

THE LIFE IMPRISONMENT IN THE HUNGARIAN CRIMINAL LAW

Abstract

Among penalties, the imprisonment is imposed for a fixed duration or for a life term in Hungary. In many cases the duration of an imprisonment may be longer due to the fact that relative dangerous criminal offenses or special circumstances shall be punished differently. As a part of the imprisonment system, but above and on the top of the penalties the life imprisonment is taking place. This penalty is usually facultative and the judge may decide whether the perpetrator would be sentenced for a fixed-term imprisonment between ten and twenty years or to the life imprisonment. The key issues of an “effective” life imprisonment are the right to hope. In line with Hungarian criminal law the court may deny the possibility of parole in connection with sentencing a person for life imprisonment. In the case law of the European Court of Human Rights, Hungarian life imprisonment received special attention and also serves as an example for the sustainability of the current regulation. In this article the author shall guide through Hungarian regulation history and highlight the current system of penalties including the right to hope and the possibility of parole.

Keywords: Hungarian criminal law, life imprisonment, right to hope, human rights.

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KAZNA DOŽIVOTNOG ZATVORA U MAĐARSKOM KRIVIČNOM PRAVU

Sažetak

Kao kazna, zatvor se u Mađarskoj izriče na određeno vreme ili doživotno. U mnogim slučajevima trajanje kazne zatvora može biti duže zbog činjenice da će se relativno opasna krivična dela ili posebne okolnosti drugačije kažnjavati. Iako je deo zatvorskog sistema, kazna doživotnog zatvora se preduzima kao mera koja je iznad svih drugih. Ova kazna je fakultativna i sudija može odlučiti da li će počilnac biti osuđen na kaznu zatvora od deset do dvadeset godina ili na doživotnu kaznu zatvora. Ključno pitanje „efikasne” kazne doživotnog zatvora jeste pravo na nadu. U skladu sa mađarskim krivičnim zakonom, sud može uskratiti mogućnost uslovnog otpusta u vezi sa osuđom lica na doživotnu kaznu zatvora. U praksi Evropskog suda za ljudska prava, mađarski doživotni zatvor je bio predmet posebne pažnje i, takođe, služi kao primer održivosti trenutnih regulativa. U radu, autor će analizirati mađarske regulative kroz istoriju uz značajan osvrt na trenutni sistem kazni - uključujući pravo na nadu i mogućnost uslovnog otpusta.

Ključne reči: mađarsko krivično pravo, kazna doživotnog zatvora, pravo na nadu, ljudska prava

1. Introduction and Short Regulation History of Life Imprisonment

Three stages of legal regulation can be distinguished related to the criminal law history of life imprisonment in History. In the first stage, in the Middle Ages, even a “perpetual captivity” or a “three-year sentence” – in the view of the conditions of captivity – was equal to death, and this is how short periods of time could become lifelong. In the second era, a more liberal approach became dominant, where parole was not denied even among life imprisonments (Tóth, 2012a, p. 407). The first Criminal Code of Hungary from 1878, the so-called “Csemegi” Code, recognized the life imprisonment which could be imposed in the case of infidelity or royalty-insult. However, the code provided the possibility of parole in both cases under certain conditions and when fifteen years had been served (Czine, 2019, pp. 147-148; Arts. 44-48, 126-129 and 142-144 of Act V of 1878). The upcoming Criminal Code adopted in 1961 eliminated the life imprisonment and

shifted to fixed-term imprisonments. Although even if life imprisonment had been rehabilitated after ten years, the earliest possibility of parole was initially twenty, later – following the political change of 1989 – it was raised to between fifteen and thirty years depending on the criminal offense committed (Arts. 35-40 of Act V of 1961). There was one exception only when the possibility of parole had to be denied: when a person sentenced to life imprisonment was sentenced to another term of life imprisonment. With this, until the beginning of the new millennium, the so-called “life imprisonment” – with very few exceptions – had lost its literal meaning (Tóth, 2012a, pp. 407-408; Czine, 2019, p. 151; see: Act LXXXVII of 1998). In the third stage, in addition to the “existing” life imprisonment, the “effective” life imprisonment re-emerged in 1999. Ever since the court could deny the possibility of parole in certain cases.¹ In contrast with the more liberal trends before, stricter regulations – named “three strikes” – were introduced after 2010 (Arts. 2 and 4 of Act LVI of 2010; Polgár, 2017, pp. 147-153). In addition to the justification for the amendment and to its political importance, the modification made the life imprisonment without the possibility of parole mandatory for repeat offenders with a history of violence or in certain serious offenses in cumulative sentences (Kőhalmi, 2006, pp. 35-43; Tóth, 2012a, pp. 408-409; Czine, 2019, p. 152). In the following, this article would describe the life imprisonment in the Hungarian Criminal Code of 2012² with particular attention to the system of penalties, the role and significance of the release on parole and finally the previously current dispute over the right to hope in such cases.

