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**CHANGES IN THE SYSTEM OF SANCTIONS
IN THE NEW CRIMINAL CODE,
PARTICULARLY WITH REGARD TO LIFE IMPRISONMENT**

I. Introduction

Hungary's new Criminal Code, the Act C of 2012 came into force on the 1st of July, 2013. Apparently the two years that has passed since then is a little time to gain practical experience in the applicability and comment on how well it has lived up to the expectations. The extension limitations also impede the examination of the sanction system issues in merits. Therefore to articulate our doubts and questions it is better to undertake the comprehensive presentation of the penal system. The overall presentation is deemed to be necessary thereto to assess the knowledge of the system as a whole so the changes, amendments and critical comments can be appraisable.

The need for creating a new law has been raised for more than 10 years. During that time many committees with different personal composition have been working on its framing. More concept drafts saw the light of day however laws did not come into existence of these. Approximately one and a half years

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later – as a criminal lawyer colleague put it – a young and ambitious team created and approved the new Criminal Law. [1]. To be historically accurate it is important to mention that the former codification committees had made some professional and scientific work and the results were published continuously. This made their achievements accessible and familiar to the professional audience. This intellectual property has been used at several stages of the creation of the new law.

However, the creation of the existing and valid Criminal Law was not preceded by meaningful professional debates [2]. Therefore if we would like to find out more about the intention of the legislator we must limit ourselves only to the draft legislation and the justification of the law – as well as to our conclusion.

The reasoning of the law primarily refers to the National Cooperation Programme according to which "the rigor of the law, the increase in the penalties, the more often used life imprisonment, the protection of victims will restrain the crime perpetrators and make it clear to all members of the society that Hungary is not a paradise for criminals. A strong Hungary can be built only if the laws made in the country's house can guarantee the safety for those abiding the law." It follows that – according to the reasoning – the primary objectives of the Government is to restore the order in Hungary and to improve the citizens' sense of security. One of the tools for this aim is the construction of strict laws that guarantee protection for every law-abiding citizen and calls for effective and dissuasive penalties for the offenders. Thus one of the most important requirements for the new Penal Code was the rigor that does not necessarily mean a limit increase in penalties but the more appearance of the more deed-proportionate approach in the law. According to the intention of the legislative the aggravation applies to primarily to the laws concerning the recidivists and in case of the first time offenders the law allows the enforcement

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of the preventive aspects. The ultimate aim of this reform is to construct a Code that is unified, modern, consistent and effective and gives back the "keystone" role of the criminal law.

In our country one law contains the terms of prosecution and the sanctions imposed by each punishable act. During the codification emerged idea of the regulation in connection with specific criminal matters (e.g. young people, soldiers) in trade laws or so-called "by-laws" however the government has opted for a single control. [3] .

In the creating spirit of the modern and strict Code the legislation – both in the General and the Special section – had made a number of amendments to emphasize that the General Part of the former Penal Law did not require conceptual rethinking and it is also dogmatically well-developed and has mature practices. Albeit the provisions relating to the system of penalties and sentencing reflects the legislature deemed in necessary to review the earlier criminal policy rules.

II. Features of the System of Penalties

The rules of the new Penal Law system of sanctions – apart from some changes – is based on the provisions of the modified 2009 novelises of the old Penal Code (Act IV. 1978) which was repealed the old Penal Code The law LXXX of 2009 made substantial changes aimed at more effective actions against the perpetrators of serious violent crimes. On the other hand it also had the aim of the implementation of criminal policy that enforces the victims' interests better. As a result, the legislature has changed significantly and also tightened the sanctions regime striving to develop a more differentiated regulation. The creation of the existing Penal Code took place along the principles above, therefore, essentially maintained the provisions of the 2009 Act, which were supplemented by new institutions.

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In the former Penal Code – for reasons of legal history – among the substantive provisions there were several executive judicial disposals. A typically such question is the determination of one grade higher or lower sentences in case of the certified consideration conduct of the inmates of custodial sentence or the enlisting of the reasons for exclusion of the enforcement of the sentence. To achieve a better regulation of the existing law of criminal and penal rules clearly separate, so the new law has been determined purely as substantive law as provisions for enforcement of penalties, actions, some of coercion and misdemeanour detention implementation 2013 CCXL on in legislation.

The Hungarian system of criminal penalties is dualistic, the penalties are characterized by duality; the law permits the use of penalties [4] and measures [5]. In our sanction system the penalty is primary; however in some cases the decisive penalty is not enough to achieve the goal of prevention. Therefore the system of criminal penalties apart from the penalties there are measures in a complementary manner.

