



# Life Imprisonment under International Law in the Light of the Case-Law of the European Court of Human Rights

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## Abstract

**Aim:** The purpose of this study is to examine the development of the Hungarian regulation of life imprisonment without the possibility of parole over the past decades and to assess its compatibility with Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. The study analyses the case law of the European Court of Human Rights, the legislative responses adopted by the Hungarian legislature, with particular emphasis on the introduction of the mandatory pardon procedure, and evaluates the adequacy of these measures. It also examines the relevant jurisprudence of the Hungarian Constitutional Court and considers the possible future directions of the legal framework.

**Methodology:** The research employs descriptive and case-law analysis methods. It reviews the evolution of the Hungarian legal framework, the relevant judgments of the European Court of Human Rights, as well as the pertinent decisions of the Hungarian Constitutional Court and the Curia, and evaluates them against the requirements of the Convention. Based on the findings of the research, the study also puts forward a *de lege ferenda* proposal aimed at ensuring that the Hungarian system of criminal sanctions complies with both the European Convention on Human Rights and the Fundamental Law of Hungary.

**Findings:** The study concludes that the Hungarian regulation of life imprisonment – particularly life imprisonment without the possibility of parole and, in

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certain cases, life imprisonment with the possibility of parole – has failed to comply with the requirements of Article 3 of the Convention since its introduction. The introduction of the mandatory pardon procedure has not remedied the deficiencies identified by the Strasbourg Court. The study further argues that the current regulation of life imprisonment is, in all likelihood, incompatible with Articles II and III of the Fundamental Law of Hungary, thereby creating an internal constitutional tension with Article IV thereof.

**Value:** The study provides a systematic assessment of the Hungarian regulation of life imprisonment in the light of the case law of the European Court of Human Rights and the constitutional requirements of Hungary. It identifies the domestic and international legal inconsistencies inherent in the current framework and formulates a *de lege ferenda* proposal for a system of criminal sanctions capable of simultaneously ensuring the protection of society, the achievement of the objectives of punishment, and compliance with fundamental human rights standards.

**Keywords:** life imprisonment, LWOP, mandatory pardon procedure, European Convention on Human Rights, European Court of Human Rights

## Introduction

At the apex of the current Hungarian system of criminal sanctions stands life imprisonment, more *precisely* its most severe form, life imprisonment without the possibility of parole (hereinafter: LWOP). Hungary has repeatedly been found in violation by the European Court of Human Rights (hereinafter: the Court) in cases arising from the various regulatory frameworks governing this sanction over the past decades. Over the years, the Hungarian legislature has sought to take measures aimed at rendering the regulation of life imprisonment compliant with the requirements of the European Convention on Human Rights (hereinafter: Convention). Nevertheless, the Court's continuing findings of violations, together with certain subsequent legislative amendments affecting life imprisonment, reveal a troubling trend regarding the success of these efforts. In the light of the Court's case-law and the successive regulatory frameworks governing life imprisonment over several decades, this paper examines the reasons underlying the Court's judgments against Hungary, the legislative responses adopted in light of those judgments and the extent to which such responses have proved adequate. It further considers the implications of these developments for the future, particularly with regard to the legitimacy and Convention

compatibility of the current Hungarian regulation of life imprisonment. The central hypothesis advanced is that, notwithstanding the Court's repeated findings of violations in recent years, the Hungarian legal framework governing life imprisonment, and in particular LWOP, has not moved closer to compliance with the Convention but has instead demonstrated a discernible tendency to diverge from Convention.

## The Significance of the European Convention on Human Rights

The Convention is an international treaty. For the purposes of the present paper, particular attention is devoted to Article 3 of the Convention, which provides that *'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'* This provision constitutes the principal normative framework for the analysis undertaken below. Pursuant to the principle of *pacta sunt servanda*, Hungary is under an obligation to ensure that its domestic legal system provides the conditions necessary to secure compliance with the obligations assumed under the Convention and to maintain harmony between its international commitments and domestic law. This requirement was previously enshrined in Article 7(1) of the former Constitution and is now reflected, in substantially identical terms, in Article Q) of the Fundamental Law of Hungary (hereinafter: the Fundamental Law), which provides that: *'In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law.'* The Fundamental Law, its legal justification, the leading academic commentary thereon, and the relevant jurisprudence of the Constitutional Court of Hungary consistently support the proposition that the Hungarian legal system – and, more specifically for the purposes of the present paper, the Hungarian system of criminal sanctions – is bound to comply with Article 3 of the Convention. The legal justification to the Fundamental Law expressly reaffirms the content of Article Q) (2), stating that: *'In order to ensure the good-faith performance of Hungary's obligations under international law, Article Q(2) requires the maintenance of conformity between the rules of international law binding upon Hungary and Hungarian law. This provision reflects the principle of international law according to which a breach of international obligations cannot be justified by reference to provisions of domestic law.'* ([URL1](#)).

