

Elektronikus változat

# Criminal enforcement in Europe PhD course

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## Criminal Sanction system in Hungary

The Hungarian system of punishment is traditionally dualistic, which means that it allows the : use of punishments and measures simultaneously.

### The most important punishments: Penal Code : Act C of 2012

- imprisonment,
- custodial arrest,
- community service work,
- fine,
- prohibition to exercise professional activity,
- driving ban,
- prohibition from residing in a particular area,
- ban from visiting sport events ,
- expulsion.

## Custodial Arrest

- The duration of custodial arrest shall be determined in days.
- The minimum and the maximum duration of custodial arrest shall be
  - five days and
  - ninety days.

## Community Service Work

The duration of community service work shall be defined in hours; (taking into consideration his health condition and education.)

Time: It may not be less than 48 hours and may not be more than 312 hour

When: Defendant shall perform the community service work at least

-on one day per week,  
on the weekly day of rest or on his day off

## The Fine

Number of days,

The minimum and the maximum number of days representing a fine shall be between 30 and 540 day

The amount of fine for one day shall be minimum one thousand and maximum five hundred ( 1000- 5000 Ft.) 270 million Ft.

## Quick overview

- Most lenient main sanction in the Hungarian law
  - Used to belong with side sanctions
- Frequently applied
- Financial disadvantage for the convict
- Major drawback
  - Can be rarely used against persons in disadvantageous financial situations

## The two phases of imposing

- First the court has to establish the number of daily items
- Second it has to set the amount corresponding to one day's item

## First phase - Number of daily items

- Deciding factors in their number:
  - Weight of the criminal offence committed
  - General principles of imposing punishment
    - E.g the material gain attained or contemplated by the act
- The number of daily items established can range between 30 and 540

## Second Phase – One days Items worth Part 1

- Deciding factors:
  - Personal circumstances of the perpetrator (exhaustibly listed by the Criminal Code)
    - Financial situation and income
    - Everyday needs
      - Thoroughly investigated
        - May be used against convicts who on paper are poor but in fact live on a high standard
        - Real financial situation into account

## Second Phase – Worth of one daily item Part 2

- The amount corresponding to one days item shall be:
  - No less than 2.500 Hungarian Forints
  - No more than 200.000 Hungarian Forints
- Total sum of the fine is effectively:
  - Number of daily items multiplied by the amount of one days item
  - Ranges from 75.000 Hungarian Forints to 108.000.000 Hungarian Forints
- May be paid in installments upon request

## Change Overview

- In case of refusal of or neglecting the payment of the fine until the deadline
- The court shall change the fine to imprisonment executable in a detention center

## Change Rules

- One days item shall be substituted by one day of imprisonment
  - This is the reason why the material weight of the crime is taken into account upon determining the number of the daily items

## Change Examples

- Example #1
  - Number of daily items: 200
  - Amount corresponding to one daily item: 2.500 HUF
  - Total sum of the fine: 500.000 HUF
  - Failure to pay the fine by the deadline results in 200 days of imprisonment

## Change Examples

- Example #2
  - Number of daily items: 30
  - Amount corresponding to one daily item: 20.000 HUF
  - Total sum of the fine: 600.000 HUF
  - Failure to pay the fine by the deadline results in 30 days of imprisonment

## Prohibition to Exercise Professional Activity

- Prohibition to exercise professional activity may be imposed upon a person who has committed a criminal offense:
  - a) through the violation of the rules of his/her profession requiring professional qualifications;  
or
  - b) knowingly, by using his profession.

Duration: definite term( 10 years) or permanently



## Driving Ban

- Driving privileges may be suspended with respect to a person who:
- a) committed a criminal offense through the violation of regulations relating to the controlled operation of a motor vehicle,
- b) uses a motor vehicle for any criminal activity

Driving ban may be ordered for a definite term (10 years), or permanently



**Suspension of driving privileges**

## Purpose

- Similar to prohibition of professional activity
- Protection of society
- Protection of the order and security of transportation



## How to commit?

- By violation of the rules of driving subject to licence
- Those machines that require a driving licence (i.e. train, plane, ships...)
- Excludes bicycles
- Example: a person causes a road accident for the third time by violating road transport regulations
- By using a vehicle to commit a criminal offence
- Sanctioning mobile crimes
- i.e. using the vehicle as a means to facilitate the committal of a criminal offence and to escape from the crime site
- Example: a perpetrator is traveling throughout the country to commit compound larceny (keeping the regulations of driving)

- Excludes those from road traffic who seriously and regularly violate traffic regulations
- Or who are unfit for driving
- Applies to certain types of vehicles



## Duration

- Final- when unfit for driving
- Fixed- 1 year to 10 years



## Prohibition from Residing in a Particular Area

- any person whose residence is deemed contrary to public interest
- The minimum duration of banishment shall be one year, its maximum duration shall be five years.

## Ban from Visiting Sport Event

- Any person having committed a criminal offense during a sport event,
    - 1.) from visiting any sport event held
    - 2.) from entering any sports facility where a sport event held
- The minimum duration of the ban shall be 1 year, its maximum duration shall be 5 years

## Expulsion

Perpetrators of citizenship other than Hungarian, whose presence in the country is not desirable

The term expulsion shall be 1 year, its maximum duration shall be 10 years.