The law – according to justification – in the enlisting of the type of penalties imputes "strength order" for the first four types (imprisonment, detention, community service, fines) due to the prohibition of aggravating point of view. Given the fact that these draw-down to custodial sentences or in some cases specified sentences are convertible to imprisonment by the law.

The penal offense was committed for the majority of the prospect of custodial sentence, but in the case of minor offenses in general terms it is possible to inflict imprisonment instead of the other types of penalty application. According to the law if the offence is punishable with maximum of three years imprisonment and not more it is possible to impose one or more other penalties instead of imprisonment.

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Our existing system of sanctions is relatively resolute and its essence is that the legislature defines the type of penalty and its lower and upper limits. Between the two the court can freely decide by taking into account and considering all circumstances of the case.

This system gives the court the opportunity to individualize the case depending on the specific objective and personnel circumstances.

That principle is refracted by the provision concerning the violent multiple recidivists, the law namely determine [Section 90 § (2)] the absolute definite penalty mandatory life sentence of imprisonment thus eliminating the possibility of judicial discretion.

The General part of the Criminal Code with regard to each penalty type determines the general minimum and maximum penalties, in the Special part in case of regulated crimes the specific minimum and maximum is enlisted. However it should be pointed out that with the designation of the special maximums and minimums we can meet in the case of custodial sentences and in respect of other penalties – because of the absence of specific rules – the general minimums and maximums are the limit.

Only in the cases provided for by law it is possible to lower the limit specified in the particular section (special minimum) [6] or above the upper limit (specific maximum) [7], or to determine the extent of the punishment.

III. Changes in the System of Sanctions in the New Penal Code.

The Criminal Code that came into force on the 1st of July in 2013 has expanded the scope of applicable law detriments by introducing new penalties and measures. As a new kind of punishment the immature was introduced which is essentially a short-term imprisonment from 5 days up to 90 days and in case of juveniles from 3 days to 30 days. Its regulation is different from the punishment of imprisonment that its length must be determined in days and not

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in months. This does not mean a sharp difference as for the effectuation is carried out also in the same institutions. It would have been a simpler solution if the legislature had lowered the general minimum imprisonment which has already occurred in the Hungarian legal system before [8] with little success. However we must add that it is difficult to imagine a situation where only a few days or weeks of detention imposed are capable of achieving the general and specific preventive objectives.

According to our point of view the introduction of incarceration is not reasonable. Especially not of what the bill relied namely that „the special preventive goal can be achieved with mainly juvenile and first-time offenders”.

The comments on the current law reasoning is not less shocking either "the incarceration is a type of detention sentence which is mainly used in the cases of those offenders with whom the other infliction would prove impractical – because of their social, economic circumstances and their age and family relationship – and the imprisonment punishment would serve the special prevention." We can only add one comment to this which is that in the future we hope that these social, economic and family circumstances in the future will be considered in favour of the offender when the infliction evaluation at the preferences of the non-custodial penalties.

It is an unacceptable argument that "the incarceration can be the alternative option of the short-term imprisonment if the exemption rules would be more favourable." The incarceration is nothing but (even in case of the exemption rules too) a short-term imprisonment so it is out ruled to be the alternative for the imprisonment even conceptually. It is not new if we state that the alternative option for the short-term imprisonment can only be a non-custodial punishment.

The § 50 of the current valid Penal Code just like the previous legislation regulates the financial penalty in a so-called daily ration system. In this system the number of the daily ration is determined separately (minimum of 30 and

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maximum of 540 daily ration) just as the ration itself for one day (minimum of 1000 and maximum of 500 000 Forint). The full financial penalty is the multiplication of these two factors. Accordingly the fine is also imposed in these two features.

Ad a.) First the court shall determine the number of items per day which is the subject of the seriousness of the offence. Because of this the determined daily item may be similar in case of crimes with similar ponderosity.

Ad b.) The second part is the determination of the daily amount of fine which is specified by the perpetrator's property, personal income and living conditions. This serves the personalization of the financial penalty. This way the financial penalties for the crimes with the same ponderosity will not be disadvantageous for those who live among less favourable financials or against those living in much better conditions.

This punishment meant to contribute to the much wider applicability so the legislature reduced the minimum amount of one thousand forints per day to a thousand. Therefore the minimum amount that can be meted out was modified from the previous seventy-five thousand to thirty thousand forint. However, the legislature has raised the upper limit from the previous two-hundred thousand to five-hundred thousand forint. At any punishment the increase of the penalty framework is appropriate if the line in the judge practise is imposed close to the upper limit. The overwhelming majority of the penalties determined by the court are the amount of a few hundred thousand forint so the change does not result in meaningful shift in practise.