The leading academic commentary on the Fundamental Law observes that, with regard to the relationship between international law and domestic law, Article Q(2) of the Fundamental Law – like Article 7(1) of the former Constitution

before it – adopts the dualist approach. Under this approach, rules of international law other than the generally recognised principles of international law become part of the Hungarian legal system only upon their promulgation through an Act of Parliament. Accordingly, from a dualist perspective, international treaties are incorporated into the domestic legal system by way of transformation, that is, through the legislative act promulgating the treaty (Árva, 2025). In the case of the European Convention on Human Rights, this function is performed by Act XXXI of 1993 on the Promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the first eight Protocols thereto.

The obligation to ensure conformity between international law and domestic law has been interpreted by the Constitutional Court of Hungary in a number of its decisions. With respect to the former Constitution, Decision No. 16/1993 (III. 12.) of the Constitutional Court of Hungary held that the constitutional provision in question [Article 7(1)] imposes upon the legislature not merely the obligation to ensure that the rules of domestic law do not conflict with Hungary's international legal obligations, but also the duty to enact such legislation as may be indispensable for the fulfilment of those obligations, thereby reflecting the dualist conception of the relationship between international and domestic law. [Decision No. 16/1993. (III.12.) of the Constitutional Court of Hungary] Furthermore, Decision No. 53/1993 (X. 13.) of the Constitutional Court of Hungary stated that *'conformity must be ensured with the domestic legal system as a whole, including the Constitution. Accordingly, this provision of the Constitution requires consistency between the Constitution, international treaties and obligations assumed directly under the Constitution, on the one hand, and domestic law, on the other; in securing such conformity, due regard must be had to the particular characteristics of each.'*

In Decision No. 61/2011 (VII. 13.), the Constitutional Court of Hungary, referring expressly to the Convention, held that *'with regard to certain fundamental rights, the Constitution defines the essential content of the right in the same manner as international treaties, such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights. In such cases, the level of protection afforded by the Constitutional Court may under no circumstances be lower than the level of international protection, as developed in particular by the Strasbourg European Court of Human Rights.'* (own trans.) According to the justification of the Constitutional Court, this requirement follows from the principle of *pacta sunt servanda*, pursuant to which *'the Constitutional Court is required to follow the Strasbourg case-law, and the standard of fundamental rights protection established therein, even where such*

*an obligation would not necessarily arise from its own prior precedent decisions.*’ [Decision No. 61/2011 (VII.13.) of the Constitutional Court of Hungary; own trans.]

This approach was reaffirmed following the entry into force of the Fundamental Law in Decision No. 32/2012 (VII. 4.) and Decision No. 7/2013 (III. 1.) of the Constitutional Court of Hungary. In the context of the present study, these decisions are of particular significance, since the prohibition enshrined in Article 3 of the Convention is reproduced in almost identical terms in Article III(1) of the Fundamental Law, which provides: *‘No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude. Trafficking in human beings shall be prohibited.’*

This conclusion is further reinforced by the fact that the leading academic commentary on the Fundamental Law likewise interprets Article III(1) of the Fundamental Law in conjunction with Article 3 of the Convention, treating the two provisions as corresponding guarantees. (Árva, 2025) Accordingly, in light of Decision No. 61/2011 (VII. 13.) of the Constitutional Court of Hungary, the prohibition enshrined in Article III(1) of the Fundamental Law must be afforded the same level of fundamental rights protection as that guaranteed by the Court under Article 3 of the Convention. It follows that the case-law developed under Article 3 of the Convention must serve as the governing interpretative standard.

With regard to the Fundamental Law of Hungary, reference should also be made to Decision No. 34/2013 (XI. 22.) of the Constitutional Court of Hungary, which, notably, places Hungary among those states that recognise generally accepted rules of international law as binding upon themselves. Furthermore, in relation to Article Q) of the Fundamental Law, the decision established the obligation that *‘the interpretation and application of domestic legal provisions shall comply with the generally recognised rules of international law and, in the case of other sources of international law, with international legal obligations promulgated in domestic legislation, provided that such an interpretation is also compatible with the value system of the Fundamental Law.’* [Decision No. 34/2013. (XI.22.) of the Constitutional Court of Hungary; own trans.] An interesting nuance is added by the Constitutional Court’s reasoning concerning the relationship between international law and domestic law with regard to irreducible life imprisonment (LWOP). This is particularly noteworthy in light of the fact that, following the judgment of the Court in Magyar v. Hungary, the Decision No. 3/2015 on the uniformity of criminal law declared that LWOP is part of Hungary’s constitutional legal order. In doing so, the Curia of Hungary effectively expressed the view that LWOP is compatible with the value

system embodied in the Fundamental Law. According to the aforementioned decision of the Constitutional Court, this may, in turn, justify an interpretation that is not fully consistent with Hungary's obligations under international law.

