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# Alternatives to Prison:

## Hungarian Law and Practice on Non-custodial Sentences

HUNGARIAN HELSINKI COMMITTEE

# Contents

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# Executive summary

As part of an international comparative research, the Hungarian Helsinki Committee conducted a study on the Hungarian legal framework and the practical application of alternative sanctions (penalties and measures), which may be imposed or applied instead of custodial sanctions. Institutions of early release, such as release on parole and reintegration custody were also analysed.

We defined the concept of non-custodial, i.e. alternative sanction presupposing that the criminal liability of the defendant has been established, i.e. (s)he was convicted by the court. Accordingly, we listed the existing penalties and measures under the Hungarian Criminal Code that may be imposed in case of the establishment of the criminal liability of the accused instead of imprisonment or confinement. At the same time, we considered relevant the legal institutions related to early release, such as release on parole or reintegration custody. We included early release schemes to our study because those equally aim at allowing the convicted person not to serve the remaining of their sentence out of custody.

Our study intends to give context to **alternative sanctions and the legal institutions related to early release**, and for that purpose, it gives an overview of the system of sanctions under Hungarian criminal law and gives an outlook on related issues, such as the mandatory cases of imposing prison sentence and the suspension of prison sentence. It briefly mentions sanctions, which may not be applied as alternatives to imprisonment, presents the principles of sentencing, and gives details on the rules on the enforcement and monitoring of alternative sanctions. In the study, special emphasis is given to presenting probation, the activities of probation officers, penitentiary probation officers and the related legal framework. Moreover, it examines alternative sanctions from the viewpoint of vulnerable defendants (such as those with deteriorated health, juvenile or young adult defendants).

After presenting alternative sanctions and legal institutions related to early release, the study discusses their practical application based on the results of empirical research. For the empirical research, the following methods were applied:

- analysis of public data,
- interviews with attorneys, probation officers, penitentiary probation officers, judges, former detainees,
- poll among attorneys by means of anonymous questionnaires.

Experiences of the **empirical research** highlighted the fact that the Hungarian criminal justice system is centred around *custodial sentences* despite the fact that there seems to be a slow increase in applying alternative sanctions, based on data relating to the period between 2013 and 2019. In 2013, courts imposed imprisonment in 25 percent of the decisions establishing criminal liability, while in 2019 in 19 percent of such decisions. The most often applied alternative sanction appears to be *fine*, however, its application raises not only a few problems in practice. For example, in many cases, it cannot be effectively applied due to the financial situation of the defendant, and often it is not actually paid by the convict but by someone else, so, in reality, it becomes a financial burden for the family of the convict. In addition, another important experience of the empirical research was that the proportion of *community service* sentences has decreased between 2013 and 2019, although that would be the most appropriate sanction for the prevention of reoffending and the promotion of social reintegration in the opinion of both defence counsels and probation officers. However, the imposition of community service is hindered by the fact that there is only a small range of organisations for its enforcement, and, as consequence, the possibilities for individualisation are limited. In addition, in many small settlements, local municipalities are the only possible employers, and although they are obliged to receive convicts sentenced to community service, they do not show willingness at times to cooperate or do not have the necessary resources to do so. Another problem related to community service is that it is frequently converted to imprisonment, which also poses a setback to imposition. A further difficulty is that judges rarely request probation officers' written opinions assessing needs and risk factors connecting to individual defendants. Probation officers' written opinions are there to

support judges' assessment of personal circumstances; the lack of using this tool creates many sentencing errors, such as ordering community service to be performed by a convict who is unfit for the job in question. Courts apply *conditional sentence with probation supervision* in the greatest proportion of measures applicable as alternatives to imprisonment, while the proportion of other alternative measures, such as *reparation work* or *probation supervision* are very low.

Concerning legal institutions related to early release, one of the most important experiences with *release on parole* is that the corresponding legislative restrictions in effect from 5 November 2020 prove to be unjustified and excessive, having the consequence that courts grant release on parole much less in the overall. One of the relevant experiences of the interviewed persons is that convicts with a less favourable social standing may benefit less often from the opportunity to be released on parole. As regards to application of *reintegration custody* the findings of the empirical research highlighted the regional differences present in judicial practice (jurisprudence) and the fact that decisions on reintegration custody are often formalized and not sufficiently individualized. The participants of the research emphasized that socially disadvantaged persons are, again, in a less favourable situation, in other words, without justification they are granted release less often than others. In addition, there are many technical problems in connection with reintegration custody, for example, in relation to ankle-cuffs, which poses a serious setback to practical applicability.

The research carried out in the project – in addition to the above – also had the distinguished objective to map, present and analyse the **changes and tendencies in legislation and the practical application of the law caused by the coronavirus pandemic**. The impact of the COVID-19 pandemic, that is, the period following 2013-2019, on alternative penalties and measures, and the legal institutions related to early release and their application are examined in a separate study exclusively and expressly focusing on that issue.[1] The short summary of our pandemic-focused study's findings are also published in the present study.

At last, this study – based on experience gained from the research – makes **recommendations** to courts, prosecution services and the legislator. For example, it advocates for the promotion of uniform application of law by means of relevant guidelines, internal regulations to judges, if appropriate, and considers it preferable to enhance the assessment of the individual circumstances of the defendant. In relation to the latter, we consider it highly important to involve probation officers in judicial decision-making to a greater extent. An enhanced application of prescribing special, individual rules of behaviour would be especially important in case of juvenile and young adult perpetrators, too. We would like to encourage adopting guidelines and internal regulations facilitating a uniform application of law with regard to decisions on reintegration custody. The most important recommendations to the legislator include broadening of the range of available alternative sanctions and the extension of the scope of the penalty range and the types of criminal offences in case of which alternatives penalties may be applied. Moreover, we recommend reducing the requirements of release on parole and broadening the scope of persons who may be eligible to be released on parole, and widening the penalty range in the case of which reintegration custody may be applied. We consider it important to provide by law that probation officers' opinions and needs and risk assessments be mandatorily sought in a wider range of judicial decisions in matters related to both release on parole and reintegration custody.

[1] Hungarian Helsinki Committee: *Impact of the COVID-19 pandemic on non-custodial penalties and measures, on early release, post-release and probation services in Hungary*, 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/02/FINAL-IPPF-report-Hungary-Final-ENG.pdf

# 1. Introduction

This study summarises the results of the research "The promotion of access to alternatives to imprisonment on an equal basis" (EU Just Project 10100746) coordinated by Penal Reform International and supported by the European Commission, conducted with the participation of the Hungarian Helsinki Committee as partner. Under the research, Hungarian law and practice on alternative sanctions (penalties and measures) that may be applied instead of imprisonment or confinement were investigated together; such as suspension of prison sentence, release on parole, or reintegration custody, with special attention to challenges arising from the pandemic and the situation concerning non-custodial measures.

Although Act C of 2012 on the Criminal Code (hereinafter: CC) widened the range of both custodial and alternative sanctions, it continues to mainly emphasise the retaliatory approach of criminal policy stepping up with consistent rigor against the criminal offences committed. The Explanatory Memorandum to the Act also reflects this: "*Therefore, one of the most important requirements* vis-à-vis *the new Criminal Code is stringency, which (…) should entail that the criminal theory advocating the imposition of punishments proportionate to the criminal offence are reflected in the Act in a more articulate manner."*[2] Statistical data on prison population from recent years show that a strict criminal policy was reflected also in court jurisprudence: prison population has not decreased significantly. The annual average number of persons in detention was 17 944 in 2017, 17 251 in 2018, and 16 664 in 2019.[3] Additionally, according to the Council of Europe Annual Penal Statistics on prison populations,[4] in 2021, the Hungarian prison population is still among the highest in Europe as it has even grown to 180 per 100,000 inhabitants (in 2020 it was 172 per 100,000 inhabitants). Additionally, in terms of the average length of prison sentences, Hungary is among the highest in Europe. At the same time, a phenomenon widely discussed in the national and international literature is that crime is decreasing worldwide. In Hungary, too, crime has been falling significantly since 2000 in case of both property and violent crimes, while criminal policies are based on the assumption that crime will continue to increase worldwide as well as in Hungary.[5]

The EU Council conclusions of December 2019 (2019/C 422/06) consider the use of alternative, non-custodial sanctions and measures necessary with respect to less serious criminal offences to promote reintegration of offenders into society and to reduce reoffending. It invites Member States to explore the opportunities to enhance the use of alternative sanctions and to consider enabling wider use of different forms of early release or release on parole. One of the aims of Act XC of 2017 on Criminal Procedure (hereinafter: CCP) is – for economic-procedural reasons and for the increase of the timeliness and the efficiency of procedures – the widening of the range of and the opportunities to use alternative sanctions. Statistical data analysed in this research also reveal a slowly but clearly decreasing trend in Hungary in using imprisonment as a sanction in proportion to all imposed penalties, with improving rates for alternative sanctions.

That was the situation when the pandemic hit in 2020 creating a heavy burden on the criminal justice system and probably further impeding the addressing of already existing problems and giving rise to new challenges. Wider use of alternative sanctions as a means of containment of the pandemic proved to be a solution for decreasing prison population figures in many European countries.

In Hungary, as a response to the pandemic, the Parliament adopted the so-called Authorisation Act[6] on 30 March 2020. That has given an authorisation unlimited in time ('carte blanche') for the

[2] Explanatory Memorandum to Act C of 2012 on the Criminal Code, p 1.
[3] Source: Review of Hungarian Prison Statistics, 2020
[4] Aebi, M. F., Cocco, E., Molnar, L., Tiago, M. M.: *Prison Populations SPACE I. – 2021*, Council of Europe Annual Penal Statistics, University of Lausanne, https://wp.unil.ch/space/files/2022/04/Aebi-Cocco-Molnar-Tiago_2022__SPACE-I_2021_FinalReport_220404.pdf
[5] Kerezsi, K.: *Miért csökken a bűnözés? [What causes the crime decline?]*, Kriminológiai Tanulmányok [Criminological Studies] 57 (2020), p. 39, https://www.okri.hu/images/stories/KT/KT57_2020/KT57_web_sec.pdf
[6] Act XII of 2020 on the Containment of the Coronavirus which was in force between 31 March 2020 and 17 June 2020.