### Additional penalty

**Deprivation of Civil Right** : who is sentenced to executable imprisonment for an intentional criminal offense

## Measures

- warning;
- conditional sentence;
- work performed in amends;
- probation with supervision;
- confiscation;
- confiscation of property;
- irreversibly rendering electronic information inaccessible;
- involuntary treatment in a mental institution;
- measures against legal persons

## Warning

An issuing a warning the

- court or
- public prosecutor expresses its disapproval
- Police

## Conditional Sentence

Felony punishable by imprisonment of up to 3 years if there are reasonable grounds to believe that probation will serve the purpose of rehabilitation

The period of probation may be between 1 and 3 years;

The probationer may be placed under the supervision of a probation officer

## Work Performed in Amends

Sentence for one year for a felony

Punishable by imprisonment not exceeding

3 years,

Work: State or local institution, at a public benefit civil society organization, or a church.

-it may not be less than 24 hours

-not be more than 150 hours

## Probation with Supervision

- for the duration of postponement of accusation ;
- for the duration of probation;
- work to be performed in amends;
- for the probation period of a suspended sentence
- for duration of parole

# The probation

- - the court decides during the trial, that:
  - - the committed act is in fact a criminal offence
  - - it was committed by the perpetrator
  - - no limitations of punishability exist
- - however:
  - - the court does not impose a punishment
  - - it is postponed for a probation period
  - - after the successful expiration of the probation the punishability of the accused ceases
- - it is only possible in limited cases:
  - - in case of misdemeanour
  - - in case of a crime punishable with imprisonment of max. 3 years (due to this multiple repeat offenders are excluded from the circle of beneficiaries)
  - - probation is generally only possible if it can achieve the aim of the punishment
- - the personality of the perpetrator and the threat he/she imposes on society can be inferred from:
  - - the severity of the committed crime
  - - the threat of the offence to society



- - the probation period can last 1-3 years
  - - it has to be defined in exact years
- - to ensure success the probationer may be supervised by a probation officer
  - - it is mandatory in case of repeat offenders

- - the probationer must abide the law during the probation period
  - - in case of criminal offence the probation has to be terminated and punishment has to be imposed

- - if the probationer is under supervision
  - - the probation officer has to observe the mandatory rules of conduct
- - if the probationer infringes these rules
  - - the probation may be extended once by max. one year
  - - in case of severe infringement the probation has to be terminated and punishment has to be imposed

## Confiscation, Confiscation of Property

1.1 which is actually used an instrument for the commission of a criminal offense;

1.2. which is created by way of a criminal act

2. any financial gain or advantage resulting from criminal activities

## Irreversibly Rendering Electronic Information Inaccessible

electronic communications network shall be rendered irreversibly inaccessible:

- a) the publication constitutes a criminal offense;
- b) which is actually used as an instrument for the commission of a criminal act; or
- c) which is created by way of a criminal act

## Involuntary Treatment in a Mental Institution

- 1. person committed in a punishable violent crime
- 2. Not punishable ( mental condition)
- 3. there is reason to believe that he will commit a similar act
- Place: Special Institution ( Hospital-Prison)

## Imprisonment

Imprisonment can actually continue

- for life imprisonment ( real)
- for a specified period of time.(fixed duration)

The shortest duration : 3 months,

The longest is : 20 years,

25 years in case of the existence of further conditions (repeat offender )

## Imprisonment

It shall be carried out in :

- jail :

misdemeanor offense, except if the convicted perpetrator is a recidivist

- correctional institution

has been imposed for a felony;

it has been imposed for a misdemeanor, and the convicted perpetrator is a recidivist

- penitentiary.

## Some dates about Hungary

- Population: 9.839.000
- Number of inmates: 18.244
- Official capacity: 12.604
- inmates Imprisonment rate: 184 inmates/100.000 citizens
- Female inmates: 1227 inmates
- Juveniles: 468 inmates
- Overcrowding: 143%



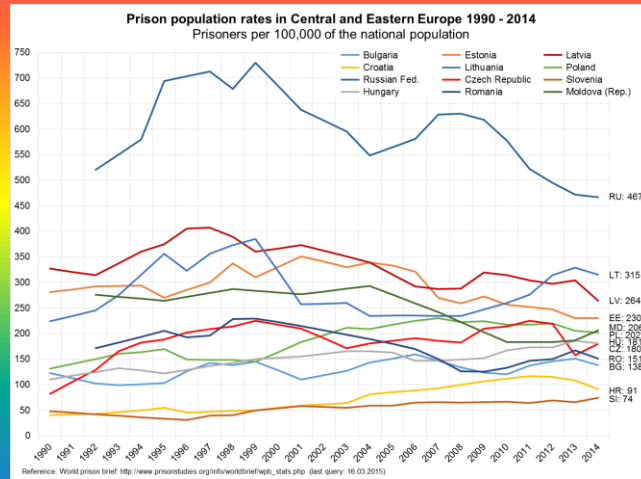
## Who can be in prison

- any perpetrator being over the age of 14
- perpetrator must possess the general conditions of criminal liability
- Life imprisonment may be only applied against person who is over the age of 20 at the time of committing the crime