In addition to the foregoing, it should be noted that the Constitutional Court of Hungary has consistently reaffirmed in its decisions the principle that *'it accepts the level of protection established in international treaties and further developed through the related judicial practice as the minimum standard for the enforcement of fundamental rights.'* [Decisions No. [32/2012. (VII.04.); 16/2014. (V.22.); 3206/2014. (VII.21.) of the Constitutional Court of Hungary; own trans.]

Nevertheless, through the process of transformation, the Convention became part of the Hungarian legal system by virtue of the Act referred to above. The jurisdiction of the Court extends to all matters concerning the interpretation and application of the Convention and the Protocols thereto that are properly submitted to it in accordance with the provisions of the Convention. (Convention, Article 32) Any Contracting State may bring before the Court an alleged violation of the provisions of the Convention and the Protocols thereto by another Contracting State. (Convention, Article 33) Furthermore, any person, non-governmental organisation, or group of individuals may submit an application to the Court if they claim to be the victim of a violation by a Contracting State of the rights set forth in the Convention or the Protocols thereto (Convention, Article 34).

Citing András Czebe and Dóra Virág Dudás, it is argued that this demonstrates that the Convention has a very strong enforcement mechanism (Czebe, 2023). Furthermore, pursuant to Rule 61 of the Rules of Court of the European Court of Human Rights, the Court may initiate so-called pilot judgment proceedings, which may be applied where an identifiable structural or systemic deficiency within the legal system of a particular State gives rise to the possibility of the submission of further similar applications on a large scale. In such cases, the Court must identify the deficiency in the domestic legal system of the State concerned that enables the occurrence of repeated violations and indicate the type of remedial measure that must be introduced at the national level in order to ensure the proper execution of the Court's judgment (Szemesi, 2013).

The Convention reaffirms in its Preamble that its role is fundamentally of a subsidiary nature, meaning that the primary responsibility for securing the rights guaranteed therein rests with the Contracting States. Accordingly, an application may be brought before the European Court of Human Rights only after all domestic remedies have been exhausted. (Convention, Article 35) The present study notes, by way of a preliminary observation, that according to the case-law of the Court, a constitutional complaint lodged with the Constitutional Court

may, in certain circumstances, constitute a relevant domestic remedy. However, with specific regard to Hungary, the Court held in *Bancsók and László Magyar v. Hungary* (No. 2) that a constitutional complaint does not constitute an effective remedy in cases involving life imprisonment ([URL2](#)).

The Contracting Parties undertake to comply with the final judgments of the Court in any case to which they are parties (Convention, Article 46).

Agreeing with András Czebe, this demonstrates that the judgments of the Court do not have *erga omnes* effect, that is, they are not binding upon all Contracting States. Nevertheless, it is also evident from the Constitutional Court decisions cited above that the jurisprudence of the Court must serve as a relevant interpretative reference for the Hungarian legal system. Consequently, this requirement necessarily extends to judgments delivered in cases in which Hungary was not a party.

In the event that a violation of the Convention or the Protocols thereto is established, and where the domestic law of the Contracting State concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party. (Convention, Article 41) According to Marcel Szabó, this means that no legislative obligation arises from a judgment of the Court, particularly because the Court does not assess the conformity of a rule of Hungarian law as such, but rather the application of that rule in a specific individual case ([Szabó, 2022](#)).

By contrast, Sándor Szemesi argues that, when read together, Article 46 of the Convention – according to which the Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties – and Article 1 – under which the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention – support an interpretation according to which *'on the basis of the obligation to secure the human rights and fundamental freedoms guaranteed by the Convention, the State found in violation is required to adopt, for the future, measures capable of preventing similar adverse judgments.'* ([Szemesi, 2013](#)).

Sándor Szemesi's argument appears even more compelling in light of the pilot judgment procedure. If a Contracting State refuses to comply with the execution of a final judgment delivered against it, the Committee of Ministers of the Council of Europe may initiate infringement proceedings before the Court (Convention, Article 46; [Czebe, 2023](#)).

In light of the foregoing, it may nevertheless be concluded that the Hungarian legal system is *de jure* bound by the provisions of the Convention and by the case-law of the Court.

## A Brief Overview of the Regulatory History

Following Decision No. 23/1990 (X. 31.), by which the Constitutional Court of Hungary abolished the capital punishment, which had long occupied the highest position within the Hungarian system of sanctions, the domestic legal system was confronted with the challenge of '*adequately filling the gap left by the abolition of the death penalty.*' (Gönczi, 2015; own trans.) In Hungary, similarly to numerous other European states that abolished the death penalty, life imprisonment gradually and organically became the 'ultimate punishment.' (Lévay et. al., 2014).