The current law also maintains the previously introduced a provision that the court has the judgment as such may provide in the infliction – in view of the perpetrator's property and income situation – the fine in monthly instalments will be paid within a maximum of two years. In this case, the court in its final

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decision sets the deadline specified payment dates and the amount is to be paid monthly.

It is also the same for the mandatory application of the penalty rule according to which those who is being convicted for a crime committed for possessions and gets a fixed-term imprisonment but had the appropriate income or wealth must be also fined.

To take actions against the phenomenon of sport hooliganism a new law has been introduced according to which the perpetrator can be proscribed from sport events for the minimum of one and the maximum of five years.

In the former Penal Law the proscription from driving was only an alternative penalty and was used after judicial consideration- In comparison, the current law made the proscription from driving mandatory whenever the perpetrator is being convicted for drunk or intoxicated driving and the court may differ from this only in particularly appreciated cases.

The measures constitute another large group of criminal sanctions. In respect of their goals they are not different from the other punishments however they differ in considering the conditions. Punishment may be imposed only when the offense was committed, but measures can be taken when there is a punishable action For example, the act committed by an abnormal state of mind not does not qualified as a criminal offense, the offender cannot be punished because of culpability for refusal, but – for the existence of other statutory conditions – can be ordered to receive a compulsory treatment.

The measures can be taken individually instead of a punishment (reprimand, probation, reparation work) or taken in addition to the sanctions (probation). The forfeiture, confiscation of assets and the making the final electronic data inaccessible independently and in addition to punishment or measure used.

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The imperial medication was for a long time a measure with indefinite length of time and according to the law it lasted till it was necessary and the re-offending was not at risk anymore. The law also enjoined the annual verification of the need of the treatment. This legislation – without a precise definition of duration – infringed the principle of *nulla poena*, so the 2009 LXXX. Act with effect from 1 May 2010, has declared it to have a definite length of time. Accordingly, the upper limit for the committed punishable act in case of a crime punishable with life imprisonment on the basis of this framework is twenty years. After that – in case of necessity – it was possible to accommodate the perpetrator with involuntary psychiatric treatment in a psychiatric institution. The new Criminal Code however – with reference to enforcement experience – restored of the previous regulations, which was criticised by the legal literature [9] in several cases.

The existing Criminal Code expanded the scope of the measures including the provision of new legal consequence reparation work and making the final electronic data inaccessible.

The goal of the legislature with the introduction of the reparation work was to allow bigger space for the restorative aspects. However this measure aims to recover an active repentance not towards the victim but toward the society and community. During the application of this measure the court finds the offender guilty but does not impose a penalty but orders a reparation work for the perpetrator. the duration of this work can have be from 24 to 150 hours.

Making the final electronic data inaccessible as a measure can be applied in case of offences carried out on the computer network (such abuse of pornographic materials) and it is designed to provide the court a tool that can make illegal contents unavailable. In addition, the introduction of this measure is to fulfil our country's obligation toward the European Union. According to the Article 25 of 2011/93/EU the European Parliament and the Council oblige the

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member states to make the necessary measures to ensure the prompt removal of the web pages that contain or disseminating child pornography – operated within the territory of the member states.

IV. Imprisonment

The long time imprisonment is in the centre of the attention for a long time because the deprivation of liberty is considered to be a disadvantage for centuries that can be suitable to achieve the goals of punishment. This kind of punishment is often in the centre of attention because the public – sometimes even the professionals overrate it and expect the reduction of crime to a level of acceptance or because more and more people expressing their distrust in this method.

The imprisonment is not needed as a disputed matter, it is needed firstly because it is a powerful deterrent punishment and secondly because it directly serves to protect the society by isolating the perpetrators. Its place in the system of sanctions cannot be justified better as Tibor Lukács did these 35 years ago: ..."the punishment of imprisonment is necessary until we find a better type of penalty to replace it with." For now, there is no better. It raises the criminals from the society thereby protecting the society. Perpetrators are put into conditions which are likely to force them to be reasonable. Disadvantages have impressive power. . "[10]

The current law regulating the imprisonment in the 34.§ [11] begins with the determination of the period: imprisonment can last for a life time or for a specified period of time.