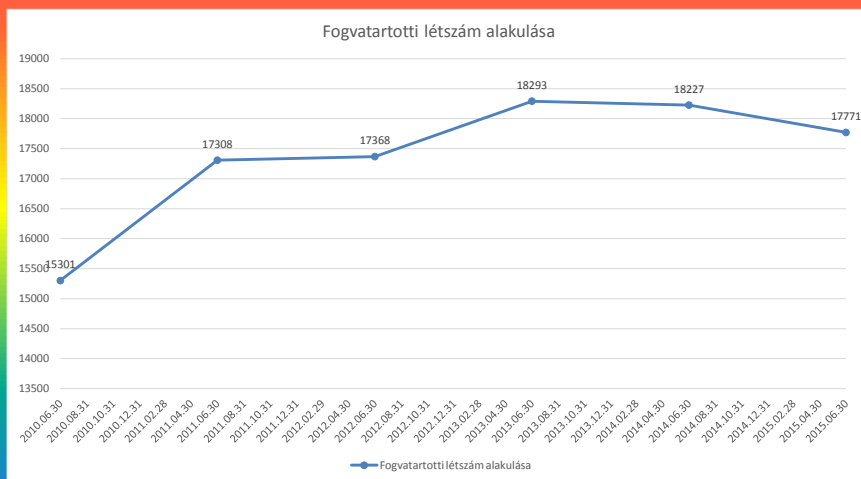
## Classification

- of other sex
- and security level, and
- to accept the grouping on the grounds of age,
- criminological,
- security, treatment and
- medical purposes.

## Comparison of prison population rates for Central and Eastern European nations, 1990-2014.



## The overcrowding in prison in Hungary from 2010-2015



## Hungary release from prison

- - completion of the term of imprisonment
- - 1.conditional release
- - interruption of imprisonment (temporary)
- - 2.presidential pardon
- - 3. reintegration custody (from 1 April 2015).

### ELECTRONIC MONITORING

## 1.Conditional release

### **The conditional release aim:**

- at a possibly effective re-socialization of well-behaving prisoners,
- penalty can be achieved without serving the complete term of imprisonment.
- The decision about the release falls within the competence of the **penal executive judge.**



## 1. Conditional release

- Early release in Hungary is based on discretionary decisions and is always conditional.

### The penal judge

- acts as a single judge.
- the penal judge conducts the hearing of offenders, he holds trial,
- The decision, reached by the penal judge is appealable.

## 1. Conditional release term

- Prisoners can be conditionally released from determinate prison sentences after they have served **two thirds of their sentence.(objectiv)**
- minimum of three month must be served since the 1998 amendments.
- **Grant conditional release:** after half of the sentence has been served (realy)

## 1. Conditional release: The subjective criterion

- Particular good prognosis for the future.
- The deciding judge must be convinced that there is no danger that the offender will relapse into further crime.
- The penal judge primarily may take into account:
  - the opinion of the penal institution and
  - other objective circumstances, such as the family circumstances
  - the possibilities of his employment, sources of his living.

## 2. The Presidential pardon

- There are two types of Presidential pardon;
- -a public pardon known as amnesty,
- -and an individual pardon.

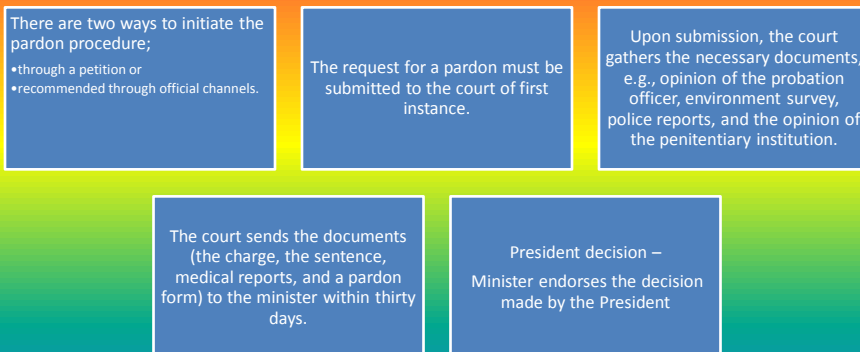
Each of these can further be divided into two categories,

- procedural and
- -enforcement pardons.

## Procedure for an Individual Presidential Pardon

- According to article 9, paragraph (4), section (g) of the Fundamental Law (constitution) of Hungary the President of the Republic has the right to grant individual pardons.
- “The President of the Republic shall exercise the right to grant individual pardon.”

## Flow chart of the procedure for a presidential pardon



## *Research number*

Igazságügyi Minisztérium Kegyelmi Főosztály,  
(Ministry of Justice, Pardon Department) number:  
XX-KEGY/44/1/2015, 2015.January

## **What does a declaration of pardon entail?**

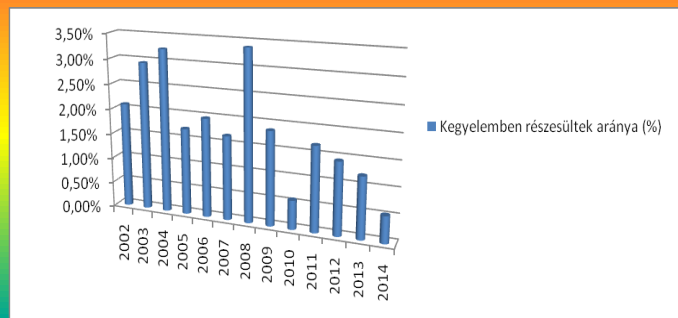
In the case of imprisonment, the text reads, for example,

