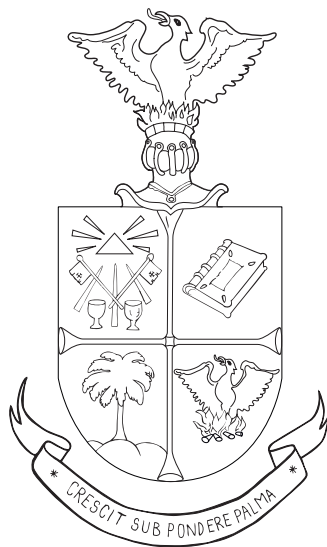


## **Karoli Mundus II.**



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# STATUTORY REGULATION ON CAPITAL PUNISHMENT IN ACT V OF 1961 OF THE HUNGARIAN PEOPLE'S REPUBLIC

## I. Introduction

The year of 1961 was a turning point in the history of criminal law in Hungary not only because it was the year in which extraordinary jurisdiction was terminated once and for all,<sup>2</sup> but also because after 80 years (following the Code of Csemegi) the second coherent and comprehensive Criminal Code (Act V of 1961) of Hungary was created<sup>3</sup>, which now (for the first time in the history of Hungary) regulated

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2 For the history of capital punishment in Hungary, see, e.g.: Tóth J., Zoltán: A halálbüntetésrevonatközönyagijogiszabályok a feudalizmusMagyarországán. (Substantive criminal regulations on capital punishment in Hungary during the feudalism.) *JogtörténetiSzemle*, 2007/4., pp. 30-50.; Tóth J., Zoltán: A halálbüntetésírottjogiszabályozásaMagyarországon a felvilágosodástól a Csemegi-kódexig. (Statutory regulation of capital punishment from the Enlightenment to the Code of Csemegi.) *De Iurisprudencia et IurePublico*, 2008/3., pp. 81-101.; Tóth J., Zoltán: Rendkívülibüntetőjog és halálbüntetésaz 1910-es évekMagyarországán. (Extraordinary criminal law and the death penalty in Hungary in the 1910s.) *Themis*, June 2007., pp. 49-62.; Zoltán J. Tóth: Statutory Regulation of Capital Punishment in Hungary during the Horthy Era and World War II. *Journal on European History of Law*, Vol. 6, 2015, No. 2, pp. 23-28.

3 This course of creation resulted in a rather long process. In 1950 already, at the establishment of the General Part of the Criminal Code, there was a need for a new criminal code containing the rules corresponding to the spirit of socialism, however, the process of creating the new codex only began in 1953, when Decision no. 514/15/1953 of the Council of Ministers provided to set up a government committee led by the Minister of Justice, for the establishment of the socialist Criminal Code. The committee started its activity in January 1954, but their work was interrupted for one year by the events of 1956. The first draft was finally completed by June 1959 and following the comments made by the requested experts, a new committee of theoretical and practical lawyers completed the second revised version in 1960. This draft was subjected to a public debate by Government Decision no. 3131 of 1960 and by considering the ascertainments and using the results of this debate, the Minister of Justice presented the final version to the Parliament. [Cf.: Békés, Imre: A magyarbüntetőjogfejlődése (The history of the criminal law in Hungary), p. 45. In: Békés et al.: *Magyar büntetőjog* (Hungarian penal law), BM Könyvkiadó, Budapest, 1980, pp. 34-38.]

the full range of crimes (including crimes against the state and military crimes).<sup>4</sup> This comprehensive nature also meant that, with the entry into force of the new Criminal Code (with one exception),<sup>5</sup> all those legislations were overruled, which pronounced certain conducts punishable in separate laws and also set out criminal sanction for any act, while after this, with the exception of the Criminal Code, substantive criminal legislation was never again constituted in Hungary.