Government to suspend the application of certain acts, to derogate from certain provisions of acts, and to take other extraordinary measures during the period of the state of danger. It was against that background that the legislative provisions relating to criminal justice and to alternative sanctions and other legal institutions were adopted as a response to the pandemic.[7] Although the Government adopted more than 150 decrees until 17 June 2020 in the framework of the legislation during the state of emergency, no provisions were adopted as regards criminal proceedings or law enforcement that would have reformed the system of penalties and measures with regard to the pandemic. No alternative sanctions were introduced in reaction to the pandemic, nor were provisions adopted which would have enhanced the use of alternative sanctions or which would have aimed at the early release of detained persons or at imposing more lenient sanctions on them. Data from 2020 on the number of detainees kept in penitentiary institutions also reveal that the number of persons detained in penitentiary institutions has not changed substantially due to the epidemiological situation.

# 2. Legal framework

## 2.1. The system of sanctions in Hungarian criminal law

The system of penalties under Hungarian criminal law has a tripartite structure: it consists of penalties, one type of additional penalty, and measures. The system is a dualist one, i.e. it is possible to impose penalties together with measures, as a general rule.

According to the Explanatory Memorandum to the CC, the Act strives for establishing a differentiated system of sanctions. Its aims at suiting the type, gravity, and rigor of the sanctions to be imposed to the gravity and nature of the criminal offence and the personal circumstances of the perpetrator. In that respect the Explanatory Memorandum mentions that the possibility to impose custodial or non-custodial criminal legal consequences has widened.[8] In comparison to the former Criminal Code in effect at an earlier period,[9] the CC provides for a more varied and complex types of penalties. Thus, that can easily be seen as encouragement to legal practitioners – judges, primarily – to impose alternative non-custodial sanctions instead of imprisonment more often, contrary to the former practice.[10] Under the CC penalties shall be:

- imprisonment,
- confinement,
- community service,
- fine,
- disqualification from a profession,
- disqualification from driving a vehicle,
- ban on entering certain areas,
- ban on visiting sports events, and
- expulsion.[11]

Exclusion from participating in public affairs (such as voting) may be imposed as an additional penalty.[12]

[7] In the opinion of the Hungarian Helsinki Committee, the Authorisation Act did not fulfill the democratic and constitutional requirements of the special legal order and was contrary to international law and standards. The special legal order applicable for an indefinite period raised serious concerns with respect to rule of law standards. The background note of the Hungarian Helsinki Committee on the issue is available at: https://helsinki.hu/wp-content/uploads/MHB_hatteranyag_a_felhatalmazasi_torvenyhez_20200331.pdf and in English at: https://helsinki.hu/wp-content/uploads/HHC_background_note_Authorisation_Act_31032020.pdf

[8] Explanatory Memorandum to the Criminal Code.

[9] Act IV of 1978 on the Criminal Code.

[10] For details, see Chapter 3 on the use of alternative penalties in practice.

[11] Section 33(1) of the CC.

[12] Section 33(2) of the CC.

The applicable measures are:

- reprimand,
- conditional sentence with probation supervision,
- reparation work,
- probation supervision,
- confiscation,
- forfeiture of assets,
- rendering electronic data permanently inaccessible,
- compulsory psychiatric treatment, and
- measures specified in the Act on measures applicable to legal persons under criminal law.[13]

The system of sanctions under Hungarian criminal law is relatively determined, i.e. the CC sets out the possible type of penalty and the penalty range ("from…up to…"). With respect to the vast majority of statutory criminal offences, imprisonment remains to be the sanction of reference, however, it is to be welcomed that there are, albeit few, criminal offences punishable by confinement – a more lenient type of penalty than imprisonment– under the statutory provisions. It is important to note that the CC explicitly provides that the **median value** of the penalty range shall be the reference value when imposing a sentence of fixed-term imprisonment; the median value shall be equal to half of the sum of the minimum and maximum of the penalty range. It is that reference point from which the judge may depart when imposing the sentence subject to the mitigating and aggravating circumstances.

As regards the use of alternative sanctions instead of imprisonment or confinement, the Hungarian CC provides that in case the minimum of the penalty range for a criminal offence does not reach one year of imprisonment and the perpetrator is not a violent multiple recidivist, other penalty or penalties may be imposed instead of imprisonment.[14] If the criminal offence is to be punished by confinement under the Act, community service, fine, disqualification from a profession, disqualification from driving a vehicle, ban on entering certain areas, ban on visiting sports events, or expulsion may be imposed, individually or in concurrently, instead of (or in addition to) confinement.[15] The measures of reprimand, conditional sentence with probation supervision and reparation work may also be applied independently, instead of a penalty.[16]

Confinement shall last for a minimum of five days and a maximum of 90 days.[17] Imprisonment may be of a fixed term or a life imprisonment.[18] The shortest term of a fixed-term imprisonment shall be three months, while its longest term shall be 20 years, or, in exceptional cases as provided by the law,[19] 25 years.[20] When life imprisonment is imposed, the court may determine the earliest possible date of release on parole at not less than 25 years and not more than 40 years.[21] The other option for the judge when imposing a life imprisonment is to exclude the possibility of a parole – this is the so-called whole life sentence, the most severe penalty in the Hungarian criminal sanction system. The European Court of Human Rights (ECtHR) first ruled in 2014 with regard to Hungary that imposing whole life sentence violates the prohibition of torture and inhuman or degrading treatment or punishment.[22]

[13] Section 63(1) of the CC.
[14] Section 33(4) and Section 90(1) of the CC. In this respect, it should be pointed out that under the provisions of Section 33(4) in effect before 1 January 2021 it was possible to use the listed alternative sanctions instead of imprisonment in cases when the maximum of the penalty range for the criminal offence did not exceed three years of imprisonment.
[15] Section 33(5) of the CC.
[16] Section 63(2) of the CC.
[17] Criminal Code, Article 46(1)
[18] Criminal Code, Article 34
[19] If the perpetrator commits the criminal offence in a criminal organisation or as a special or multiple recidivist, or if a concurrent sentence or accumulative sentence is imposed.
[20] Criminal Code, Article 36
[21] Criminal Code, Article 43(1)
[22] *László Magyar v. Hungary* (Application no. 73593/10, Judgment of 20 May 2014), https://hudoc.echr.coe.int/eng?i=001-144109

Subsequently, the Hungarian legislator introduced a so-called mandatory clemency procedure for those sentenced to whole life imprisonment, but this remains incompatible with the European Convention on Human Rights, as confirmed by the ECtHR in another judgment in 2016.[23]

## 2.2. Non-custodial measures

In the following, we give an overview of sanctions (measures) applicable as alternatives to imprisonment, in cases where the criminal liability of the perpetrator is established by the court, but no penalties are imposed, or the imposition of penalty is postponed.

***Reprimand*** is the most lenient legal consequence, a measure of educational nature, which means essentially the moral condemnation of the perpetrator. Basically, it consists of the court establishing the criminal liability of the perpetrator, but at the same time, deciding that the degree of danger to society of the act committed at the time of adjudication does not reach a level which would justify application of penalties. Under the relevant legislation currently in effect, reprimand shall be mandatorily applied, if, at the time of adjudication, the act of the perpetrator is no longer dangerous or the degree of danger to society is so insignificant that the application of even the lowest penalty or any other measure available under the CC, is unnecessary.[24] Through applying reprimand, the court or the prosecution service expresses its disapproval of the unlawful act and warns the perpetrator to refrain from committing any criminal offence in the future.[25] The penalty range set by the law for the given criminal offence is irrelevant when deciding whether the application of reprimand is sufficient with regard to the defendant. If the danger to society posed by the criminal offence has already ceased to exist at the time of adjudication, or has become insignificant, the court may apply this measure for the commission of any criminal offence.[26]

***Conditional sentence with probation supervision*** is one of the forms of conditional sentencing based on the Anglo-American probation system. It consists of the court establishing the commission of the criminal offence and the criminal liability of the perpetrator but postponing his/her sentencing during the probationary period. Accordingly, as opposed to the other form of conditional sentencing, i.e. the suspension of the enforcement of the punishment, no penalty is imposed in this case having regard to the objective of punishment. If the probationary period successfully expires, i.e. the perpetrator observes the rules of behaviour, criminal liability of the perpetrator shall terminate, otherwise the court shall impose a penalty. The perpetrator, therefore, becomes subject to the legal consequence only if the probationary period does not expire successfully. Similarly to reprimand, the establishment of criminal liability is a prerequisite to the application of conditional sentence with probation supervision. The court shall release the accused on probation by its conclusive decision declaring criminal liability. Conditional sentence with probation supervision is a measure applicable in place of a penalty, accordingly, it is not possible to apply conditional sentence with probation supervision concurrently with a penalty.[27] As an educational measure, it is a legal consequence to be applied only for less serious offences, as specified in the Act. Accordingly, sentencing of the perpetrator may be postponed in case of petty offences,[28] or in case of felonies punishable by not more than three years of imprisonment provided that the objective of punishment can also be achieved by applying

[23] *T.P. and A.T. v. Hungary* (Application nos. 37871/14 and 73986/14, Judgment of 4 October 2016), https://hudoc.echr.coe.int/eng?i=001-166491. For further information, see the Hungarian Helsinki Committee's communication submitted to the Committee of Ministers of the Council of Europe in 2016: http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E.

[24] Section 64(1) of the CC, Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai

[25] Section 64(2) of the CC.

[26] Section 64 of the CC provides on the most important rules on reprimand, moreover, further rules on its enforcement are included in Section 307 of the Prison Act.

[27] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.