*“the remainder of the punishment is suspended for X years on probation.”*

## Features of pardon decision

- 1. Above all, the president has discretionary power to decide.
- 2. The President of the Republic shall not discuss the reasons (Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 és 61199/12, 8 July 2014) for granting or denying a pardon.
- 3. The opinion of the minister does not bind the president, and
- 4. The decision becomes effective only with the endorsement of the minister.
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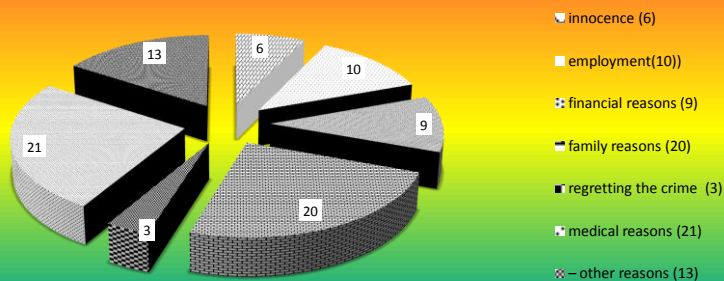
According to the data issued by the Pardon Department for the period between January 1, 2002 and March 31, 2015 approximately 98% of the requests for pardon were refused.



## Empirical research at Pardon Department

- the crime committed
- the sentence
- the reason for the request
- the opinions from the relevant sources
- whether the request was recommended for a presidential pardon.
- 

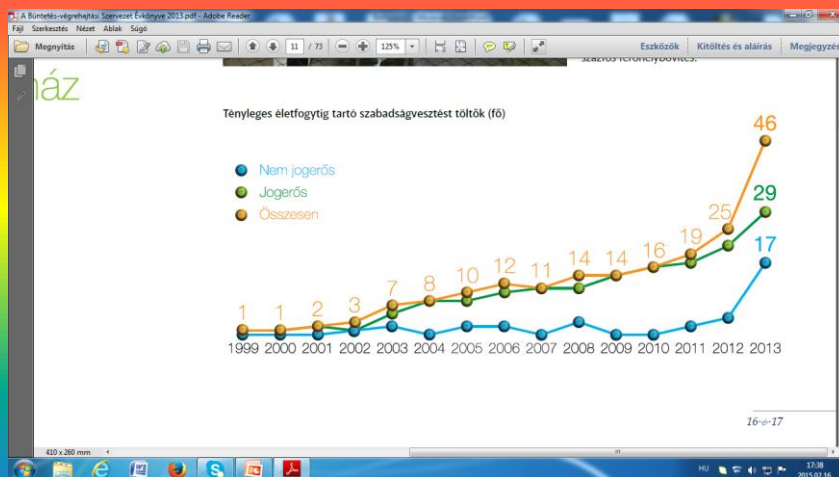
Shows the distribution of the reasons for requesting pardon. As we can see, the most frequent reasons given are medical reasons and family reasons. Other reasons included fear, good behavior, and advanced age.



## Life imprisonment

- From March 1, 1999 the sentence of ‘real life imprisonment’ came into force in Hungary
- *Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) recommends:* a “..., the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.” Life-sentence prisoner is one serving a sentence of life imprisonment.

## Real Life Imprisonment



## European Court of Human Rights

- In *Magyar v Hungary* (Application no. 73593/10, 20 May 2014)
- The sanction of life imprisonment as regulated by the respondent state,
  - *de jure*
  - *de facto*
- Violation: Article 3 ECHR
- It denies the defendant any HOPE ( Hope of Right) of being released in the future.

## Answer for ECHR Judgement

- *Hungary took two important steps in its response to the ECHR judgment:*
  1. It introduced a **mandatory pardon** procedure, where a convict has spent 40 years of his sentence,
  2. It established a **Pardon Committee**.



## Mandatory Pardon

- Convict has served 40 years of his/her sentence
- The minister informs the leader of the Supreme Court, who appoints the **five members of the Pardon Committee** :
- examining medical status,
- behaviour,
- risk ranking, etc.).----- PRESIDENT



## Mandatory Pardon

### **Problem:**

Review: 25 years – 40 years

Reason: Shall give reason for granting or denying a pardon

Real Review: Endorsment

### 3. Electronic Monitoring

- Back door modell
- Condition:
  - 6 month before release
  - First comitted crime
  - Not more 5 years imprisonment
  - Special cases in Penal Code is not possible (Penal Code 459 §)

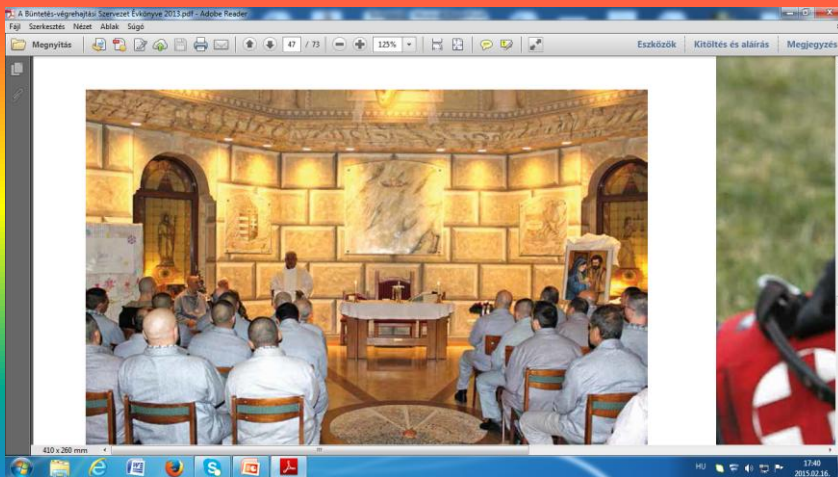
### After Care- Rehabilitation

- **Prison care-after care**
- Prison care: begins generally **six months** before the expected time of release.( Special insitution) „KEK“
- After care: after release 1 year- voluntary
- The probation officer helps with, among others, solving housing problems, job search, obtaining documents and arranging other official matters.

