].

The ultima ratio nature of criminal law appeared in Hungarian law[33] soon after the regime change. Its foundations were laid by the Constitutional Court in its decisions 1214/B/1990, 23/1990 (X. 31) and 30/1992 (V. 26). Although these decisions pre-date the entry into force of the current Fundamental Law and have thus lapsed, this does not impact the legal effects of these decisions.[34]

According to the Constitutional Court's Decision No. 1214/B/1990, the extent of the restriction of rights by means of punishment must also comply with the principles of proportionality, necessity, and ultima ratio. Decision No 23/1990 (X. 31) of the Constitutional Court, which ruled that the death penalty was unconstitutional, also touches on the principle of ultima ratio, stating that "the social function of criminal law is to be the sanctioning pillar of the legal system as a whole." The role and function of criminal sanctions is "to maintain the integrity of legal and moral norms when other legal sanctions no longer help."

The principle of ultima ratio is discussed in detail in the Constitutional Court's Decision No. 30/1992 (V. 26). According to this decision, criminal law is the ultima ratio in the system of legal liability or, as Ferenc Nagy puts it, "the last resort in the last place."[35] The role and function of criminal sanctions, that is, of punishment, is to maintain the integrity of legal and moral norms when sanctions in other branches of law no longer help. An act can, therefore, be considered a criminal offense if the effects and consequences of the conduct on the individual and society are so serious that other forms of liability, such as the liability systems of criminal or civil law, are insufficient against the perpetrators of such conduct.

Ultima ratio can thus be interpreted on at least three levels: legislation is only necessary when no other instrument is adequate; if legal regulation is necessary, then criminal law can only be considered if no other legal system can resolve the issue; and if criminal law is absolutely necessary, more severe sanctions should be used only if less severe sanctions are not sufficient. In accordance with this line of thought,

32 Section 80 Subsection 1 of the CC.

33 Amberg, 2013, pp. 11–22.

34 "T Decisions of the Alkotmánybíróság delivered prior to the Fundamental Law entering into force shall be abolished. This provision shall be without prejudice to the legal effects of such decisions." See Closing and miscellaneous provisions of the Fundamental Law, Nr. 5.

35 Nagy, 2008, p. 59.

Karsai concluded that (because, with the abolition of the death penalty, imprisonment is the most severe punishment in Hungary) imprisonment itself functions[36] as an ultima ratio.

As previously explained, the ultima ratio principle is closely linked to the principle of proportionality. As Békés puts it, criminal law is the instrument of last resort, to be used only when necessary and then only within[37] the framework of proportionality. Wiener argues that necessity must be examined first, followed by whether it is really the instrument[38] of last resort. The Constitutional Court explained in its decision No 1214/B/1990 that the special part of the CC establishes the penalty limits according to the gravity of each offense and thus meets the proportionality requirements. The general rules on penalties in the general part of the CC and the normative rules on sentencing are an integral part of the CC's penal system. Together, the system of penalties adapted to the nature and gravity of each offense and the normative rules on sentencing serve the function of legal punishment under the rule of law: proportionate and deserved retribution through sanctions. Proportionate and deserved retribution can serve preventive punishment objectives. The increase in responsibility, which must be proportionate, necessary, and based on constitutional grounds, must not be cruel, inhuman, or degrading while taking the legal system of punishment as a benchmark.

The other principles of criminal law are regulated by the Criminal Procedural Code. In connection with the principle of ne bis in idem, Section 4 Subsection 3 of the CPC stipulates that criminal proceedings may not be initiated and criminal proceedings that have been initiated will be terminated if the offender's offense has already been finally adjudicated, except in the case of extraordinary legal remedies and certain special proceedings. According to Subsection 4, this provision also applies if the offender commits several offenses in one act, but the court does not find the accused guilty of all of the offenses (according to the qualification of the charge) that can be established according to the facts of the indictment. In fact, the prohibition of multiple prosecution under Section 4 Subsection 7 of the CPC and Article XXVIII Subsection 6 of the Fundamental Law applies within a much broader scope, as defined by international treaties or European Union acts.[39] According to Section 4 Subsection 7 of the CPC, criminal proceedings may not be instituted, and criminal proceedings shall be terminated if the offender's act has been finally adjudicated upon in a Member State of the European Union or a decision has been made on the merits of the act in a Member State that (under the law of the Member State that made the decision) prevents the institution of further criminal proceedings in respect of the same act or the continuation of criminal proceedings ex officio or on the basis of ordinary legal remedies. However, according to Subsection 8, this provision shall not apply if a final

36 Karsai, 2012, p. 260.
37 Békés, 2002, p. 51.
38 Bárd et al., 2002, p. 29.
39 Herke, 2021b, p. 161.

judgment given by a court of a Member State cannot be taken into account or the act was committed entirely in the territory of Hungary. In the latter case, the principle of ne bis in idem shall also apply if, in the event of conviction, the sentence imposed by the Member State has been executed, is being executed, or cannot be executed[40] under the law of the Member State that has given final judgment.

A fact not proven beyond reasonable doubt cannot be assessed against the accused, according to Section 7 Subsection 4 of the CPC. In relation to the principle of in dubio pro reo (in dubio mitius), we must make three restrictions: a) applies only to questions of fact (assessment of evidence), not to questions of law (i.e., the court is not obliged to apply the lighter standard in case of doubt); b) applies only to final decisions (not to other decisions, such as those ordering detention,[41] when the court decides); c) only after all legal means of proof have been exhausted (for example, if there is doubt between two statements, the court must first try to eliminate it by other means, such as confrontation).

Thus, subject to the above restrictions, if the evidence is scarce or contradictory, the court must determine the facts in a way that is more favorable to the accused.

4.2. Criminal liability: Obstacles to criminal liability

According to Section 4 of the CC, "criminal offense" refers to any conduct that is committed intentionally or (if negligence also carries a punishment) with negligence and that is considered potentially harmful to society and that is punishable under the CC.

There are three main elements to this concept: a) Intent: a criminal offense is committed with intent if the person conceives a plan to achieve a certain result or acquiesces to the consequences of their conduct[42]; negligence: a criminal offense is committed where the perpetrator can anticipate the possible consequences of their conduct but carelessly relies on the non-occurrence of those consequences or fails to foresee such possible consequences through conduct characterized by carelessness and neglectfulness[43]; harm to society: any activity or passive negligence that prejudices or presents a risk to the person or rights of others or the fundamental constitutional, economic, or social structure of Hungary provided for in the Fundamental Law[44].

There are two forms of statutory criminal offense in Hungary: felony and misdemeanor. The third, mildest form is the misdemeanor, which is not a criminal offense and is provided for by a separate law.[45] A felony is a crime committed intentionally

40 For details, see Herke, 2018, pp. 413–417.
41 Bagossy, 2016, pp. 15–20.
42 Section 7 of the CC.
43 Section 8 of the CC.
44 Section 4 Subsection 2 of the CC.
45 See Act II of 2012 on misdemeanors, the misdemeanor procedure, and the misdemeanor registration system. Because the terms "misdemeanor" and "misdemeanour" are very similar, several authors use the term "petty offense" for the latter.

that is punishable under this Act by imprisonment of two or more years. Every other criminal offense is a misdemeanor[46].

The offense has three stages. Compared to the completed offense, the closer stage is the attempt, and the more distant stage is the preparation. An attempt is a criminal offense if the person who commits the intentional offense starts but does not complete it. An attempt is punishable as a completed offense[47]. While an attempt is punishable in the same way as a completed offense, the offense of preparation is punishable only if the CC specifically provides for this in the case of the offense in question. An act of preparation is deemed to be committed if the accused, with a view to committing the offense, provides the necessary or facilitating conditions, invites, offers, undertakes or agrees to commit the offense jointly[48].

The CC divides the obstacles to criminal liability into three main categories: a) grounds for total or partial exemption from criminal responsibility; b) grounds for exemption from criminal responsibility; c) other obstacles of criminal prosecution.

Ad. a) According to Section 15 of CC, the perpetrator may be totally or partially exempt from criminal responsibility or an act may be fully or partly exempt from criminalization on the following grounds: being below the age of criminal responsibility, insanity, coercion and threat, mistake, justifiable defense, means of last resort, statutory authorization, and other grounds defined by law.