[28] Under Section 5 of the CC a criminal offence shall be a felony or a petty offence. A felony shall mean an intentional criminal offence, which is punishable by a penalty of over two years of imprisonment under the CC, and any other criminal offence shall constitute a petty offence.

conditional sentence with probation supervision.[29] The latter falls within the margin of appreciation by the court, i.e. the judge must assess the relevant aggravating and mitigating circumstances, and must examine whether the application of the measure would contradict the requirement of general prevention (the deterrence of possible perpetrators from committing a criminal offence).[30] A person shall not be released on probation if (s)he is a recidivist,[31] (s)he committed the criminal offence in a criminal organisation,[32] (s)he committed an intentional criminal offence either after being sentenced to imprisonment to be served but before enforcement of the sentence was completed, or during a probationary period of suspended imprisonment.[33] In those cases, the application of conditional sentence with probation supervision shall be excluded, due to a greater danger posed to society inherent in the personality of the perpetrator.[34] The probationary period shall not be shorter than one year or longer than three years.[35]

***Reparation work*** is a so-called community sanction, and accordingly, it essentially consists of carrying out work for the benefit of the community free of charge. In case of reparation work the perpetrator may choose where (s)he wishes to perform the work out of those specified by the Act,[36] accordingly, the place of work is not designated for him/her.[37] According to the perpetrator's choice, the reparation work may be performed at or for a State institution or a municipality, a public interest non-governmental organisation, a religious charity or a legal person.[38] Some elements of this type of measure show similarities to conditional sentence with probation supervision. These are the following: in addition to ordering the performance of reparation work, the court establishes the perpetrator's criminal liability, and postpones the imposition of penalty for a period of one year.[39] Similar to conditional sentence with probation supervision, it can be applied independently, in place of a penalty, and it is not possible to order concurrently with a penalty. Furthermore, it is also a measure of educational character, which may be applied only in case of misdemeanours or felonies punishable by not more than three years of imprisonment provided that the objective of punishment can also be achieved in this way.[40] In such cases the court establishes the criminal liability of the perpetrator, and, at the same time, postpones sentencing the perpetrator. Furthermore, the grounds of exclusion are identical to those of conditional sentence with probation supervision, i.e. the scope of persons with regard to whom no reparation work may be applied,[41] and probation supervision may also be ordered in addition to both types of measures if the regular supervision of the perpetrator is necessary.[42] The consent of the perpetrator is not necessary for ordering the performance of reparation work. Its period

[29] Section 65(1) of the CC. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[30] Opinion 55/2007. BK on the conditional sentence with probation of adults, and the suspension of the enforcement of the punishment, Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[31] Under Point 31 of Section 459(1) of the CC, the perpetrator of an intentional criminal offence shall be considered a recidivist if he/she has already been sentenced to imprisonment to be served for committing an intentional criminal offence, and the period between his/her sentence being served, or its enforceability being terminated, and the perpetration of the new criminal offence is shorter than three years.
[32] Point 1 of Section 459 (1) of the CC.
[33] Section 65(2) of the CC.
[34] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[35] Section 65(3) of the CC.
[36] Section 67 (3) of the CC.
[37] Sections 67-68 of the CC provide on the most important rules on reparation work, moreover, further rules on its enforcement are included in Section 309 of the Prison Act, and Section 64 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[38] Section 67 (3) of the CC.
[39] Section 67 (1) of the CC.
[40] Section 67 (1) of the CC.
[41] Section 67 (2) of the CC.
[42] Section 67 (1) of the CC.

is determined by the Act in hours, and it shall not be shorter than twenty-four hours or longer than one hundred and fifty hours.[43]

## 2.3. Non-custodial sanctions, alternatives to imprisonment

### 2.3.1. Alternatives to custodial sanctions

In the following, we give an overview of penalties in the case of which the court sentences the defendant but does not impose imprisonment or confinement on him/her, but some other kind of measure instead.

#### *2.3.1.1. Penalties as alternative sanctions*

As explained earlier, all sanctions classified as penalties under the CC – except for imprisonment and confinement – may be used to replace imprisonment or confinement, if the conditions laid down in the Act are fulfilled.

***Community service*** – similarly to reparation work– is a so-called community-based sanction, which, in this case too, means that it basically aims at the symbolic reparation of the harm caused.[44] The convict performs work for the benefit of the public, which helps to prevent recidivism and contributes to his/her social inclusion.[45] Community service is a legal consequence that may be imposed individually, i.e. also as an alternative to imprisonment or confinement, but may, nevertheless, be imposed concurrently with other types of penalties.[46] Similar to reparation work, the consent of the perpetrator is not necessary for its imposition.[47] The perpetrator shall be required to perform a service (s)he is foreseeably able to perform, taking his/her health and qualifications into account.[48] The period of community service – just like in the case of reparation work – shall be determined in hours, and it shall not be shorter than forty-eight hours or longer than three hundred and twelve hours.[49] A significant difference compared to reparation work is that in case of community service the convict shall not be entitled to choose where (s)he wishes to perform service but the workplace is designated for him/her. As a general rule, community service shall be performed by the convict without any remuneration and on at least one day per week.[50]

***Fine*** as a criminal sanction is a payment obligation in the amount established by the court, which is due by the convict to the State because (s)he committed a criminal offence.[51] It can be imposed independently concurrently with other penalties, it is one of the legal consequences that may be used also as an alternative to imprisonment or confinement.[52] Fine shall be imposed – taking into account the gravity of the criminal offence – by determining the number of daily units of the penalty (for how many days a fine is to be paid), and the amount of one daily unit.[53] When determining the number of

[43] Section 67 (4) of the CC.

[44] Barabás A., T.: *"Alternatív büntetések hatékonysága a magyar igazságszolgáltatás rendszerében" [Efficiency of alternative penalties in the Hungarian justice system]*, Miskolci Jogi Szemle [Miskolc Law Review] 14 (2019) Special Issue 2., Vol.1., p. 47

[45] Section 280 (1) of the Prison Act.

[46] See Sections 33(4) and (5) of the CC referred to above. Under points a) and b) of Section 33(6) of the CC, however, imprisonment and expulsion are excluded from the possibility of such combined imposition. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.

[47] Explanatory Memorandum to the CC.

[48] Section 47(4) of the CC.

[49] Section 47(1) of the CC.

[50] Section 47(2) of the CC. Further rules on community service and the most important rules on its enforcement are included in Sections 47-49 of the CC, Sections 280-291 of the Prison Act, and Sections 45–49 and 126-128 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases, and Sections 24-37 of Decree 8/2013. (VI. 29.) KIM on the Activities of the Probation Service.

[51] Explanatory Memorandum to the CC.

[52] See Sections 33(4) and (5) of the CC referred to above. Under points b) and c) of Section 33(6) of the CC, however, life imprisonment and expulsion are excluded from the possibility of such combined imposition.

[53] Section 50 (1) of the CC.

daily units, the judge examines only the objective elements of the criminal offence, but when determining the amount of one daily units the individual situation, i.e. the financial situation, income, personal circumstances and lifestyle of the perpetrator are taken into account. The number of daily units of fine shall not be lower than thirty or higher than five hundred and forty. The amount of one daily unit shall not be less than one thousand forints or more than five hundred thousand forints.[54] However, the court – taking the financial situation and income of the perpetrator into account – may order, that the perpetrator pays the amount of the fine in monthly instalments within a period of not more than two years.[55] The consent of the perpetrator is not necessary for the imposition of fine. The person sentenced to fixed-term imprisonment for a criminal offence committed for gain shall be sentenced to a fine as well, if (s)he has appropriate income or assets.[56] The penalty shall not be recovered by coercive state action; it may not be enforced, only converted. If the convict does not pay the fine or does not perform community service, the penalty shall be converted to imprisonment.[57]

***Disqualification from a profession*** is a legal consequence that may be imposed independently, i.e. also as an alternative to imprisonment or confinement, or concurrently with other penalties.[58] A person may be disqualified from exercising a profession if (s)he committed the criminal offence by violating the rules of his/her profession that require qualification, or intentionally by abusing his/her profession.[59] In addition, for perpetrators of a criminal offence against the freedom of sexual life and sexual morality, or a criminal offence of endangering a minor – subject to conditions specified by the Act – disqualification from a profession is not only a possibility falling within the remit of judicial appreciation, but the court shall mandatorily impose the penalty of disqualification from a profession.[60] Disqualification from a profession shall be imposed for a fixed period or permanently.[61] The period of a fixed-term disqualification shall not be shorter than one year or longer than ten years. A person may be permanently disqualified if (s)he is unfit for or unworthy of exercising the profession.[62] Unfitness is declared most often for reasons of health, unworthiness means moral unsuitability, for which internal rules of the profession or job descriptions may serve as guidance.[63] The consent of the perpetrator is not necessary for its imposition.[64]

***Disqualification from driving a vehicle*** – similarly to disqualification from a profession – is described by the Explanatory Memorandum to the Act as a penalty involving the limitation of rights that serves both the purposes of the protection of society and the prevention of the risk of recidivism.[65] It is a legal consequence that may be imposed independently, i.e. also as an alternative to imprisonment or confinement, and may be imposed concurrently with other penalties.[66] A person may be disqualified from driving a vehicle if (s)he committed a criminal offence by violating the rules of driving a vehicle requiring a license, or used a vehicle to commit criminal offences, accordingly, it may be used also in case of criminal offences other than traffic-related criminal offences.[67] As a general rule, prohibition from driving a vehicle is only a possibility, it may be imposed depending on the discretion of a judge.

[54] Section 50 (3) of the CC.
[55] Section 50 (4) of the CC.
[56]Section 50 (2) of the CC.
[57] Sections 49 and 51 of the CC.
[58]See Sections 33(4) and (5) of the CC referred to above.
[59] Section 52 (1) of the CC.
[60] Sections 52 (3) and 4) of the CC.
[61] Section 53 (1) of the CC.
[62] Section 53 (2) of the CC.
[63] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[64] Further rules on disqualification from a profession and the most important rules on its enforcement are included in Sections 52-54 of the CC, Sections 296-297 of the Prison Act, and Sections 57–58 and 129 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases. Exemption from the permanent disqualification from a profession may be granted by the penitentiary judge, the relevant procedure is regulated by Section 69/C of the Prison Act.
[65] Explanatory Memorandum to the CC.
[66]See Sections 33(4) and (5) of the CC referred to above.
[67] Section 55 (1) of the CC.

