

RELEASE FROM PRISON AND PROBATION IN HUNGARY

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ABSTRACT: *In Hungary the penal judge may release a person serving a definitive term of imprisonment on parole, if there is reason to believe - in view the person's good conduct displayed when serving a term of imprisonment and of his willingness to lead the life of a law abiding citizen – that the aim of the punishment may also be achieved without further incarceration. This article focuses on legal procedure which allows this decision.*

KEYWORDS: *criminal sanctions, prison, conditional release, penal judge*

JEL CODE: *K 42*

1. INTRODUCTION

It is well known that in Hungary the prison population is high by European standards. In 2013 there were 18293 people in prison custody (the ideal number is 12 584 people). The majority of these prisoners are serving determinate sentences, but a growing number face indeterminate (life) sentences. This table shows the overcrowding in Hungarian prison.

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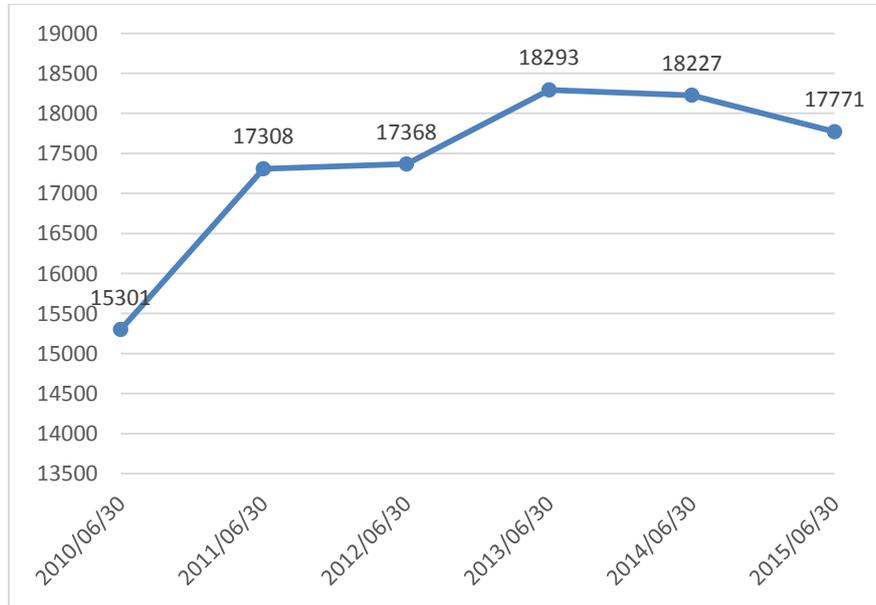


Figure 1: The overcrowding in prison in Hungary from 2010-2015

Source: (Börtönstatisztikai szemle 2015., p. 4.)

Imprisonment shall be executed on the security level assigned by the court, respectively on minimum, medium or on maximum security level.

The prisoner is assigned to the respective prison, preferably to the nearest to the prisoner's domicile, by the National Prison Administrative. On different security levels of imprisonment, the prisoner's

- a.) segregation from the society
- b.) detention and supervision
- c.) movement within the parameters of the prison,
- d.) regime of life,
- e.) amount of money allotted for personal needs,
- f.) rewards and disciplinary sanctions
- g.) participation in prisoner organizations are different.

In Hungary in 2013 is a new Act for the execution of punishments and measures was enacted, which came into force on 1 January 2015. In the focus of this act will be the reintegration, rehabilitation.

2. THE SYSTEM OF EARLY RELEASE IN HUNGARY

Some figures about Hungary:

Population: 9.839.000

Number of inmates: 17.771

Official capacity: 13.356

Inmates imprisonment rate: 180 inmates/100.000 citizens

Female inmates: 1377 inmates

Juveniles: 408 inmates

Overcrowding: 141% (in 2014)

The imprisonment may be 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, respectively, or twenty five years in respect of cumulative or consolidated sentences and for crimes committed in affiliation with organized crime.

While imprisonment lasting for a definite period of time may be applied against any perpetrator being over the age of 14 and possessing the general conditions of criminal liability, life imprisonment may be only applied against a person being over the age of 20 at the time of committing the concerned crime.

The court may rule in the judgement sentencing life imprisonment that the convict might not be released from the penal institution even after serving certain part of his time. In that case life imprisonment literally lasts for the lifetime of the convict and thereby becomes the harshest sanction of Hungarian criminal applicable law.