2. The Hungarian System of Penalties: Imprisonment and Life Imprisonment

Among the penalties, the imprisonment is imposed for a fixed duration or for a life term. Fixed-term imprisonment shall be three months as a minimum and twenty years as a maximum in line with particular criminal offenses within the Special Part. The General Part offering a frame for imprisonment where the duration of fixed-term imprisonment shall be increased for crimes committed in the framework of criminal organization, or if the perpetrator is a repeat offender or a habitual recidivist, as well as in the case of cumulative sentences or

¹ It should be noted that the possibility would have existed before because after the earliest years of parole – following a twenty or thirty-year term – the judge would decide not to release the sentenced on parole.

² See Act C of 2012 on the Criminal Code. See for the used English translation of the Hungarian Criminal Code: Act C of 2012 on the Criminal Code, Ministry of Interior, 2012, https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf.

the merger of the sentences to twenty-five years (Arts. 34-36 of Act C of 2012). In this case the duration may be longer due to the fact that relative dangerous criminal offenses or other circumstances like a criminal organization or the background of the offender shall be punished differently shall not exceed twenty-five years. This is the upper red line among fixed-term imprisonment under special circumstances defined in line with the General and Special Part of the Criminal Code (Tóth, 2012a, pp. 402-404).

As a part of the imprisonment system, but above and on the top of the penalties the life imprisonment is taking place. This penalty is usually facultative and the judge may decide whether the perpetrator would be sentenced for a fixed-term imprisonment between ten and twenty years or to life imprisonment. The only exception is the age of a particular person who committed the crime because in line with the law only those over the age of twenty at the time of commission of the criminal act shall be sentenced to life imprisonment and this provision also applies to the life sentences imposed under provisions relating to repeat offenders with a history of violence.³ In these cases the minimum sentence for violent crimes against the person, if committed by repeat offender with a history of violence and if carrying a higher sentence, the maximum penalty described for such crimes in Special Part, if punishable by imprisonment, shall be doubled. After the punishment being doubled and if the maximum penalty increased as per the above would exceed twenty years, or if either of the said offenses carry a maximum sentence of life imprisonment, the perpetrator in question must be sentenced to life imprisonment (Arts. 41 and 90(2) of Act C of 2012). The originally adopted text laid down strict rules under cumulative sentences in which cases, if in respect of multiple counts of charges, at least three counts constitute violent crimes against persons committed at different times, the upper limit of the applicable penalty – based on the types of punishment and according to the most severe one prescribed for the gravest of the multiple offenses to which it pertains – shall be doubled. In this case if the upper limit of the applicable penalty increased as per the above would exceed twenty years, or if either of the said criminal offenses in the multiple counts carry a maximum sentence of life imprisonment, the perpetrator in question must be sentenced to life imprisonment (Art. 81(4) of Act C of 2021).⁴

³ The maximum term of imprisonment that may be imposed upon a juvenile offender over the age of sixteen years at the time the crime is committed shall be ten years for a crime that carries a maximum sentence of life imprisonment (see Art. 109(2a) of Act C of 2012).

⁴ However, where it was permitted under the General Part the penalty may be reduced without limitation. It has been even included in the constitution in 2011 that “effective” life imprisonment shall be used only in the case of serious violent crimes, see: Constitution of Hungary

3. Life Imprisonment and the Release on Parole

Sentence to life imprisonment shall be served in a penitentiary (Art. 90(2) of Act C of 2012), the only difference among persons serving a life imprisonment shall be found under the regulations of release on parole. In the event a sentence of life imprisonment is imposed, the court shall specify the earliest date of eligibility for parole, or shall preclude any eligibility for parole. If the court has not precluded eligibility for parole with a sentence of life imprisonment, the earliest date of release on parole shall be after serving twenty-five years, or at least forty years, but the earliest time of release on parole shall be determined in years and the duration of parole in the case of life imprisonment shall be not less than fifteen years (Arts. 42-43 of Act C of 2012).⁵