In the criminal law according to Section 12 of the CC, "perpetrator" means the parties to a crime (the principal, the covert offender, and the cofactor) as well as the accomplices (the abettor and the aider). In terms of becoming the defendant, age at the time of committing the crime has great significance:

1. childhood: childhood is an excluding factor for punishment; that is, a defendant under 14 when committing a crime in the majority of cases, and under[49] 12 in certain cases, cannot be punished and can, at most, be a witness in the criminal procedure;
2. juvenile: criminal procedures against juveniles can be carried out against the person that can make the above-mentioned distinction and is over 14/12 years of age but under 18[50], if the defendant was under 14 when committing the crime, or if the defendant has the capacity to understand the nature and consequences of their acts[51];

46 Section 5 of the CC.
47 Section 10 Subsections 1–2 of the CC.
48 Section 11 Subsection 1 of the CC.
49 Section 16 of the CC: homicide, voluntary manslaughter, battery if it is life-threatening or results in death, assault on a public official, assault on a person entrusted with public functions, assault on a person aiding a public official or a person entrusted with public functions, acts of terrorism, aggravated cases of robbery and plundering, and if the defendant lacks the capacity to understand the nature and consequences of their acts.
50 Section 678 of CPC.
51 The provisions of the Criminal Code concerning juveniles are different from the general ones and the aim and content of these special provisions is the upbringing and resocialization of juveniles.

3. adult: a defendant who, when committing the crime, was over the age of 18 (or if there are more criminal procedures pending and one of those was committed as a juvenile, but the defendant was 18 when committing at least one of the crimes).

Ad. b) According to Section 25 of the CC, the grounds for exemption from criminal responsibility are the death of the perpetrator, the statutory limitation, clemency, upon voluntary restitution, and under other grounds defined by law.

Among the grounds for decriminalization, active remorse should be highlighted because of its specificity. Active remorse is essentially grounds for decriminalization resulting from a successful mediation process. Mediation is a procedure designed to promote the agreement of the suspect and the victim, the reparation of the consequences of the crime, and the prospective law-abiding conduct of the suspect motioned by the suspect or the victim or applicable with their voluntary consent[52]. The conditions of the mediation procedure are contained partly in the CPC and partly in the CC:

Positive conditions (§ 412. CPC, § 29. Ss. 1-2 of Criminal Code)	**Negative conditions** (§ 712. CPC, § 29. Ss. 3 of Criminal Code)
1. In case of any of the six types of crime: • against against life, limb and health (Chapter XV. of Criminal Code), • against personal freedom (Chapter 18 of Criminal Code), • against human dignity and fundamental rights (Chapter XXI. of Criminal Code), • crime against traffic regulations (Chapter XXII. of Criminal Code), • against property (Chapter XXXVI. of Criminal Code), • against intellectual property rights (Chapter XXXVII. of Criminal Code) 2. The crime punishable with imprisonment not exceeding five years. 3. Motioned by/with the consent of the suspect and the victim. 4. The suspect has made a confession to the crime before the indictment. 5. Reparation of the consequences of the crime is expected (with regard to the nature of the crime, method of perpetration and the identity of the suspect) and the conduct of the judicial procedure is omissible / the mediation procedure is not contrary to the principles of the imposition of the punishment.	1. the defendant is repeat offender or habitual recidivist; 2. perpetration in criminal organization; 3. the crime caused death; 4. intentional perpetration during probation/ conditional sentence/ conditional prosecutorial suspension 5. participation in mediation procedure within two years 6. crime committed to the detriment military body in military criminal procedure

For the purpose of the conduct of the mediation procedure, the prosecutor's office may suspend the procedure on one occasion for six months, which shall be communicated

52 Section 412 of CPC.

to the probation officers' service with powers and competence for the conduct of the mediation procedure.

There are three possible outcomes of the mediation process:

1. Compensate the victim for the damage caused or otherwise make reparation for the harmful consequences of the offense; for a misdemeanor or a felony punishable by a maximum of three years, the prosecutor terminates the proceedings; for an offense punishable by more than three years but not more than five years, the prosecutor will prosecute, but there may be unlimited reduction of the sentence.
2. If the accused has begun to comply with the agreement reached as a result of the mediation procedure, but their criminal liability has not been terminated because the obligation contained in the agreement cannot be fulfilled during the period of suspension, the prosecutor's office may extend the period of suspension for a maximum of 18 months and will examine what measures may be taken at the end of the period at the latest.
3. If the mediation procedure has been completed during the period of suspension, and there is no reason to terminate or otherwise suspend the procedure (no agreement, unsuccessful mediation), the prosecution will order the continuation of the procedure.

Ad. c) The other obstacles of criminal prosecution are the lack of private motion or official complaint. A private motion is any statement by the victim that they wish to punish the perpetrator of the offense against them.

These obstacles are not, in fact, substantive obstacles but procedural ones; there is a historical reason why they are regulated in the CC, and unfortunately, this dogmatic error has not been remedied in the course of the recent codifications.

4.3. The system of sanctions under the Criminal Code

The system of sanctions is the set of laws that govern the various criminal penalties as well as their application and enforcement. The Hungarian system of sanctions has three characteristic features: a) This is a dual system of sanctions: sanctions can be penalties or measures. Both types of sanction are aimed at prevention, but punishment can only be used when a criminal offense is committed, while measures can also be used for non-criminal offenses (e.g., compulsory treatment of a person with a pathological mental disorder). b) Penalties themselves can be of two halves: a penalty and a secondary penalty. The CC only recognizes one subsidiary punishment, so this division has lost its former significance (in the old Criminal Code, there were still seven subsidiary punishments, most of which are in the new CC punishments, and a smaller part of which have become measures in the current CC or are not regulated by it). c) Finally, a specific feature of the system of sanctions is that the CC includes both custodial and non-custodial sanctions among both penalties and measures.

The system of sanctions under the Prison Law is illustrated in the table below:

Penalties		**Measures**
Penalties	*Additional penalty*	
• Imprisonment (§§ 34-45. of CC), • Custodial arrest (§ 46. of CC), • community service work (§§ 47-49. of CC), • fine (§§ 50-51. of CC), • prohibition to exercise professional activity (§§ 52-54. of CC), • driving ban (§§ 55-56. of CC), • prohibition from residing in a particular area (§ 57. of CC), • ban from visiting sport events (§ 58. of CC), • expulsion (§§ 59-60. of CC).	• deprivation of civil rights (§§ 1-62. of CC)	• warning (§ 64. of CC), • conditional sentence, (§§ 65-66. of CC), • work performed in amends (§§ 67-63. of CC), • probation with supervision (§§ 69-71. of CC), • confiscation (§§ 72-73. of CC), • confiscation of property (§§ 74-76. of CC), • irreversibly rendering electronic information inaccessible (§ 77. of CC), • involuntary treatment in a mental institution (§ 73. of CC), • measures: under the Act on criminal measures applicable to a legal entity (§ 3 of the Act CIV. of 2001: termination of the legal person, restriction of the activity of the legal person or fine).

Imprisonment is imposed for a fixed duration or for a life term[53]. In the event that a sentence of life imprisonment is imposed, the court shall specify in its peremptory decision the earliest date of eligibility for parole or shall preclude any eligibility for parole[54].[55]

The current Hungarian law is characterized by a relatively severe system of penalties, but it also recognizes alternative sanctions. Alternative sanctions always follow the fate, from a legal point of view, of the first type of penalty. According to Section 33 Subsection 4 of the Criminal Code, if the minimum penalty for an offense is less than one year's imprisonment, imprisonment may be replaced by detention, community service, a fine, a ban on engaging in an occupation, a ban on driving, a ban on being expelled, a ban on attending sporting events or expulsion, or several of these penalties.

Penalties may be imposed concurrently. There are two limits: a) If the offense is punishable by imprisonment, community service, a fine, prohibition from occupation, prohibition from driving, banishment, prohibition from attending sports events or expulsion, one or more than one of these penalties may be imposed instead of or in addition to this penalty. b) Imprisonment may not be accompanied by detention or community service, expulsion may not be accompanied by community service or a fine, and life imprisonment may not be accompanied by a fine.

Among these measures, reprimand, probation, and reparation can be used independently in place of penalty. Probation supervision may be used in addition to a

53 Section 34 of CC.
54 Section 42 of the CC.
55 In relation to life imprisonment without parole, see Lévay, 2016, pp. 167–187.

penalty or measure. However, probation supervision cannot be ordered in addition to expulsion. Forfeiture, confiscation of property, and permanent inaccessibility of electronic data may be used independently and in addition to a penalty or measure.