However, a person who committed the criminal offence of driving under the influence of alcohol shall be disqualified from driving a vehicle mandatorily.[68] However, in cases deserving special consideration, the mandatory application of disqualification from driving a vehicle may be dispensed with.[69] Disqualification from driving a vehicle shall be imposed for a fixed period or permanently.[70] Its period shall not be shorter than one month or longer than ten years.[71] A person may be permanently disqualified if (s)he is unfit to drive a vehicle.[72] The consent of the perpetrator is not necessary for its imposition.[73]

The penalty of ***ban on entering certain areas*** is defined by the Act as, in the cases specified therein, a person may be banned from one or more settlements, or certain areas of a settlement or of the country, if his/her presence there endangers the interest of the public.[74] Ban on entering certain areas is a legal consequence that may be imposed independently, i.e. also as an alternative to imprisonment or confinement, but it may be imposed concurrently with other penalties.[75] The Act leaves it to the discretion of the court whether the presence of the perpetrator in a certain settlement endangers the interest of the public. The penalty essentially means that the person banned cannot be present at the location defined by the court.[76] The period of a ban on entering certain areas shall not be shorter than one year or longer than five years.[77] The consent of the perpetrator is not necessary for its imposition.[78]

The ***ban on visiting sports events*** – according to the Explanatory Memorandum to the Act – was introduced by the legislator to counter "sports hooliganism".[79] It is a legal consequence that may be imposed independently, or concurrently with other penalties, and it may also be used as an alternative to imprisonment or confinement.[80] Its application is subject to the condition that the perpetrator commits the criminal offence related to a sports event in the course of participating in, going to, or leaving the sports event. The court shall determine in the judgment the organizing sports association, the competition scheme of the sporting discipline, or the hosting sports facility of the relevant sports event the visiting of which the perpetrator shall be banned from.[81] The period of a ban on visiting sports events shall not be shorter than one year or longer than five years.[82] The consent of the perpetrator is not necessary for its imposition.[83]

***Expulsion***, similarly to ban on entering certain areas, is a limitation of the right to freely choose one's place of stay. A perpetrator other than a Hungarian national whose staying in the country is

[68] Section 55 (2) of the CC, Explanatory Memorandum to the CC.
[69] Section 55 (2) of the CC, Explanatory Memorandum to the CC.
[70] Section 56 (1) of the CC.
[71] Section 56 (3) of the CC.
[72] Section 56 (5) of the CC.
[73] Further rules on disqualification from driving a vehicle and the most important rules on its enforcement are included in Sections 55-56 of the CC, Section 298 of the Prison Act, and Sections 59–60 and 130 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases. Exemption from the permanent disqualification from driving a vehicle may be granted by the penitentiary judge, the relevant procedure is regulated by Section 69/C of the Prison Act.
[74] Section 57 (1) of the CC.
[75] See Sections 33(4) and (5) of the CC referred to above.
[76] Explanatory Memorandum to the CC.
[77] Section 57 (2) of the CC.
[78] Further rules on ban on entering certain areas and the most important rules on its enforcement are included in Section 57 of the CC, Section 299 of the Prison Act, and Sections 59–60 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases.
[79] Explanatory Memorandum to the CC.
[80]See Sections 33(4) and (5) of the CC referred to above.
[81] Section 58 (1) of the CC, Explanatory Memorandum to the CC.
[82] Section 58 (2) of the CC.
[83] Further rules on ban on visiting sports events and the most important rules on its enforcement are included in Section 58 of the CC, Section 300 of the Prison Act, and Sections 59–60 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases.

undesirable shall be expelled from the territory of Hungary.[84] It essentially means that the expelled person shall be required to leave the territory of the country or shall tolerate to be removed from the territory of the country, and shall not be allowed to return to the country during the period of expulsion, not even with special permission.[85] It is a legal consequence that may be imposed independently, i.e. also as an alternative to imprisonment or confinement, or may be imposed concurrently with other penalties, too.[86] Expulsion may be used only against perpetrators other than Hungarian nationals. The applicability and duration of the penalty of expulsion depend on the nature and gravity of the criminal offence, the perpetrator's title of residence in Hungary, his/her personal and family relations, and the severity of any other penalty that may have been imposed. The Act differentiates between aliens on the basis of the closeness of their ties with Hungary: they have the right to free movement and residence (i.e. EU citizens and their family members), or they are third country nationals having the right to reside in the territory of Hungary as permanent residents. Persons who are granted asylum by Hungary – as they have equal rights to Hungarian nationals – shall not be expelled.[87] Expulsion shall be imposed for a fixed period or permanently.[88] The period of expulsion for a fixed period shall not be shorter than one year or longer than ten years.[89] A person may be expelled permanently if (s)he is sentenced to imprisonment for ten years or more, and his/her presence in the country would pose a significant threat to public safety. EU citizens and their family members shall not be expelled permanently.[90] The consent of the perpetrator is not necessary for its imposition.[91]

*2.3.1.2 Cases of mandatory use of imprisonment as penalty*

In the case of the criminal offences with respect to which the legislator sets out the penalty range according to the "from… up to…." logic, the court is practically obliged to impose the penalty of imprisonment, but that rule may, nevertheless, be set aside by the so-called "double downgrading", which may be applied as reduction of punishment.[92] Accordingly, under the relevant provisions of the Act, in case of perpetrators who are considered as abettors,[93] when the act remained in the phase of attempt,[94] it shall be possible for the court even to use an alternative sanction instead of imprisonment.[95]

In certain cases, the CC does not allow the use of alternative sanctions instead of imprisonment. First of all, perpetrators who are violent multiple recidivists should be mentioned.[96] In the case of such

[84] Section 59 (1) of the CC.
[85] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[86] See Sections 33(4) and (5) of the CC referred to above. With respect to the limitation under point b) of Section 33(6) of the CC, however, expulsion may not be imposed concurrently with community service or fine.
[87] Section 59 of the CC, Explanatory Memorandum to the CC.
[88] Section 60 (1) of the CC.
[89] Section 60 (2) of the CC.
[90] Section 60 (3) of the CC.
[91] Further rules on expulsion and the most important rules on its enforcement are included in Sections 59-60 of the CC, Section 301 of the Prison Act, and Sections 61 and 131 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases. The procedure for establishing the non-enforceability of the expulsion is regulated by Section 67 of the Prison Act, and the penitentiary judge shall be competent for the relevant procedure. Similarly, exemption from permanent expulsion may be granted by the penitentiary judge, the relevant procedure is regulated by Section 69/C of the Prison Act.
[92] The possibilities for reducing punishment are discussed in detail in point 3.
[93] Under Section 14(2) of the CC, abettor means a person who intentionally provides assistance for the commission of a criminal offence.
[94] Under Section 10(1) of the CC, a person shall be punishable for attempt if he/she commenced but did not complete the commission of an intentional criminal offence. Under Section 10(2) an attempt shall be subject to the same penalty range as the completed criminal offence.
[95] Section 82 of the CC.
[96] Under point c) of Section 459(31) of the CC, a multiple recidivist shall be considered a violent multiple recidivist, if he/she committed a violent criminal offence against a person on all three occasions. Under point b) of Section 459(31) a person shall be considered a multiple recidivist if he/she has already been sentenced to imprisonment to be served as a recidivist before committing the intentional criminal offence, and the period between his/her last sentence being served, or its

perpetrators, imprisonment must be imposed even if the minimum of the penalty range for the criminal offence does not reach one year of imprisonment.[97] In this context, furthermore, it seems appropriate to mention the rule according to which in case of a violent multiple recidivist, the maximum of the penalty range for the criminal offence based on which the perpetrator is considered to be a violent multiple recidivist shall be doubled for imprisonment. If the maximum of the penalty range increased this way would exceed twenty years, or if the criminal offence may be punished also by life imprisonment under the Act, the perpetrator shall be sentenced to life imprisonment.[98]

*2.3.1.3 The suspension of the enforcement of imprisonment*

When the enforcement of imprisonment is suspended, the court has already established the criminal liability of the perpetrator and has sentenced him/her to imprisonment, but before the commencement of the serving or the enforcement of the sentence, or after serving a given term of the prison sentence – under certain conditions specified by law – it allows the perpetrator to serve his/her sentence or the remaining period of it without his/her deprivation of liberty. If the perpetrator passed the probationary period successfully, the imposed sentence is not to be enforced, otherwise the enforcement of the sentence of suspended imprisonment shall be ordered.[99]

Under the Hungarian CC currently in effect, there is only one type of penalty, namely imprisonment, the enforcement of which may be suspended for a probationary period. We find it appropriate to describe the most important characteristics of this legal institution in our study, because suspended prison sentence practically belongs to non-custodial penalties. In such cases, – although the court imposes prison sentence against the perpetrator – the suspension of enforcement "softens" the custodial sanction.

Under the relevant provisions of the law, enforcement may be suspended in case of a sentence of imprisonment of not more than two years, as a general rule. One of the conditions of suspension subject to discretion is the court finding that there is reasonable ground to believe that the objective of punishment can be achieved even without enforcing it. In that regard, the personal circumstances of the perpetrator (such as the being an occasional offender or having a clear criminal record) must be taken into account primarily.[100] The probationary period of the suspension shall not be shorter than one year or longer than five years. It shall not be shorter than the term of the imprisonment imposed.[101] The enforcement of a sentence of imprisonment shall not be suspended if the convict is a multiple recidivist, if (s)he committed the criminal offence in a criminal organisation, or (s)he committed an intentional criminal offence before enforcement of the sentence of imprisonment was completed or during a probationary period of suspended imprisonment.[102] Subject to judicial discretion the perpetrator may be subjected to probation supervision concurrently with suspending the enforcement of a sentence of imprisonment. If the perpetrator sentenced to suspended imprisonment is a recidivist, (s)he shall be subject to probation supervision mandatorily.[103] If the perpetrator seriously violates the rules of behaviour of probation supervision, a sentence of suspended imprisonment shall be enforced,[104] the ordering of which falls within the competence of the penitentiary judge (hereinafter: pen. judge).[105] A sentence of suspended imprisonment shall be

enforceability being terminated, and the perpetration of the new criminal offence punishable by imprisonment is shorter than three years.

[97] Section 90 (1) of the CC.

[98] Section 90(2) of the CC, colloquially referred to as "the three blows".

[99] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.

[100] Section 85 (1) of the CC. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.

[101] Section 85 (2) of the CC. Sections 86(2), (3) and (4) of the CC provide on derogations from the probationary period ranging from one year to five years.

[102] Section 86 (1) of the CC.

[103] Section 86 (6) of the CC.

[104] Point c) of Section 87 of the CC.

[105] The procedure before the penitentiary judge relating to the ordering of the enforcement of prison sentence suspended for a probationary period is regulated in Section 61/E of the Prison Act, and in Section 121/A of Decree 9/2018. (VI. 11.) IM

enforced also if the perpetrator is sentenced to imprisonment to be served for a criminal offence committed during the probationary period.[106]

### 2.3.2. Additional penalty

As already mentioned in the introductory part, the CC also relied on the concept of *additional penalty* as a supplement to penalties and measures. The Hungarian system of criminal legal consequences provide only one single type of such additional penalty: **deprivation of civil rights,**[107] which, however, is linked to the imposition of imprisonment, and, accordingly, may not be imposed independently, that is, it cannot serve as alternative to custodial penalties. A person shall be excluded from participating in public affairs (such as the right to vote, holding a public office or a military rank, or serving as a defence counsel or legal representative in an official procedure) if (s)he is sentenced to imprisonment to be served for committing an intentional criminal offence and (s)he is unworthy of participating in public affairs. Deprivation of civil rights shall be imposed for a fixed period, which shall not be shorter than one year or longer than ten years.