## II. General provisions on the death penalty

The new Criminal Code, due to the circumstances of the period, did “naturally” know the death penalty (Article 35(1)), but never ordered it as an absolute sanction. For every special case that involved the death penalty for its execution, the alternative punishment was imprisonment from ten up to fifteen years.<sup>67</sup> The Criminal Code argued for the justification for the most severe sanction in a very similar method to that of the General Part of the Criminal Code, namely: “Socialist criminal law, for theoretical reasons in perspective, advocates against death penalty, however, as long as there is a direct and indirect harmful effect of the capitalist environment, a state building socialism cannot lack the most severe tool of criminal law.”<sup>8</sup> The same

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4 The law was published on December 22, 1961 and entered into force on July 1, 1962 by Law-Decree No. 10 of 1962.

5 The only exception was Act VII of 1945, more precisely, PM Decree No. 81 of 1945 (February 5) signed into law by the law and some of its provisions on war crimes and crimes against the people remained in force with the comment that the original forced labour for life and life imprisonment, would no longer be applicable. (Law-Decree No. 10 of 1962, Article 2(3)).

6 The Criminal Code did not recognize life imprisonment (with one exception); the ministerial reasoning explained this by the fact that if the offender could not be improved, the offender would have to be condemned to death as an exceptional punishment, but if the offender could be improved, it would be unjustified to deprive the offender of his/her freedom for the rest of his/her life. (This is also the reason why the Criminal Code usually did not include punishment for an undetermined period.) Even in the case of aggregated and cumulated sentence, the law (Article 37) provided twenty years as the maximum period of imprisonment, and it also set out twenty years for the cases when death penalty was modified due to mercy (Article 36(4)). The only exception in which life imprisonment (as an intermediate alternative between 10-15 years of imprisonment and death penalty) was among the special factual situations of the Criminal Code, was one of the cases of mutiny, set out in the second phrase of Article 316(4).

7 The Criminal Code, similarly to the General Part of the Criminal Code, did not distinguish between the different types of imprisonment, therefore, imprisonment (or “custodial sentence” as worded in the special part) had to be applied for everyone (which did not mean that prisons could not or did not use different rules on those who committed different crimes regarding their method of detention and guarding, their possibilities to act within the prison, etc.).

8 Detailed reasoning for Article 36

conclusion is drawn in the preamble when it discusses the purposes of punishment. Based on Article 34 of the Criminal Code, “the purpose of the punishment is to apply the penalty set out by law for the crime in order to protect society, to improve the behavior of the offender and to prevent the members of society from committing crimes”. The ministerial reasoning explains all these as follows: “If the purpose of punishment is not only retaliation, but also correction, the proposal may only apply exceptionally retaliatory punishment...”, however, “among the acts endangering society... there are those the abstract danger of which makes threatening by death penalty justifiable, considering the significance of the legal interest that needs to be protected. These legal interests are the state (our social, political and economic order), the life, the social property, as well as the discipline and fighting capacity of the armed forces, therefore, the proposal recognizes death penalty as a form of punishment, however, when imposing penalty, when it comes determining the degree of danger of the specific crime to society, it sets out for the judge: >>death penalty... can only be imposed if the purpose of punishment cannot be achieved with another punishment<< (Article 64(2)).”

The exceptional nature of capital punishment was, in principle, applicable to several levels as well: in the regulation of Article 64 cited above as justification, which urged the judge to ponder the aggravating and attenuating circumstances<sup>9</sup> and allowed imposing such a sanction only if it was the exclusive way of fulfilling the purpose of the punishment (general prevention and, thus, the protection of society)<sup>10</sup>; in the formulation of certain specific partial facts that regulated death penalty as an alternative punishment without exception (alternatively with imprisonment of 10 to 15 years); in the right to modify death penalty to imprisonment of up to 20 years, as an act of mercy (Article 36(4)); and in the provision that “death penalty may only be imposed on a person who had reached the age of twenty when the offense was committed”<sup>11</sup> (Article 36(1)).<sup>12</sup> Finally, we have to mention, in the context of the General Part,

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9 “The punishment, by considering its purpose (Article 34), should be imposed under the conditions set out by law in a way that it remains consistent with the danger to the society imposed by the crime and the offender, the degree of guilt, as well as other aggravating and attenuating circumstance.” (Article 64(1))

10 As it can be seen from the wording of Article 34, special prevention is not generally assumed by the Criminal Code among the purposes of punishment, but it merely aims to valorize one of its modes, the so-called “moral education”, that is the correction of the offender (but not the deterrence, the so-called “legal education” of the offender, nor rendering the offender harmless; the latter one can only be deduced from the purpose of the indirect protection of society in the context of individual prevention, while the latter is only considered by the Criminal Code from the aspect of general prevention.