4.4. Trends related to the special part of the Criminal Code

According to the information[56] published by the Prosecutor General's Office in 2021 (hereafter: the Information), the overall crime rate in Hungary over the past 20 years has developed as follows:

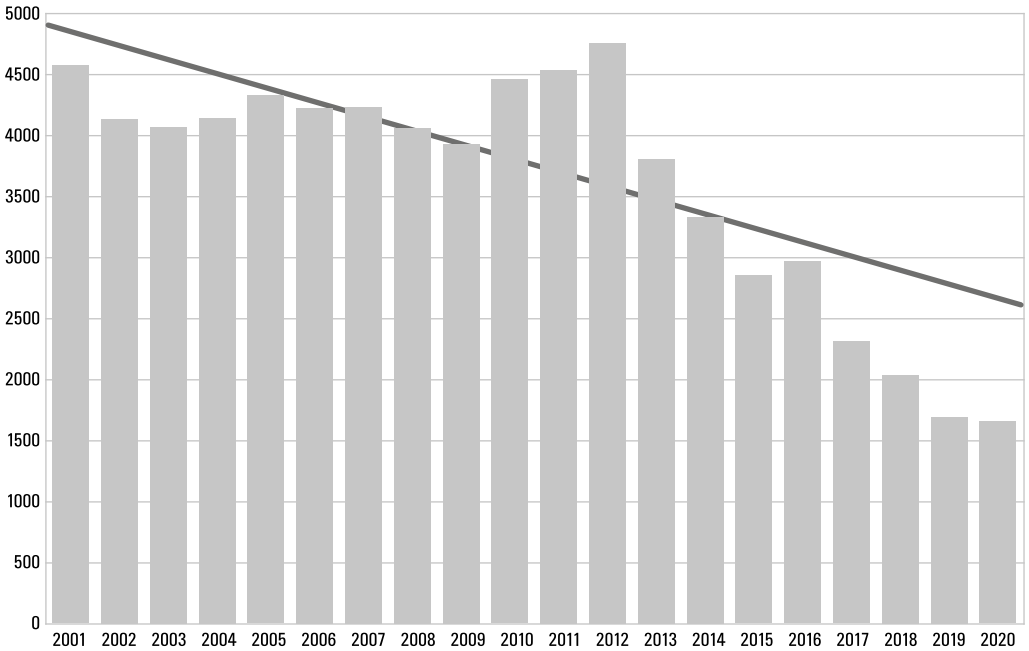
Year	Registered crimes				Registered offenders		
	number	change in number (2001 = 100%)	Number per 100 thousand inhabitants	unknown perpetrator	number	change in number (2001 = 100%)	Number per 100 thousand inhabitants
2001	465 694	100,0	4565,5	223 911	128 399	100,0	1258,8
2002	420 782	90,4	4135,5	200 784	129 454	100,8	1272,3
2003	413 343	88,8	4075,4	179 250	124 924	97,3	1231,7
2004	418 883	89,9	4140,5	181 245	137 195	106,9	1356,1
2005	436 522	93,7	4323,0	179 328	140 211	109,2	1388,6
2006	425 941	91,5	4227,0	174 120	129 991	101,2	1290,0
2007	426 914	91,7	4241,1	187 668	121 561	94,7	1207,6
2008	408 409	87,7	4065,6	178 285	122 695	95,6	1221,4
2009	394 034	84,6	3928,2	182 602	120 141	93,6	1197,1
2010	447 186	96,0	4465,5	221 194	129 945	101,2	1297,6
2011	451 371	96,9	4520,2	245 080	120 529	93,9	1207,0
2012	472 236	101,4	4742,4	274 143	108 306	84,4	1087,7
2013	377 829	81,1	3813,1	177 877	109 876	85,6	1108,9
2014	329 575	70,8	3336,7	139 020	108 466	84,5	1098,1
2015	280 113	60,1	2842,2	109 178	101 494	79,0	1029,8
2016	290 779	62,4	2957,9	91 073	100 933	78,6	1026,7
2017	226 452	48,6	2311,3	77 034	92 896	72,3	948,2
2018	199 830	42,9	2043,6	63 190	87 733	68,3	897,2
2019	165 648	35,6	1695,0	56 718	73 765	57,4	754,8
2020	162 416	34,9	1662,5	48 918	77 552	60,4	793,8

56 Nagy, 2020, p. 10.

The main conclusions that can be drawn[57] from the above data, according to the Prospectus, are outlined below.

The number of registered offenses has been steadily decreasing[58] since the introduction of the CC.[59] Accordingly, the number of offenses per 100,000 inhabitants has also decreased significantly (as the population has not changed significantly): the number of offenses per 100,000 inhabitants in 2020 is the lowest since 2001 (1662.5), while in the base year (2001), it was 4565.5. This may be partly due[60] to changes in the rules of the CC and partly to the increase in the threshold for offenses.

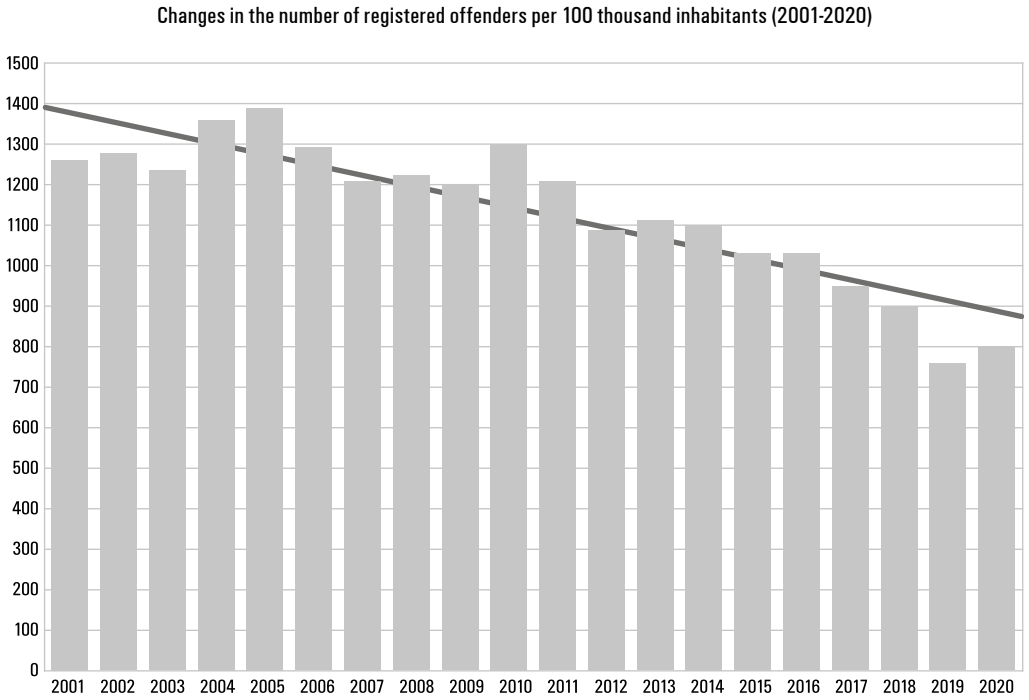
Changes in the number of registered crimes per 100 thousand inhabitants (2001-2020)



A similar trend can be observed in the number of registered offenders. The trend, which has essentially been steadily decreasing, is broken only in one year or another due to a small number of cases with more offenders. The number and proportion of offenses committed by unknown perpetrators is an important indicator. This rate has ranged from 40–60% of registered offenses over the last two decades (above 50% in

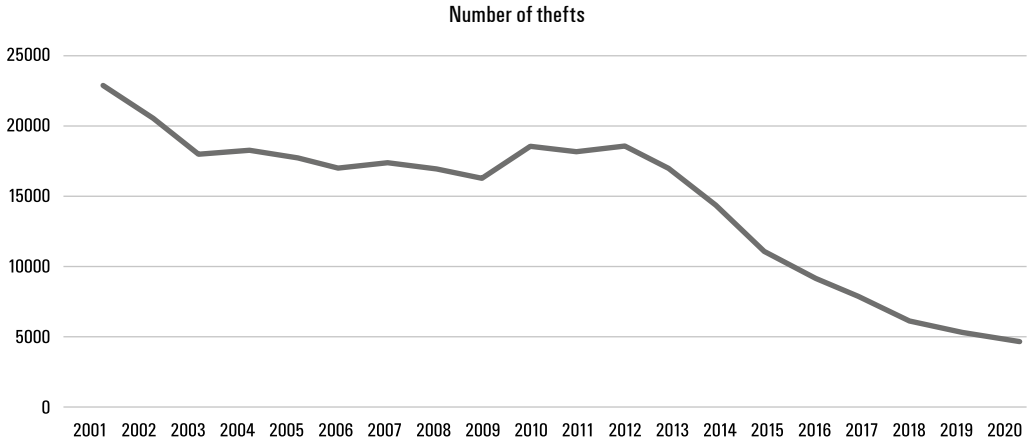
57 Nagy, 2020, pp. 6–8.
58 The exception to this was 2016, but the reason for this was that there were two cases with tens of thousands of offenses, which distorted the statistics; ibid., p. 6.
59 In the context of a decrease in the number of registered offenses, see Kerezsi, 2020.
60 Nagy, 2020, p. 11.

2011 and 2012). These rates have been gradually decreasing, reaching below 40% from 2015 and around 30% in[61] recent years.