Dávid Vig characterised the situation following the abolition of capital punishment as a '*decapitated system of sanctions*', the essential problem of which lay in the fact that, where life imprisonment included the possibility of conditional release, criminal law lacked an adequate instrument for dealing with offenders who had committed the most serious offences (Vig, 2009). András Polgár elaborates that this regulatory gap undermined the public sense of justice and had a dysfunctional impact on voluntary compliance with the law. The problem manifested itself in the absence of proportional punishment based on the gravity of the offence. While in the majority of cases offenders who committed less serious crimes were sanctioned proportionately by the courts, perpetrators of offences of exceptional gravity received, by the same logic, disproportionately lenient punishment; as a result, the purposes of punishment were not fulfilled (Polgár, 2017). In support of the foregoing proposition, it is noted that: '*Between 1990 and 1998, through a number of substantive decisions in specific cases, the Criminal Chamber of the Supreme Court worked to eliminate the adverse phenomenon observed nationwide in sentencing practice following the Constitutional Court's abolition of the death penalty (lenient sentencing not conforming to a system of proportional liability, as well as inconsistent and at times extreme disparities in sentencing), with a view to eliminating such tendencies and stabilising judicial practice.*' (Kónya, 2017).

In order to address this situation, Act LXXXVII of 1998 introduced LWOP, thereby excluding the possibility of conditional release. As Ádám Békés puts it, this constituted '*a kind of gap-filling measure on the part of the legislature, enabling society to be protected from those offenders who had engaged in conduct so serious and so fundamentally contrary to social norms that their reintegration into society was essentially considered hopeless.*' (Békés, 2014; own trans.) András Polgár argues that '*if this sanction (LWOP) did not exist, then in certain exceptional cases the punishment would no longer be proportionate to the offence committed.*' (Polgár, 2017).

Nevertheless, for, among other reasons, those outlined above, LWOP has raised numerous human rights and criminal law-principles concerns. Presumably with the intention of addressing such concerns, the legislature – as Mihály Tóth notes, *'although it remains silent on the prohibition of the death penalty'* (own trans.) – expressly recognised the constitutionality of LWOP in Article IV(2) of the Fundamental Law (Nagy, 2014) and thereby ensured its constitutional conformity (Szomora, 2024) by providing that: *'No one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.'*

At this point, reference should also be made to Mihály Tóth's critique of the codification of the Criminal Code from the perspective of the principle of legality, according to which, in addition to Article IV of the Fundamental Law, the separate inclusion of the requirement of violent conduct in the Criminal Code was, in fact, unnecessary (Tóth, 2014).

However, this may give rise to further concerns, since Article II of the Fundamental Law declares the inviolability of human dignity, while Article III prohibits torture and inhuman or degrading treatment or punishment. Moreover, the right to legal certainty, which constitutes one of the fundamental components of the rule of law, is also inherent in the constitutional framework. [Decision No.11/1992. (III.5.) of the Constitutional Court of Hungary] Furthermore, the relationship between Article IV(2) and Article Q) of the Fundamental Law remains unresolved. These apparent contradictions and potential conflicts are issues that the Constitutional Court would be expected to resolve. Nevertheless, a concerning tendency may be observed in this regard, as demonstrated, for instance, by the fact that in 2023 the Constitutional Court rejected an application partly aimed at addressing these issues without conducting a substantive examination (Szomora, 2024).

In his dissenting opinion, Marcel Szabó expressed the view that an issue requiring the interpretation of the Fundamental Law is whether, within the constitutional framework established by the Fundamental Law, the sentence of LWOP (the imposition of which is expressly permitted by the Fundamental Law itself) complies with the prohibition of torture and inhuman or degrading treatment or punishment, which is likewise guaranteed by the Fundamental Law, and under what principled conditions such a sentence may be considered compatible with that prohibition [Order No. 3492/2023. (XII.1.) of the Constitutional Court of Hungary].

Accordingly, the constitutional conformity of LWOP remains unresolved: despite the existence of potential constitutional conflicts, the Constitutional Court

has not examined the issue on the merits. Moreover, in light of the case-law of the Court discussed above, there are substantial grounds to argue that the current Hungarian regulation of life imprisonment violates Article III(1) of the Fundamental Law.

## **The Significance of Article 3 of the European Convention on Human Rights in the Context of Life Imprisonment**

With regard to Hungary, the Court delivered its first judgment finding a violation in the case of *László Magyar v. Hungary*. Briefly summarising the background to this judgment, reference should be made to the Court's case-law developed in *Kafkaris v. Cyprus* and *Vinter and Others v. the United Kingdom*.

One of the most significant findings of the Court in *Kafkaris v. Cyprus* was that life imprisonment imposed on an adult offender is not, in itself, prohibited and is not incompatible with Article 3 of the Convention or with any other provision thereof. At the same time, the Court also held that the imposition of an irreducible life sentence on an adult offender may raise an issue under Article 3 of the Convention ([URL3](#)).

In determining whether life imprisonment in a particular case may be regarded as irreducible, the Court examines whether the person sentenced to life imprisonment has any realistic prospect of release. Where domestic law provides for the possibility of reviewing a life sentence with a view to its commutation, remission, termination, or the conditional release of the prisoner, this is considered sufficient to satisfy the requirements arising from Article 3 of the Convention. For the purposes of Article 3, it is sufficient that life imprisonment is reducible both *de jure* and *de facto* ([URL3](#)).