11 This provision, however, did not apply for the people qualifying as soldiers (see Article 103(3)).

12 Even more specific rules apply to juveniles than this provision; who had already reached

the limitation of the punishability of the crimes punishable by death, as well as the limitation of the enforceability of the imposed death penalty, both of which periods were provided as twenty years (Article 31(a) and Article 58(1)(a)).

### III. The extraordinary crimes punishable by death

The Special Part of the Criminal Code of 1961 set out<sup>13</sup> death penalty as an impossible punishment for 31 crimes<sup>14</sup>: 9 of these were crimes against the state, 2 crimes against humanity<sup>15</sup>, 12 military crimes and 8 ordinary crimes. Accordingly, crimes against the state (Chapter 9) should be punished by death if those are considered<sup>16</sup> certain cases of conspiracy;<sup>17</sup> the qualified cases of rebellion<sup>18,19</sup>; damage resulting in serious

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the age of sixteen, but not the age of eighteen, could be sentenced to imprisonment of maximum ten years, while those who had already reached the age of fourteen, but not the age of sixteen, could be sentenced to imprisonment of maximum five years (Article 93); and, of course, no other legislation could impose more severe penalties to juveniles. (If we compare these conditions of punishments with the Hungarian law in force, we can see, somewhat surprisingly, that the Criminal Code of 1961 set out much lighter punishment for the crimes committed by juveniles than the present criminal code).

- 13 The delimitation of crime and offense still does not exist; therefore, I will avoid the use of these *termini technici* in respect of Act V of 1961, except for when the Criminal Code itself (showing some inconsistency) uses the term “offense” as the synonym of “crime”.
- 14 Since the use of the death penalty, as stated earlier, was never mandatory, we have to ignore the reference to the fact that a total of ten years to fifteen years of imprisonment could be imposed on the person committing all facts as an alternative punishment (instead of death penalty).
- 15 The meanings of the concept of “*humanity*” or “*humanité*” included in the Criminal Code of 1961 and of 1978 did not conform to the category of “humanness” used today and generally accepted as its correct term, but they used the concept of “humanity” as the totality of the peoples of the Earth.
- 16 Conspiracy is an activity “aiming to overthrow, undermine or weaken the state, social or economic order of the Hungarian People’s Republic” (Article 116(1)).
- 17 The initiator and leader of the conspiracy could be punished with death if they committed another crime in connection with conspiracy, which was punishable by imprisonment of more than eight years if the conspiracy seriously endangered the state, social and economic order and if the conspiracy was committed armed or in time of war (Article 116(3)). The same sanction could have been applied to the participant or supporter of the conspiracy “if the offender committed another crime in connection with conspiracy, which was punished by law with imprisonment of more than eight years” (Article 117(3)).
- 18 In accordance with Article 120(1) of the Criminal Code, rebellion is committed by someone “who organizes or leads a civil disturbance aiming to overthrow or weaken the state or social order of the Hungarian People’s Republic”.
- 19 Thus, rebellion was punishable by death if it led to the serious disturbance of public order and if it was committed armed or in time of war (Article 120(2)).

disadvantages, committed in time of war<sup>20</sup> (Article 124(2)); destruction resulting in particularly serious disadvantages, committed by endangering the public in time of war<sup>21</sup> (Article 125(2)); assassination;<sup>22</sup> high treason with serious consequences, by making use of state service or official mandate, committed in time of war<sup>23</sup> (Article 129(2)); supporting the enemy;<sup>24</sup> the qualified cases of committing espionage;<sup>25</sup> and all these acts even if they were not committed against the Hungarian People's Republic but another socialist state.<sup>26</sup> Those who committed crimes against humanity (Chapter 10) would also have been sentenced to death if they were guilty of the qualified cases of the offences of genocide<sup>27</sup> or war atrocity<sup>28</sup>, however, no such acts