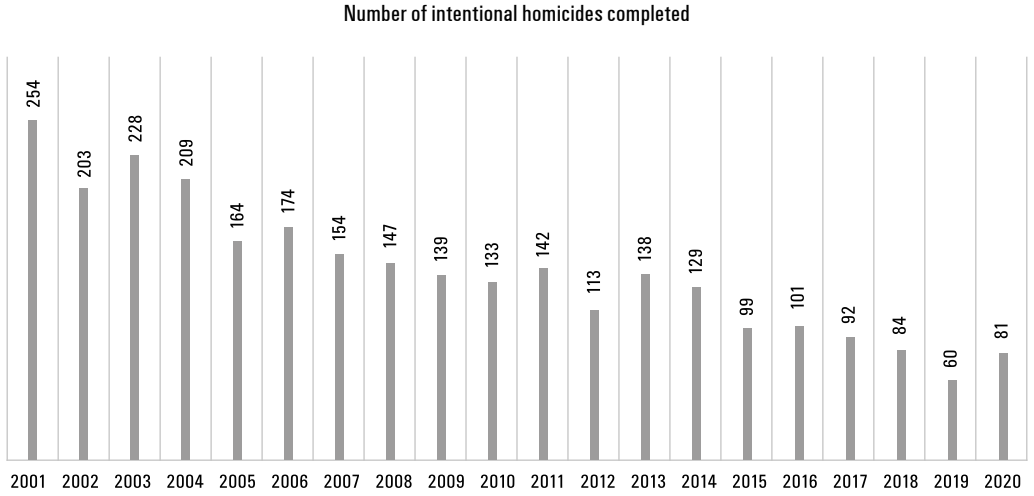


The predominance of crimes against property in relation to the total number of registered crimes is striking, according to the data in the publication. These offenses usually account for around 50–60% of the total crime figures and are, therefore, of crucial importance for the evolution of total crime. In 2020, 45.6% of all registered offenses were crimes against property. Theft and fraud continue to account for the largest share of crimes against property, which has remained unchanged for decades. At the same time, the number of thefts has fallen significantly compared to previous years: compared to 228,769 in the base year (2001), only 48,627 thefts were recorded in 2020, 21.2% of the 2001 figure.[62]

61 Ibid., p. 12.
62 Ibid., p. 13.

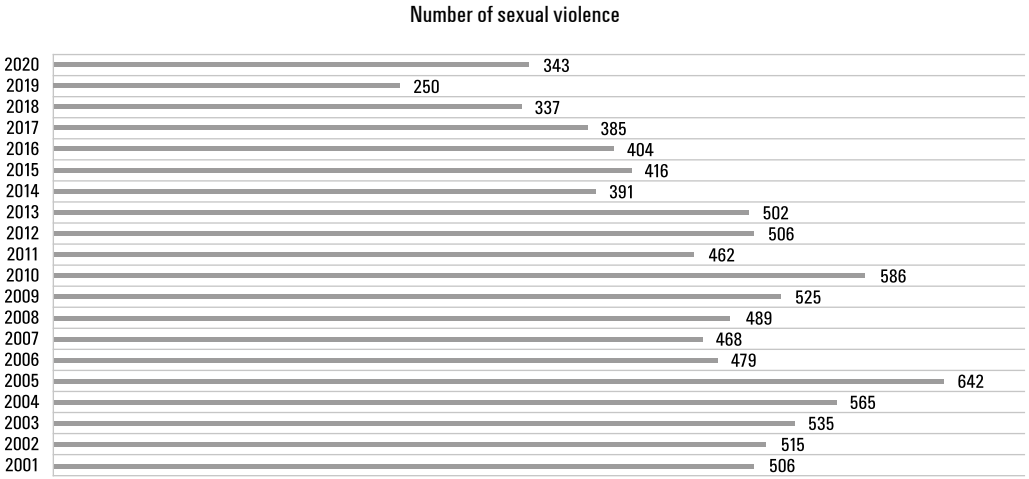


The available data on violent crime show that while the number of violent crimes against property (similar to crimes against property) has steadily decreased, the number of crimes against life, limb, and health has increased slightly (6.2%) compared to 2019. The same is true for the number of intentionally completed homicides (2019: 60; 2020: 81); nonetheless, the number of intentionally completed homicides is still much lower compared to previous years (254 in the base year 2001 and around 130–150 between 2007 and 2014, but since then, with the exception of 2016, it has always remained below 100).[63]



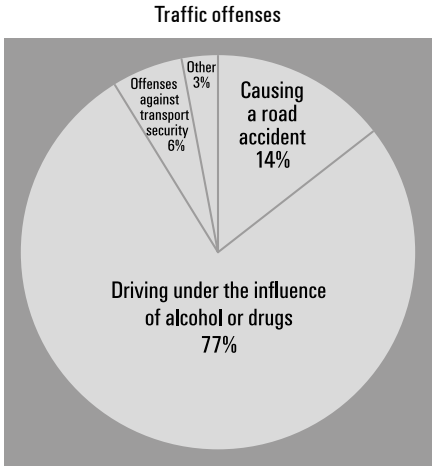
63 Ibid., p. 17.

The figures for crimes against sexual freedom and crimes against sexual morality have been constantly changing. The main reason for this is attributed to the jumps in child pornography figures. In the case of child pornography, the regularity of the offense has been constantly changing (e.g., 94% of offenses in 2013 and 80% in 2017 were recorded as a single offense); that is, if the offender committed the offense through several pornographic recordings, this was sometimes treated as a single offense and sometimes as multiple offenses. The issue was resolved by the Curia Criminal Case Law No. 2/2018, which established that one offense is committed with several pornographic recordings. The number of sexual assaults[64] has decreased by a third in the two decades under review; however, an increase can be observed in 2020 compared to the figures recorded in 2019 (2019: 250; 2020: 343).[65]

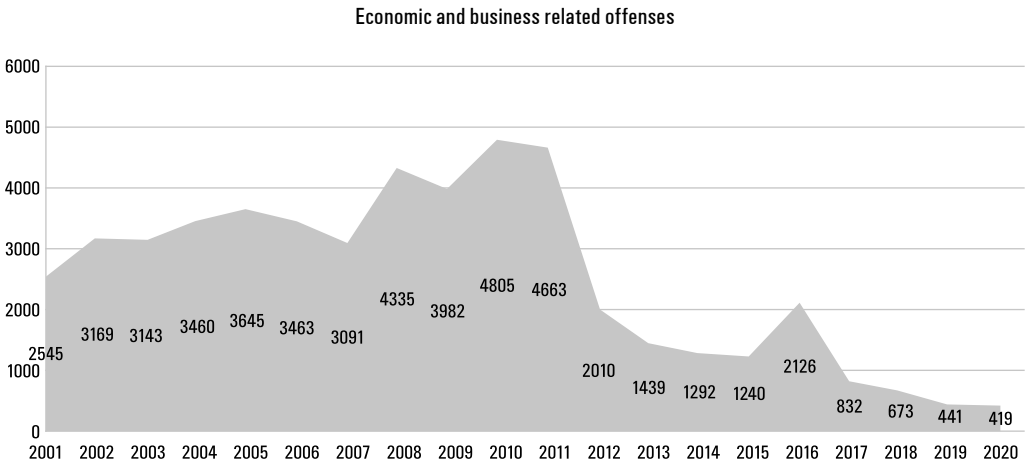


Compared to the previous year, there was a slight increase in the number of traffic offenses recorded in 2020. The number of drunk or intoxicated driving offenses, which had been on a steady upward trend in previous years, decreased in 2019 and was almost the same in 2020 as in the previous year (2019: 14,564; 2020: 14,556). Despite the significant decrease, this number is still 14.5% higher than the average of the last 20 years and continues to account for the largest share of traffic offenses:[66]

64 In the old Prison Law, it was two offenses (forcible sexual intercourse, indecent assault). For the data for this period, the data of the two previous offenses have been added together.
65 Ibid., p. 21.
66 Ibid., p. 19.

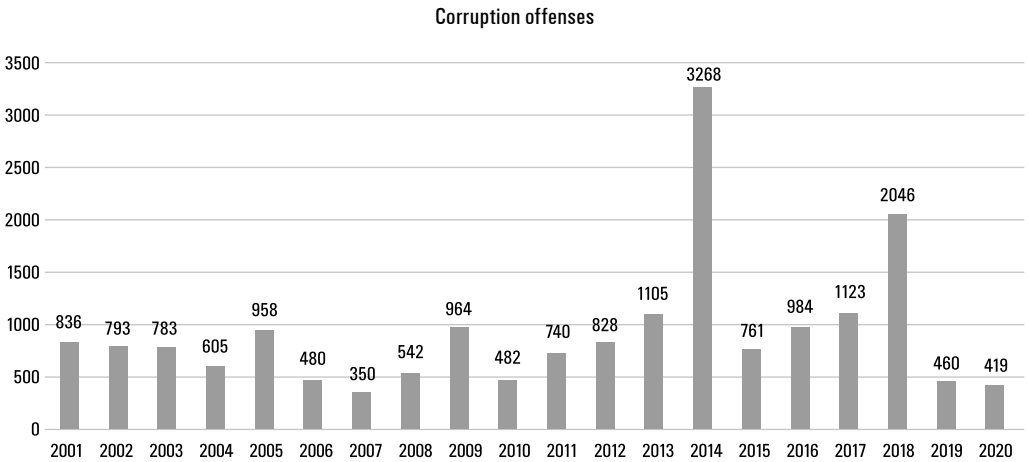


The number of economic and business-related offenses shows a significant decrease compared to the base year 2001. This is particularly the case for bankruptcy offenses, which have fallen from between 1,000 and 2,000 in 2001–2006 to between 200 and 300 in recent years, with only 107 bankruptcy offenses recorded in the last year. The drastic reduction in the number of offenses against the economic order may be due to the use of electronic tax registers, as the possibility of committing[67] these offenses was much greater with the older paper-based accounts.