Since the abolition of death penalty [23/1990.(X.31.)] the life imprisonment is the most serious penalty in our legal system. Life imprisonment both the previous and the current law justification qualified as an indefinite period of conviction but in the legal literature many authors [12] represent a different

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point of view. They point out that although life imprisonment contain uncertainty motif – the sentence may last until the end of the convicted person's life therefore the date is uncertain – still it cannot be considered indefinite judgement in the proper sense of the word. In the latter case it is mainly dependent on the executive body of the release. In contrast to life imprisonment after the expiry of the period specified in the Act the convict can be conceded to conditional parole if the court had not ruled out its possibility. The life imprisonment to a certain extend is defined that at the time of the judgment the exact time before the convict cannot parole is recorded.

The importance of the difference between life imprisonment and the fixed-term imprisonment is that some parts of the law refer to the fixed-term imprisonment so these cannot be applied to life imprisonment as a punishment.

The shortest duration of fixed-term imprisonment was increased from two months to three months, the longest span of fifteen year for twenty years, and the total cumulative penalty in case of participating in a criminal organization or being a multiple recidivist it is now twenty-five years. Raising the lower limit was necessary because of the introduction of the confinement punishment also the modification of the upper limit to twenty years was necessary to create a legislative consistency with the penalties defines in the Special part and also the raise in the general maximum to twenty-five years was needed because of the fight against serious or several crime perpetrators.

In the punishment of imprisonment it is not only the duration but also the implementation stage that serve the distinction and personalization. The law enforcement steps in determining the gravity of the offense, the offender and the extent of pre-judgment of the penalty attaches importance.

Prison is the mildest degree of imprisonment. All the imprisonment for offences committed by negligence and the imprisonment that is more than two years should be implemented in prison except in those cases when the convict is

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also a recidivist. Therefore the prison is the general implementation stage of imprisonment imposed for offense.

According to the law of paragraph § 37 (2) the imprisonment should be implemented in prison except in those cases where the law imposes penitentiary and the convict is a recidivist. Prison is the institution that has the widest range of implementation degree. The common trait of the inmates is that all of them committed intentional crimes but among the offences can occur the slightest and more severe as well. Among the offenders there can be both types first offenders and also recidivists.

Penitentiary is the most serious enforcement of prison discipline. The rules together with the above mentioned issues were determined but it is still perplexing.

However it should be also pointed out that the court has possibility to take the direction of the alleviation or the aggravation and differ from the otherwise mandatory enforcement considering the circumstances at the sentencing and also that the goal of the penalty can be achieved by the derogation from the general rules. However, this provision does not apply if the court has ruled out the possibility of parole in the case of life imprisonment imposed. Penal Code 44.§ (1) – (2), section 90 (2).

The practise shows that the lenient regulations occur more often and the stricter discipline is used rarely.

In the cases specified in the law, it is possible that the court convicts of parole. The institution of parole is a highly important criminal policy tool that helps the work of the law enforcement organisations by encouraging the convicts to maintain the order in prison. The supervision on the parole and the prospect that in case of a new criminal offence the convict must continue his sentence are all influencing factors and help to educate and re-socialize the

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convict. The parole is only a possibility and its justification and terms must be examined in each individual case.

The court must command about the parole in every case. It must determine the earliest date of parole and also if the possibility of it is excluded. The current legislation is a step forward, as a general rule the prisoner may be released after the completion of the two third parts of his sentence. Exceptions to this rule are the repeat offenders who may be on a parole after serving the three forth parts of their sentence. Previous legislation was significantly less advantageous, the parole date was set to the degree of the execution stage [13].

In accordance to the concept of 2012 Act C separates the criminal and the penal rules so the penalties, measures and some coercive measures so the law of CCXL 2013 of the implementation of misdemeanour imprisonment also contains provisions on the parole. The Penal Code of TV.188, §-a records the subjective condition of parole according to which the custodial sentenced person can be released on parole if during the sentence his behaviours was impeccable as well as showed the willingness to lead a law-abiding lifestyle. In this case the goal of the punishment can be reached without further imprisonment. Obviously, for the usage of this advantage there is a need for the objective criteria that is to say serving the part of the fixed-term imprisonment that is set by the law. If the court does not allow the conditional release at the earliest date then there is no obstacle to re-examine the possibility later if the behaviours of the convicted is favourable.

As the widening of the possibility of parole the section 3 of the current law of § 38 can be appraised. In cases in need of special consideration the court can have the judgment that the convict can be released on parole after serving half of his sentence in cases of not more than five years of imprisonment – this was three years earlier in the Criminal Code. This provision obviously does not apply if the convicted is a multiple recidivist.