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- 20 In accordance with Article 124(1), the delict of damage was committed by someone “who, in order to undermine or weaken the state, social and economic order of the Hungarian People's Republic, with their activity related to their official duties, services or public services, as well as by the failure to comply with or by inadequately performing their obligations, causes a significant disadvantage”.
- 21 The person “who, in order to weaken the state, social and economic order of the Hungarian People's Republic, destroys, renders unusable or damages public utility, a facility of production, public transport or communication, public building or edifice, stock of production or crop, war material or other property with the same importance”, commits the crime of damage against the state (Article 125(1)).
- 22 Death penalty can be imposed for assassination on a person “who kills a member of state body, a person in a leading position at a state body or social organization for their activity carried out in the interest of socialism” (Article 126(1)) and who causes lethal bodily injury to one of such people (Article 126(2)).
- 23 High treason is committed by the Hungarian citizen who, “in order to violate the independence, territorial integrity, political, economic, defense or other important interest of the Hungarian People's Republic, interacts, forms an alliance or cooperates with a foreign government or foreign organization, or their agent” (Article 129(1)).
- 24 “The person who, in time of war, in order to weaken the military force of the Hungarian People's Republic, interacts with or helps the enemy, or causes disadvantage to their own armed force or the ones belonging to their allies, can be punished with imprisonment of ten to fifteen years or death penalty.”(Article 130(1))
- 25 The person “who obtains, collects or discloses data that can be used to the disadvantage of the Hungarian People's Republic, in order to provide them to a foreign government, foreign organization or the agent of these” (Article 131(2)), is punishable by death if they committed the crime in relation to state secrets, regularly, as the member of a spy organization or in time of war (Article 131(3)).
- 26 Crimes against other socialist state (Article 133 of the Criminal Code)
- 27 Article 137(1): “The person who, in order to partially or completely exterminate a national, ethnic, racial or religious group, a) kill the member of the group, b) forces the group into living conditions that threaten the group or some of its members with destruction, c) takes measures that aim to prevent births within the group, d) drags away the children of the group to another group, can be punished by imprisonment of ten to fifteen years, or death penalty.”
- 28 The offenders of “war atrocity” were those “who, in time of war, by violating international



were carried out in Hungary, fortunately, neither under the Criminal Code of 1961, nor the current one.

The Criminal Code provided death penalty for 12 types of military crimes (Chapter 17). Such sanction could be applied for crimes against the obligations of military service if those were considered absconding in time of war<sup>29</sup> (Article 312(2) (b)), cases of absconding abroad,<sup>30</sup> and the delict of “abdication from performing military service”<sup>31</sup> (Article 315(1)). Among the factual situations of insubordination, certain cases of mutiny<sup>32</sup> could be punished with capital sanction;<sup>33</sup> the offender of “insubordination to order” who disobeyed the war command out of service commands (Article 317(3)); the offender of “violence against the superior and environment of service”<sup>34</sup> who committed this crime in a war situation and who also carried out intentional killing with this act (Article 318(4)). Death penalty was imposed for two crimes of service: the (deliberate) violation of the instructions of the guard,<sup>35</sup> if that was committed in battle and it resulted in a specifically great disadvantage

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legislation, treated inhumanly defenseless civilians, refugees, the wounded, the sick, members of the armed forces who had already laid down their arms, as well as prisoners of war” (Article 139(1)). This act was punishable by death if the crime caused death (Article 139(2)).

29 Absconding is committed by the person “who in order to abdicate from performing military service, deliberately leaves or stays away from their station” (Article 312(1)).

30 Accordingly, a death penalty could be imposed on the person who deserted abroad, armed, together with another soldier, by making use of their actions of service or in time of war (Article 313(2)).

31 According to Article 315(1), this crime is committed by the person “who, by mutilating their body or damaging their health, make themselves completely incapable of performing due military service and who, in order to abdicate from performing military service, feigns illness or uses other fraud”.

32 According to Article 316(1), mutiny is committed by the person “who, together with more soldiers, is involved in an open opposition to the service order of their superior, or against service order or discipline in general”.