The principles established in the landmark *Vinter and Others* judgment are summarised by Dániel Karsai as follows: pursuant to Article 3 of the Convention, LWOP must be reducible, in the sense that domestic law must provide a procedure through which it can be determined whether the continued detention of the prisoner continues to serve any legitimate penological purposes. A convicted person should not be required to wait for an indeterminate period before a review is conducted, as such uncertainty is incompatible with the principle of legal certainty. At the commencement of the sentence, the prisoner must know the conditions under which release may become possible (Karsai, 2014). Furthermore, in *Vinter and Others*, the Court observed that the relevant comparative and international legal materials clearly support the establishment of a dedicated review mechanism guaranteeing a review no later than twenty-five years

after the imposition of a life sentence, followed thereafter by periodic reviews at regular intervals ([URL4](#)).

Having regard to the foregoing, in its judgment delivered in the *László Magyar v. Hungary* case on 20 May 2014, the Court held that LWOP, under the rules applicable at the time, violated Article 3 of the Convention, since the only possibility for reducing the sentence was an individual pardon granted by the President of the Republic in the exercise of his discretionary power, which, however, could not be regarded as an acceptable mechanism *de jure* or *de facto*.

This was so, first, because the President of the Republic was under no obligation to provide justifications for such a decision; consequently, the offender had no knowledge of the conditions under which a favourable decision may be adopted. Secondly, no time limit was prescribed with regard to the President's decision, and no person sentenced to LWOP had ever received a presidential pardon. Therefore, the convicted person could not, in reality, be aware of the conditions that had to be fulfilled or of the time at which any possibility of reducing the sentence might arise.

On the basis of the *László Magyar* judgment, the Hungarian legal system was required to establish a procedure which, after the expiry of an appropriate period of time served in prison, would enable an assessment of whether the continued detention of the convicted person could still be justified by legitimate penological grounds and whether the penal policy considerations underlying the sentence continued to exist.

In light of these requirements, the Hungarian legal system amended Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Detention for Misdemeanours (hereinafter: the Punishment Enforcement Act) by virtue of Sections 93–162 of Act LXXII of 2014, and introduced, with effect from 1 January 2015, the legal institution of a mandatory pardon procedure in cases involving LWOP.

In relation to the *László Magyar* case, the Curia also stated that LWOP forms part of the Hungarian constitutional legal order and that its imposition is not prohibited by any international treaty. (Decision No. 3/2015 of the Curia on the uniformity of criminal law)

## **The Compatibility of the Mandatory Pardon Procedure with the European Convention on Human Rights**

Under the mandatory pardon procedure, in the case of offenders sentenced to LWOP, a pardon procedure must be conducted *ex officio* and with the consent

of the convicted person after forty years have elapsed. The detailed rules governing this procedure were codified in the Punishment Enforcement Act.

According to the legal justification, the exceptionally long forty-year waiting period was introduced in order to preserve the coherence of the Hungarian system of criminal sanctions. Otherwise, offenders sentenced to LWOP for the most serious offences and regarded as posing the greatest danger to society could find themselves in a more favourable position than offenders serving life imprisonment with the possibility of conditional release. In the latter case, eligibility for conditional release must be reviewed no earlier than twenty-five years and no later than forty years after the commencement of the sentence (URL6).

The legal justification suggests that the new regulatory framework seeks to respond to the judgment in the case of László Magyar by addressing the concerns identified by the Court regarding the Hungarian pardon system. According to the justification, *'the Judgment criticised the fact that, under the Hungarian regulatory framework, a person sentenced to LWOP was not aware, at the time the final criminal judgment was delivered, of the precise considerations that would be examined by the authorities and officials involved in the pardon procedure.'* (URL6).

The legal justification maintains that this deficiency can be remedied simply by requiring the Minister responsible for justice to obtain the documents necessary for conducting the pardon procedure, thereby placing upon the Minister, by operation of law, the responsibility for collecting the relevant information. At the same time, in order to ensure that the identification of the relevant documents does not depend exclusively on the Minister's individual discretion, *'the Act enumerates the categories of documents that must be obtained in every case, as they are indispensable for the careful assessment of the considerations that are mandatorily to be examined in the mandatory pardon procedure.'* (URL6).

This requirement ensures that all information relevant to the decision-making process is available to the actors involved (URL6). These include, for example, the specialist psychiatric and psychological assessment prepared by the correctional institution concerning the prisoner's mental condition, as well as the prisoner's medical records relating to his or her physical health.

The legal justification further states that, in response to the judgment in *László Magyar v Hungary*, the mandatory pardon procedure introduces an ad hoc Pardon Committee in order to satisfy the requirement that, alongside the President of the Republic, *'independent external opinions should also be incorporated into the procedure.'* (URL6).

Furthermore, according to the legal justification, the new provisions of the Punishment Enforcement Act adopted in the wake of the *László Magyar v.*

Hungary judgment lay down, as a procedural safeguard, the criteria that the Pardon Committee is required to examine in every case. According to the justification, this provision is intended to remedy the deficiency identified by the Court in the case of *László Magyar v Hungary*, namely that, at the time of sentencing, the prisoner is not aware of the factors that he or she must demonstrate in order to obtain a favourable pardon decision.