## Dog and prisoners



## Religious from 2003



# The rights of the prisoner

1. to be accomodated adequately to hygienic and health conditions, to be provided with appropriate food services and health care
2. to correspond through mail – family members and other people named by him approved by the prison authorities
3. to be visited at least once a month
4. To participated in work – receive compensation
5. In case of a female prisoner or a juvenile prisoner – to be protected by special provisions
6. To have his pension – in case of disability disability pension – in case of labour accident – adequate allotment

- 7. To make requests, statements of common interest, file grievances and legal motions within the prison or to authorities, independent from the prison system
- 8. To choose his religious beliefs or faith and exercise it freely
- 9. To be protected in his rights, concerning his personal property
- 10. To correspond with the representatives of would-be employers, members of charitable organizations and the professional supervisor – to facilitate his employment and settlement upon release
- 11. To spend at least one hour with exercise on the free air
- 12. to enjoy leisure time, to relax and to receive paid holidays earned by regular work
- 13. to self education, to subscribe publications and to use the cultural, educational and sport facilities of the prison

- 14. to pursue studies in primary school, in justifiable cases to pursue secondary school and university studies – adequate free time to prepare for the exams
- 15. if he is an alien citizen – to contact and correspond with the members of the embassy or consulate of his respective country
- 16. The prisoners legal capacity is not limited. His appearance before the court must be made possible
- 17. The prisoner may mail and receive one parcel per month
- 18. in case of the prisoner is giving birth to a child while imprisoned, the infant has to be placed together with his mother for the duration of six months – in exceptional cases one year

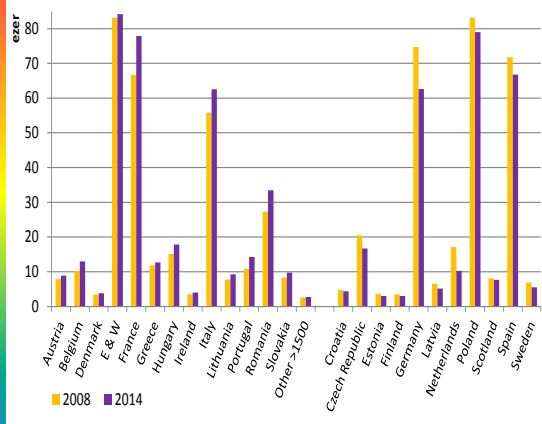
## Modified civil rights

- The right to receive and pass data of common interest can not endanger the order and security of the prison
- The right to employment can be suspended
- The prisoner is allowed to represent his opinion in those ways, not endangering the order and security of the prison
- The prisoner's correspondence through mail can be examined for security purposes of the prison – except letters sent to public authorities and international organizations – the prisoner shall be informed about this right of the prison
- The use of phone under the regulations of the prison can be monitored by the prison authorities - the prisoner shall be informed
- The prisoners right to associate, to pursue studies and his duties concerning military service are restricted due to the execution of imprisonment

## During the time of imprisonment prisoner's rights are suspended

- To chose his domicile and to free movement
- To congregation
- To strike
- To vote
- To exercise his parental control

## Prison populations in EU member states 2008 and 2014 (SPACE1)



## Factors Attributed to Successful Reintegration:

- There are several factors that contribute to successful reintegration. They include:
- Employment
- Family support
- Financial stability (being able to cover the costs of housing and basic necessities)
- Involvement in substance abuse programs
- Stabilization of any mental illness

## Reintegration custody – NEW!!!!

- As part of the execution of imprisonment, reintegration custody was introduced in Hungarian law as a completely new legal institution effective as of 1 April 2015.
- As regards the essence of this institution, based on the decision of the law enforcement judge,
- a convict may spend the last six months of his/her imprisonment in a designated home
- Reintegration custody is monitored via a remote electronic surveillance device. (probation officer in prison cooperate with police)

## inmate support and after-care

Inmate support	After care
6 month before the estimated data of release from prison,	it begins after release from prison.
prisoner	prisoner released on parole without probation supervision
	prisoner released on parole with probation supervision
	prisoner served their full sentence



## Penal judge

- The competent authority for conditional release is always a penal judge. ( special chamber of the County Court)+REINTEGRATION CUSTODY
- The penal judge acts as a single judge.
- The penal judge conducts the hearing of offenders, in case of presentation of evidence he holds trial, the prosecutor and the defender are permitted to be present at the hearing.

The decision, reached by the penal judge is appealable. If the penal judge has not released the prisoner on parole, he may review the possibility of release later.