33 Death penalty could be imposed on the initiator, organizer and leader of mutiny if the resisting had particularly serious consequences (Article 316(3)(a)); on the participant of mutiny, who, through his acts committed during the mutiny, caused the death of someone or had other particularly serious consequences (Article 316(3)(b)); on any offender of the mutiny during battle (a simple participant as well), and on the initiator, organizer and leader of mutiny committed in time of war, who, during the mutiny, committed a violent act against a superior or another person opposing the resisting (Article 316(4)).

34 This factual situation is carried out by someone “who uses violence or threatens of doing so, or shows physical resistance against a superior, guard or other environment of service” (Article 318(1)).

35 The violation of the instruction of the guard is committed by the person “who violated the general or extraordinary provisions related to the performing of service during guard service” (Article 326(1)).

(Article 326(3)), as well as the (deliberate) violation of the rules of standby duty,<sup>36</sup> under the same conditions (Article 327(3)). Finally, the crimes threatening fighting capacity could have also been punishable by death, in the case of “misconduct on behalf of the commander in battle”;<sup>37</sup> the delict of “abdication from performing battle obligations”<sup>38</sup> (that is the factual situation named “cowardice” at the time); the classified cases<sup>39</sup> of endangering of battle station<sup>40</sup> and it could be imposed on the offender of violence against a military attaché who killed the military attaché or their accompanying person (Article 338(2)).

#### **IV. The ordinary capital crimes**

Lastly, we may divide common criminal offenses punishable by death into two groups. One of the groups (the smaller) includes the offences that are directly or indirectly against human life (or the important personal assets/physical integrity, freedom, etc. of others), while the other group includes the actions that primarily attack and endanger social property as a particular form of property in socialism. The previous category may include, on the one hand, murder, the legal subject of which is directly the human life and the classified cases of which<sup>41</sup> may be punishable by death, on

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36 According to Article 327(1), this delict is carried out by someone “who violates the provisions relating to response, police, emergency, courier or other standby services”.

37 Based on Article 331: “The person who, by violating their obligations of commander, a) surrenders or lets to be captured the armed force under his command, b) destroys the battle position, equipment, weapon or other war material delegated to him, or surrenders it to the enemy in a usable state, or c) does not carry out resistance against the enemy to the extent of his possibilities, can be punished by imprisonment of ten to fifteen years or death penalty.”

38 “The person who abdicates from performing battle obligations a) by the arbitrary abandonment, concealment of or running away from their station, b) by deliberately causing, pretending the incapacity to participate in battle or by other deceit, c) by losing, destroying or failing to use their weapon, d) by the arbitrary surrender to the enemy, or e) by other serious violation of their service obligations, is punishable by imprisonment of ten to fifteen years or death penalty.” (Article 331)

39 Accordingly, death penalty could be imposed on someone who endangered the battle station in time of war or in a situation of battle if the crime caused particularly great disadvantage on service (Article 334(2)).

40 According to Article 334(1), this crime is committed by the person “who directly endangers the battle station of the force, by neglecting to provide the necessary weaponry, battle equipment or other war materials, or to preserve these stocks, while violating service obligations”, as well as by “unlawfully destroying, rendering unusable or withholding in other way from their purpose objects of weaponry or other battle equipment, or other important war material”.

41 All classified cases of murder are punishable by death if they were committed with particular cruelty, premeditatedly, endangering the lives of many, for profit, for other vile reasons

the other hand, the classified cases<sup>42</sup> of prison mutiny<sup>43</sup>, the offender of which attacks directly the social interest related to the order of prison and detention (executing the punishment imposed on criminals), while also endanger indirectly life, freedom, etc.