2.1. Life imprisonment

The toughest amendments concerning conditional release from life imprisonment were made in 1998 and are still in force. These modification-introduced the so-called „real life imprisonment” in cases where conditional release could be excluded by the sentencing judge, that is life sentence in this case would last literally until the end of the prisoner’s life.¹

If the possibility of release on conditional release will not be excluded by the judge, then in case of offence that can be prosecuted without a time limit, the minimum period (before granting parole) must be ordered by the judged as being at least 25 years, maximum 40 years.

2.2. Imprisonment lasting for a definite period of time

One of the most effective tools of changing the attitudes of the convicts is the institution of conditional release. The essence of parole is that after serving a determined part of the punishment it renders the possibility to the convict to reintegrate into the society.

Early release in Hungary is based on discretionary decisions and is always conditional and based on Article 38 of Penal Code. According to this provision, prisoners can be conditionally released from determinate prison sentences after they have served two thirds of their sentence. A minimum of three month must be served since the 1998 amendments.

¹ In the case of *Magyar v. Hungary* (Application no. 73593/10, 20 May 2014) the European Court of Human Rights decided that the Hungarian system of real life imprisonment without the possibility of review for conditional release violates Article 3 of the European Convention on Human Rights.

The conditional release aims at a possibly effective re-socialization of well-behaving prisoners, in which case the aim of 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. There are objective criterion and subjective criterion on parole.

a.) The objective criterion for release on parole is that a certain proportion of the sentence must have already been served (two thirds of their sentence). According to Article 38 (3), when the court imposes a term of imprisonment of no longer than five years, the court may, in circumstances deserving special consideration, grant conditional release after half of the sentence has been served. This option is not available in case of multiple recidivists.

b.) The subjective criterion is particularly 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, while concerning the prospects of the future he shall examine the statement of the convict and other objective circumstances, such as the family circumstances of the convict, the possibilities of his employment, sources of his living.

The penal institutions support it, if the prisoner has a lot of rewards. The rewards in prison can be: praise, permission of extra opportunity to receive extra parcel, permission of extra opportunity to meet visitors, extension of amount of money allotted for personal needs, article reward, money reward, delating the record of executed disciplinary sanctions, short term absence of leave, authorized absence.

The competent authority for conditional release is always a penal judge². (Nagy, F. 2001. p. 368.) 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 penal judge conducts the hearing and holds the trial within the parameters of the penal institution. 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.

The penal judge terminates the procedure if the motion has been withdrawn by the prosecution on the grounds of justifiable reason. Appeals against the decision of the penal judge are decided by an appeal panel of county court. The procedural costs are covered by the State.

2.3. Probationary supervision

The system of early release can include supervision by the probation services according to Article 69 Penal Code the court shall place the convicted person under the supervision and guidance of a probation officer. Probationary Supervision is a measure of educational function and of an accessory character. This preventive measure cannot be applied independently but only in addition to imprisonment (penalty) or other measures (Belgium. Ministry of Justice 2011).

According to Article 69 of Penal Code, probationary supervision can be applied:

1. for the postponement of accusation
2. for the duration of conditional release

² special chamber of the County Court

3. for the duration of probation
4. for community labor
5. for suspended imprisonment

If the perpetrator is juvenile or recidivist, the application of probationary supervision is obligatory in the cases mentioned above. According to Article 70 of Penal Code the probation term is at least one year and no longer than five years. It shall be not be less than the remainder of the sentence. The Probation Service has behavioural rules, some of them are general – like keeping in contact with the probation officer and the obligation to work somewhere –, defined by the law, but the law also allows the prosecutor or the judge to order other requirements in accordance with the offender's circumstances.

Behavioural rules are for example: the perpetrator is not allowed to contact specific persons, she/he stay away from the victim, carry on with studies or register for job search. These rules can serve different purposes in cases of juveniles or adults. Their usage is deemed most important in three crime types: those committed against property, public order or person (Mikula, M. 2007. p. 28.).

Article 71 (1) of Penal Code contains a long list of examples for behavioural rules. The main types of behaviour rules are the following.

1) The offender may be ordered to discontinue a form of conduct or activities related to the crime such as visiting clubs or similar venues) or an obligation similar to a restraining order may be imposed on the offender (typically for offenders of domestic violence).