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So the current law allows a wide usage of the release on parole there may be circumstances in which it is excluded in itself. It is not justified to use this possibility in case of perpetrators who committed offense in a criminal organisation, a violent multiple recidivist, or a multiple recidivist if the custodial prison should be implemented in a penitentiary. The law also excludes from the release on parole those who were sentenced to imprisonment for an intentional crime which was committed after an imprisonment for an earlier committed crime and before the end of its effectuation. In this case the reason of exclusion is that the imprisonment did not restrain the convict from committing new offences. It does not matter if it was a crime of intention or negligence. However if the recent imprisonment judgment is due to crime of negligence the law does not exclude the possibility of parole.

V. Life Imprisonment

In the legal literature it is the generally accepted view that life imprisonment serves as a bridge between the death penalty and the fixed-term imprisonment. Life imprisonment in the current statutory penalty can be adjudged for several offenses but in all cases the fixed-term imprisonment is an alternative penalty. It may be imposed if the Special part permits its usage and the perpetrator is over 20 years old.

However, it should be also pointed out that the most stringent rules and regulations for the violent and the multiple recidivists in both the previous and the current Penal Code life imprisonment is ordered compulsorily. The cumulative rules in respect of 23/2014. (VII.15) in the cumulative measures of the 23/2014 (VII.15). AB decision the Constitutional Court retrospectively annulled the provisions of this law arguing that the exclusion of the judicial discretion is contrary to the Fundamental Law and does not meet the

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constitutional requirements for the system of punishment. Nevertheless the mandatory rule for multiple violent recidivists is not in force yet.

The life sentence of imprisonment – except for a ten-year period – is regulated by all of our penalty codes. The justification of this institution in view of the structure of crime may not be questioned. The development of the rules for the conditional release [14] and the judicial practice induce serious debates. As the law of LXXXVII 1998 introduced the institution of the real life imprisonment and since then it has been incorporated into the Fundamental law as well.

According to the effective Penal Code the court can impose the release on a parole in the case of life imprisonment in two different ways: either to determine the earliest date of parole or can exclude its possibility. If the court does not exclude its possibility then it can determine the period after which the convict can be released on a parole this period can be determined between the minimum of twenty-five and the maximum of forty years time. The provisions of this law are more favourable than the previous rules. The court in connection with consideration of the applicable sentencing considerations can get to the conclusion to proscribe the prisoner from the possibility of parole for the offenses listed in the law. In this case, the prisoner sentenced to life imprisonment may be released only by amnesty.

It is difficult to explain the law's provisions – putting aside the possibility of judicial consideration – that excludes from the institution of release on a parole the multiple violent recidivists and the perpetrators who committed the offence in a criminal organization as defined by the law.

The problem of the real life imprisonment came into the foreground in our country again in 2014 after the condemning decision of European Court of Human Rights about Hungary.

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The European Court of Human Rights (ECtHR) has addressed more decisions to the issue of life imprisonment which served as the basis of the matter in Hungary. The first case involving Hungary was the case of Tibor Törköly vs. Hungary. [15] In this case Tibor Törköly – as a multiple recidivist – was sentenced non-appealable sentenced for life imprisonment for murder with special cruelty and the court also stated that the earliest release on a parole can be after 40 years of imprisonment. The accused turned to the ECtHR with reference to the third article of the Convention and complained that he was actually sentenced for life imprisonment since he should live up the 75 years to actually reach the time when he can be released on parole and for this he does not have a chance. The court explained that the imposing of life imprisonment in it is not against the Convention, if the penalty is de facto and de jure can be moderated. Therefore in the Törköly-case the applicant was not completely deprived form the hope of freedom. The ECtHR, however, has also claimed that the amnesty given by the President of the Republic is still available for the sentenced person but in practise this matter was not examined.

The case of László Magyar vs. Hungary [16] the ECtHR ruled against Hungary for the violation for the Article 3 of the European Convention on Human Rights (ECHR) [17] . The applicant was non-appealable sentenced for life imprisonment for several counts of murder, assault, robbery and other crimes and was excluded from the benefit of parole. The Hungarian government ordered to pay convicted for violation of Article 3 of the Convention. The Hungarian government ordered the convicted to pay According to the applicant's pint of view in the regulations of Hungary the life imprisonment cannot be reduced de facto or de jure either and that is contrary to the Article 3 of the Convention. In his request he pointed out that unlike in the case of Kafkaris – in which the governmental pardon was examined – the amnesty is valid only with the agreement of the Minister of Justice and the Prime Minister of Hungary.

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Also no reason is needed for the decision making so the decision was made on the basis of discretionary, political considerations and this way it ignores all the legal safeguards in connection with the merit of the application. The penalty is therefore not considered to be alleviated *de jure*. Given the fact that the Prime Minister has never granted a pardon for any convicts with life imprisonment the punishment cannot be mitigated *de facto*.