The other category only includes action that violate the existing order or property and the socialist form of collective property. The explanation of this particular protection was formulated in the ministerial reasoning of the Criminal Code: “In the process of building socialism, the assets under social property have a special role. The social property of productive assets ensures production without exploitation, socialist accumulation, expanded reproduction and the production of consumer goods in a quantity that allows for the distribution of consumer goods based on the laws of socialism, and later communism; the social property of consumer goods, beyond the distribution of the goods based on the laws of socialism and communism, allows for the proportionate distribution of national income for the construction of socialism.”<sup>44</sup> As a result, the Criminal Code of 1961 did not consider threatening with death penalty serious, because it classified these acts that damage social property as the most dangerous act given the nature of protected legal interest, by placing them on the same level, from the aspect of their abstract danger, with the crimes against the state, life and military crimes, as we have seen. Thus, Article 295(3) of the Criminal Code imposed death penalty as an alternative sanction (in addition to the “regular” imprisonment of ten to fifteen years) on theft,<sup>45</sup> embezzlement,<sup>46</sup> fraud<sup>47</sup> and misappropriation<sup>48</sup> damaging

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and aims, against an official person during or because of their official procedure, targeting multiple people, or as a recidivist (Article 253(2)).

- 42 Prison mutiny is committed by the prisoner “who, together with others, participates in an open opposition against the order or discipline of the prison” (Article 186(1)).
- 43 Death penalty can be imposed, in the first place, on the initiator, organizer and leader of prison mutiny if the opposition had a particularly serious consequence, and, on the other hand, on the participator of the prison mutiny, whose action during the mutiny caused the death of another person, or had other particularly serious consequence (Article 186(3)).
- 44 The foundation of this is provided by the following quote (from the ministerial reasoning as well): “The higher ethical principles in the socialist society, the socialist living conditions require members of society to behave differently than the bourgeois society addresses itself to its members. In the criminal evaluation of certain conducts, these changed higher requirements should be taken into account.”
- 45 “The person who takes away a foreign property from someone else to unlawfully possess it, commits theft.” (Article 291)
- 46 “The person who unlawfully takes away or disposes of as his/her own the property entrusted to him/her, commits embezzlement.” (Article 292)
- 47 “The person who uses deceit, deception, or trickery for unlawful financial gain and thereby causes damage, commits fraud.” (Article 293)
- 48 “The person entrusted with the management of foreign property and who caused damage to this property by violating their obligations resulted from this assignment, commits misappropriation.” (Article 294)

social property<sup>49</sup> if the offender committed this act within a criminal organization or as a recidivist, causing particularly great damage. Article 299(4) provided the same sanction for robbery,<sup>50</sup> if it caused a particularly great damage to social property; finally, under the aforementioned condition, the person committing reckless endangerment<sup>51</sup> was also punishable by death (Article 190(2)(b)).

The substantive regulations of the Criminal Code of 1961 were supplemented by Law-Decree N o. 8 of 1962 on the criminal procedure,<sup>52</sup> which, on the one hand, set out the method of execution, enforcing the existing rule that “the death penalty should be executed in a closed space, with a rope or by a firing squad” (Article 309), and, on the other hand, it provided the regulations of pardon. Among these latter rules, as the most important warranty provision, it set out that any death penalty can only be executed after the rejection of the petition for mercy and that the procedure of mercy had to be carried out in all cases (even if the convict did not ask for mercy). With regard to the submission of the petition for mercy and the decree on mercy, the Criminal Code of 1961 did not add a lot to the previous regulation, however, its merit was that, by arranging the chaotic state of the previous years and decades, it cleared and summarized the relevant rules in one single paragraph. According to this (Article 310), after the final judgment, the president of the judges’ council asks the defendant whether he/she wants mercy and requests from the defense counsel to file a petition for mercy on behalf of the defendant (even in spite or regardless of his/her will). After obtaining the opinion of the prosecutor, the court making the final judgment will take a position on whether the convict is recommended for mercy and then the Supreme Court (unless they were the ones to make the final judgment) proceeds similarly after asking for the opinion of the general prosecutor, then sends all these recommendations, petitions and opinions together with the case files to the Minister of Justice in order to present them to the Presidential Council

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49 According to the provision attached to Chapter 16 of the Criminal Code “the increased criminal law protection for social property includes the assets of the state, the cooperatives, the social organizations and the associations, as well as the foreign properties under their use, treatment or disposition, including the social property of other socialist countries that are on the territory of the Hungarian People’s Republic” (Article 311(1)).