1.released from prison by the <u>prison judge on probation with supervision;</u>	2.released from prison by the prison judge on <u>probation without supervision,</u>
	<u>3.after serving the full term</u>
probation officer work	It is close to social work
unvoluntary basis	voluntary basis
focuses on the needs of the offenders, and	focuses on the needs of the offenders,
- supervises the fulfilment of behavioural conditions	- houses
- prevention of offender from committing crime	- family relationship
- to contribute to prisoner's adaptation to the society	- replacing lost official documents
- to give notice in advance about his intention of	- employment
	- education
	- medical care
	- improving skills

absolut control	There is no control function
behavioural rules	There is no behavioural rules
are legal consequences – a) the conditions have been seriously violated, imprisonment may be executed b) the behavioural conditions can be modified	There are no legal consequences
minimum 1 year , for the duration of parole	Duration depen on nature of case
Method: 1. questionnaire 2. providing information 3. individual case 4. group work ( strengthening the family relationship)	

## Which strategies and concepts can be seen as good practices and why?

- Several organisations and projects shall deal with reintegration of ex-prisoners: they differ in type, size, function, budget.
- Types of organisations:
  - State administration: Ministry of Justice – Department of Crime Prevention, authorities (labour centres), penal institutions (prisons)
  - NGO's: foundations, associations
  - „Church” organisations (missions)
  - Educational institutions (vocational, adult training)
  - Social welfare „companies”
- Function:
  - Education
  - Supportive care
  - Provide info on job opportunities..... Etc.
- Funding:
  - State subsidy
  - EU Structural Funds

## Activities inside prison

- Towards the social reintegration of the prisoners, the Hungarian prison service organizes several activities:
- school - vocational training - work
- Educational programs are organized inside prisons to cover the minimum compulsory education standards. Prisoners may attend university programs if they are on open regime and can cover their costs.
- Vocational training is organized by the prisons together with the employment offices according to the prisoner's options and abilities.
- The diplomas are issued by the providers without mentioning the fact that the program was organized within the prison system.
- Prisoners can work in different forms of contracts: as service providers, self-employed.
- The regulations regarding work apply the same as for the ordinary workers outside the prisons (e.g. working hours, safety, holidays etc.).
- If the prisoners are paid for their work the salary cannot be lower than 1/3 of the minimum average gross salary per economy.

## Duties of prisoners

## **The prisoner has the duty**

- to serve his imprisonment in the prison assigned by the National Prison Administration
- to tolerate and accept his segregation from prisoners of other sex and security level, and to accept the grouping on the grounds of age, criminological, security, treatment and medical purposes.
- to obey the regime of the prison
- to comply with the security and hygienic requirements
- to obey and accomplish the orders given to him

## **The prisoner has the duty :**

- to accomplish the work, assigned to him, in discipline and in accordance with his qualifications and skills
- to obey the regulations concerning labour safety and environmental protection
- to take part in maintenance activities and in keeping the cleanliness of the prison without compensation
- to submit himself to necessary medical examination and medication
- to contribute to the expenses of his detention

## Duties of the prisoner

- The portion of prisoner's earnings and deposited money shall be retained till the time of his release
- The following costs and expenses are not covered by the prisoner:
  - Costs of transportation of the prison
  - Costs of his appearance before court in criminal cases pending against him
  - Costs of forced medical treatment
  - Costs of examination of prisoner's mental status

## Duties of the prisoner

- The director of the National Prison Administration is authorized to determine the amount of money, with which the prisoner has to contribute to the expenses of his detention
- The prisoner is responsible for the damages caused by him as regulated by the Civil Code
- The Code of Labour is applicable in cases of damages caused by the prisoner during his work.
- The prisoner is mandated by the prison to repay the damages caused by him.

## Duties of prisoner

- The Ministry of Justice is responsible for all the damages caused to the prisoner during his imprisonment as it is regulated by the Civil Code.
- In cases of damages emerging in connection with prisoner's employment, the Code of Labour is applicable

## The Bail

## Purpose

- - ensuring the presence of the accused during the procedure
- - to avoid having to apply pre-trial detention

## Conditions

- - risk of escaping or hiding of the accused
- - the conditions of the application of pre-trial detention are met
- - based on the crime and the personal circumstances of the accused the court may accept bail
- - the bail may be offered by the accused or anyone else in his/her stead

## The ordering procedure

- - investigating judge holds a meeting during the investigation stage
- - during the hearing he determines:
  - - the amount of the bail based on the personal circumstances and financial conditions of the accused
  - Prohibition to leave the place of residence or house arrest may be ordered at the same time

## Amount of bail

- - the bail may be offered by the accused or anyone else in his/her stead
- - the amount is based on the personal circumstances and financial conditions of the accused
- - the bail is paid in cash
- - upon valid completion the accused in arrest should be immediately discharged
- - there is no legal limit on the amount of the bail



## Loss of the bail

- - if the accused fails to attend the court without certificate:
  - - the court may order his arrest
  - - the accused loses the amount of the bail

## Reimbursement of the bail

- the bail should be reimbursed
  - - if the accused gets arrested for any other reason
  - - if the investigation is terminated
  - - if the accusation is disregarded or postponed
  - - if the proceedings were completed validly
    - - irrespective of the issue of guilt

## Legal remedies I.

- - against the investigating judges decision on the bail disclosed by verbal announcement
  - - the accused and the defence attorney may appeal
  - - the appeal has to be immediately submitted after the verbal announcement of the decision
    - - if the accused did not attend the announcement, it has to be submitted within 3 days

## Legal remedies II.

- - against the investigating judges decision on the bail disclosed by delivery
  - - the appeal has to be submitted within 3 days

## Legal remedies III.

- - the appeal will be judged by the second instance committee of the county court
- - if the acting court ordered the bail
  - - the accused or his/her defence attorney may dispute this decision in an appeal against the verdict (first or second instance)
  - - only the public prosecutor may appeal against the decision on disregarding or terminating the pre-trial detention of the accused in return for bail

## PREVENTIVE DETENTION

## Requirements of Preventive Detention Warrant:

- I. During investigation preventive detention is ordered by the investigating judge on a motion by the prosecutor.
- II. After an indictment is entered, preventive detention is ordered by the competent court.