### 2.3.3. Probation supervision as a special measure

***Probation supervision*** (for further details see: 2.5.2.) as a type of measure defined by the CC, may be linked to release on parole, to the probationary period of conditional sentence with probation supervision, to ordering the performance of reparation work, or to the probationary period of suspended imprisonment.[108] In comparison to other measures set out in the CC, it is special in sense that it is the only measure, which may not be applied independently, but may be ordered concurrently with any penalty or measure[109] except for expulsion.[110]

### 2.3.4. Non-custodial sanctions that may not be used as alternatives to imprisonment

For the sake of completeness, it is important to note that in addition to the measures closely linked to the subject matter of this study – such as reprimand, release on parole, reparation work, and probation supervision – the CC also provides on measures that may not be imposed independently, i.e. they may not be used as alternatives to the penalty of imprisonment, but they should be considered as non-custodial sanctions. The detailed description of these legal institutions and their analysis go beyond the scope of the present study, therefore, we only sum up shortly the essence of them in the following.[111]

One of them is ***confiscation***.[112] Under the relevant provisions of the law, an object shall be confiscated if it was used or intended to be used as a means of committing a criminal offence; if it was created by way of committing a criminal offence; if it was the subject of a criminal offence, or it was used to transport such an object after completing the criminal offence; if its possession poses a threat to public

on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases.

[106] Point b) of Section 87 of the CC. Further grounds for the enforcement of suspended imprisonment are set out in points a) and d) of Section 87 of the CC. A comprehensive regulation of the suspension of the enforcement of a sentence of imprisonment are set out under Sections 85-88 of the CC.

[107] Under Section 61(1) of the CC a person shall be excluded from participating in public affairs if he/she is sentenced to imprisonment to be served for committing an intentional criminal offence and he/she is unworthy of participating in public affairs.

[108] Points b)-e) of Section 69(1) of the CC.

[109] For the sake of completeness, it must be definitely noted that the basic rules on probationary supervision as a measure are included in Sections 69-71 of the CC, and the basic rules on its enforcement are included Sections 310-314 of the Prison Act. In addition, further important detailed arrangements are set out in Sections 38-51 of Decree 8/2013. (VI. 29.) KIM on the Activities of the Probation Service.

[110] The only exception is expulsion, in addition to which probationary supervision may not be ordered, Section 63(3) of the CC.

[111] Moreover, in view of that, we also leave aside discussing the enforcement of these measures under title 4.

[112] Explanatory Memorandum to the CC.

safety or is in breach of the law; also any press product in which the criminal offence was committed shall also be confiscated.[113] Confiscation shall also be ordered if the perpetrator is not liable to punishment due to infancy or mental disorder or if the perpetrator was reprimanded.[114]

The ***forfeiture of assets*** essentially consists of the removal of goods originating from committing a criminal offence, i.e. restoring the financial situation before the committing of the criminal offence, and as such, does not effect the assets lawfully gained by the perpetrator. The application of this measure, therefore, aims at removing the assets originating from committing a criminal offence, which are, accordingly, either illegal, or they were legal, but which were used to contribute to committing the criminal offence. Forfeiture of assets shall also be ordered if the perpetrator is not liable to punishment due to infancy or mental disorder or if the perpetrator was reprimanded.[115]

The reason why the ***rendering electronic data permanently inaccessible*** was introduced in the Act was that criminal offences, which are committed by publication on computer networks, are punishable by the CC (for example, the misuse of illegal pornographic recording). Under the provisions of the Act, data constituting a criminal offence published on an electronic communications network shall be rendered permanently inaccessible, or which were used as a means of committing the criminal offence. Just like in the case of confiscation, the Act provides that rendering data published on an electronic communications network permanently inaccessible shall also be ordered if the perpetrator is not liable to punishment due to infancy or mental disorder, or if the perpetrator was reprimanded.[116]

***Compulsory psychiatric treatment*** is a legal consequence of a punishable act committed by someone of unsound mind (*non compos mentis*), which serves primarily the protection of society. The ordering of compulsory psychiatric treatment is subject to four conditions: the committed act is a violent punishable act against a person or a punishable act causing public danger, the liability of the perpetrator to punishment is excluded due to his/her mental disorder, there are reasonable grounds to assume that there is a risk of the perpetrator committing a similar act, and imprisonment for more than one year would be imposed by the court if the perpetrator would be liable to punishment. Under the relevant provisions of the law, compulsory psychiatric treatment is a measure to be ordered for an indefinite period, which shall be terminated if it is deemed no longer necessary at the judicial review due every half years.[117]

## 2.4. Substantial legal provisions on sentencing and the use of alternative sanctions

Under the relevant provision of the CC, the *objective of punishment* shall be, in the interest of the protection of society, to prevent the perpetrator or any other person from committing a criminal offence.[118] Based on that provision, the objective of punishment is the protection of society, with individual crime prevention on the one hand, and general prevention of crime on the other. Individual crime prevention means that the punishment should be tailored to deter the perpetrator from committing a criminal offence again. For the achievement of that aim, the most important requirement for the punishment is the principle of proportionality. In addition, the punishment should also serve the purpose of preventing others from committing a criminal offence.[119]

Among the *principles of sentencing* the CC sets out the basic rule according to which punishment shall be imposed within the framework laid down in the Act, bearing in mind its objective, ensuring that the punishment fits the material gravity of the criminal offence, the degree of guilt, the degree of danger

[113] Sections 72 (1) and (2) of the CC.
[114] Points a) and b) of Section 72 (4) of the CC. The detailed regulation of confiscation is included in Sections 72-73 of the CC.
[115] Points a) and b) of Section 72 (5) of the CC. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai. The detailed regulation of the forfeiture of assets is included in Sections 74-76 of the CC.
[116] Section 77 of the CC, Explanatory Memorandum to the CC.
[117] Section 78 of the CC, Explanatory Memorandum to the CC.
[118] Section 79 of the CC.
[119] Explanatory Memorandum to the CC.

the perpetrator poses to society, and other mitigating and aggravating circumstances.[120] As it was also pointed out by the Constitutional Court: "within the framework of the system of punishments under the CC, the right to determine the sanction is shared between the legislator and those implementing the law".[121] Accordingly, the court shall determine the type and severity of the penalty within the limits of the minimum and maximum of the penalty range as set out by the Act, taking into account the circumstances of the given case. Under the Act, therefore, and as a general rule, the punishment shall be imposed within the framework laid down in the Act, and with regard to mitigating and aggravating circumstances.[122] The CC gives merely an illustrative list of aggravating and mitigating circumstances, and mentions in that regard the material gravity of the criminal offence,[123] the degree of guilt,[124] the degree of danger the perpetrator poses to society, which means that – in addition to those explicitly mentioned – due account must be taken of other mitigating and aggravating circumstances, too. However, it is impossible to compile an exhaustive list of those, as, on the one hand, the list of such circumstances can constantly change, and, on the other hand, the same circumstances, which are mitigating, may be aggravating, or may even be neutral, depending on the situation. With a view to consolidating case law, however, Opinion 56/2007 of the Criminal Division of the Kúria on the circumstances that may be assessed when imposing sentences,[125] provides some guidance in that regard.[126] Different forms of vulnerability, such as old age, the low level of literacy or the lack of education of the perpetrator, the limited nature of his/her mental competency as limiting his/her accountability, illness, a significant level of disability, a clear criminal record, the committing of the criminal offence caused by legitimate reason, and self-reporting are listed as mitigating circumstances linked to the perpetrator. In case of criminal offences against property mitigating circumstances may include financial difficulties of the perpetrator that are not imputable to him/her, especially if those difficulties lead to the commission of the criminal offence. On the other hand, the proliferation of criminal offences, continuity in committing the acts, committing the criminal offence in different forms of joint offending, the commission of several criminal offences, and committing the criminal offence close to the maximum of the value limit may be considered as aggravating circumstances.[127]

In connection with sentencing, it is important to mention the provisions of the CC allowing for the reduction of punishment.[128] Under those provisions a punishment more lenient than the penalty range may be applied if, taking the principles of sentencing into account, even its lowest level would be excessive.[129]

According to the paragraph providing on the reduction, if the minimum of the penalty range is

- ten years of imprisonment, imprisonment for at least five years,

[120] Section 80(1) of the CC.
[121] Decision No. 13/2002. (III. 20.) AB of the Constitutional Court
[122] Explanatory Memorandum to the CC.
[123] According to the Explanatory Memorandum to the CC, when the Act mentions the material gravity of the crime among the principles of sentencing, then it should not be understood as the abstract material gravity of the criminal offence – which has already been assessed by the legislator and reflected by the penalty ranges specified in the Special Part –, but the concrete gravity of the committed criminal offence.
[124] According to the Explanatory Memorandum to the CC, the degree of guilt means the intensity of the psychological relation to the act, and which is to be inferred primarily from the manner, means, and method of committing the criminal offence. The Commentary to the Act adds, that certain constituting elements of the definition, which is composed of several elements, may also gain importance with respect to the degree of guilt, such as the appropriate age, mental competency, and reasonability, in addition to intention and negligence (Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai).
[125] Opinion 56/2007 BK of the Criminal Division of the Kúria on the circumstances which may be assessed when imposing sentences. In addition to the Opinion of the Criminal Division, the court delivering a judgement, as a matter of course, may take into account, for example, other relevant uniformity resolutions or earlier judicial decisions adopted in individual cases.
[126] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[127] Opinion No. 56/2007. BK
[128] Section 82 of the CC.
[129] Section 82(1) of the CC.