50 “The person who unlawfully takes away foreign property by using violence against someone, or threatens the life or physical integrity of someone, or places someone in an unconscious or defenseless state...” (Article 299(1)) “It is considered robbery when the thief caught in act, in order to keep the property, uses violence, or directly threatens life or physical integrity.” (Article 299(2))

51 The crime of reckless endangerment is committed by someone “who causes public danger by arson, causing flood, or by producing the effect of explosive, radiant or other destructive material or energy” and “who obstructs the prevention of such a public danger, or the mitigation of its consequences. (Article 190(1))

52 The Law-Decree was entered into force by Decree No. 4 of 1962 of the Ministry of Justice (June 14), on July 1, 1962.

of the Hungarian People's Republic. The decision on mercy (regardless of the above-mentioned opinions) is made by the Presidential Council of the Hungarian People's Republic itself. If the Presidential Council of the Hungarian People's Republic pardons the person sentenced to death, then, in accordance with Article 36(4) of Act V of 1961, the death penalty is modified to imprisonment of up to twenty years (thus, even of a shorter period); but if it does not pardon the convict, the decision in this regard has to be promulgated by the court in the first instance (even if it did not impose death penalty), in the presence of the defendant, defense counsel and prosecutor in the first instance and the sentence will be executed on the next day. Another important element of legal certainty was the rule that a decision rejecting mercy could not be communicated to (and death penalty could not be executed on) a pregnant woman and a mentally ill person prior to their "recovery" and death penalty imposed on an absent defendant could only be executed on the basis of a final order concluded during the retrial. (With a slightly different wording, but essentially the same provisions were repeated a decade later by Article 399 of Act I of 1973 on criminal procedure, therefore, since they are in line with the previous provisions, we do not discuss these regulations of the Code of Criminal Procedure.)

## **V. Modification of the Criminal Code: the regulation of capital crimes under Law-Decree No. 28 of 1971**

The Criminal Code of 1961 started to become obsolete over the years, so in the early seventies, a comprehensive reform of the socialist Criminal Code was introduced.<sup>53</sup> From the aspect of our subject, the most important measures of Law-Decree No. 28 of 1971<sup>54</sup> were that the general conditions for the application of death penalty were changed, as well as the fact that certain factual situations of the general part ceased to be punishable by death (however, new crimes punishable by death were introduced). In regard of the general provisions, perhaps the most important change was that life imprisonment was included among the sanctions and it could have been imposed as an alternative punishment when the law, as the punishment for a certain crime, ordered<sup>55</sup> death penalty or imprisonment of ten to fifteen years (or twenty years in the case of aggregated or cumulative sentences)<sup>56, 57</sup> The ministerial

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53 Cf.: Nagy, Ferenc: A magyar büntetőjog általános része. (Special part of the Hungarian criminal law.) Korona, Budapest, 2001, p. 50.

54 It was published on November 4, 1971 and entered into force on January 1, 1972.

55 The term "offense" defined in Article 2(1) of Act V of 1961 was officially replaced by "crime" (see Law-Decree No. 28 of 1971 Article 92(1)).

56 The unity of imprisonment was also abolished, and it had to be executed, based on the nature of the crime and the conditions of committing it, in maximum security prison, medium security prison or minimum security prison.

57 Article 91(2) of Law-Decree No. 28 of 1971

reasoning explained this by the fact that there was an irrationally wide gap between the longest period of imprisonment (15, respectively 20 years) and death penalty,<sup>58</sup> therefore, there was a need for an intermediate sanction, which can be imposed on those who seem to be unfit for being reintegrated into society, but the possibility of their improvement is not completely excluded and which can be used as a deterrence beyond individual prevention in order to achieve the general preventive goal of punishment.<sup>59</sup> By introducing life imprisonment, the regulation on mercy was obviously changed as well (Article 36(4) of the Criminal Code); accordingly, from that point on, death penalty could not only be modified to imprisonment of up to twenty years, but also to life imprisonment (depending on the discretion of the Presidential Council of the Hungarian People's Republic). Finally, tightening the penalties applicable for juveniles can also be seen as a substantial modification; in the case of crimes punishable by death penalty, a juvenile who had reached the age of sixteen, but not the age of eighteen, the maximum time of imprisonment became fifteen years compared to the previous ten and in the case of juveniles who had reached the age fourteen, but not the age of sixteen, the maximum imposable imprisonment became ten years compared to the previous five.<sup>60</sup>

