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dans l'ordre interne et international

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Preparatory Colloquium

Section I

Criminal Responsibility of Minors
in National and International Legal Order

September 26-28, 2002, Vienna (Austria)

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en el orden interno e internacional

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SOMMAIRE / CONTENTS / ÍNDICE

Nécrologie

- Evandro Lins e Silva, *René Ariel Dotti*..... 11

XVII^e CONGRES INTERNATIONAL DE DROIT PÉNAL XVIIth INTERNATIONAL CONGRESS OF PENAL LAW XVII CONGRESO INTERNACIONAL DE DERECHO PENAL

SECTION I / SECTION I / SECCIÓN I

LA RESPONSABILITÉ PÉNALE DES MINEURS
DANS L'ORDRE INTERNE ET INTERNATIONAL
26-28 septembre 2002, Vienne (Autriche)

*CRIMINAL RESPONSIBILITY OF MINORS
IN NATIONAL AND INTERNATIONAL LEGAL ORDER
September 26-28, 2002, Vienna (Austria)*

LA RESPONSABILIDAD PENAL DE LOS MENORES
EN EL ORDEN INTERNO E INTERNACIONAL
26-28 Septiembre 2002, Viena (Austria)

Allocution d'accueil

Otto F. Müller 13

Peter J. Schick 19

RAPPORT GÉNÉRAL / GENERAL REPORT / INFORME GENERAL

Version française, *Reynald Ottenhof* 25

English version, *Reynald Ottenhof*..... 51

Versión española, *Reynald Ottenhof* 75

RAPPORTS NATIONAUX / NATIONAL REPORTS / INFORMES NACIONALES

Algérie, <i>Ramdane Zerguine</i>	103
Austria, <i>Frank Höpfel</i>	121
Belgique, <i>Thierry Moreau</i>	151
Brazil, <i>Sergio Salomão Shecaira</i>	201
China, <i>Gu Xiaorong and Guo Xiang</i>	213
Colombia, <i>Ana Paola Hall Garcia</i>	231
Croatia, <i>Božtica Cvejtko</i>	263
Czech Republic, <i>Helena Valkova</i>	277
España, <i>Agata Ma Sanz Hermida</i>	293
Finland, <i>Matti Marttunen</i>	315
France, <i>Christine Courtin</i>	337
Greece, <i>Angelika Pistela</i>	355
Hungary, <i>Kristina Karsay</i>	379
Iran, <i>Mohammad-Ali Ardebili & Ali Hossein Nadjafi</i>	401
Japan, <i>Guang-Xu Jin</i>	409
Mexico, <i>Fernando Raúl Espinoza de los Monteros</i>	423
Pologne, <i>J. Lubelski & Anna Walczak Zochowska</i>	437
Portugal, <i>Anabela Miranda Rodriguez</i>	461
Roumanie, <i>George Antoniu & Constantin Duvac</i>	483
Slovenia, <i>Katia Filipcic</i>	493
Sweden, <i>Nils Jareborg</i>	511
Tunisie, <i>Sassi Ben Halima</i>	527
United States, <i>Paul Marcus</i>	535

RAPPORT SPÉCIAL / SPECIAL REPORT / INFORME ESPECIAL

Centre National de Prévention et de Défense Sociale, <i>Silvia Larizza</i>	555
--	-----

* *
*

Projet de Résolutions	579
Resolutions Project	583
Proyecto de Resoluciones	587
Liste des participants	591

CHRONIQUES / CHRONICLES / CRÓNICAS

A nos lecteurs	599
Chronique des Nations Unies, <i>Jean-Paul Laborde</i>	603
Chronique du Conseil de l'Europe, <i>Aglaïa Tsitsoura</i>	613
Chronique de droit américain, <i>Eileen Servidio-Delabre</i>	621
Chronique de droit chinois, <i>Xiao-Ying Han</i>	641
Chronique bibliographique, <i>Jean Cédras</i>	651

HUNGARY

**CRIMINAL RESPONSIBILITY OF MINORS
IN NATIONAL AND INTERNATIONAL LEGAL ORDER**

Dr Kristina KARSAY *

List of Relating Hungarian Acts

The Hungarian Criminal Code (CC) Act IV/1978

The Hungarian Criminal Procedure Act (CP) Act I/1973

The Act XXXI/1997 on the protection of children and on the guardianship administration (APC)

The Hungarian Prison Act (PA) Statutory Rule 11/1979

The Hungarian Civil Code Act IV/1952

Definitions in the Hungarian legal system

Minor is the person who has not turned eighteen, unless he/she is married. The marriage does not bring majority according to criminal law.

Child is the person who has not turned fourteen - according to criminal law. A child neither has capacity to act (civil law) nor is responsible for his/her criminal act (criminal law).

The minor who has turned fourteen but has not yet reached the age of eighteen is *juvenile*. The juvenile person possesses diminished capacity to act (civil law) and is fully responsible for his/her criminal acts (criminal law).

Young adult is the person of majority age who has not reached the age of twenty four (according to APC). The criminal law does not define this category by age.