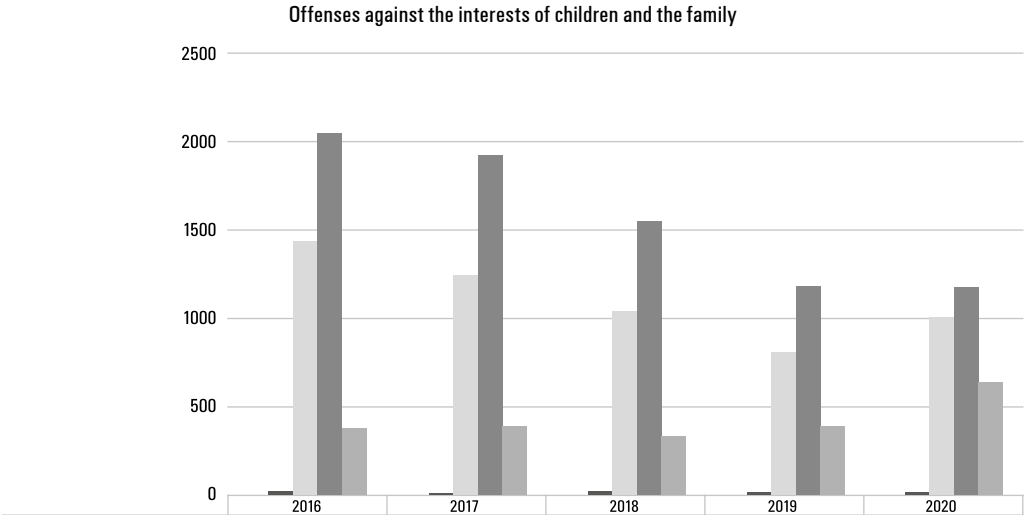
67 Ibid., p. 22.

The data on corruption offenses show the opposite trend to those on offenses against sound management[68]. After stable figures in the 2000s (with a further major decrease between 2006 and 2008), the number of corruption offenses increased severalfold in the 2010s. The spike in 2014 may be explained by several cases of bribery (the number of bribery[69] cases in 2014 was 1,573 and is usually below 100), but this shows that the rise of corruption crimes is significant.



The number of offenses against the interests of children and crimes against the family has been decreasing steadily over the last few years,[70] only increasing slightly in 2020 (2016: 3,918; 2017: 3,590; 2018: 2,967; 2019: 2,417; 2020: 2,863). However, observing two aspects shows that the situation is not so simple. On the one hand, the 20-year data shows that for this group of offenses, there is essentially only a decrease of around 12% compared to 3,246 in 2001, with this number rising to over 5,000 by the early 2010s and then beginning to slowly decline.[71] On the other hand, while failure to comply with a maintenance obligation has fallen by about half in the last five years (2016: 2,058; 2020: 1,186) and endangerment of a minor by about two-thirds (2016: 1,439; 2020: 1,005), relationship violence has increased by one and a half times (2016: 391; 2020: 650), and the latter offense was committed in 2014 only a quarter as frequently as in the year 2020 (158). However, this is possibly only due to the high latency rate for relationship violence, the reduction of which (and hence the increase in the number of reported crimes) is also due[72] to the proliferation of victim support centers over the last few years.

68 Ligeti, 2003.
69 Nagy, 2020, p. 23.
70 Barabás, 2017, pp. 171–181.
71 Nagy, 2020, p. 20.
72 Ibid., p. 20.



	2016	2017	2018	2019	2020
Violation of family status	0	1	0	0	1
Changing of the custody of a minor	29	18	25	21	20
Abuse of a minor	1489	1248	1050	818	1005
Nonsupport	2058	1906	1559	1184	1186
Domestic violence	391	396	339	392	650

5. The main characteristics of Hungarian criminal procedure law

5.1. Principles of criminal procedure law

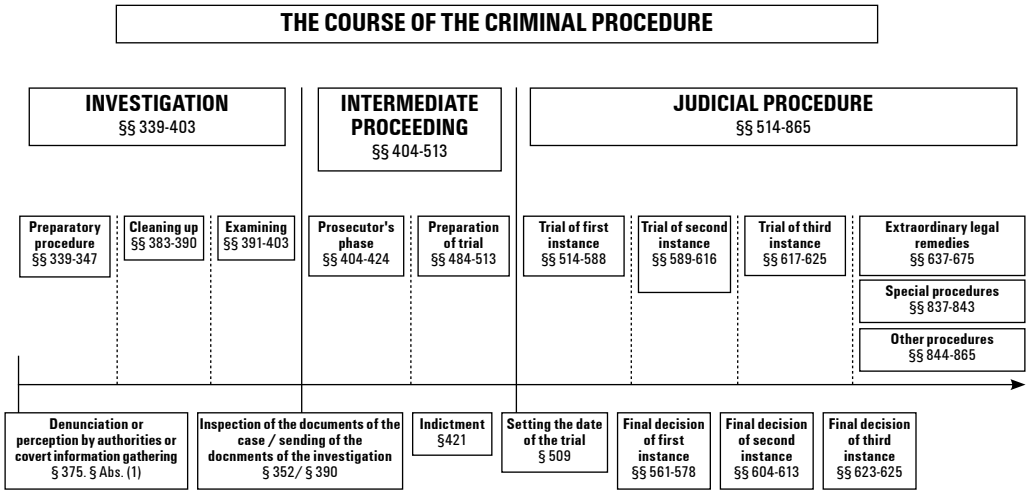
In Chapter I of the CPC, the basic principles regulated under General Provisions serve as a norm for legislation. For example, the rules for exclusion had to be created so that they fit with the principle of function sharing (contradictorium). In other cases, these can be applied in practice (e.g., principle of in dubio pro reo).

The basic principles regulated in the CPC can be divided into two main groups:

Basic principles prevailing in the entire criminal procedure	Basic principles prevailing only in the judicial phase
• presumption of innocence in a narrower sense (§1. of CPC) • protection of basic rights (§2. of CPC) • principle of defence (§ 3. of CPC) • foundation and obstacles of criminal procedure (§ 4. of CPC) • division of procedural duties (§ 5. of CPC) • prohibition of self-incrimination (§ 7. Subsection 3 of CPC) • principle of substantive evaluation of criminal liability (§ 7. Subsection 5 of CPC) • language of the criminal procedure and the riaht to use lanruage (6 8. of CPC)	• foundation of adjudication and commitment to indictment (§ 6. of CPC) • principle of appeal (§ 6. of CPC) • burden of proof (§ 7. Subsections 1-2 of CPC) • principle of in dubio pro reo (§ 7. Subsection 4 of CPC) • free evaluation of evidence (§ 167. of CPC) • publicity of the trial (§ 436. of CPC)

5.2. The stages of the criminal procedure

The progression of the criminal procedure can be structured as follows:



The role of investigation remains important at each procedural stage (although the legislative aim over the last two decades has been the opposite). Investigations are characterized by over-proofing: the investigating authority or the prosecution tries to gather almost all of the evidence during the investigation, which can last for months or even years, and the court essentially repeats this proof, which makes the trial very formal.

One of the decisive effects of the innovations of the current CPC was the acceleration of the procedure. This has still not had a significant impact on investigations, but it has had an impact on the judicial branch. Thanks to the provision that if the prosecution offers a specific sentence at the pre-trial meeting, which if accepted by the accused, the case can finally be concluded (because the court is bound upward to this prosecution motion; that is, it cannot apply a more severe sanction), a significant number of cases are concluded before they go to trial. This is compounded by the numerous legal measures that lead to the termination of proceedings (e.g., mediation, conditional suspension, cooperation of the suspect, dismissal with a reprimand, plea bargain, criminal trial) before or at the beginning of the trial phase or during the pre-trial phase. Accordingly, the trial phase has been used in increasingly fewer cases, primarily when the accused does not plead guilty.