During the procedure, the Hungarian State President of the Republic stressed the importance of grace, and claimed that the result of this legal institution the possibility of grace is not put out of action.

In contrast to the arguments above, the court ruled that state does not have any obligation for the liberation of the convict however it must ensure the reconsideration of the life imprisonment and the possibility of return into the society. The ECtHR did not want to specify the method of review, but the convict has the right to know before the start of his sentence what to do for his release. According to the ECHR's decision therefore the Hungarian regulation violates the Article 3 of the Convention because it does not give any opportunity for the reconsideration and as for the presidential pardon belongs to the discretion of the Prime Minister the convicts are left without any legal guarantee.

Following the decision of the Strasbourg the legislature amended the penalties, some coercive measures and CCXL law of 2013 of the implementation of incarceration and introduced a mandatory procedure of clemency. This means that in case of a convict who was sentenced to life imprisonment has been excluded from the possibility of parole – with the consent of the prisoner – the proceedings of clemency must be preceded by position when the convict has fulfilled forty years of imprisonment. In the clemency proceedings a five-member *ad hoc* Commission of pardon acts whom the Supreme Court appointed with the suggestion of the Curia. The members are

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appointed by the president of the Curia or the Court of Appeal judges hearing criminal cases.

The prisoner is heard by the Parole Board and on the basis of the documents obtained [18] his impeccable behaviour during the execution of the sentence, as well as his willingness of leading a law-abiding lifestyle, his personal and family circumstances, his health conditions the Board decides if the goal of the punishment could be achieved without imprisonment.

The parole Board adopts an appropriate resolution based on the inspection, which includes the proposal of the practise of amnesty. The justified resolution and the documents and data and the expertise received and obtained during the process are sent to the Minister responsible for justice.

The Minister of Justice cannot differ from the resolution of the Parole Board therein the citation with the justification of the resolution is sent to the president of the Republic with the same content. The Minister of Justice shall forward the citation to the convicted person as well.

If the binding process has been completed without amnesty the convicted has to contain his life imprisonment the mandatory amnesty process must be carried out again two years after the end of the first process.

However the mandatory amnesty process does not exclude the possibility for the prisoner or any other authorised person or the entitled person to initiate the process and submit an application for amnesty according to the general rules

In connection with the topic it is necessary to refer to the 3013/2015. (I.27.) AB order too. The antecedent of the Constitutional Court's decision was that the Court Appeal of Szeged had launched the criminal case of BF.II.10/2014 for homicide and other offences and this case was suspended and the Constitutional Court initiated legal proceedings in this case. The Court of Appeal in this statement suggested that the Constitutional Court to annul the provisions of this Act that contain the possibility of conditional parole 1978 IV Law and the C Act

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of 2012 (henceforward referred to as: Criminal Code) because they are against the third part of European Convention on Human Right However the Constitutional Court terminated the proceedings on the ground that the enactment of the mandatory amnesty proceeding the reason of this proceeding has ceased.

In connection with this decision Miklós Lévy has added some remarkable a minority report. According to his point of view after the Constitutional Court should have accomplished the examination of this legal situation and should have also monitored if the enacted statutory provisions had been in correspondence with the Conventions and the legal practice for the life imprisonment according to the ECHR.

The Criminal Code also highlighted that the provisions were not modified by the legislature and the actual life imprisonment is still part of the domestic criminal sanction system and its phasing with the Convention is still in question and the proposition obviously has not been rendered obsolete.

He referred to the fact that the Strasbourg judgment in the case of Magyar Laszlo vs. Hungary does not meet the new the domestic legislation on compulsory clemency process in two aspects. First because the verification after minimum of twenty-five years of imprisonment marked in the judgment is in contrast with the mandatory amnesty process if the defendant completed forty years of his imprisonment.

Second is that during the process the decision maker is the President for the Republic who is not bound in the presentation of the position of the Parole Board. Therefore the factors considered by the President of the Republic while practising his sphere of authority cannot be established so that the requirement that the convicted person has to correspond to in order to have realistic chances for the parole cannot actually be seen at the conviction.

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VI. Conclusion

As a summary, it can be said that the provisions of the system of sanctions of the existing Criminal Code – apart from some of its modification – basically are based on the rules introduced in 2009. As for the amendments of the fines and the release on parole the changes must be evaluated as positive ones by all means. The first one is because this way the punishment is adjusted better to the economic situations and as for the latter the offender's life assessment scales more in the eyes of the legal institution.

The evaluation of the introduced new sanctions will be carried out through the legal practise and it would be early to state how far they lived up to the expectations.