I - Justification of the Principle

(Without entering into an abstract criminal philosophical debate, it seems indispensable to indicate the basis of the *principle of criminal responsibility/irresponsibility of minors* for each national system. This leads to the following questions:)

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1.1. Is the principle announced in an explicit manner by a legal text? When necessary, has the jurisprudence helped to complete the legislative dispositions or filled the silence of the law?

According to CC Art. 23: "The person who has not yet reached the age of fourteen at the time of the perpetration of a crime, shall not be punishable." Nevertheless, the cited rule is not considered as a principle of the criminal law in Hungary. It is rather one of the objective legal (i.e., normative) requirements for criminal responsibility¹.

1.2. Is the principle based on classical legal reasoning (imputability/guilt) or is it based more on a criminological concept of «criminal capacity»?

See the answer above.

1.3. Are there existing doctrinal or legislative tendencies which, if necessary, aim at giving the responsibility of minors a specific justification ?

no

Such tendencies are not known in Hungary.

1.4. Does a specific concept of «juvenile crime» exist which is independent of the principle of criminal responsibility; and, if so, for what types of acts?

no

This special concept is not accepted by the Hungarian criminal law.

1.5. Does a tendency exist to exclude minors from benefiting from the juvenile justice system for the sake of treating them as adults for certain crimes that are particularly serious (for example: acts of terrorism, rape...)?

"Minors" mean here only juveniles. See Definitions above.

no

Such a tendency is not recognised by the Hungarian criminal law.

1.6. Do dispositions (civil or criminal) exist which favour the responsibility of parents for the delinquent behaviour of their children who are not of age based on the notion of objective responsibility?

1.6.1. Such an objective criminal responsibility does not exist in the Hungarian criminal law.

1. For background: the children are fourteen at the time of finishing elementary school in Hungary and they become familiar with the necessary knowledge of social life up to this age.

I.6.2. There is no rule in the civil law either about the parent's (or the guardian's) liability for the delinquent behaviour of the child. In this regard, the provisions for indemnification can be relevant and can be issued.

If a child lacking the mental ability causes damage with a criminal act, the guardian can save himself from being held responsible for the child's act by showing that he has performed his supervising duties in a manner that can generally be expected in the given situation (presumption of liability). On the other hand, if the child possesses full mental ability, then the other party should prove that the guardian has breached his supervising obligations. In this case, the guardian as well as the child who caused the damage shall be subject the joint and several liability (Civil Code Art. 339, Art. 347).

II - The Question of Different Categories of Age

II.1. What is the age of criminal majority? Has this age been recently modified? Are there existing tendencies to increase or lower this age? For what reasons?

II.1.1. The criminal majority is fulfilled with the age of 14. The perpetrator of an unlawful act can be punished from this age, if he also meets all the other requirements of guilt laid down by the criminal law (sane mental capacity, intention/negligence concerning the act). Nevertheless, some special rules of the criminal procedure and of the applicable sanctions provide a special treatment for juveniles (between the age of 14-18). *See Chapters III and IV.*

II.1.2. The age of criminal majority has not been modified recently.

II.1.3. The majority of Hungarian experts insist on keeping the present age limit. A few of them argue that it is necessary to reduce the age of criminal responsibility to twelve, particularly in cases involving serious crimes (e.g., murder). Nevertheless, it is quite likely that the latter opinion will not emerge in the codification process.

II.2. Is there a minimum level under which the minor can not be punished or receive educational measures for the crime he/she has committed? If so, does this level consist of a chronological age or can it vary according to the subject? In this latter case, what is the criterion (legal, psychological...) which determines this level?

II.2.1. Children are irresponsible in the criminal law (*see Definitions and II.1.*). The age is an objective element of the criminal responsibility.

II.2.2. There are experts in favour of introducing the category of “mental-moral maturity” as an additional subjective element to the criminal responsibility of juveniles, which means that its existence has to be proven in addition to the existing category of mental capacity. But, it is not yet clear what would make the distinction between the two main subjective elements.

II.3. Do there exist specific categories that benefit from a particular regime? What measures are possible in the case of a child committing a crime?

II.3.1. According to the APC (Art. 68-69), the notary of the local government (head of the administration) is entitled to order the *taking in protection of a minor* which is carried out by a family supervisor keeping the minor within the family. The notary can determine special conditions regarding the duties of the parents or the behaviour of the minor. The guardianship authority is allowed to order other protective measures for the minor’s sake separating him/her from his/her family (e.g. provisional or permanent education in special institutions). These measures are of a *non-penal* nature.

II.3.2. The authorities who are competent for the protection of children co-operate with the institutions of criminal justice, if a juvenile is accused. The reformatory institution, the enforcement of the pre-trial detention of juveniles and the probationary supervision of juveniles are parts of the so-called “child-protection system” (APC Art. 15 para. 5). *See Chapter IV for details too.*

II.4. Are there specific dispositions that apply to the category «young adults»? If so, up to what age can a subject be considered a part of this special regime?