The wording of the new regulatory framework could also give rise to a degree of optimism, as it suggests that the mandatory pardon procedure is to be conducted with the participation of a broad range of experts. Such an arrangement could arguably accord with, *inter alia*, the proposals advanced by Mihály Tóth regarding the review of life sentences (Tóth, 2014).

Nevertheless, even after the codification of the mandatory pardon procedure, the Court found Hungary in violation of the Convention on several further occasions. In *T.P. and A.T. v. Hungary*, which became final on 6 March 2017, the Court once again held that, at the time of the *László Magyar* judgment, the Hungarian legal framework governing LWOP did not provide a mechanism by which such sentences could be reduced either *de jure* or *de facto*. The Court also reaffirmed that the principles laid down in *Vinter and Others v. the United Kingdom* remained the governing standards in this area (URL5).

In this connection, the Court recalled that both comparative and international legal materials clearly support the review of life sentences after twenty-five years of imprisonment (URL5). Furthermore, the Court reiterated that, in the case of *Bodein v. France*, when examining whether a review mechanism available after thirty years of imprisonment satisfied the requirements established in *Vinter and Others*, it had accepted such a review period as compatible with Article 3. In doing so, the Court placed particular emphasis on the fact that, under French law, time spent in pre-trial detention was credited towards the sentence, with the result that the applicant was entitled to apply for release on parole after twenty-six years of detention.

With regard to the case before it, the Court observed that, in the context of LWOP, the mandatory pardon procedure – namely, the new mechanism theoretically rendering such sentences reducible – provided for a waiting period of forty years before review. This period was substantially longer than the maximum interval accepted by the comparative and international legal consensus, to which the Court had previously referred, as the latest permissible point for reviewing a life sentence, and considerably exceeded even the twenty-six-year period accepted in the *Bodein* case.

The Court further noted that this situation was rendered even more problematic by the fact that the Hungarian Government had not argued that time spent in

pre-trial detention was to be credited towards the forty-year qualifying period ([URL5](#)). The Court explained that this circumstance alone was sufficient to establish a violation of Article 3, since it unjustifiably delayed the assessment of whether the prisoner's personal development had reached a stage at which continued detention could no longer be justified by legitimate penological grounds. In other words, it postponed the determination of whether the execution of the sentence had already achieved its legitimate purposes ([Himpli, 2026](#)).

Indeed, one of the principal purposes of criminal punishment, including imprisonment, is the offender's reintegration into society – that is, enabling the offender, through the execution of the sentence, to become a constructive member of society or, at the very least, to lead a law-abiding life upon release.

Nevertheless, the mandatory pardon procedure gave rise to further concerns regarding its compatibility with the Convention. The Court also reiterated that the previously established requirement that a prisoner must know what conditions he or she is required to satisfy in order for the sentence to become reducible can, *inter alia*, be secured only where the relevant decisions are accompanied by a duty to give justifications.

The Court acknowledged as a positive development that the Punishment Enforcement Act, by way of a procedural safeguard, prescribes the criteria that the Pardon Committee is required to consider in every case. At the same time, however, it emphasised that the Committee's opinion, although based on those mandatory statutory criteria, is not binding on the President of the Republic, who ultimately has the final say on whether the sentence should be reduced. Moreover, the President remains under no obligation to provide justifications for the decision, even where, *ad absurdum*, it departs from the opinion of the Pardon Committee.

Accordingly, the Court concluded that the amendments to the Punishment Enforcement Act adopted in response to the Magyar judgment – which the legal justification characterises as procedural safeguards and which establish the mandatory pardon procedure – do not constitute adequate procedural guarantees capable of ensuring that LWOP is reducible both *de jure* and *de facto* ([URL5](#)).

The Court reached the same conclusion on the basis of substantially the same reasoning in *Sándor Varga and Others v. Hungary*, which became final on 10 October 2021, and subsequently in *Bancsók and László Magyar v. Hungary* (No. 2), which became final on 28 January 2022.

Also worthy of mention in this context is the case of *Horváth and Others v. Hungary*, which became final on 2 March 2023 ([URL10](#)). The significance of this judgment for the present discussion lies in the fact that, although the Court once again found Hungary in violation of the Convention, the case concerned a sentence of life imprisonment that did not exclude the possibility of release on parole.

The Court relied on essentially the same reasoning as in *T.P. and A.T. v. Hungary*, namely that a violation of Article 3 of the Convention may arise solely from the fact that a prisoner is required to serve more than twenty-five years imprisonment before becoming eligible for a review of the sentence, notwithstanding the standard established in the case of *Vinter and Others* and reflected in comparative and international legal materials.

Accordingly, the judgment established an important precedent demonstrating that, under the Hungarian legal framework, Convention incompatibility is not confined to LWOP or to the mandatory pardon procedure. Rather, in certain circumstances, it may also arise in relation to life imprisonment with the possibility of parole.