2) The offenders may be ordered to participate in treatment, trainings or counselling related to character or behaviour problems, addictions etc., for instance they may be required to undergo medical treatment, or to attend aggression management training, social skills improvement training, labor market training and job counselling.

3) Obligations to make up for missing education; for instance the juvenile offenders can especially be ordered to continue or complete their studies or to attend learning assistance programmes.

4) Behaviour rules related to restitution; if such rules are prescribed, the offender may be required to pay compensation or provide symbolic reparation for the damage caused by the crime.

Juveniles and people with convicted offenders in their family tend to disregard behavioural rules more than others (Mikula, M. 2007. p. 30.).

	<i>Mandator</i>	<i>Compulsory cases of ordering</i>
<i>Duration of conditional release</i>	<i>penal judge</i>	<i>recidivist, juvenile</i>
<i>Temporary release from reformatory</i>	<i>penal judge</i>	<i>always</i>

Table 1: Cases of ordering probation supervising from release

2.4. The after-care of the released prisoners

The role of the probation officer is significant not only in the implementation of alternative sanctions, but also in the task of aftercare. The aim of aftercare is to provide the released prisoners or offenders released from prison or reformatory help for the social re-integration and for the creation of the necessary social conditions in order to protect the

public and to prevent crime repetition. Aftercare differs from probation in many aspects: it is not mandatory and mostly applied at the request of offender, no behavioural rules are set and there are no sanctions if the offender is not cooperative. (Mikula, M. 2007. p. 24.)

Since 2003, after care begins six months before the expected time of release. The assistance may continue after release if the ex-convict requires it subsequent to the release. The probation officer helps with, among others, solving housing problems, job search, obtaining documents and arranging other official matters. The probation officer may direct the person under after-care to religious, charity or other organizations cooperating with the Probation Service, and in reasonable cases may provide the client with a small amount of cash subsidy.

After care serves both social and crime prevention roles, since one of the major reasons of recidivism is the disorder in the above mentioned circumstances as well as the sense of helplessness, which can be charged by the probation officer in cooperation with the client.

The aftercare tasks in the reformatory and penal institutions are carried out by the competent probation officer according to the headquarters of the institutions, while the after-care following release and the preparation of the family are implemented by the probation officer of the competent county office. The number of persons under after-care all over the country is approximately 2200 annually.

2.5. Recalling conditionally released prisoners in Hungary

Conditions for recall are prescribed by law in Penal Code Article 40 (1) and (2). According to legal doctrine the court shall terminate the parole, if the prisoner is sentenced to a term of executable imprisonment:

- a) during the time when released on parole for a crime committed after the date on which the decision of the court becomes enforceable, or
- b) for a crime committed during the time when released on parole.

1.) So a reason for a recall is a new offence

The suspension of the sentence can be revoked, if the conditionally released offender commits an offence during the probation period, which shows that the Courts expectation in his good prognosis has been disappointed.

It is agreed that not every punishment will automatically disqualify an offender from remaining on conditional release. Only the prisoner is sentenced to a term of executable imprisonment will automatically disqualify an offender from remaining on conditional release.

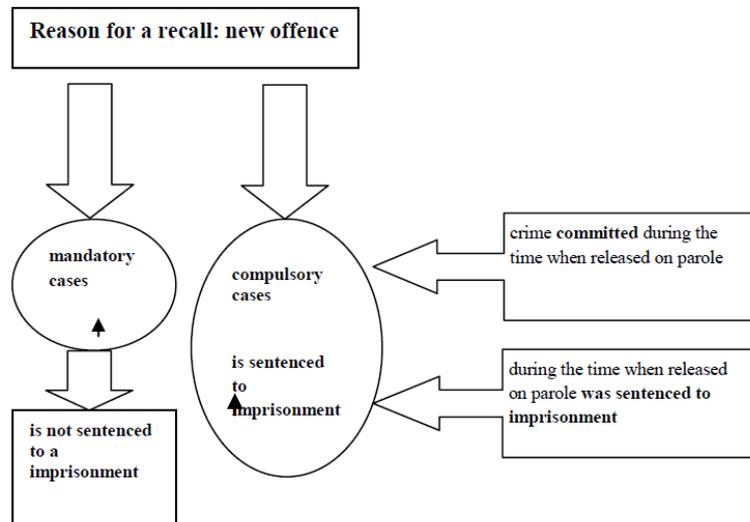


Figure 2: Reason for a recall: new offence

2.) Serious Violation of direction

It is also possible according to Code Execution of Punishments and measure Article 61 (1) the serious violation of direction. The suspension of the remainder of the sentence can furthermore be revoked if the released prisoner deliberately or persistently violates the Court's instructions.