II.4.1. The category of young adult does not exist in the Hungarian criminal law. (*See Definitions above.*)

II.4.2. There are no specific conditions or rules applying to young adults neither as to criminal responsibility nor as to the criminal procedure. Even the applicable sanctions on the offenders of this age are the same. Nonetheless, two relevant exceptions are to be mentioned: 1/ life imprisonment can be imposed if the offender has turned twenty at the time of perpetration (CC Art. 40 Para. 3), and 2/ the execution of the imprisonment is carried out in the juvenile penal institution until the age of twenty one (*See IV. Introduction*).

III - Judicial Establishment of Criminal Responsibility of Minors

III. Introduction

Under the Constitution the courts are responsible for the administration of justice with the control over their operations and judicature exercised by the Supreme Court of the Republic of Hungary. There are three levels of courts. Original jurisdiction in most matters rests with the local courts. Appeals of their rulings may be made to the county courts or to the Court of the Capital City which also have original jurisdiction in other matters. The highest level of appeal goes to the Supreme Court, whose decisions on non-constitutional issues are binding.

The delivery of judgement in any case of adults should take place publicly. However, publicity can be prohibited by the court if the accused person is a juvenile.

Defendants are entitled to have legal counsel during all phases of criminal proceedings and are presumed innocent until proven guilty. Juvenile offenders must be represented by a defence attorney who is either empowered by the offender or appointed by the competent authority.

Judicial proceedings are generally investigative in nature rather than adversarial. Hungarian criminal procedure accepts the principle of legality (with several exceptions based on the principle of opportunity), i.e., that every case has to be commenced with an indictment. This can be excluded only by the obstacles to punishability or in cases where the suspect cannot be identified and no result may be expected from the continued identification procedure.

III.1. Are there special jurisdictions competent to judge minors who commit crime? When these jurisdictions exist, to what extent do they use juries or have members of other professions sit with the professional judges? Specify the composition of these jurisdictions.

III.1.1. In Hungary, only the juvenile offenders (between 14-18 at the time of the offence) can be subjected to a criminal procedure, other minors may not. Juvenile justice is part of the ordinary criminal justice system, and different rules are laid down in the Chapter XIII of the CP which need to be applied if the juvenile offender has turned eighteen before or during the criminal procedure.

III.1.2. Contemporary Hungarian justice does not use juries, in the narrow sense. But all court councils at all court levels are composed of judges and of non-professional judges (lay-judges). The lay-judges are nominated by different non-political entities and are elected by the body of the local representatives.

III.1.3. In the case of juvenile offender, only the appointed council, the so-called “council of juveniles”², is entitled to try a case in the first and second instance (except if it is undertaken by the Supreme Court). The “council of juveniles” of first instance is composed of one professional judge and two lay-judges. One of the latter should be a teacher³. The chairman himself is appointed by the National Council of Justice⁴. The “council of juveniles” of second instance is made up by three professional judges and one of them is appointed by the National Council of Justice (CP Art. 296).

III.1.4. The “council of juveniles” is the competent body over accused adults too, if their case is in connection with a case of a juvenile.

III.2. How is the responsibility/irresponsibility of the minor established judicially? Does the jury or do the non professional judges take part in pronouncing the minor guilty or not guilty?

“Minors” mean here only juveniles. See Definitions above.

III.2.1. It should be highlighted here that pronouncing the accused person guilty or not guilty is not a separate stage in the Hungarian criminal law. According to the continental traditions, both the decision on criminal responsibility and the imposition of a sanction occur in one proceeding. Thus, every member of the proceeding council takes part both in the conviction and in the sentencing.

III.2.2. The related rules are the following: the professional judge and the lay-judge have the same rights and obligations in the process of judging (CP Art. 21 para. 4). The court passes its decision - if it proceeds as a council - by voting after having held a closed session. A younger judge has to vote before an elder judge and the presiding judge votes last. In lack of unanimity the decision is passed by the majority of votes (CP Art. 162 para. 1-2). Furthermore, a judge left in the minority in the voting is entitled to enclose his written dissent to the protocol of the session.

III.3. Does the court have recourse to prior investigations, obligatory or optional (expertise, medico-psychological examination, personality study), before ruling on the question of the responsibility of the minor ?

“Minors” mean here only juveniles. See Definitions above.

2. In the case of several less grave crimes, the appointed (professional) judge on his own as “judge of juveniles” has the right to try the case.

3. Referring to III.1.2., the lay-judges are nominated by teachers' professional unions.

4. The mentioned body is a non-political, administrative and supervisory entity of all judges in the country.

III.3.1. In the case of a juvenile defendant, special evidence must be taken into account by the proceeding authorities on the basis of the “special” personal status of the accused.

III.3.2. The special evidence is as follows: the social report made by the guardianship authority, the hearing of the guardian as witness (about the facts of juvenile’s character, of his/her mental development and of his/her life-conditions), an official document proving the age of the juvenile and a personality report given by the school or employer (CP Art. 301 para. 1-2).