Preventive Detention for an offence carrying a punishment of imprisonment may be ordered by court, if one of the next 4 alternative conditions exists:

1. If the accused absconded, hid from the court, prosecutor or investigating authority; attempted to abscond; during the investigation a new procedure is initiated against the accused for deliberately committing an offence carrying the punishment of imprisonment, OR

2. If the threat of absconding, hiding or any other reason necessitates preventive detention in order to ensure the accused presence at stages of the criminal procedure, OR
3. If there is a reasonable cause to believe that the accused will influence or coerce witnesses, destroy, falsify or hide physical evidence thus preventing, hindering or jeopardizing the evidentiary procedure, OR
4. If there is a reasonable cause to believe that the individual will commit the attempted or mediated criminal act, or will commit another offence carrying the punishment of imprisonment.

### The contest of the Preventive Detention Warrant:

- Before issuing the warrant the judge hears the accused in the presence of the prosecutor. This hearing is conducted in camera. (without publicity)
- In reality more than 90% of the motions of prosecutors are successful.
- Instead of preventive detention, the court may order: house confinement, house arrest, bail.

## Characteristics of Preventive Detention:

- ❖ Before an indictment is entered: prev. det. may last only until an order is issued by the court of first instance after preliminary hearing, but in any case up to 1 month.
- ❖ The investigating judge has the right to extend this period for 3 months at a time, for a total of 1 year starting from the first order.
- ❖ Then, the regional court may extend this period for 2 months at a time.
- ❖ If the duration reaches 3 years it terminates.
- ❖ There is one exception, when a prev. det. warrant is issued or upheld after the final decision is rendered.

## Conditional Release and Real Life Imprisonment

Why is important to deal with conditional release from prison followed by post release supervision ?

1. Reduce overcrowding in the cells
2. Number of prison population is growing

- a life imprisonment or
  - an imprisonment lasting for a definite period of time.
  - The shortest and the longest duration of a sentence for a specific term of imprisonment shall be three months and twenty years,
  - or twenty five years in respect of cumulative sentences.
- Imprisonment may be:**

## Conditional release term

- From 1998 modification-introduced the so-called „real life imprisonment” in cases where conditional release could be excluded by the sentencing judge.
- From 1. July 2013
  - at least two-third.
  - in case of recidivists.: at least three-quarters
- But minimum of 3 months must be served.

## International outlooking

- **Austria: general preventive aspects**  
2/3
- **Croatia: 1/2 exeptionally, good behaviour** 1/3
- **France: 1/2 , for recidivist offenders**  
2/3,



## Conditional release aims

The conditional release aims :

- 1.) a possibly effective **re-socialization** of well-behaving prisoners,
- 2.) the penalty can be achieved without serving the complete term of imprisonment.

The **decision** about the release of a certain prison inmate on parole falls within the competence of the **penal executive judge( penal judge)**

## Conditional release definition

- Council Framework Decision 2008/947/JHA  
Article 2 paragraph ( 6):  
" shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures

**Recommendation Rec(2003)22  
of the Committee of Ministers to member states  
on conditional release (parole)**

**Definition of conditional release :**

conditional release means the early release of sentenced prisoners under individualised post-release conditions.

Amnesties and pardons are not included in this definition.

- The objective criterion :  
the sentence must have already been served (two thirds of their sentence).  
*There are objective criterion and subjective criterion on parole.*  
The conditional release after half of the sentence has been served.
- The subjective criterion:  
is particularly good prognosis for the future.

## Subjective criterion on parole.

The penal judge takes into account:

- the opinion of the penal institution  
prisoner has a lot of rewards?? (permission of extra opportunity to receive extra parcel, permission of extra opportunity to meet visitors)
- such as the family circumstances of the convict,
- the possibilities of his employment, sources of his living.

## The penal judge

- Single judge.
- The penal judge conducts the hearing of offenders,
- In case of presentation of evidence he holds trial,
- The decision, reached by the penal judge is appealable.

## Conditional release from prison followed by post release supervision

According to Penal Code, probationary supervision can be applied:

- for the postponement of accusation
- for the duration of conditional release
- for the duration of probation
- for community labor
- for suspended imprisonment

## Reason for a recall: 1.new offence

### Mandatory cases

- is not sentenced to a imprisonment

### Compulsory cases

is sentenced to imprisonment

- 1.) crime committed during the time when released on parole
- 2.) during the time when released on parole was sentenced to imprisonment

## Reason for a recall: 2. Serious

- released prisoner deliberately or persistently violates the Court's instructions.
- prosecutor files a motion of parole revocation to penal judge.
- The penal judge has the right to decide if the violation of behavioural rules is *serious or not*.