- five years of imprisonment, imprisonment for at least two years,
- two years of imprisonment, imprisonment for at least one year,
- one year of imprisonment, imprisonment for a shorter period may be imposed instead.[130]

If the minimum of the penalty range is one year of imprisonment, the Act allows the court to impose confinement, community service or fine fine(or any combination of those) instead of imprisonment.[131]

If the act was only attempted or the perpetrator participated in the committing of the criminal offence only as abettor, and even the reduced punishment applicable under the provisions above would be excessive, – as mentioned earlier – it is possible for the court to apply the so-called double downgrading.[132] Double downgrading itself results in a very important reduction of punishment that usually puts the defendant in a very favourable situation, and therefore, it is of outmost importance in practice. Finally, if a reduction without limitation is permitted by the Act, the lowest level of any type of penalty may be imposed as well.[133]

In the course of the criminal procedure, the court decides about the criminal liability of the perpetrator and the sentence simultaneously.[134] In case the court imposes prison sentence, it shall decide simultaneously whether the convict must serve his/her sentence or – as explained earlier above – orders the suspension of the enforcement of the prison sentence for a probationary period. The court must provide a reasoning to the judgement, and the reasoning must include the statement of the most important facts and circumstances supporting the decision, and the legal provisions on which the decision was based.[135] It follows from the above that the judge establishing the criminal liability of the perpetrator and the one imposing the sentence is the same person. In that regard, it must be noted that in case of certain legal institutions classified as alternative sanctions pen. judges also exercise important powers.[136] Pen. judges are different from trial judges in charge of determining criminal liability of the accused and imposing sentences. Pen. judges are special justices in charge of carrying out judicial tasks arising with respect to the enforcement of penalties and measures.[137]

An appeal may be filed against the conclusive decision of the court establishing criminal liability and imposing a sentence under the general rules.[138] The defendant, the prosecution and the defence counsel shall be entitled to file an appeal against the judgement of the court of first instance.[139] The appeal may challenge the operative part and also the reasoning of the judgement.[140] In addition, an appeal may also be filed only against the type, severity or duration of the penalty imposed or measure applied.[141]

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[130] Section 82(2) of the CC.
[131] Section 82(3) of the CC.
[132] Section 82(4) of the CC.
[133] Section 82(4) of the CC.
[134] Under Section 456(1) of the CCP included in the general rules of court proceedings, the final and binding conclusive decision of the court consists of a decision on the indictment, on the criminal liability of the defendant, on the criminal legal consequences, or the lack of those with administrative finality and binding for all.
[135] Section 451(5) of the CCP.
[136] For example, with regard to establishing the exclusion of the possibility of release on parole (Section 55 of the Prison Act); the conduct of the procedure for release on parole and decision on release on parole (Sections 57-60 of the Prison Act); the procedure for termination of the parole (Section 61 of the Prison Act), ordering and terminating reintegration custody, and the procedure for the release on parole of convicts in reintegration custody (Sections 61/A-61/D of the Prison Act); the ordering of the enforcement of imprisonment suspended for a probationary period (Section 61/E of the Prison Act).
[137] Section 47 (1) of the Prison Act. The rules of procedure before the penitentiary judge are included in Sections 50-75/S of the Prison Act.
[138] Section 579(1) of the CCP. An appeal against the conclusive decision of the court of first instance may be addressed to the court of second instance.
[139] Points a) – c) of Section 581 of the CCP. Further persons entitled to file an appeal are listed under points d) – g) of Section 581.
[140] Section 583 (2) of the CCP.
[141] Point a) of Section 583 (3) of the CCP.

## 2.5. The enforcement and supervision of alternative sanctions

### 2.5.1. The enforcement and supervision of alternative penalties

The probation service shall ensure the enforcement of ***community service***.[142] In that regard, the probation officer shall be responsible for finding employers providing the facilities for the enforcement of the penalty, the designation of the place of work, the organisation and coordination of serving the sentence, and the continuous supervision of the enforcement.[143] The probation officer shall regularly check whether the convict fulfils his/her obligations related to the enforcement of community service.[144, 145] Since 1 January 2021, the Prison Act clearly provides that in case it is not possible to designate any place of work for the performance of community service, the local municipality having territorial competence based on the registered address or actual place of residence of the convict is obliged to ensure the place of work for the performance of community service.[146] No employment relationship shall be established with the designated place of work for the duration of the performance of community service, the convict shall perform work within the framework of penitentiary legal relationship – it is unpaid and shall not count as service when calculating pension's rights.[147] When enforcing community service, the daily working time shall be at least four hours, and shall not be more than twelve hours. Its weekly duration shall be at least four hours, but it shall not exceed forty-eight hours.[148] If the convict fails to perform the service prescribed for him/her due to his/her own fault within two years,[149] the community service or its remaining part shall be converted to imprisonment, which shall be enforced in a low-security penal institution.[150] Four hours of community service shall convert to one day of imprisonment.[151] The pen. judge shall be responsible for the conversion of community work to imprisonment (after the probation officer has drawn-up the report thereof and submitted the proposal for the initiation of conversion of community work to imprisonment to the prosecution service)[152] and conducting the procedure[153] on termination of the enforceability of community service.[154]

If the convict does not pay the ***fine*** or, if payment in instalments was permitted and (s)he fails to pay a monthly instalment, the fine, or any unpaid remainder of it shall be converted to imprisonment.[155] If, for example, fine was imposed in addition to imprisonment not to be served, imprisonment replacing fine – similar to converted community service – shall also be enforced in a low-security penal institution. If a fine was imposed in addition to a sentence of imprisonment to be served, or the enforcement of a suspended imprisonment was ordered, any imprisonment replacing the fine shall be enforced at the same security level as the sentence of imprisonment. (In any other case, imprisonment replacing a fine shall be enforced in a low-security penal institution.)[156] The pen. judge shall conduct

[142] Section 280 (2) of the Prison Act.
[143] https://igazsagugyiinformaciok.kormany.hu/partfogo-felugyeloi-szolgalat
[144] Section 287 (1) of the Prison Act.
[145] Further rules on community service and the most important rules on its enforcement are included in Sections 47-49 of the CC, Sections 280-291 of the Prison Act, and Sections 45–49 and 126-128 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases, and Sections 24-37 of Decree 8/2013. (VI. 29.) KIM on the Activities of the Probation Service.
[146] Section 280 (2) of the Prison Act, and the Explanatory Memorandum to the Prison Act.
[147] Section 280 (3) of the Prison Act.
[148] Section 280 (4) of the Prison Act.
[149] The cases thereof are listed under Section 290 (1) of the Prison Act.
[150] Sections 48 (1) and (2) of the CC.
[151] Section 291 (1) of the Prison Act.
[152] Sections 290 (1) and (2) of the Prison Act.
[153] Sections 64-65 of the Prison Act.
[154] The cases of termination of the enforceability of community service are included in Section 289 of the Prison Act, the procedure for the establishment of the termination of the enforceability of community service is regulated under Section 63 of the Prison Act.
[155] Section 51 (1) of the CC.
[156] Section 51 (2) of the CC.

the procedures[157] related to the conversion of fine to imprisonment, and the establishment of the termination of the enforceability of the fine.[158] Since fine is enforced by the finance department of the tribunal,[159] in practice, the court is typically notified *ex officio* of the non-payment of the penalty when the finance department does not receive the amount due. The pen. judge is contacted and called upon by the finance department to convert the fine to imprisonment.[160] The duration of imprisonment replacing unpaid fine shall be determined by converting one daily unit into one day of imprisonment.[161] It is important that the fine may be paid even after its conversion to imprisonment by the court.[162] In that case, imprisonment shall not be enforced. If the fine is paid during the enforcement of imprisonment, the convict shall be released immediately following the justification of payment. The penalty may be paid in instalments, and in such cases, only that part of the imprisonment may be enforced that corresponds to the unpaid amount of the fine.[163]

The body responsible for the mandatory registration or authorisation of certain activities of the profession from, which the defendant is disqualified, shall be responsible for the enforcement of ***disqualification from a profession.*** On a notification from the pen. judge the respective body shall enter the data relating to the disqualification from the profession in the register and shall ensure that the convict does not carry out any activity prohibited by the court during the period of disqualification.[164] Upon the request of the convict, the pen. judge may grant exemption from the permanent disqualification from a profession. Granting an exemption shall be possible if the convict justifies his/her eligibility for exercising the profession, in the manner required by the court.[165] The police shall check the enforcement of the penalty of disqualification from a profession.[166]

The rules of enforcement of ***disqualification from driving a vehicle*** are similar to those of disqualification from a profession.[167] A district office of the respective capital or county government office shall be responsible for carrying out the tasks related to disqualification from driving a vehicle, on notification by the court.[168] If the law makes the recommencement of driving a vehicle subject to the certification of the competence necessary for driving a vehicle, the convict may recommence driving a vehicle only after (s)he submitted the certificate of competence necessary for driving a vehicle to the district government office.[169] The enforcement of the penalty of disqualification from driving a vehicle shall be checked by the police.[170] The CC imposes sanctions on a person who drives a vehicle while being subject to disqualification from driving a vehicle. Namely, the CC specifies the statutory elements of the criminal offence of driving a vehicle while disqualified. Accordingly, a person who drives a vehicle while being subject to disqualification from driving such a vehicle is guilty of a petty offence and shall be punished by imprisonment for up to one year.[171] In addition, a person who commits the criminal offence while being subject to disqualification from driving a vehicle imposed in a criminal proceeding is guilty of a felony and shall by punished by imprisonment for up to three years.[172]

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[157] Section 66 of the Prison Act.
[158] The cases of termination of the enforceability of fine are included in Section 293/A(1) of the Prison Act, the procedure for the establishment of the termination of the enforceability of fine is regulated under Section 65/A of the Prison Act.
[159] Section 292(1) of the Prison Act.
[160] Point b) of Section 292 (3) of the Prison Act.
[161] Section 292(4) of the Prison Act.
[162] Section 293(1) of the Prison Act. The detailed rules on the enforcement of fine, and on the conversion of unpaid fine to imprisonment are included in Section 66, and Sections 292, 293, and 293/A. of the Prison Act, respectively.
[163] Sections 293(2) and (3) of the Prison Act.
[164] Section 297 (1) of the Prison Act.
[165] Section 297 (5) of the Prison Act.
[166] Section 297 (6) of the Prison Act.
[167] Section 298 (1) of the Prison Act.
[168] Section 298 (2) of the Prison Act.
[169] Section 298 (3) of the Prison Act.
[170] Section 298 (5) of the Prison Act.
[171] Section 239/B (1) of the CC.
[172] Section 239/B (2) of the CC.