III.4. Are there two distinct stages, one deciding the question of the minor’s guilt (conviction stage) and the other pronouncing the sanction (sentencing stage)?

no

See III.2.1. above.

III.5.1. Briefly describe the role of the victim when the crime is committed by a minor.

In the Hungarian criminal law, the victim always has *the same role, regardless of the age of the perpetrator*. If the criminal act is committed by a child who is not responsible under criminal law, only the limited liability of the parents (or guardian) can be relevant for the damages caused. (See I.6. above.)

The victim can initiate the criminal procedure and in several cases he/she is the only one entitled to start it (See III.5.2. below). Furthermore, the hearing of the victim as a witness can be an important evidence, but his/her hearing is not obligatory. The victim can enforce the so-called “civil claim” in the criminal procedure, if his losses are result of the crime. Moreover, the victim does not have general right to appeal.

III.5.2. Can the victim initiate the action?

There are several crimes where the investigation is subject to a private motion presented by the victim. Such crimes are for example: unlawful or forcible entry (in a flat etc.), defamation, lesser bodily harm or a simple rape (because of the consideration of the victim).

III.5.3. Is the victim allowed to ask for reparation before the jurisdiction that judges the minor’s responsibility? Can the victim obtain reparation even if the minor is considered irresponsible? Before what court (civil or criminal)? Finally, do alternative procedures (of the mediation-reparation type) exist?

If the accused juvenile is acquitted by the criminal court the victim cannot obtain any reparation (from the offender) in relation of the judged crime.

There is a possibility of reparation by the state in case of death or bodily harm of the victim according to the Government Decree 209/2001. The victim or his/her closed relatives can apply for a state reparation even though such a criminal act is committed by a child who cannot be punishable.

The reparation is allocated by a state foundation (not by a court).

Mediation-type alternative procedures do not exist in the present Hungarian criminal law.

IV - Sanctions and Measures Applicable

IV. Introduction

The special provisions of the Hungarian criminal law concerning juvenile offenders do not establish special rules for their criminal liability, there are only different provisions for the applicable penalties and measures. As the sanctions, the special provisions have primacy to the general rules. Therefore, the latter can be applied in the absence of special provisions or with their appropriate alteration. In the following section a brief summary of the general system is given first, before the answers to the specific questions.

According to Art. 37 of the CC the aim of a punishment is to prevent the offender, or others, from committing a further offence in order to protect society.

The Criminal Code redefines more precisely the aim of the punishment against juveniles: "(1) The aim of a penalty or measure applied against a juvenile offender is primarily that he / she should develop in the right direction and become a useful member of society. (2) A penalty shall be inflicted when the application of a measure does not fully suit the purpose. (3) A measure or penalty involving custody may only be applied, if the aim of the measure or penalty may not otherwise be achieved." (Art. 108)

Hungarian criminal law is based on a dual system of sanctions: penalties and preventive measures are laid down in the CC. The Criminal Code determines both the legal content of each penalty and measure and the basic conditions for their applications. The special rules of execution are defined in the Hungarian Prison Act (PA, *see The List of Relating Hungarian Acts*). Distinction should be made between principal and secondary penalties. The principal penalties are *imprisonment, community service and fines* (Art. 38).

The secondary penalties entail the deprivation or limitation of certain rights: *exclusion from participation in public affairs, disqualification from a profession or*

from driving motor vehicles, a ban on entering certain areas and expulsion. Another type of secondary penalty is of a financial nature: a *fine imposed together with other penalties* (Art. 38). The preventive measures have the function of special prevention of crime: *admonition* and *probation* are educational measures. The *compulsory psychiatric treatment* - applicable to mentally disordered offenders who cannot be punished because of insanity or diminished responsibility - and the *compulsory treatment for alcoholics* are remedial measures. There is a regulation for *probationary supervision* as well which is applied in most cases in addition to probation. The *confiscation of property* as a measure can be applied against the offender or any person who has gained financially as the result of a crime. The aim of this measure is to identify and secure any property with criminal origin. Finally, confiscation as security measure is defined by the law. For example, it can be applied on the equipment used in the committed crime (CC Art. 70).

In addition to these measures, a special measure had been introduced against juvenile offenders, namely, special education in a reformatory institution.

The rule of the CC (Art. 108) mentioned above also determines the order of application of sanctions, which is obligatory for the courts:

1. educative (and/or security) measure without deprivation of liberty,
2. penalty without deprivation of liberty,
3. measure involving deprivation of liberty,
4. penalty involving deprivation of liberty.

The hierarchy of sanctions emphasises the importance of the moral salvation and education of the juvenile and the intention not to separate the juvenile from his/her social environment, except as a last resort. Only a proper evaluation of all circumstances in the given case can lead to the fulfilling of the legal requirement of suitability (CC Art. 108). Both the objective and subjective facts of the offence committed by the juvenile can call for a more severe sanction. Objective circumstances include serial perpetration, the cumulation of crimes, the special method of perpetration, and the aggravating circumstances. Coprincipality, the perpetration in a group or in a criminal organisation, and the special motives of the juvenile offenders are considered as subjective facts.