5.3. Possibilities of diversion in Hungarian criminal proceedings

As previously mentioned, there are several ways to avoid trial in Hungarian criminal proceedings. Among these, the following are highlighted: a) mediation procedure; b) conditional prosecutorial suspension; c) cooperation of the suspect; d) plea bargaining.

Ad. a) The mediation procedure has already been dealt with in detail in the criminal substantive law section in relation to active remorse as ground for decriminalization.

Ad. b) The prosecutor's office may suspend the procedure with respect to the future conduct of the suspect to terminate the procedure at a later time under the following conditions:

Specific reasons for the conditional prosecutorial suspension (§ 416. Subsection 2 of CPC, § 690. Subsection 1 of CPC)	**Reasons excluding conditional prosecutorial suspension (§ 416. Subsection 3 of CPC)**
• threat of imprisonment of at most 3 years (in exceptional circumstances: 5 years), threat of imprisonment of at most 8 years in case of a juvenile • favourable change of conduct of the suspect is expected with regard to character of the crime, the method of perpetration and identity of the suspect	• repeat offender • criminal organization • the crime caused death • intentional perpetration during probation/ conditional sentence/conditional prosecutorial suspension

The length of the conditional prosecutorial suspension shall be determined in years (and months); it can be between one year and the threat of the length of imprisonment for the crime (in case of a juvenile, at most three years).

If the law regulates the conduct of the defendant as grounds for the reason for ceasing the punishability, the procedure shall be suspended for one year.

The prosecutor's office may prescribe rules or obligations of conduct concurrently with the conditional prosecutorial suspension, and for the purpose of the clarification of circumstances, the prosecutor's office may order the obtainment of the opinion of the probation officer[73], which is obligatory if the defendant is a juvenile[74].

The following table shows the aim and content of the rules of conduct:

The aim of the rules of conduct	**The content of the rules of conduct**
To clarify whether • the suspect is able to comply with the planned rule (obligation) of conduct • the suspect consents to the planned psychiatric treatment (treatment of alcohol addiction) • the victim consents to the reparation if the possibility of reparation sustains	The suspect shall • compensate for damages (substantial value, etc.) (if the amount can be stated, the suspect shall generally be obligated to compensate) • provide for the reparation in favour of the victim in another way • effect financial compensation for a determined purpose or do community service (if the defendant is at least 16 years of age when the decision is made) • participate in psychiatric (alcohol addiction) treatment (with preliminary consent)

73 Section 418 of CPC.
74 Section 690 of CPC.

The prosecutor's office may state several or other rules of conduct (may prescribe other obligations), and concurrently with the conditional prosecutorial suspension, the prosecutor's office may order the probation with supervision of the suspect.

The defendant shall not be punishable for a crime substantiating the conditional prosecutorial suspension if they complied with the prescribed conduct or the period of the conditional prosecutorial suspension has passed effectively (in which case the prosecutor's office terminates the procedure); otherwise (or if the defendant lodged a complaint against the conditional prosecutorial suspension), the prosecution's office shall order the continuation of the procedure.

Ad. c) If the person who may be reasonably suspected to have committed a criminal act cooperates by contributing to the detection of the case (or other criminal case) or to the presentation of evidence to such an extent that the interests of national security or criminal prosecution related to cooperation takes priority over the interest of establishing the criminal liability of the person reasonably suspected to have committed a crime, depending on the stage of the proceedings, the prosecutor's office shall 1. reject the denunciation[75] or 2. terminate the procedure[76].

Cooperation shall be excluded if the object of incrimination is a crime which intentionally causes the death of another person, causes permanent disability, or intentionally causes serious health impairment.

In the case of cooperation, the state shall compensate for damages (compensation for immaterial injuries) that the defendant is liable to effect pursuant to civil law (if it is not indemnified in any other way).

Ad. d) There are two main forms of plea bargaining in the Hungarian CPC: d/1) the arrangement; d/2) confession of the accused in addition to the sanction indicated by the prosecutor.

Ad. d/1) Before the indictment, the prosecutor's office and the defendant may conclude an arrangement in relation to the crime committed by the defendant on the admission of culpability and its consequences[77]. There is no obstacle to reaching an arrangement if the suspect has previously admitted to committing the crime. The private prosecutor may not conclude an arrangement with the accused[78]. The conclusion of the arrangement may be initiated by the defendant, the defense counsel, and the prosecutor's office alike (the prosecutor's office may do so even during the interrogation of the defendant). The participation of the defense counsel in the procedure directed at the conclusion of the arrangement is mandatory.

In the interest of the conclusion of an arrangement, the prosecutor's office, the defendant, and the defense counsel (or, with the consent of the defendant, only the prosecutor's office and the defense counsel) may conciliate concerning the admission of culpability and the substantial elements of the arrangement (except for the findings

75 Section 382 of CPC.
76 Section 399 of CPC.
77 Section 407 of CPC.
78 Section 786 of CPC.

of fact and the classification of the crime according to the CC). If the prosecutor's office and the defendant have agreed in the purport of the arrangement, the prosecutor's office shall warn the defendant of the consequences of the planned arrangement during the interrogation of the defendant as a suspect, and the arrangement shall be included in the protocol of the interrogation of the suspect. The protocol shall be signed jointly by the prosecutor, the defendant, and the defense counsel.

At the preparatory session, the court decides on the approval or denial of the arrangement:

The conditions of the approval of the arrangement	The cases of denial of the approval of the arrangement
1. the conclusion of the arrangement was in conformity with the rules 2. the arrangement includes the legal requirements 3. the accused has understood the nature of the arrangement and the consequences of its approval 4. there is no reasonable doubt concerning the legal responsibility of the accused and the voluntariness of his confession 5. the statement of the admission of culpability by the accused is unequivocal and substantiated by the documents	1. the indictment or the prosecutor's motions depart from the arrangement 2. the accused did not admit his culpability in compliance with the arrangement at the preparatory session or did not renounce his right to trial 3. the conditions of the approval of the arrangement are not in place 4. the accused did not fulfil his accepted obligations 5. a classification departing from the indictment seems ascertainable

Ad. d/2) If there are no obstacles to a preparatory session, following the commencement of the preparatory session, at the request of the court, the prosecutor: 1) shall present the essence of the charge (this may be omitted at the motion or consent of the accused); 2) shall designate the means of evidence underlying the charge; 3) may motion for the degree (length) of the penalty or measure in case the accused confesses of committing the crime at the preparatory session.

Next, the court interrogates the accused. After the warnings, the court poses the question to the accused as to whether they plead guilty to the crime as an object of the charge.

If the accused admits their culpability and renounces their right to a trial in the scope of the confession, the court shall decide via an order whether it accepts the statement of the admission of culpability by the accused on the basis of this fact, the documents of the procedure, and the interrogation of the accused. In such cases, the questioning of the accused may be limited to the examination of the conditions for the acceptance of the statement. No appeal can be submitted against the order of acceptance[79].

There are two possibilities following the acceptance of the statement of confession:

1. the court does not find an obstacle to the settlement of the case at the preparatory session, in which case it shall interrogate the accused in the circumstances of the imposition of penalty; the prosecutor and defense counsel may

79 Section 504 of CPC.

then plead, and the court may issue the judgment (in such a case, the court may not impose a more unfavorable sanction than proposed[80])
2. if the case cannot be settled at the preparatory session, the accused and the defense counsel may motion for the conduct of an evidentiary procedure not concerning the reasonability of the findings of fact in the indictment and the issue of culpability and for other procedural actions as well as the exclusion of evidence with the designation of the cause and the purpose, which the prosecutor may comment on (and present a similar motion)

In the latter case (if the case cannot be settled at the preparatory session), the court may hold the trial without delay[81].

5.4. Characteristics of judgment

During the judicial procedure, the following decisions may be made:

Final decisions			***Non-conclusive orders***	***Judicial measures not requiring decisions form***
Sentences		**Orders**		
Verdict of acquittal	*Guilty sentence*		Decisions that do not include provisions on the merits of the case	
The court acquits the accused from the charge, if the culpability of the accused cannot be established and does not terminate the procedure.	The court finds the accused guilty, if it established that the accused committed a crime and is punishable	• ruling terminating the procedure • penalty order		

In 2018, the Curia carried out an investigation into the practice of imposing sentences, which was summarized[82] in its Summary Report (hereinafter: the Report). The findings of the Report were summarized in three points.