The rules applicable to disqualification from a profession shall apply *mutatis mutandis* to the enforcement of ***expulsion***.[173] The expelled person shall be obliged to leave the settlement or area from which (s)he was expelled within eight days from the date on which the conclusive decision becomes final and binding or from the date of his/her release from imprisonment and leave for the locality chosen by him/her, and present himself/herself at the police there.[174] If someone is present in a locality or in an area of the country from which the court expelled him/her, or if (s)he violates the rules of expulsion ordered by the court shall be liable for committing a petty offence.[175]

The ***ban on visiting sports events*** shall be enforced by the police.[176] While banned, the convict shall be obliged to stay away from the venue of sports events, or sports facilities as determined by the court.[177] A person who violates the rules of the ban on visiting sports events ordered by the final and binding decision of the court, shall be liable for committing a petty offence.[178]

***Expulsion*** shall be enforced by the local aliens policing authority.[179]

### 2.5.2. The enforcement and supervision of measures

As regards the measures relevant for the subject matter of the present study, concerning ***reprimand***, the Prison Act provides that in case the defendant is present at the delivery of the judgement, the single judge, the president of the judicial council, or the prosecutor shall communicate reprimand orally on the spot, and the judgment becomes final and binding. In all other cases, reprimand shall be enforced by postal delivery of the decision.[180] Through applying reprimand, the court or the prosecution service expresses its disapproval of the unlawful act and warns the perpetrator to refrain from committing any criminal offence in the future. According to the relevant part of the Explanatory Memorandum to the CC, by applying reprimand, the prosecution service or the court establishes the liability of the perpetrator and they express their disapproval of the act committed by the perpetrator, on the one hand, and call upon the perpetrator not to commit any criminal offences in the future, on the other.[181] The defendant subject to the measure of reprimand shall not be entered into the register of convictions, and shall have a no criminal record.[182] However, defendants subject to the measure of reprimand shall be entered in the register of persons with a clear criminal record that have been subject to adverse legal consequences.[183]

Regarding the enforcement and monitoring of ***conditional sentence with probation supervision***, and the consequences of violating the rules of behaviour to be followed while released on probation, it must be mentioned first that the person released on probation may be placed under probation supervision. If a person released on probation violates the rules of behaviour of probation supervision, the probationary period may be extended once by up to one year.[184] Conditional sentence with probation supervision shall be terminated and a penalty shall be imposed if a serious violation of the rules of behaviour of probation supervision occurs or the person released on probation is sentenced for a criminal offence committed before being released on probation or for a criminal offence

[173] Section 299 (1) of the Prison Act.
[174] Section 299 (3) of the Prison Act.
[175] Sections 201 (1) and (2) of Act II of 2012 on petty offences, the petty offence procedure and the petty offences records (Petty Offences Act).
[176] Section 300 (1) of the Prison Act.
[177] Section 300 (2) of the Prison Act.
[178] Section 201 (2) of the Petty Offences Act.
[179] Section 301 (5) of the Prison Act.
[180] Section 307 (1) of the Prison Act.
[181] Section 64 (2) of the CC.
[182] Section 10 of Act XLVII of 2009 on the criminal record system, the registration of judgments handed down by courts of the Member States of the European Union against Hungarian citizens and the recording of criminal and law enforcement biometric data.
[183] Points d) and e) of Section 15 of Act XLVII of 2009.
[184] Section 65(4) of the CC.

committed during the probationary period.[185] The liability to punishment of the perpetrator shall cease after the successful expiry of the probationary period.[186, 187]

***Reparation work*** shall be performed for a period determined in working hours by the court, under the conditions as agreed between the convict and the organisation or institution providing the place of work.[188] No employment relationship is established for the duration of reparation work. If the convict is subjected to probation supervision, the probation officer shall assist him/her in choosing the place for the performance of reparation work, and the probation officer shall check whether the reparation work was performed.[189] If the perpetrator provides reliable evidence within one year that (s)he has performed reparation work, his/her liability to punishment shall cease.[190] Contrary to the penalty of community service, in case of reparation work, failure to perform for reasons imputable to the perpetrator does not mandatorily result in conversion of the measure to imprisonment. The court shall impose a penalty if the perpetrator does not provide evidence of having performed reparation work or – in case probation supervision was ordered in addition to ordering the performance of reparation work –, the perpetrator seriously violates the rules of probation supervision. The Act expressly provides that if the court imposes a penalty in such cases, no measure shall be applied, except for juvenile convicts, who may be ordered to be subjected to special education in a reformatory.[191] If the perpetrator cannot provide evidence of having performed reparation work for health reasons, the CC provides the possibility of the extension of the time limit for providing evidence once and by up to one year.[192]

In the course of the enforcement of ***probation supervision***, the probation officer shall contribute to preventing the supervised person from reoffending by means of supervising and instructing the supervised person. The probation officer shall also provide assistance to his/her social inclusion, and to the development of the necessary social skills and securing the necessary conditions, and shall participate in asserting the interests of the aggrieved parties.[193] The following general rules equally apply to probation supervision ordered for the duration of the suspension of imprisonment, for the period of probation, or in addition to the ordering reparation work:

- by means of regular and, where appropriate, personal contacts, probation officers and correctional probation officers shall supervise the behaviour of the supervised person,
- and shall draw up individual probation officer's plans[194] with respect to each supervised person for the purposes of the enforcement of probation supervision,
- and shall draw up probation officer's opinions to determine any special rules of behaviour and to provide a sufficient basis for the decision of the court.[195]

In connection with the opinion of the probation officer, it is worth noting that it is a means of evidence in the criminal proceedings.[196] The court or the prosecution service may request the opinion of the

[185] Section 66(1) of the CC.
[186] Section 66(2) of the CC.
[187] The most important rules of conditional sentence with probation supervision are included in Sections 65-66 of the CC, while further rules on its enforcement are included in Section 308 of the Prison Act.
[188] Section 309 (2) of the Prison Act.
[189] Section 309 (7) of the Prison Act.
[190] Section 68 (1) of the CC.
[191] Section 68 (2) of the CC, and, respectively, Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[192] Section 68 (2) of the CC.
[193] Sections 310 (1) and (2) of the Prison Act.
[194] The individual probation officer's plan includes the grounds leading to the committing of the crime, the description of the circumstances imposing a risk to the defendant with regard to reoffending based on a risk analysis or risk evaluation, and the necessary steps for their elimination; the general rules on the drawing-up of the plan are included in Section 44 of Decree 8/2013. (VI. 29.) KIM on the Activities of the Probation Service.
[195] Points a), b), and d) of Section 310 (3) of the Prison Act. The general rules on the drawing-up of the probation officer's opinion are included in Sections 7-10 of Decree 8/2013. (VI. 29.) KIM on the Activities of the Probation Service, the rules on the drawing-up of the probation officer's opinion with regard to reparation work are included in Section 12 of that Decree.
[196] Point d) of Section 165 of the CCP.

probation officer before imposing penalties or measures.[197] The court's or the prosecutor's request for the probation officer's opinion gives a possibility for the probation officer to draw-up a *quasi* expert's opinion, within which (s)he presents and evaluates

- the personal aspects of the perpetrator's behaviour and his/her to the offence committed,
- the relationship between the findings on the relevant facts and circumstances and the commission of the criminal offence,
- the risks of reoffending,
- and the needs of the defendant.

The probation officer in his/her opinion makes or may make recommendations for ordering special behavioural rules regarding the defendant, or for interventions to mitigate the effects of the risks of reoffending.[198]

The police shall also contribute to the enforcement of probation supervision,[199] as law-enforcement bodies and the probation service – for the purposes of an efficient enforcement of probation supervision – shall cooperate with bodies and organisations providing care, assistance or services related to health care, social care, and youth protection.[200]

While under probation supervision the supervised person has to

- abide by the rules of behaviour prescribed by the final decision of the court;
- follow the orders of the probation officer or penitentiary probation officer and the police in relation to the observance and monitoring of the rules of behaviour,
- provide the requested information to them;
- and present himself/herself at the probation officer at regular intervals.[201]

At the same time, during the enforcement of probation supervision, the supervised person may ask for assistance or advice (for example, in relation to his/her employment, to his/her establishment, to securing his/her proper living and accommodation, to his/her participation in education, to the re-establishment of his/her family relationships).[202] If the supervised person violates the rules of behaviour while on parole, during the probationary period for the suspension of imprisonment, during the probationary period for conditional sentence with probation supervision, or when reparation work is also ordered, the probation officer or the penitentiary probation officer, respectively, shall draw up a proposal and send it to the prosecution service.[203] If, due to the violation of the rules of behaviour the probationary period may be subject to extension, the probation may be subject to termination, or a penalty may be imposed instead of reparation work. These shall be initiated by the prosecution service at the trial court of first instance of the case.[204]

## 2.6. Early release

### 2.6.1 Release on parole

***Release on parole*** makes it possible to reduce the term of imprisonment actually enforced. In its judgement, the court either excludes the possibility of release on parole or specifies the earliest date thereof in the sentence of imprisonment. Moreover, the final decision on release on parole shall be adopted by the pen. judge acting as a single judge; both the CC and the Prison Act contain provisions

[197] Point a) of Section 202 (1) of the CCP. Under Section 202(2) an act may provide that a probation officer's opinion should be mandatorily sought.
[198] https://igazsagugyiinformaciok.kormany.hu/partfogo-felugyeloi-szolgalat
[199] Section 310 (4) of the Prison Act.
[200] Section 311 of the Prison Act.
[201] Section 313 (1) of the Prison Act.
[202] Section 313 (2) of the Prison Act.
[203] Section 314 (1) of the Prison Act.
[204] Section 314 (3) of the Prison Act.

on release on parole. The Prison Act specifies the objective and subjective criteria of release on parole,[205] the rules of the procedure for release on parole,[206] the provisions on the procedure for the termination of parole,[207] and the rule of the exclusion of conditional reduction on procedural grounds.[208]

*2.6.1.1. The objective criteria of release on parole*

As regards to conditions of ***release on parole from fixed-term imprisonment***, the court delivering the relevant judgement shall first establish, on the basis of objective criteria, whether the release of the convict on parole is legally possible, and shall specify in its judgement the earliest date of release on parole, or shall establish that the possibility of release on parole is excluded.[209] As release on parole is only a possibility, the fulfilment and justification of respective criteria must always be evaluated in the individual case. One objective criterion of release on parole is that the convict serves the term specified in the judgement.[210] Accordingly, release on parole is possible if two-thirds of the sentence has been served for non-recidivist convicts, and three-quarters of the sentence for recidivists has been served, but at least three months, according to which the earliest date of their release on parole shall be specified.[211] However, if imprisonment for a period not exceeding five years is imposed, the court, in cases deserving special consideration, may order in its final decision that the convict may be released on parole after serving half of his sentence.[212] When assessing if cases deserves special consideration the trial court may take into account the former lifestyle of the convict and the findings of the proceedings (such as the deterioration of the defendant's health, his/her age, or other circumstances which are humanly acceptable) as possible grounds to award this possibility when sentencing. It must be emphasized that the final decision on release on parole – be it after serving one third, one fourth or half of the sentence – shall be adopted by the pen. judge on the initiative from the penitentiary institution.[213]

*2.6.1.2. The subjective criteria of release on parole*

The subjective criterion is set out in the Prison Act:[214] the objective of the punishment should be possible to be achieve without further imprisonment. The fulfilment of that subjective criterion shall be examined and assessed by the pen. judge on the during the hearing on release on parole. In the course of the assessment the pen. judge shall consider especially the following factors: the criminal offence committed by the convict; the term of the sentence and the remaining part of the sentence to be enforced; the behaviour of the convict during the enforcement of imprisonment; moreover, the reparation of the harm caused by the criminal offence and the ability to lead a law-abiding lifestyle.[215]