The special and general norms provide the following sanctions in detail:

1. Educative measures without deprivation of liberty

Admonition: "In the case of admonition the authority expresses its disapproval, and invites the perpetrator to restrain from the perpetration of a crime in the

future.” (CC Art. 71 para. 3). In addition to the court, the police and the prosecutor are also entitled to apply this measure.

Probation: In case of milder crimes⁵ sentencing may be postponed by a probation period, if it is reasonably presumed that the aim of the punishment may be achieved in this way. In certain cases sentencing for a felony punishable by imprisonment not exceeding three years may be postponed. The period of the probation is between one and three years (CC Art. 72).

A juvenile probation may take place in case of any crime. The duration of probation may last 1-2 years; the duration has to be defined in years and months. Supervision is obligatory for juveniles during the period of probation (Art. 117 and 119).

It needs to be noted that in case of probation the court sends the accused person on probation *without conviction* (CP Art. 214/A).

2. Penalties without deprivation of liberty

Fine: The total sum of the fine as a main penalty is 10,8 million HUF (about 44.190€⁶) and as a secondary penalty 10 million HUF (about 40.916€). The fines have to be converted into imprisonment in case of non-payment (CC Art. 51, 52 and 64).

A fine may be imposed upon a juvenile, if he has his own separate income or appropriate property. The imposed fines (both as a primary and secondary penalty) shall be converted into imprisonment in case of irrecoverability (CC Art. 114).

Community service: The duration of common service is maximum fifty days, with six hours of work per day (CC Art. 49). This measure may be applied against a juvenile offender, if he/she turned eighteen at the time of sentencing (CC Art. 113).

Suspended imprisonment: It is legally possible to suspend the execution of an imprisonment not exceeding one year (or in certain cases two years) for a period of 1-5 years in the sentence. The payment of the fine as a primary penalty may be

5. Hungarian criminal law determines two forms of offences: felony - which is committed intentionally and punishable with imprisonment exceeding two years - and breaching (CC Art.11)

6. The official exchange rate on May 15 2002 is: 1 € = 244,4 HUF.

suspended for one year as well (CC Art. 89).

3. Measures involving deprivation of liberty

Compulsory psychiatric treatment: In case of violent acts against a person or acts causing public danger compulsory psychiatric treatment has to be ordered, if the offender is not punishable because of mental malfunction and it is presumed that he/she will commit a similar act. The final requirement which is laid down by the law is that in the case of punishability, imprisonment exceeding one year would have to be inflicted. The treatment has no time limit and has to be terminated if it is no longer necessary (CC Art. 74).

Compulsory treatment for alcoholics: This measure may be ordered, if the offence was committed in connection with the defendant's alcoholism and the offender was sentenced to an executable imprisonment exceeding six months (CC Art. 75).

Special education in a reformatory institution (CC Art. 118)

Hungarian criminal law lays down this special educational measure for juveniles in the interest of their successful education, its duration can be 1-3 years. The court may temporarily release the juvenile (after he has already served half of the inflicted term which cannot be less than a year imprisonment) if it is presumed that the aim of the measure may also be achieved without any further deprivation of liberty. The duration of temporary release has to be equal to the remaining portion of the sentence, but will be at least one year. The person who has turned nineteen, has to be released from the reformatory institution. Special education should be ordered in a sentence without finding the accused person guilty (CP Art. 305).

4. Penalty involving deprivation of liberty

Imprisonment is the only penalty involving deprivation of liberty in Hungary at present. Imprisonment is a general description of a type of penalty which may last for life or for a determined period. The court has the right to exclude parole in cases of life imprisonment given certain circumstances, and in these cases the imprisonment literally lasts until the end of prisoner's life (CC Art. 40, 47/B).

Life imprisonment can only be imposed on offenders who have turned twenty at the time of the offence.

The minimum term of imprisonment is two months while the maximum period is 15 years. When a cumulative sentence is given the maximum possible duration can be 20 years (Art. 40). The Hungarian Criminal Code follows a framework regulation for imprisonment: the law contains only the ranges of penalty for every

type of crime and the court is allowed, and also obliged, to decide on the individual terms of the imprisonment within the limits of the legal framework.

The terms of imprisonment are different in the case of juveniles: the minimum term is one month in case of any crime (disregarding the legal ranges of the penalty in general). The maximum term of imprisonment is influenced by two circumstances, namely, the age of the young offender and the gravity of the committed crime.

If the juvenile had turned sixteen at the time of the crime, the maximum term is either *fifteen years* (twenty years - in case of a cumulative sentence) in case of crime also punishable with life imprisonment or *ten years* (fifteen years - in case of a cumulative sentence) in cases of crimes punishable with imprisonment exceeding ten years. If the juvenile offender has not turned sixteen when committing the crime, the maximum term is *ten years* (fifteen years - in case of a cumulative sentence) in cases of crimes punishable with life imprisonment. Furthermore, in the case of crimes that are punishable with imprisonment exceeding five years, the longest duration of imprisonment is only *five years* (CC Art. 110) (seven years and six months in cases with a cumulative sentence). In addition to this, in case of crimes punishable with imprisonment not exceeding five years the general rules are to be applied.