A further cause for concern – and, in all likelihood, a circumstance incompatible with the Convention – is the restriction of the President of the Republic’s power to grant pardon in respect of certain offences against sexual freedom and sexual morality, introduced by Act XXX of 2024 through the amendment of Section 104 of the Criminal Code and reinforced by the Thirteenth Amendment to the Fundamental Law.

In the context of LWOP, this amendment may give rise to further anomalies. It is conceivable that an offender sentenced to LWOP for one of the offences concerned could be categorically excluded from receiving pardon, even where the mandatory pardon procedure has been successfully completed under the applicable legal framework and the Pardon Committee has concluded that there are no longer any criminological or penological grounds for maintaining the sentence (Himpli, 2026).

## Future Prospects – De Lege Ferenda

The criminal law of a state governed by the rule of law rests upon two fundamental principles: the rule of law and the principle of humanity. Perhaps the most significant point of convergence between these principles is their shared commitment to the protection of human rights. Both are strongly reflected in the Convention, the provisions of which Hungary has recognised as legally binding upon itself, as discussed above.

In addition to these general principles, the criminal law of a state governed by the rule of law is also governed by more specific principles. Among these, particular importance attaches to the principle of legality, including the maxims *nullum crimen sine lege* and *nulla poena sine lege certa*, which require criminal offences and penalties to be defined with sufficient precision and

clarity, as well as to the prohibition of indeterminate criminal provisions and indeterminate sanctions.

If these principles are to be taken seriously, the current Hungarian system of criminal sanctions cannot be maintained in its present form. This does not mean, however, that individuals who pose an extreme threat to society and persistently violate its most fundamental norms cannot, where justified, remain in prison for the rest of their lives.

The Convention itself does not preclude such an approach. Rather, it suggests that consideration should be given to the possibility of removing life imprisonment from the current system of criminal sanctions altogether.

Such a development would also be consistent with the organic evolution of criminal law. Just as vengeance gradually gave way to the State's monopoly on the power to punish, and just as capital punishment was, in turn, replaced by life imprisonment as the most severe sanction within the criminal justice system, life imprisonment itself may likewise evolve into a new form of punishment. More precisely, it may be transformed into a different sanction occupying the apex of the system of criminal penalties.

Such a sanction could be designated long-term imprisonment, existing alongside determinate imprisonment as the most severe custodial penalty within the system of criminal sanctions.

This is because long-term imprisonment would constitute an indeterminate sentence, while requiring that eligibility for release on parole be reviewed after twenty-five years through a rigorous, potentially multi-stage procedure involving a broad range of experts. Even where such a review concluded that release was not warranted, parole could be refused repeatedly, as many times as justified by the circumstances.

In my view, such a model would satisfy both the substantive and the enforcement-related purposes of criminal punishment. First, even in the case of the most severe sanction, the objective of special prevention would not be excluded, since the offender would enjoy a genuine opportunity, both *de jure* and *de facto*, to demonstrate rehabilitation and ultimately to become a constructive, law-abiding member of society. Secondly, the model would also be unlikely to conflict with the principle of proportionality. For example, if long-term imprisonment could be imposed only on offenders who had attained the age of twenty at the time of the offence – thus reflecting the age thresholds traditionally associated with capital punishment and life imprisonment – the first review of parole eligibility could take place no earlier than at approximately forty-five or forty-six years of age.

In practice, however, given that persons convicted of the most serious offences are, on average, older than twenty at the time of the offence, parole eligibility

would generally not arise before the offender had reached the age of fifty to sixty. Consequently, the offender would spend the greater part of his or her active adult life in custody before any assessment of continued dangerousness to society became necessary. Such a model could also serve as a catalyst for broader reform of the punishment enforcement system. By requiring, within a foreseeable period even in cases involving the most serious offences, an assessment of whether the punishment enforcement system is capable of effectively achieving the purposes of punishment, it would create a structural incentive for the continuous development and improvement of correctional practice.

A further, more practical consideration also supports placing the proposed sentence of long-term imprisonment at the apex of the system of criminal sanctions. Such a reform would finally resolve a conceptual issue that is difficult to reconcile with the principle of *nullum crimen sine lege* and *nulla poena sine lege certa*: namely, the absence of a clear legal definition of long-term imprisonment. Although the term has long been employed in legislation and legal scholarship, it has never been defined with precision.

From an international perspective, the concept of long-term imprisonment encompasses a broad range of meanings. On the one hand, Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe classifies determinate prison sentences exceeding five years as long-term sentences (URL7). On the other hand, empirical international research has adopted a variety of thresholds: some studies regard imprisonment exceeding four years as long-term, (Flanagan, 1995) while others associate the concept with custodial sentences of at least five, ten, (URL8) or fifteen years. With regard to life imprisonment, some studies automatically classify it as a form of long-term imprisonment, whereas others do so only where eligibility for parole arises after at least fifteen years or where the prisoner has already served fifteen years of the sentence (Hulley et.al., 2016).