In the event a sentence of life imprisonment is imposed, the court may deny the possibility of parole only in connection with the following crimes (Art. 44(1) of Act C of 2012). This event may happen firstly when the perpetrator committed a particular dangerous criminal offense by using actual force against a person or a thing or committed the criminal offense in the framework of a criminal organization, or secondly when the perpetrator is a repeat offender with a history of violence (Art. 44(1)(2)a-b) of Act C of 2012). These particularly dangerous criminal offenses being mentioned above are the following:⁶ genocide [Section 142(1)], crimes against humanity [Section 143(1)], apartheid [Section 144(1)(3)], aggravated cases of assault against a war emissary [Section 148(2)], assault on protected persons [Section 149(1)(2)], use of a weapon prohibited by international convention [Section 155(1)], other war crimes [Section 158], aggravated cases of homicide [Section 160(2)], aggravated cases of kidnapping [Section 190(3)(4)], aggravated cases of kidnapping [Section 190(3)(4)], aggravated cases of kidnapping [Section 190(3)(4)], aggravated cases of kidnapping [Section 190(3)(4)], aggravated cases of trafficking in human beings [Section 192(6)], attempt to overturn constitutional order by force [Section 254(1)], aggravated cases of destruction [Section 257(2)], aggravated cases of prison riot [Section 284(4)], acts of terrorism [Section 314(1)], aggravated cases of unlawful seizure of a vehicle [Section 320(2)], aggravated

Article IV (2); See for the English translation of the Constitution of Hungary: Hungary's Constitution of 2011, Constitute Project, 2011, Link: https://www.constituteproject.org/constitution/Hungary_2011.pdf.

⁵ Be advised that probation with supervision shall be ordered for the convicted perpetrator if released on parole from life imprisonment and the duration of probation with supervision shall be up to fifteen years (see Arts. 69(2)a) and 70(1) of Act of 2012).

⁶ Consequently, no statute of limitations applies to the crimes which carry a maximum sentence of life imprisonment (see Art. 26(3)b) of Act C of 2012).

cases of public endangerment [Section 322(3)], aggravated cases of mutiny [Section 442(4)], aggravated cases of assault on a superior officer or representative of public authority [Section 445(5)] (Art. 44(1)a-r) of Act C of 2012).

When the court did not deny the possibility of parole in connection with sentencing a person for life imprisonment it may deny or postpone it due to significant changes following its former decision. Firstly if, while serving a term of life imprisonment, a prisoner is sentenced to a specific term of executable imprisonment for a criminal offense committed before being sentenced to life imprisonment, the court shall postpone the earliest date of release on parole for the duration of such specific term of executable imprisonment. If a prisoner who is released on parole from life imprisonment is sentenced to a specific term of executable imprisonment for a criminal offense committed before receiving such sentence of life imprisonment, the court shall revoke the parole and shall postpone the earliest date of release on parole for the duration of such specific term of executable imprisonment. Secondly if, while serving a term of life imprisonment, a prisoner is sentenced while serving a term of life imprisonment to a specific term of executable imprisonment for a criminal act committed before receiving such sentence of life imprisonment, the court shall postpone the earliest date of release on parole for the duration of such specific term of imprisonment or for a period of not less than five years and not more than twenty years. Or, if a prisoner who is released on parole from life imprisonment is sentenced to a specific term of imprisonment for a criminal offense committed while serving such sentence of life imprisonment, the court shall terminate the parole and shall postpone the earliest date of release on parole for the duration of such specific term of imprisonment or for a period of not less than five years and not more than twenty years. This shall be applied too, if a prisoner who is released on parole from life imprisonment is sentenced to a specific term of imprisonment for a criminal offense committed after being released on parole from such life imprisonment, the court shall terminate the parole and shall postpone the earliest date of release on parole for the duration of such specific term of imprisonment or for a period of not less than five years and not more than twenty years. Beside the above mentioned, the earliest date of release on parole from life imprisonment is postponed due to being sentenced for a specific term of imprisonment, the earliest date of release on parole shall be determined taking into consideration the time of preliminary detention deducted from the fixed-term sentence, as well as the duration of any house arrest and naturally a person sentenced to life imprisonment may not be released on parole if he is sentenced to another term of life imprisonment. The second sentence of life imprisonment shall not be carried out before the previous term of life imprisonment is executed (Art. 45(1)-(7) of Act C of 2012).