**The maximum term of imprisonment for young offenders
(in case of a cumulative sentence)**

	between 14-16 years of age	between 14-16 years of age
crime also punishable with life imprisonment	10 years (15 years)	15 years (20 years)
crime punishable with imprisonment exceeding 10 years	5 years (7,5 years)	10 years (15 years)
crime punishable with imprisonment exceeding 5 years		according to the ranges for adults
crime punishable with imprisonment not exceeding 5 years	according to the ranges for adults	

Imprisonment takes place in a high, medium or low security prison. The sentencing court indicates the required level of security in the sentence, in line with the relevant criteria of the Criminal Code, which are the gravity and type of offence and the length of term of imprisonment. There are differences between the security levels with respect to matters such as the isolation of prisoners from the outside world, guarding and supervision, and the freedom of movement within the prison.

There are only two levels of security in use for juveniles - medium and low - and they are physically separated from the adults in juvenile penal institutions.

According to Art. 47 of the Criminal Code, the court is allowed to send the person who was sentenced to imprisonment on *parole*, if it is appropriate in view of his/her behaviour during the sentence, and of his/her readiness to adopt law-abiding behaviour, so that the aim of punishment may be reached without further deprivation of liberty. The objective criterion for the application of parole is that the sentenced person has already served a certain part of his/her penalty. The period taken into account depends on the level of the security of the sentence: the more secure the prison, the longer the portion of the sentence that must be served. The term of a parole is equal to the remaining part of the sentence, but no shorter than a year. In the case of life imprisonment the term of a parole is 15 years.

There is a new legal procedure in the framework of criminal justice against young offenders which has to be presented here. This is the opportunity for a *deferral of indictment*. This opportunity has been introduced into juvenile justice first in 1995, but since 1999 it can be applied in the case of adults as well. According to Art. 303/A of CP, the indictment can be deferred for offences punishable with imprisonment not exceeding five years in the interest of the correct development of the young offender. For adults it can be applied for offences punishable with imprisonment not exceeding three years (CP Art. 147/A). The duration of the deferral is 1-2 years in any case.

IV.1. What measures can be applied to minors before judgement (provisional detention, judicial supervision, constraining measures and/or educative measures)?

IV.1.1. Only a final judgement can lead to the application of any measure or penalty as a criminal sanction. But it can be necessary to apply some security measures to guarantee the success of the criminal procedure with prosecuted persons (coercive measures). These are, among others, pre-trial detention (CP Art. 92-97), arrest (CP Art. 91) and provisional compulsory psychiatric treatment (CP Art. 98), which involve deprivation of liberty.

IV.1.2. Such measures have the same rules for juveniles as in the case of adults. Only the ordering of pre-trial detention has a special regulation. According to Art. 302 of CP, the court is allowed to order it in order to meet the general legal criteria and only if the committed crime is of serious gravity (for example grave crimes against a person, rape or group robbery).

According to the general rules before the decision is taken on the pre-trial detention the prosecuted person has to be heard. In case of prosecuted juvenile the court has to make a decision on where the pre-trial detention will take place, as it can be executed either in a reformatory institution, in a penal institution, or in police custody. The latter possibility is very important for the purpose of separating the prosecuted young persons from adults, and to use the period of pre-trial detention for special education. The maximum duration of the pre-trial detention is not laid down by the law, but its necessity has to be proven through recurring review by the entitled court.

IV.1.3. Other coercive measures involving a deprivation of liberty such as arrest (for up to 72 hours) and provisional compulsory psychiatric treatment are applied to juveniles similarly to the general rules for adults.

IV.1.4. Criminal sanctions or procedural coercive measures are not allowed to be imposed on children (under 14). In the case of a crime committed by a child the guardianship authority is entitled to take any protective, non-penal, measures (*See II.2.3. above*).

IV.2. If the minor is judged responsible, does the court have a choice between pronouncing a punishment or an educational measure, or does it have no choice?

yes

The above cited Art. (108) of the Hungarian Criminal Code provides a compulsory sequence of sanctions. The court has to analyse the suitability of the sanction for achieving the stated goals. A deprivation of liberty may be applied only if the legal aim of punishment cannot be achieved in any other way.

It is to be noted that Hungarian criminal law provides few of the special, educative measures for juveniles as sanctions. Moreover, the list of the sanctions lacks alternatives for diversion, reparation and negotiation (between offender and victim).

IV.3. What is the general tendency concerning specific measures applicable to minors?

IV.3.1. The only special sanction is the education in a reformatory institution for juvenile offenders. The actual process of the recodification of the Hungarian Criminal Code is dealing with the possible extension of the list of the specific measures applicable to young offenders.

IV.3.2. It seems to be useful to present a short, statistical report regarding the sanctions imposed on juveniles in the last few years. We would like to state the following:

The proportion of imprisonment has decreased and the application of the suspended imprisonment has been rising. A fine as a primary penalty is only occasionally imposed on juvenile offenders. The independent application of secondary penalties and other measures is diminishing. In the latter group, probation has the highest rate of use. According to the statistics, special education represents only a very small percentage of the sanctions.