1. Sentencing disparities: Sentencing practice remained almost unchanged on average between 2003 and 2017, but there are statistically significant differences among courts. This was particularly noticeable regarding theft; for example, the differences were smaller for aggravated assault.
2. Several explanations for the possible reasons for the regional differences were given in the Report. One is the "crime rate" hypothesis: where crime rates are lower (e.g., Transdanubia), crimes pose less of a threat to personal safety, property security, and public tranquility, and therefore, sentencing practices are more lenient. On the other hand, where crime rates are higher (e.g., northeast Hungary), the sentencing practices are stricter. However, local sentencing practices are also important (e.g., in Veszprém, even with

80 Section 565 Subsection 2 of CPC.
81 For details on the rules of criminal procedure, see Herke, 2021a.
82 Cf. Kúria, 2019.

a low crime rate, sentencing is still quite strict). For career reasons, district judges in a given court may adapt to the practice of forensic judges, as their qualifications and thus their promotion in the organizational hierarchy are crucially dependent on them. Tribunals tend to have a small number of second-tier panels, so that sentencing practice is shaped by a relatively small number of people per county, whose personal perceptions of sentencing can thus have a decisive influence on sentencing in the county as a whole.

3. Ways of promoting uniform sentencing practices: the Report proposes a computer application that would allow the key features of a case to be entered into a computer system to determine the range of sentences in which sentences in similar cases vary at the national level (even taking into account mitigating and aggravating circumstances as corrective factors).

6. Prison law in Hungary

6.1. Purpose and principles of penitentiary law

Pursuant to Section 1 of PL, the task of the enforcement of sentences is to enforce the objectives of punishment through the execution of the penalty or measure, with the objective that the aspects of individualization must be ensured in the execution to serve the achievement of individual prevention objectives.

In relation to the principles of the execution of sentences, Hungarian legal literature generally focuses on the principles of the execution of imprisonment (which are also contained in Section 83 of the PL). These authors generally distinguish[83] among the following principles: a) the principle of normalization: to create living conditions similar to free conditions; b) the principle of openness: the mental and physical isolation of prisoners must be reduced; c) the principle of responsibility and self-respect: the prisoner is not the object of the enforcement of the sentence but the subject of it; d) the principle of gradualness and progressive implementation: as the prisoner approaches release, they must be guaranteed living conditions that are close to those of a free life; e) the principle of the individualization of enforcement: the procedures used must be adapted to the personality, individual abilities, and needs of the sentenced person.

According to Vókó, however, there are principles that apply to the enforcement of sentences as a whole and principles[84] that apply only to the enforcement of individual sanctions. Thus, the principles of the enforcement of sentences are not only the principles of the enforcement of imprisonment. Indeed, there are also general principles of law that permeate the entirety of the enforcement of sentences. Accordingly, the principles of the penitentiary system cannot be listed in a taxonomy, but Vókó

83 Eisemann, Gyurnik and Ragó, 2018, pp. 10–11.
84 Vókó, 2014, p. 113.

considers the following to be such principles: the principle of legality; the principle of equality; the rule of law; the humanity requirement; right to a defense; principle of publicity; the principle of mother tongue use; the principle of social participation; protecting your privacy; protection of personal data; the inviolability of the private home; the prohibition of the abuse of rights; the requirement of humane treatment; the requirement of timeliness; the requirement of the application of the legal disadvantage defined in the court's decision; the principle of unity of disadvantage and treatment or education; the prohibition of torture; restrictions and prohibitions on medical scientific experimentation; the principle of normalization; the principle of the necessary degree of separation from society; the principle of necessary and sufficient security; the principle of harm reduction; the requirement of openness; the integration (responsibility) principle; the principle of loan-assumption of rights and obligations[85]; the principle of individualization in the penitentiary system; the principle of least intrusion; respect for human dignity and the need to be treated accordingly; the principle of promoting participation in education; the differentiation principle.

6.2. The Hungarian prison system

According to Section 97 of the PL, imprisonment is carried out in the degree of imprisonment determined by the court (in a jail, correctional institution, or penitentiary) and in the penitentiary institution designated by the penitentiary organization (on the basis of the law or the national commander's measure), preferably in the prison nearest to the convict's address. Imprisonment in a penitentiary is a more severe form of execution than that in a correctional institution, and that in a correctional institution is a more severe form of execution than that in a jail.

During the execution of a custodial sentence, depending on the risk analysis of the prisoner, their behavior and participation in reintegration activities, the order of execution within each level of imprisonment, and the benefits to be granted to the prisoner may vary according to the regime rules associated with each level. A sentenced person may be subject to general, more lenient, and more restrictive regime rules for each level of enforcement. The security classification of a sentenced person should not in itself be an obstacle to their being subject to the more favorable regime rules for each level.

The order of enforcement differs for each level of enforcement in the application of the lighter enforcement rules in the case of placement in a temporary unit or in a secure cell or unit. The penitentiary organization may set up a special section for prisoners with special treatment needs (e.g., drug prevention section, low security risk section, religious section), where the enforcement regime is primarily adapted to these special needs.

85 According to Kabódi, the penitentiary apparatus, as a superior organization with undisguised power, has an accountable duty to promote the human right of the convicted person; Kabódi, 1991, p. 34.

The rules for each implementation stage are listed in the table below:

	Penitentiary	**Correctional institution**	**Jail**
leave	may exceptionally be allowed, the duration of which counts towards the term of imprisonment (not for life imprisonment)	may exceptionally be authorised, the duration of which shall be included in the period of imprisonment	may be authorised, the duration of which shall be included in the period of imprisonment
his life	defined in detail, under permanent management and control	defined, managed and controlled	• set out in part • use their free time outside the reintegration programmes as they see fit
movement within the prison	• with authorisation and under supervision • under supervision • under supervision, only in the designated area	• with authorisation and under supervision • under supervision, with control in the designated area of the penitentiary institute • freely participate in supervised organised programmes	• with supervision • check • free
keeping the lock closed	• must be kept closed at night • during the day, periodic opening hours in line with regime rules may be allowed	• be closed at night, unless running water or toilets for toileting are provided per department • full or temporary opening hours during the day	• be closed at night, unless running water or toilets for toileting are provided per department • must be kept open during the day
participation in group cultural and sports programmes, other activities	be authorised in accordance with regime rules		
what you can keep with you	• limited (not limited to: library and textbooks, school supplies, licensed artifacts, family photos) • can be extended according to the regime rules		
frequency and duration of contact	expandable according to regime rules a lower limit must be provided		

6.3. Education, reintegration, and resocialization

According to Section 164 of the PL, in the framework for reintegration activity, efforts must be made to recognize the social danger of the convicted person's crime and to mitigate its consequences to the greatest extend possible. The sentenced person should be offered apprenticeship training, vocational training, or, if the prison institute so permits, professional training, taking into account the prison's characteristics, and (if the prison governor so permits) may be encouraged to start or continue higher education.

It should be possible for the prisoner to receive primary education in the prison. If the prison does not provide primary education, the prisoner shall, at their request, be transferred to a prison suitable for providing primary education, if possible.

To the greatest extent possible for the penitentiary institution, the prisoner's self-education should be supported, taking into account the penitentiary's characteristics, and the prisoner should be provided with the conditions for regular work. For a period and at regular intervals to be decided by the prison governor, the prison shall provide the prisoner with technical equipment for listening to foreign-language texts to learn a language or take a language examination.

To ensure effective reintegration, the prisoner's family and other relationships should be maintained and developed.

To facilitate the reintegration of prisoners, the prison service makes use of the Prison Chaplaincy Service.

To make good use of free time, opportunities should be provided for education, sport, and religious practice.

As part of the preparation for release, prisoners are already assisted in their reintegration into society and the creation of the necessary social conditions for this during the period of imprisonment[86]. Preparation for release is carried out by the prison probation officer (with the assistance of the reintegration officer) based on an individual care plan or, in the cases specified by law, a reintegration program.

A prisoner who has been sentenced to a term of imprisonment for the first time and for whom the term of imprisonment for the misdemeanor does not exceed one year shall, upon request, be included in a social bonding program[87]. The purpose of the social attachment program is to strengthen the inclusive environment and, if necessary, to help re-establish family ties to facilitate reintegration into the former workplace; if this is not possible, to find a new job; or, failing this, to create public employment to explore the possibility of further social contacts and to help create housing.

If the purpose of the sentence can also be achieved in this way, a prisoner who undertakes doing so and who is in custody for reintegration before the expected date of release may be placed in reintegration custody if they have been sentenced to imprisonment for a reckless offense (in which case the period of detention for

86 Section 185 of PL.
87 Section 187 of the PL.

reintegration is one year) or if they have been sentenced to imprisonment for an intentional offense but not for a violent offense against the person, is serving a first sentence of imprisonment, or is a non-recidivist repeat offender serving a sentence of imprisonment of no more than five years (in which case the period of reintegration detention is ten months).

In the event of a detention order for reintegration, the prisoner may leave the accommodation and the fenced area designated by the prison judge only for the purposes specified in the ordering decision, in particular to meet the normal needs of daily life, to work, or to attend education, training, or medical treatment at the time and for the destination specified therein. Therefore, reintegration detention is a similar legal measure to house arrest and can only be provided through the use of electronic means of remote monitoring.