In the Hungarian context, similar uncertainty can be observed. Shortly after the turn of the millennium, Ferenc Nagy defined long-term imprisonment as imprisonment for five years or more (Nagy, 2005). Furthermore, the concept may also be examined through the method of *interpretatio grammatica* by reference to the Punishment Enforcement Act. Section 186(1) of that Act, entitled '*Preparation for Release in the Case of Prisoners Serving Long-Term Imprisonment*', provides that '*a prisoner who has continuously served at least ten years of a term of imprisonment in a correctional institution shall participate in a reintegration programme and shall comply with the rules governing that programme.*' At the same time, Section 105 of the Punishment Enforcement Act provides that placement in the so-called special long-term unit is available

both for prisoners serving life imprisonment and for prisoners serving determinate sentences of at least fifteen years. Consequently, the Punishment Enforcement Act itself illustrates that the conceptual boundaries of long-term imprisonment remain uncertain and that its own internal approach to the concept is not entirely coherent.

A further argument in favour of codifying long-term imprisonment is that the current Hungarian criminal law makes virtually no distinction, as regards the objectives of punishment, between determinate imprisonment and life imprisonment with the possibility of parole. Section 83(1) of the Punishment Enforcement Act states: *'The objective of executing a custodial sentence is to enforce the legal disadvantage prescribed in the final adjudication and, as a result of reintegration activities during enforcement, to facilitate the successful reintegration of the convicted person into society upon release and their transformation into a law-abiding member of the community.'* Thus, according to Section 83(1) of the Punishment Enforcement Act, in the case of fixed-term imprisonment and life imprisonment with the possibility of parole, a conjunction of objectives is evident regarding the objective of the punishment. The aims are the enforcement of the legal disadvantage and reintegration, the latter being the most preferred mode of realization of special prevention. The Punishment Enforcement Act states expressis verbis that, in both fixed-term imprisonment and life imprisonment with the possibility of parole, the convicted person's release is anticipated. This calls into question the legitimacy of the term 'life imprisonment' in light of the principle *nullum crimen, nulla poena sine lege certa*, as it clearly appears that, contrary to the name, the purpose is not for the sentence to last for life. The legal justification of the Punishment Enforcement Act reinforces the latter statement in relation to Section 83, clarifying that the objective of enforcement is identical for both fixed-term imprisonment and life imprisonment with the possibility of parole: *'The conceptual definition of the purpose of imprisonment, in harmony with the provisions of the Criminal Code, distinguishes between fixed-term imprisonment and the so-called LWOP.'* ([URL9](#)). Argumentum a contrario: the conceptual definition of the purpose of imprisonment, in accordance with the provisions of the Criminal Code, does not distinguish between fixed-term imprisonment and the so-called life imprisonment with the possibility of parole. Neither the law, nor the commentary, nor the legal justification, nor the explanatory notes differentiate between these two sanctions with regard to the enforcement objectives of custodial sentences ([Himpli, 2026](#)).

## Conclusion

In my view, the Fundamental Law, its commentary, the legal justification, and the relevant jurisprudence of the Constitutional Court make it abundantly clear that both the Convention and the case-law of the Court form an authoritative interpretative framework for the Hungarian legal system, particularly in cases in which Hungary is the respondent State.

It may likewise be concluded that life imprisonment and life imprisonment without the possibility of parole, which occupy the apex of the current Hungarian system of criminal sanctions, are incompatible with the Convention and, in all likelihood, also with Articles II and III of the Fundamental Law. This, in turn, gives rise to an internal constitutional tension with Article IV of the Fundamental Law.

Against this background, I submit that both the Constitutional Court and the legislature are under a constitutional imperative to restore the coherence of the Hungarian legal system – and, more specifically, of Hungarian criminal law – and to ensure its conformity with both the Convention and the Fundamental Law. As argued in this article, these objectives can be achieved only through a comprehensive reform of the system of criminal sanctions.

Inevitably, such a reform would require systemic legislative amendments extending from the Fundamental Law through the Criminal Code to the Punishment Enforcement Act. Nevertheless, such an approach would result in a more coherent criminal justice system. In a field of law that permits the most far-reaching interferences with fundamental rights, the strictest constitutional and human rights standards must prevail. A reformed system of criminal sanctions would therefore better reflect the principles of the rule of law, humanity, and legality, while ensuring compliance with Hungary's obligations under the Convention – compliance that, for the reasons set out above, is not achieved under the current legal framework.

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## Online links in the article

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- URL1: Magyarország Alaptörvényének indokolása (T/2627/165). <https://www.parlament.hu/irom39/02627/02627-0165.pdf>
- URL2: *Bancsók and László Magyar v. Hungary* (No. 2), 52374/15. és 53364/15. sz. kérelmek, 2021. október 28-i ítélet. <https://hudoc.echr.coe.int/eng?i=001-212669>
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