Year	Total number of convicted juveniles	out of which													
		Imprisonment				out of which		Fine (main penalty)		Secondary penalty or preventive measure ⁷		out of which			
		Suspended								Probation		Special education in a reformatory institution			
			%		%		%		%		%		%		
1997	7230	2101	29,0	1504	71,6	502	6,35	5164	71,4	4451	86,2	178	3,45		
1998	7845	2271	28,9	1676	73,8	563	6,79	5274	67,2	4509	85,5	249	4,72		
1999	8805	2753	31,3	2042	74,2	802	8,42	5584	63,4	4838	86,6	197	3,53		
2000	7877	2491	31,6	1093	76,4	752	8,8	5049	64,0	4436	87,8	239	4,73		

IV.4. Do legal criteria for determining the sanction exist?

See the "IV.Introduction" for the details.

IV.5. Does the court possess the means to moderate the punishment or to allow for a more flexible execution of the sanction?

IV.5.1. The court determines the penalty freely within the framework defined by the law in general. In case of juvenile offenders, the court is sentencing within the special, reduced range of penalty (imprisonment).

According to Art. 83 of the CC, the penalty has to be inflicted in such a way that it should be commensurate with the danger of the crime and of the offender for society. Furthermore, the degree of criminal responsibility and other aggravating and mitigating circumstances have to be considered. In cases with juvenile

7. These sanctions are applied on their own, without imposing a primary penalty.

offenders this rule is fulfilled by the additional rule above, on taking into account the aim of the punishment (CC Art. 108). The CC allows the court to impose a more lenient penalty than is originally provided by the law, even if its minimum term is too severe (CC Art. 87). The modification of the penalty actually follows these general rules in the case of juvenile offenders as well.

IV.5.2. The sentencing court, when imposing imprisonment, may diverge from the security level prescribed by the law, especially when it seems justifiable to take into consideration the personal characteristics of the offender and the cause of the offence. Furthermore, the sentencing court has no influence on the rules of the penal institution.

IV.5.3. The court of the execution of the penal sentence is different from the sentencing court, it is an independent judicial authority. Its function is to refine the legal framework of the imposed sanction and to alter or to revise it, if necessary.

IV.5.4. The most important (and also relevant) alterations which the court of the execution is entitled to make are the following: to send the sentenced person on parole or to release the person; to release the juvenile from the reformatory institution or to revoke parole; to change the security level of the imprisonment; to apply the milder rules of sentencing; to determine the security level of the imprisonment if the sentenced juvenile has turned twenty one; to specify the details of the community service ordered by the sentencing court and to order or to extend or even to revoke the probationary supervision.

IV.6. Does the execution of the sanction have any particular supervision and according to which modalities?

IV.6.1. The international level of the control of the penal execution is embodied by the Commission on Human Rights, Committee against Torture (United Nations), the European Court for Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe). The special national institutions are the prosecutor and the judge for penal execution. Furthermore, the Parliamentary Ombudsman for Civil Rights and some non-governmental organisations take part, or could take part, in the control and civil supervision of the execution of criminal sanctions.

IV.6.2. The penal-execution prosecutor's role is to assure the legality in the system of the penal execution: he/she controls the proceedings and activities of the entitled state bodies, can check the records and has an independent right to initiate investigation on the suspect of any violence, and takes part in the proceedings of the penal execution court.

IV.6.3. The penal execution court has the duty to modify the original sentence if it is required by the conditions laid down in the sentence itself. This modification can affect only some of the details of the sanction, if special conditions have been arisen during the execution of the sentence. In this way, the final decision of the sentencing court can be modified only by another court decision, which has great importance. It must be stated that the special court for execution is not an institution of legal, professional or special supervision concerning the execution of sanctions.

IV.6.4. The social control of the execution of the sanction is underdeveloped in Hungary. This topic has only turned up during the last decade in the Hungarian literature, but the necessary legal framework of the communication between the penal institutions and the civil sphere has not been laid down yet.

According to the Hungarian Constitution, the Parliamentary Ombudsman for Civil Rights is responsible for investigating or initiating the investigation of cases involving the infringement of constitutional rights which come to his attention and initiating general or specific measures for their remedy (Art. 32/B para. 1). The imprisoned persons can appeal to the Parliamentary Ombudsman for Civil Rights about their individual cases as well. The position of the Parliamentary Ombudsman for Civil Rights is an intermediary one between authorities and individuals, because his/her actions provide only a supplementary and complementary protection of rights. His/her initiatives and recommendations are not legally binding, but they can influence certain situations because of their publicity.

IV.6.5. The execution of sanctions imposed on young offenders, does not have a separate, special supervision based *only* on the fact that the sentenced person is juvenile in the Hungarian penal execution.