Finally, aftercare must be mentioned[88]. The aim of aftercare is to help people released from prison reintegrate into society. The maximum duration of aftercare is one year. Aftercare is provided at the request of the sentenced person. The prisoner released from custody may request assistance and support, in particular for employment, resettlement, accommodation, the continuation of studies and medical treatment. Aftercare is carried out by the probation officer in cooperation with local authorities, employers, NGOs, religious communities, and other voluntary organizations involved in charitable activities to promote the integration of the prisoner into society.

7. Cooperation with the Member States of the European Union

Act CLXXX of 2012 on criminal cooperation with the Member States of the European Union (hereinafter referred to as the EU Act) regulates numerous legal instruments.

One such instrument is the European Arrest Warrant, which is a significant and increasingly utilized legal instrument[89] The seizure and surrender of objects[90] and the interrogation of the suspect are also legal instruments relating to criminal cooperation with the Member States of the European Union.

A separate chapter of the EU Treaty regulates the legal instruments relating to procedural legal aid: a) mutual legal assistance for the execution of a European Investigation Order (including provisional measures, provision of information on accounts and account data held by a financial institution, temporary transfer of a detained person to the Member State issuing a European Investigation Order, temporary transfer of a detained person to the Member State executing a European Investigation Order, interrogation by means of telecommunications, and the use of disguised

88 Section 191 of the PL.
89 Horváth, 2007; Herke, Blagojević and Mohay, 2011.
90 Farkas, 2009.

means); b) procedural assistance with Member States that do not apply the European Investigation Order (provision of information on accounts and account data held by a financial institution, temporary transfer of a detained person to the Member State executing the request for procedural assistance, interrogation by telecommunication, controlled delivery, use of undercover investigators, use of disguised means subject to judicial authorization); c) setting up a joint investigation team; d) direct information; e) service of an official document; f) return of the object; g) legal aid for the enforcement of a decision on supervision measures; h) means of evidence, procedural assistance for the execution of a confiscation order and for the preservation of confiscated property[91]; i) forwarding and receiving denunciations; j) the validity of a national judgment; k) enforcement assistance (imprisonment, measures involving deprivation of liberty, rules of conduct and alternative sanctions during probation, fines or other financial penalties, the confiscation and forfeiture of property); l) transit; m) European protection order.

The regulation of these legal instruments is based on EU sources of law, and it is not possible discuss them in detail in this study.

8. Summary

In Hungary, the main sources of criminal law at the time of the 1990s regime change were derived from the 1970s. Therefore, the sources of the criminal sciences needed major revision. Against this background, the new Criminal Code[92], Criminal Procedure Code[93], and Prison Law[94] were drafted.

The new CC did not represent a complete dogmatic break with the old Criminal Code, and accordingly, many basic institutions were not only retained but often literally adopted; however, the penal system, the chapter on economic offenses, and even the chapter on offenses against the person have been transformed. A further change compared to the old Criminal Code was that while the previous Act also contained provisions of a penal enforcement nature, the new CC does not contain such provisions. Likewise, procedural issues have been removed from the CC. The CC retains the dual structure of the old Criminal Code: the general part deals with the scope, criminal liability (the subjects), and sanctions, while the special part lists the basic, qualified, and privileged cases of each offense and the punishable offenses.

After the acceptance of the CC, there was also a demand for the creation of a corresponding code of criminal procedure and penal law as soon as possible. The Prison Law preceded the new Code of Procedure. The aim of Prison Law was to create a law

91 Törő, 2014.
92 Act C of 2012.
93 Act XC of 2017.
94 Act CCXL of 2013.

harmonizing the legal provisions introduced by the CC and creating a unified system with the CC, which would place the enforcement of sentences on new footing in line with the new sanctions and other amendments.

Finally, after the CC and the Prison Law, the third legislation was the recodification of the provisions on criminal procedure. The CPC has significantly altered criminal procedure in its structure and content. The former Criminal Procedure Act followed the earlier (socialist) criminal procedure laws (in contrast with basic concept); the traditional investigation (intermediate procedure) governed the criminal procedure within a judicial procedure system. However, effective laws allow for a great deal more leeway for criminal procedures based on agreement; in particular, confession by the defendant (acceptance of the facts) enables a number of simplifications. Through this, the progression of the criminal procedure (possible outcome) is much more complicated and diversified than in the earlier linear procedure.

In addition to the three main areas of criminal law (criminal law, criminal procedure, and penitentiary law), there are numerous other sources of criminal law (the Fundamental Law of Hungary, the organizational laws, laws on other subjects of criminal proceedings, etc.). The codification wave of the 2010s (with the exception of the police) has also reached the main subjects of criminal proceedings.

The study reviewed the main rules for authorities acting in criminal proceedings (investigating authority, the prosecutor's office, and the court). The principles of criminal law (the fundamental legal principles: the rule of law [legal certainty and justice], the principle of humanity, and the specific principles of criminal law: legality, the principle of responsibility for action, the principle of liability based on fault, the ultima ratio nature of criminal law, the principle of proportionality, the ne bis in idem principle, and the principle of in dubio mitius) were then analyzed in detail. This was followed by a chapter on criminal liability and its obstacles. The main elements of the concept of criminal offense (intent, negligence, and harm to society), the two forms of crime in Hungary (felony and misdemeanor), and the stages of criminal offenses (the completed offense, the attempt, and the preparation) were analyzed. In Hungary, the CC divides the obstacles to criminal liability into three main categories: grounds for total or partial exemption from criminal responsibility, grounds for exemption from criminal responsibility, and other obstacles to criminal prosecution.

In terms of becoming a defendant, age at the time of committing the crime has great significance. Childhood is an excluding factor for punishment, that is, if the defendant is under 14 (or, in certain cases, under 12) when committing a crime. Criminal procedures against juveniles can be carried out against a person who is over 14/12 years of age but under 18 when committing a crime. All defendants who were over the age of 18 when committing the crime are considered adults.

Among the grounds for decriminalization, active remorse should be highlighted because of its specificity. Active remorse is essentially grounds for decriminalization

resulting from a successful mediation process. The study analyzed in detail the conditions and the possible outcomes of the mediation process.

The Hungarian system of sanctions has three characteristic features: a) the dual system of sanctions: sanctions can be penalties or measures; b) penalties can also be of two kinds (penalty, secondary penalty); c) the CC includes both custodial and non-custodial sanctions (among both penalties and measures).

The current Hungarian law is characterized by a relatively severe system of penalties, but it also recognizes alternative sanctions, and the penalties may be imposed concurrently as well.

After analyzing the general part of the CC, the study analyzed certain groups of crimes (crimes against property, violent crimes, crimes against sexual freedom and sexual morality, traffic offenses, administrative offenses, economic and business-related offenses, corruption offenses, offenses against the interests of the children, and crimes against the family) and the statistics associated with them. The main conclusion that can be drawn from the data is that the number of registered offenses has been steadily decreasing since the introduction of the CC; accordingly, the number of offenses per 100,000 inhabitants has also decreased significantly (as the population has not changed significantly). The predominance of crimes against property in relation to the total number of registered crimes is striking (around 50–60% of total crime).

After the criminal law questions, the main characteristics of Hungarian criminal procedure law were analyzed. Among these, it is worth highlighting the issue of the principles of criminal procedure law, the stages of the Hungarian criminal procedure, the possibilities of diversion in Hungarian criminal proceedings (mediation procedure, conditional prosecutorial suspension, the cooperation of the suspect, and plea bargaining), and the characteristics of judgment.

The role of investigation remains important at each procedural stage (although the legislative aim over the last two decades has been the opposite). Investigations are characterized by over-proofing; that is, the investigating authority or the prosecution tries to gather almost all of the evidence during the investigation, which can last for months or even years, and the court essentially repeats this proof, which makes the trial very formal. One of the decisive effects of the innovations of the current CPC was the acceleration of this procedure.

The task of the enforcement of sentences is to enforce the objectives of punishment through the execution of the penalty or measure, with the objective that the aspects of individualization must be ensured in the execution to serve the achievement of individual prevention objectives. Following the discussion of the purpose and principles of penitentiary law, the study described the Hungarian prison system in detail. The imprisonment is carried out in the degree of imprisonment determined by the court (in a jail, correctional institution, or penitentiary). Imprisonment in a penitentiary is a more severe form of execution than that in a correctional institution, and that in a correctional institution is a more severe form of execution than that in a jail. The rules for each implementation stage are outlined in a table in the

study. The study then briefly reviewed the main rules of education, reintegration, and resocialization.

The work concludes with a presentation of the main provisions of international criminal cooperation.

Overall, it can be said that Hungary's criminal legislation underwent substantial changes to replace the former socialist criminal justice principles with the rule of law. Nonetheless, legislation must change constantly to keep up with the challenges of an everchanging society.

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