## Reason for a recall : 3. Escape

According to Code Execution of Punishments and measures Act 2013 CCXL Article 61(2) :

- if the prisoner on parole has tried to escape from the authorities before his arrest

## 28 March 2013 CPT visit in Hungary

- The CPT's recommendations after the last visit to Hungary, **prison overcrowding** remains to be one of the most serious issues in terms of the penitentiary system
- In the report on its visit to Hungary in 2007, the CPT expressed “**serious reservations**” about actual life-long imprisonment, ( imprisonment without the possibility of parole)

## CPT visit (2013)

- The law should make conditional release available to all sentenced prisoners, including life-sentenced prisoners.
- The CPT invited the Hungarian authorities to introduce a **regular review** of the threat to society posed by “actual lifers”, on the basis of an individual risk assessment, ( CPT 2007)

## CPT visit (2013)

- Despite the suggestions, the CPT expressed that actual life-long imprisonment continues to exist in Hungary, and no regular review possibility regarding actual lifers has been introduced.

## Release from prison

- In Hungary release from prison can occur in several ways:
  - - completion of the term of imprisonment
  - - conditional release
  - - interruption of imprisonment (temporary)
  - - presidential pardon
  - - reintegration custody (from 1 April 2015).

## The European Court of Human Rights

- The European Court of Human Rights has condemned Hungary for its adoption of real life imprisonment (also known as whole life imprisonment)-  
*no regular review possibility*
- CASE OF LÁSZLÓ MAGYAR v. HUNGARY  
(Application no. [73593/10](#))

## Real life imprisonment

- According to paragraph 44 (1) of the Penal Code, real life imprisonment is applicable in 18 cases.
- The judge can use his/her judgement, including the following:
  - genocide,
  - crimes against humanity, apartheid, etc.
  - In two cases, real life imprisonment is **compulsory**:
    - a) *multiple recidivism* with violence, or (b) those who committed the crimes from the list above in a *criminal organization*.



## Statistics

- In Hungary today there are two hundred and seventy-five people sentenced to **life imprisonment**, and of these only
- forty have been sentenced to **real life imprisonment** (not all of these are final decisions).

## Long-Term Imprisonment and Human Rights

- Universal Declaration of Human Rights (UDHR) GA Res 217A (III), 10 December 1948
- International Covenant on Civil and Political Rights (ICCPR) GA Res 2200A (XXI), 16 December 1966, entry into force 23 March 1976
- **European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR)** , 4 November 1950, CETS 005, entry into force 3 September 1953,

## ECHR

There are currently 9 countries where life imprisonment does not exist:

Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain

(Applications nos. [66069/09](#), [130/10](#) and [3896/10](#) 9 July 2013 )

## ECHR: Dedicated mechanism for reviewing

In the majority of countries where a sentence of life imprisonment may be imposed, there exists a dedicated mechanism for reviewing the sentence after the prisoner has served a certain minimum period fixed by law.

Albania (25 years), Armenia (20), Austria (15), Azerbaijan (25), Bulgaria (20), Cyprus (12), Czech Republic (20), Denmark (12), Estonia (30),..

## Article 3 of the European Convention on Human Rights and Vinter Case

- “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### **CASE of *Vinter and others v. The United Kingdom***

„If a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable”.

**In CASE of *Magyar v Hungary*** (Application no. 73593/10, 20 May 2014)

**European Court of Human Rights** held that the sanction of life imprisonment as regulated by the state, which is *de jure* and *de facto* **irreducible, amounts** to a violation of the prohibition of degrading and inhuman punishment as prohibited by Article 3 ECHR.

**It denies the convict any hope of being released in the future.** („Right to Hope”)

- 1. It introduced a mandatory pardon procedure, where a convict has spent 40 years of his sentence,
- **Hungary took two important steps in its response to the ECHR judgment.**
- 2. It established a Pardon Committee.

Guides us through what the compulsory pardon procedure actually entails step by step.

1. Convict **has served 40 years** of his/her sentence (and has declared that he/she wishes to request the compulsory pardon procedure)

2. The minister must carry out the procedure within **60 days**

3. The minister informs the leader of the Curia, who appoints the **five members of the Pardon Committee.**

4. The **majority opinion** must be made within 90 days in an **oral hearing** (examining medical status, behaviour, risk ranking, etc.).

5. The **opinion must be sent to the President** within 15 days, and the President then decides whether to grant the pardon. The final step is the **endorsement** of the minister responsible for justice.

6. If a pardon is not granted at this time, the procedure must be **repeated in two years.**

The Hungarian Constitutional Court made a declaration on April 17, 2014 (No. III/00833/2014) and a council of the Curia (Büntető Jogegységi Tanácsa) issued a declaration on July 1, 2015 (No. 3/2015.BJE).

Regarding the compulsory Presidential pardon procedure, these declarations stated that the Hungarian legal system now was in compliance with the requirements set forth by the European Court of Human Rights.

Question: Is it enough for the ECHR??

## My opinion

- ECHR said, ... “ the comparative and international law materials before the Court show clear support for the institution of a dedicated mechanism guaranteeing a review *no later than twenty five years* , **but it is in Hungary 40 years.**
- **Conclusion:** 2 cases before ECHR (dec. 2015 ) „*The applicant complains under Article 3 that the fact that he can be eligible for parole only after 40 years of imprisonment amounts to inhuman and degrading treatment.*”