IV.7. Does a tendency exist which favors the decriminalisation of juvenile justice? Is this tendency based on the dissociation of the responsibility and the sanction?

no

Such tendencies do not exist in the Hungarian criminal law. These issues have not arisen either in the concerning scientific literature, or in the present process of the codification of the new criminal code.

IV.8. Can capital punishment be pronounced in the case of a juvenile, and if so at what age?

no

The Hungarian Constitutional Court abolished capital punishment in 1990 (23/1990 AB hat.)

IV.9. Does the punishment of life imprisonment or for an indeterminate time exist?

yes

IV.9.1. Referring to section IV. Above, life imprisonment is a criminal sanction in the Hungarian criminal law. Furthermore the court has the right to exclude the possibility of parole, which leads to life-long imprisonment - it is an imprisonment for an indeterminate time. Compulsory psychiatric treatment does not have a defined maximum term, either.

IV.9.2. Life imprisonment cannot be imposed on juvenile offenders. For adults, its application requires that the offender had turned twenty by the time of the offense (CC Art. 40 para. 3).

V - International Aspects

V.1. What are, briefly enumerated, the relevant dispositions in international law, having an incidence on the determination of the criminal responsibility of minors?

1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) - 1985,
2. Convention on the Rights of the Child - 1989
3. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) - 1990,
4. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

V.2. What authority do these dispositions have vis-à-vis national sources?

V.2.1. International treaties and conventions become part of the Hungarian legal system via domestic legislation. According to the Hungarian Constitution the legal system accepts the generally recognised principles of international law and the state shall harmonise the domestic law with the obligations assumed under international law (Art. 7 para. 1).

V.2.2. The Convention on the Rights of the Child (1989) carries obligations for those States that officially ratify this agreement. The Convention was ratified by Hungary and the Act LXIV/1991 embodies the necessary national legislation by which the Convention has become part of the Hungarian legal system.

The other relevant international instruments are non-binding or of a soft law nature, which means they are approved at international forums such as the UN General Assembly but they do not carry formal obligations on states regarding implementation.

V.3. Do they have a real influence in positive law?

V.3.1. The Republic of Hungary is bound by “hard” law which is proved by the fact that, in practice, the Convention on the Rights of the Child from the year 1989 has deeply influenced Hungarian legal provisions. New regulations and several amendments have been issued in favour of juveniles.

V.3.2. The new regulations in force since 1 September 1995 have reformed juvenile criminal justice, which has become more effective and individualised. Juvenile offenders are treated in a different way, although the juvenile justice system remains a part of the ordinary criminal justice system.

The most important elements of the reforms are the following: 1/ it is legally declared that a penalty or measure involving deprivation of liberty can be used only as a measure of last resort (CC Art. 108 para. 3); 2/ the introduction of the deferral of indictment (CP Art. 303/A); 3/ the limitation of pre-trial detention for the cases with particular gravity; 4/ it has been allowed that the pre-trial detention can be carried out in the reformatory institution as well; 5/ the period of the pre-trial detention must be counted in the duration of the special education in a reformatory institution (CP Art. 302, CC Art. 120/B); 6/ the introduction of the maximum term of the special education in a reformatory institution (CC Art. 118 para. 2).

V.3.3. The other mentioned international instruments do not have real influence in positive law but in the process of any national legislation the already accepted and recommended international standards can play an important role.

V.4. Do particular dispositions exist concerning the criminal responsibility of foreign minors? How, for example, can one determine the age of a minor in the absence of official documents that attest the alleged age?

V.4.1. The scope of the Hungarian Criminal Code is stated by Articles 3, 4 of CC: Article 3 says that the Hungarian law has to be applied to crimes committed in Hungary, as well as to the acts committed by Hungarian citizens abroad which are defined as crimes in Hungarian law. The Hungarian law shall also be applied to criminal acts committed on-board Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary. The Article 4 lays down

that Hungarian law must also be applied to acts committed by non-Hungarian citizens abroad, if they are a/ criminal acts in accordance with Hungarian law and are also punishable in accordance with the law of the place of perpetration, b/ criminal acts against the state (Chapter X of CC) regardless of whether it is punishable in accordance with the law of the place of perpetration, except espionage against the allied forces (CC Art. 148), c/ crimes against humanity (Chapter XI of CC) or any other crimes whose prosecution is prescribed by an international treaty. In the latter cases (a-c) the criminal proceedings have to be ordered by the Attorney General.

V.4.2. Consequently, the Hungarian criminal law does not contain special provisions for the criminal responsibility of foreign minors (juveniles). Referring to the section IV. Above, it must be noted that expulsion as a secondary penalty can be applied only for foreign offenders (adult and juvenile).

V.4.3. The age of the juvenile offenders must be proved by an official document in the criminal proceeding. In so far as the necessary documents are absent, the person responsible for the care of the minor is to be heard about the juvenile's age or a medico-psychological examination has to be ordered to determine the age of the offender. For this aim the Hungarian authorities can initiate an international request to counterpart bodies abroad.

V.5. Do special dispositions concerning police, judicial and penitentiary co-operation exist that apply to minors who are in a criminal procedure?

See II.3.2. above.

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