Among special factual situations (only regarding death penalty), there were two significant modifications. The most important of these was the fact that the

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58 General reasoning 1(b)

59 The same as stated by the ministerial reasoning: "The Criminal Code ignored the punishment of life imprisonment, because it argued that if the protection of society does not require the imposition of death penalty, the educating purpose of the penalty can still be realized. The achievement of the purpose was only possible by imprisonment for a determined period, based on its considerations. The Plan moves beyond this approach... The possibility of a choice between death penalty and imprisonment for a determined period... caused difficulties for the court; of course, there are significant reasons for the permanent exclusion of the convict from society, but it can still be assumed that there is hope for improving the sentenced person. In such borderline cases, imposing both death penalty and imprisonment for a determined time, may be problematic and ultimately it jeopardizes achieving the purpose of punishment. The Criminal Code in force only examined the institution of life imprisonment from the aspect of individual education, however, the need for general retention must also be considered, which is clearly in favour of the application of this institution. In order to resolve these contradictions within the system of penalties, the Plan introduced life imprisonment. In cases where, considering the purpose of punishment, the permanent exclusion of the offender from the society seems justified, but the possibility of re-education is not completely excluded, only this penalty provides a satisfactory solution. If the hopes related to re-education are fulfilled, the convict can regain freedom by conditional release, therefore, in the cases that do require it, the imprisonment does not last until the end of the convict's life." (Detailed reasoning of Article 5)

60 The rule that (with the exception of soldiers) death penalty could only be applied to those who had reached the age of twenty at the time of committing the crime, did not change.

punishability by death of offences committed against social property was abolished and the social property as a legal interest protected (with some justified exceptions) ceased to exist in general. Thus, Article 295 on theft, embezzlement, fraud and misappropriation damaging social property was completely annulled by the Novella,<sup>61</sup> while it also abolished the cases of robbery that caused serious damage to social property<sup>62</sup> and reckless endangerment<sup>63</sup> (and, of course, the threat imposed by death penalty).<sup>64</sup> A new factual situation punishable by death was introduced in Article 192 of the codex: the seizure of aircraft.<sup>65</sup> Based on the Novella (and on the Criminal Code after January 1, 1972), this is committed by the person “who unlawfully gains or practices control over the aircraft by violence, threat or placing someone in an unconscious or defenseless state on the board of the aircraft” (Article 192(1)), this act was punishable by death if the offender caused the death of others with this act (Article 192(2)).

With all these modifications, after the entry into force of the Novella, the number of crimes previously punishable by death, namely 31, was reduced to 26. And all this remained unchanged until the entry into force<sup>66</sup> of Hungary’s new Criminal Code, i.e., Act IV of 1978, by which, in the course of repealing some of its statutory provisions by the Parliament and annulling others by the Constitutional Court, the death penalty would be abolished in Hungary.

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61 More precisely, it aggregated it with Article 296. (Article 67 of Law-Decree No. 28 of 1971)

62 Article 70 of Law-Decree No. 28 of 1971

63 Article 42 of Law-Decree No. 28 of 1971

64 In the ministerial reasoning, all these were explained as follows: “The Plan, in line with the law in force, sustains death penalty only for the most serious crimes as an exceptional form of penalty. The socialist development of law is undoubtedly moving towards the narrowing and, ultimately, abolishing the application of death penalty. The Plan recognizes that this form of penalty is no longer needed for the crimes against property...” (Detailed reasoning of Article 42) “In today’s socio-economic conditions... sustaining death penalty as an exceptional form of punishment is no longer justified among the crimes against property.” (Detailed reasoning of Article 67) (The same applies for the ministerial reasoning on reckless endangerment.)

65 Article 43 of Law-Decree No. 28 of 1971

66 July 1, 1979