As for my personal point of view the reappraise of the sanctions for the life imprisonment is indispensable. In one respect at the imposition the possibility of the judicial discretion must be set back. Its absolute determined sanction cannot be allowed in any case. On the other hand, it is necessary to change the actual provisions of life imprisonment. The introduction of the mandatory amnesty process – regulated in the law that defines the punishments and measures – did not change but only postponed the solution for the problem. Invariably, the President of the Republic shall exercise the grace and – as explained Miklós Levay – can make a decision without a statement of reasons and therefore the process does not constitute a substantive guarantee for the convicted. Setting up a commission of experts seems to be a much better solution. This commission could make decisions based on transparent rules and predefined criteria. These decisions would be made with the obligation of justification and they would make responsible verdicts in the cases of the convicted with life imprisonment.

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Bibliography:

[1] Michael Toth: At the Cradle of the New Criminal Code. Magyar Jog 2013. 9th issue . p 527.

[2] Since the adoption of the Act is has been modified 14 times. Maybe a professional consultation would not have been in vain.

[3] MihályTóth : The Fourth Criminal Code of Hungary. Jogtudományi Közlöny 2014th 10. p 447.

[4] Criminal Code. 33 § (1) Penalties

a) the imprisonment

b) the incarceration

c) the public interest work,

d) the financial penalty,

e) professional disqualifications,

f) interdiction from driving

g) relegation,

h) the prohibition from visiting sports events,

i) the expulsion.

(2) Additional penalty and interdiction from public affairs.

(3) The punishment – with the exceptions of the paragraphs (5) and (6) – can also be meted out.

(4) If the upper limit of the crime is not more than three years of imprisonment instead of custodial detention community service, fines, professional disqualification, disqualification from driving, expulsion, ban from sport events or expulsion or any more than one of these can be imposed.

(5) If the offense is punishable by imprisonment according to this Act, instead of or in addition to this fine community service, fines, profession disqualification, disqualification, ban, prohibition from visiting sporting events or expulsion or more of these penalties may also be imposed.

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(6) Can not be imposed

a) under the custodial detention or public work,

b) under the expulsion of community service or a fine.

[5] Criminal Code. 63. § (1) Measures

a) reprimand;

b) release on probation

c) the reparation work,

d) patron supervision

e) the confiscation,

f) the confiscation of property,

g) to make the final electronic data inaccessible,

h) compulsory medical treatment

measures in accordance with the Law on i) criminal measures applicable to legal persons.

(2) The reprimand, probation and reputational work independently, can be used instead of punishment.

(3) Can be applied beside the probation or other punishments. Expulsion cannot be ordered beside probation.

The forfeiture, confiscation of assets and making the final electronic data inaccessible can be used independently or beside other measures taken.

[6] Mitigation of punishment

[7] in case of cumulative, total, special, multiple punishment or in case of offence committed in a criminal organization.

[8] The shortest time span of the punishment was one day between 1993 and 1999. This rule, however, had no practical significance.

[9] Ferenc Nagy: The system of sanctions. *Jogtudományi Közlöny* 2015. Issue 1 p.14
Tóth Mihály: At the Cradle of the New Criminal Code *Magyar Jog* 2013. Issue 9. p 534.

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[10] Tibor Lukács: Sin and punishment. Minerva. Budapest 1980 p 247 and seq.

[11] § Imprisonment lasts for a fixed time or for a life time.

35. § (1) If the court imposes imprisonment, its implementation jail, prison or penitentiary institutions.

(2) At the imposition of the punishment it is possible to determine one degree severe or moderate punishment with regard to the special sentencing circumstances. This provision is not applicable on the basis of § 44 (1) – (2) and § 90 (2) in case of the life imprisonment.

The fixed-term imprisonment

36. § The shortest duration of fixed-term imprisonment is three months, the longest span is twenty years; in case of offence in criminal organization particularly as a recidivist, multiple recidivist, cumulative or total penalty offense or multiple and cumulative or total penalty it is twenty-five years.

37. § (1) the implementation stage of the punishment is penitentiary if it has been imposed because of misdemeanour, unless the convicted is a recidivist.