4. The Right to Hope and the Possibility of Parole

The key issues of the release on parole from an “effective” life imprisonment is the right to hope in the case when the court originally denied the possibility of parole in connection with sentencing a person for life imprisonment. The newly adopted Constitution of Hungary from 2011 declares that an “effective” life imprisonment shall be used only in the case offenders have committed violent crimes.⁷ Even if this had been declared in the Constitution, still seems (seemed) rightly as a “declared unpredictability” in which cases the non-uniform treatment of legal certainty, long, indefinite deprivation of liberty is discriminatory. Denying the hope of a release from life imprisonment may be against humanity and against human rights (Tóth, 2012, p. 409). The adoption of the penitentiary act⁸ offered an additional but still unpredictable solution and introduced the mandatory pardon procedure for those being sentenced for life imprisonment without the possibility of parole.⁹ In line with the regulation the mandatory pardon procedure shall be instituted *ex officio*, provided that the convicted person declares and agrees to the above mentioned. The penitentiary detaining the convicted person shall notify the Minister of Justice in order to initiate the mandatory pardon procedure if the convicted person has served forty years and in this case the minister shall conduct the proceedings within sixty days receiving the notification from the penitentiary (Art. 46/D-G of Act CCXL of 2014; Polgár, 2017, p. 57).

In the case law of the European Court of Human Rights, life imprisonment has received special attention and also serves as an example for Hungary regarding the sustainability of the current regulation. Firstly, in the *Törköly v. Hungary* case (4413/06¹⁰) from April 2011 in which the court rejected the application and came to the conclusion that the applicant was not deprived of the hope of parole. As the release of the sentenced should be considered after forty years of detention, the possibility of the parole of the applicants cannot be ruled out either. Secondly, the case of *László Magyar v. Hungary* (73593/10¹¹) from October 2014 is particularly

⁷ See the Constitution of Hungary as: (1) Every person shall have the right to freedom and personal safety. (2) No person shall be deprived of his or her liberty except for statutory reasons or as a result of a statutory procedure. Life imprisonment without parole shall only be imposed in relation to the commission of willful and violent offences (Art. IV (1)(2) of the Constitution of Hungary).

⁸ See the Act CCXL of 2013 on the Implementation of Penalties, Measures, Certain Coercive Measures and the Misdemeanor Custodial Arrest.

⁹ See Art. 109 of Act LXXII of 2014 on the Modification of the Act CCXL of 2013 on the Implementation of Penalties, Measures, Certain Coercive Measures and the Misdemeanor Custodial Arrest and Other Related Laws that enacted the above cited Art. 46/A-H of Act CCXL of 2014.

¹⁰ See the related ECHR link: <http://hudoc.echr.coe.int/fre?i=001-104602>.

¹¹ See the related ECHR link: <http://hudoc.echr.coe.int/fre?i=001-144109>.

significant, where the court found that the possibility of parole was uncertain. As the sentenced applicant was excluded from parole, the court hold that the pardon procedure of the President of the Republic is immature, uncertain and does not contain any practical guidance. There is no legal regulation or other set of requirements as to what conditions the convicted has to meet. It is not guaranteed whether and to what extent the fulfillment of the conditions should be taken into account when considering a parole from life imprisonment, in addition in the *T.P. v. Hungary* (37871/14¹²) and *A.T. v. Hungary* (73986/14) cases from October 2016 the court also found that the uncertainty of the forty years long waiting is too long in international or European comparison. The above mentioned case law points in the direction that the current system of life imprisonment needs to be reviewed (Tóth, 2012b, pp. 268-273; Polgár, 2017, pp. 41-60; Czine, 2019, pp. 153-156).

5. Conclusion

In Hungary, almost 400 sentenced persons are currently serving their life imprisonments with an uncertain possibility for parole, which number has been on the rise in the recent decade while their average life ages have been declined (Rutkai & Sánta, 2020, p. 16). It is not disputed that, the isolation of certain offenders may be justified, but the reintegration into society after forty years would certainly be difficult. Even if life imprisonment is accepted, the system as a whole may need to be reviewed based on the above mentioned critical remarks. One, if not the most crucial issue is to ensure the right to hope in accordance with humanity requirements and in line with international and European practice. The possibility of parole or the suspension of sentence should be reviewed along a more developed set of conditions and, if possible, instead of forty years, the life imprisonment without the possibility of parole would be relieved significantly earlier (Ruzsonyi, 2016, pp. 50-52; Czine, 2019, pp. 156-157).

¹² See the related ECHR link: <http://hudoc.echr.coe.int/fre?i=001-153949>.

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