In this case the 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.

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, or attempt of escape can reasonably be suspected, the prosecutor, or after the filling of the motion, the penal judge may order the temporary execution of imprisonment.

3. REFORMS OF THE PROBATION SERVICE

According to Act XIV of 2003, probation for juvenile and adults offender has been implemented in an integrated way by the unified Probation Service since 1 July 2003. In the organizational structure operates separately the department of juvenile and adult offender within the county offices of the Ministry of Justice Probation and Legal Aid Services.

The probation service has 5 main case groups: social inquiry report, pre-sentence report, implementation of probation supervision, community service and aftercare. As regards alternative sanctioning and diversion from the judiciary path, the probation officers – within the present criminal justice system – play an important role in the initial phase of the criminal procedure also. (Vokó, Gy. 2006)

Unfortunately this good structured system was destroyed, because the probation officers now belong to the public administration not to the Ministry of Justice. Although a new office have been formed in October 2014³ which belongs to the Ministry of Justice, but probation officers remained part of public administration⁴This new office coordinates probation officers in professional cases.

From January 1 2015 two new legal institutions became part of the probation service: the preventive probation (introduced by Minister of Justice Decree 19/2014. (XII. 22.) and criminal enforcement probation (introduced in a 2014 amendment of Act CCXL of 2013). Preventive probation can be taken as a measure if a minor commits a crime. Before this the possible actions in these cases were defined by the Child Protection Act including taking into protection and temporary placement (Búza, G. A. 2015. p. 93.). The government regarded this insufficient to deal with the problem as social workers had a hard time with minors who commit offences (Burkáné Nagy, B. 2015). In the new system the child welfare agencies work together with a probation officer in these cases who creates a report on the living conditions and a risk analysis about the chances of crime repetition. If the risk is high or moderate the minor or juvenile can be placed under preventive probation which works as adult probation: he/she must follow a set of behavioural rules and regularly keep in contact with the probation officers.

Another important change in the Hungarian system regards the aftercare and conditionally released prisoners with post-followed supervision. These probation officers who are responsible for prisoners were moved to the prison institutions and now part of the criminal enforcement probation (Szabolcs-Szatmár-Bereg. Büntetésvégrehajtási Intézet 2015). It means these probation officers belong to the Ministry of Home Affairs.

4. PROBLEMS WITH PROBATION IN HUNGARY

In my opinion the probation service system is too disintegrated (different areas belong to to Ministry of Justice, Prison Institutions and public administration), so the structure is very complicated, and it is very hard to coordinate. It was already a problem long ago which only changed with the reforms of 2003 (Nyerges, K. & Kóta, T. 2003. p. 757.) . The implementation of preventive probation is cause of much controversy since its announcement in 2011 with some arguing that it is an amendment which won't make the system of child protection any better and that the *ultima ratio* nature of criminal law leaves no place for probation in crime prevention (Dávid, L. 2013. p. 244.).

Another problem for effective usage of alternative sanctions and probation is society's condemnation of people who were convicted and fear from crime. As lots of people support harsh sentences there is too little room for other solutions (Mikula, M. 2007. p. 25.). The fact that aftercare is only granted at the prisoner's request can deteriorate the effectiveness of social reintegration. It is clear that they can't be punished for misbehavior in aftercare but the lack of any aftercare can have a huge impact on crime repetition.

Other problems are more similar to other states'. Because the probation service is undermanned, probation officers are often overladen, there is too few time for a prisoner, and none for fieldwork. As a result they can't counsel and support each and every prisoner

³ the name is: Justice Office, Igazságügyi Hivatal

⁴ Kormányhivatal

in a comprehensive manner. It makes successful aftercare very hard as just there is not enough time to help a prisoner with his/her social problems like debt counseling which may have contributed to committing the first offence. Another problem is financial as probation service has little money to spare on more officers and activities which could help them in achieving their goals.

In Hungary the electronic monitoring exists as a pre-trial possibility and belongs to police. I hope there will be also changes in this field also and electronic monitoring will belong to probation officer, and there will be a unified probation system.

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