(2) the implementation stage of the custodial imprisonment is if it has been imposed because of

a) a crime

b) due to offense and the convicted is a recidivist

(3) The degree custodial correctional prison is penitentiary if

a) a three or longer span of imprisonment was imposed

aa), the offense is defined in the Chapter XIII. XIV. or XXIV.

ab) in case of military offence that is punishable with life imprisonment

ac) acts of terrorism [314th § (1) – (2), 315-316. §], the financing of terrorism [318th § (1) – Constitution], vehicle hijacking (2) [320th § (1) – Constitution], participation in a criminal organization (3) [321st § Constitution], abuse of explosives or explosive devices (§ 324), firearm or ammunition abuse

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(1) [325th § (1) – paragraph] abuse of weapons prohibited by international treaty
 (3) [326th § (1) – Constitution], abuse of military technology product or service
 (6) [329th § (1) – Constitution], misuse of items for dual-usage, (4) [330th § (1) – (3)]

d) murder, drug trafficking, drug possession, kidnapping, human trafficking, sexual violence, causing public danger, or a violation of international economic ban grave robbery in qualifying cases [160th § (2), § 176 (2) – (3), § 177 (1) – (2), § 178 (2), § 179 (2), § 190 (2) – (4), § 192 (2) – (6), § 197 (2) – (4), § 322 (2) – (3), § 327 (3) paragraph, § 365 (3) – (4)]

or

b) the period is two years or more, and

ba) the convicted is a multiple recidivist

bb) the offense is committed in a criminal organization.

[12] József Földvári: The General Section of the Criminal Law 6th revised edition. Osiris, Budapest 2002. p 256.; Ferenc Nagy: The General Section of the Hungarian Criminal Law 2nd revised edition. HVG ORAC .Lap-és Könyvkiadó Kft. 2010. p. 277

[13] According to the former Criminal Code the conditional release amounted only if the convicted had fulfilled 4/5 part of his sentence in a penitentiary, minimum the 3/4 part in a prison or 2/3 part in jail.

[14] At time of the enforcement of the 1978 Act IV. the governing rules was that the court could emit the parole for the life sentenced convicted if he had already fulfilled twenty years of his sentence and it was exhaustively assumed that the goal of the sentence would be achieved without any additional penalty. This provision was in force until 15 May 1993, after the amendment, the earliest date of parole was determined by the court to be between 12 and 25 years.

Recent amendments of the 1997 LXXIII. Law was introduced with the effect date of 15 September 1997. According to this amendment the earliest date

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of parole was between 15 and 25 years if the life sentence was imposed because of a crime that was not time-barred and was determined between 20 and 30 years. In this context it should be noted that the practice of life imprisonment was imposed only for the most serious crime against human life which is not time-barred so the time span had practical relevance.

The amendment created by the law of 1998 LXXXVII. It clearly pointed into the direction of significant aggravation. Not only that it introduced the actual life imprisonment but also determined the earliest date of the parole in at least twenty years and in cases of not time-barred offenses it defined it in at least thirty years. Using the term "at least" meant that the law did not specify the ceiling, so the court could define it up to 35 or 40 or even above.

[15] {3}{/3} 4413/06. April 2011 5th

[16] 73593 / 10.2014. May 20

[17] 3. Article: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

[18] 46 / C. § The Minister for Justice, obtain personal data or examined during the decision making about the amnesty cited preparatory documents needed to complete the mandatory amnesty process, especially

- a) the documents compiled by the executive institution,
- aa) the report summary of risk assessment of the convicted
- ab) documents relating to the prisoner security risk classification,
- c) evaluating the opinions made of the convicts
- d) documents relating to disciplinary measures against the prisoner,
- e) the documents concerning the state of health of the convicted, including psychologists and specialist advice in relation to mental health also convicted;
- b) the criminal records of the case of the prisoner
- c) environmental assessment by the correctional probation officer of the convicted

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d) If the convicted person informs and ensures the executive institution that in case of his parole his employment will be granted with a statement issued by the future employer.

Балог Агнес

Зміни в системі санкцій у новому кримінальному кодексі, зокрема, щодо довічного ув'язнення

У статті представлено зміну санкцій у системі нового угорського Кримінального кодексу. Наводяться приклади для кращого розуміння питання.

Ключові слова: довічне позбавлення волі, новий Кримінальний кодекс, система санкцій, Угорщина.

Балог Агнес

Изменения в системе санкций в новом уголовном кодексе, в частности, касательно пожизненного заключения

В статье представлены смену санкций в системе нового венгерского Уголовного кодекса. Приводятся примеры для лучшего понимания вопроса.

Ключевые слова: пожизненное лишение свободы, новый Уголовный кодекс, система санкций, Венгрия.

Ágnes Balogh

Changes in the system of sanctions in the new criminal code, particularly with regard to life imprisonment

Paper presents the changing of sanction system of Hungarian new Criminal Code. The introduced cases help the understanding of the paper.

Key words: life imprisonment, New Criminal Code, sanction system, Hungary.

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