Granting release on parole, therefore, is not automatic, but must be decided upon by the pen. judge following an assessment of the objective and subjective criteria. For the purposes of the assessment, the pen. judge shall hear the convict, and – in case the time remaining until the possible date of release on parole is at least two months – may require that a probation officer's opinion be drawn up,[216] and,

[205] Section 188 (1) of the Prison Act.
[206] Sections 57-60 of the Prison Act.
[207] Section 61 of the Prison Act.
[208] Section 87 of the Prison Act.
[209] Section 38 (1) of the CC.
[210] Point a) of Section 188 (1) of the Prison Act.
[211] Section 38 (2) of the CC.
[212] Section 38 (3) of the CC. Under that provision, however, it shall not apply if the convict is a multiple recidivist.
[213] The detailed rules on the procedure for release on parole are included in Sections 57-60 of the Prison Act, and Section 117 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases.
[214] Point b) of Section 188 (1) of the Prison Act.
[215] Section 188 (1a) of the Prison Act.
[216] In cases defined under Section 58 (2a) of the Prison Act (for example, when somebody is released on parole from life imprisonment, and thus he/she must mandatorily be subjected to probationary supervision) the probation officer's opinion shall be obligatory.

thereafter, shall adopt a decision on release on parole.[217] If the pen. judge does not find that the application of release on parole justified, but nevertheless finds that it may be applied in the future, (s)he indicates a deadline for the penitentiary institution to submit a new initiative.[218] If release on parole is not granted, both the convict or his/her defence counsel and the penitentiary institution may introduce a repeated request for the release on parole. The latter is subject to the condition that at least six months elapsed from the date on which the order on refusal was adopted, and that there be a permanent and substantial change in the behaviour of the convict.[219, 220]

*2.6.1.3. Grounds for exclusion of release on parole*

As regards the grounds for exclusion of release on parole, the CC provides differentiated regulation: one the one hand, it sets out the groups of persons who may not be released on parole at all (mandatory grounds for exclusion)[221], and, on the other hand, in certain groups of cases it provides on the abstract possibility for the appreciation by the court to exclude the possibility to be released on parole (discretionary grounds for exclusion).[222] The latter includes, for example, a violent criminal offence against a person, punishable by imprisonment for eight or more years committed against a relative,[223, 224] or – under the new provisions of the CC in effect since 8 July 2021 – conviction for a criminal offence against the freedom of sexual life and sexual morality punishable by imprisonment for eight or more years committed against a person who has not attained the age of eighteen years.[225] Release on parole in case of committing those acts shall be, as a general rule, excluded. If, however, there are circumstances deserving special consideration (such as the circumstances of committing the act, the degree of danger imposed to society inherent in the person of the perpetrator, or other circumstances of the sentencing), the court shall have a margin of appreciation.[226] In addition, the Prison Act provides with regard to the grounds for exclusion that the possibility to be released on parole shall be excluded also in the case of the person who does not start serving the fixed-term imprisonment due to his/her own fault.[227] In such cases, the exclusion of the possibility to be released on parole shall be ordered by the pen. judge, who, however, does not have a real margin of appreciation concerning the issue.[228, 229]

With respect to release on parole, it is important to bear in mind that the convict is still subject to the effect of punishment during the period of parole as defined by the act. For fixed-term imprisonment,

[217] Section 57 (1) of the Prison Act.
[218] Section 60 (1) of the Prison Act.
[219] Section 60 (2) of the Prison Act.
[220] The detailed rules on the procedure for release on parole are included in Sections 57-60 of the Prison Act. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[221] The respective exhaustive list is included in Section 38(4) of the CC.
[222] Section 38 (5) of the CC.
[223] The definition of relative is included in Section 38 (7) of the CC.
[224] Point b) of Section 38 (5) of the CC. In connection with the relevant provision of the CC, we note that the Hungarian Helsinki Committee (HHC) strongly criticized its adoption – following a case from 2019, colloquially referred to as the "child-murder of Győr" (a man who had formerly committed a violent act against his wife killed his son aged 10 and his stepdaughter aged 13 while on parole)– and the tightening of the CC's rules on release on parole in that context, respectively (i.e. the enacting of Section 38(5) of the CC itself, which eventually became effective as of 5 November 2020). In that regard, the HHC emphasized that the victims of domestic violence, indeed, need effective protection, but the tightening of the rules of release on parole, the tightening of criminal provisions in general, and narrowing down the margin of appreciation of judges are not the appropriate means. The opinion and analysis of the HHC concerning the issue is available at (in Hungarian): https://helsinki.hu/a-hirtelen-felindulasbol-elkovetett-szigoritas-nem-segit-az-aldozatokon/, https://helsinki.hu/wp-content/uploads/Magyar_Helsinki_Bizottsag_eszrevetelek_felteteles_eloterjesztes_200127.pdf
[225] Point c) of Section 38 (5) of the CC.
[226] Section 38 (6) of the CC.
[227] Section 87 (1) of the Prison Act. Section 87 (2) provides that the convict shall be warned to these consequences in the summons to commence imprisonment, or, in case when postponement was authorised, in the corresponding decision. Section 55 of the Prison Act provides on further rules on the establishment of the exclusion of release on parole.
[228] Section 55 of the Prison Act.
[229] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.

the period of parole shall be equal to the remaining period of imprisonment, but at least one year.[230] However, it depends on the behaviour of the convict on parole, whether the court terminates the parole. Namely, in case the convict seriously violates the rules of probation supervision, the parole shall be terminated. The competent pen. judge shall decide on the termination of parole with respect to the behaviour of the convict during the enforcement of punishment.[231] As regards the provisions of the CC on the termination of parole, there are mandatory cases and cases depending on the appreciation of the court. The court shall terminate the parole if the convict is sentenced to imprisonment to be served during the period of parole, for a criminal offence committed after the conclusive decision became final and binding, or for a criminal offence committed during the period of parole.[232] The decision on the termination of parole is discretionary for the pen. judge if – with respect to the new criminal act committed –, the convict is sentenced to a penalty other than imprisonment to be served.[233] If the parole is terminated, the period spent on parole shall not be credited to the period of imprisonment, i.e. the convict shall serve the time period corresponding to the full duration of the parole.[234, 235]

If life imprisonment is imposed, the court shall specify the earliest date of release on parole. In certain cases, the court can decide to exclude,[236] in other cases, the court must[237] exclude the possibility of release on parole under the CC. In that regard, the CC lists the criminal offences for which the exclusion of the possibility of release on parole is subject to the court's discretion,[238] and those for which parole shall be excluded.[239] The exclusion of release on parole shall be obligatory for the court on the one hand if the convict sentenced to life imprisonment is a violent multiple recidivist, and, on the other hand, if (s)he committed the specified criminal offences in a criminal organisation.[240] A convict shall not be released on parole if (s)he is sentenced to life imprisonment once more.[241]

If the possibility of release on parole from life imprisonment is not excluded by the court, it shall specify in the judgement the earliest date of release on parole;[242] its earliest date shall be at least after twenty-five years. Accordingly, convicts sentenced to life imprisonment must serve at least twenty-five years in a penitentiary institution before the possibility to be released on parole opens for them. The latest date of release on parole shall not be more than forty years. The trial court of the case, therefore, shall specify in years the earliest date of release on parole within the range between twenty-five years and forty years.[243] We note that the court, when adopting the relevant decision, must take into account, among other things, the age of the perpetrator at the time of committing the criminal act. If life

[230] Section 39 (1) of the CC. Under Section 39 (2) of the CC, if the remaining period of imprisonment is less than one year and its enforcement has not been ordered, after the expiry of the period of parole, the sentence shall be deemed to be served as of the last day of the remaining period.

[231] Section 190 (1) of the Prison Act and Section 61 (1) of the Prison Act. The rules of the procedure before the pen. judge for the termination of parole are set out in Section 61 of the Prison Act and Sections 118-120 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases. The decision on the termination of parole shall be adopted by the pen. judge having territorial competence corresponding to the registered address or actual place of residence of the convict.

[232] Section 40 (1) of the CC.

[233] Section 40 (2) of the CC.

[234] Section 40 (3) of the CC.

[235]The most important rules on release on parole from fixed-term imprisonment are included in Section 38-40 of the CC. Moreover, as it is apparent from the above, relevant rules are also provided by the Prison Act, out of which the most important ones have been presented or indicated in the corresponding footnotes. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.

[236] Section 44 (1) of the CC.

[237] Section 44 (2) of the CC.

[238] Section 44 (1) of the CC.

[239] Section 44 (1) of the CC.

[240] Section 44 (2) of the CC.

[241] Section 45 (7) of the CC.

[242] Section 42 of the CC.

[243] Section 43 (1) of the CC.

imprisonment is imposed, the CC provides that the period of parole shall be at least fifteen years,[244] while its upper limit is not set. At the same time, the Prison Act sets forth two conditions with regard to the actual release on parole of convicts sentenced to life imprisonment (similar to fixed-term imprisonment). First, the earliest date of release on parole specified in the judgement of the court must be reached, second, the convict may be released on parole only if there is reasonable ground to believe that the objective of punishment can also be achieved without further imprisonment.[245] In the case of life imprisonment, too, the pen. judge shall decide on the release on parole.[246] In case the judge's decision is negative, the issue of release on parole shall be re-examined *ex officio* within two years at the latest, and annually in the case of further negative decisions.[247, 248]

It is equally true for the release on parole from life imprisonment that the behaviour of the convict during the enforcement of the penalty has special importance. A person shall be mandatorily subject to probation supervision if (s)he is released on parole from life imprisonment.[249] The parole – similarly to release on parole from fixed-term imprisonment – is to be terminated if the convict seriously violates the rules of behaviour of probation supervision. In such cases too, the pen. judge shall decide on the termination of parole with respect to the behaviour of the convict during the enforcement.[250,251]

### 2.6.2 Reintegration custody

*Reintegration custody* is essentially penitentiary house arrest. In the system of sanctions, it is situated between the full deprivation of liberty and personal liberty without restriction, during which the convict is allowed to leave the penitentiary institution and regains his/her personal liberty to a limited extent. The restricted nature of personal liberty consists in the restriction of the actual freedom of movement and of the right to freely choose one's place of residence.[252] Once it is ordered, the convict shall be allowed to leave the apartment and the enclosed area pertaining to it as designated by the pen. judge only for reasons specified in the decision on ordering – especially for the purposes of ensuring the usual necessities of everyday life, participation in employment, education or training, or for health treatment – at the times specified therein, and according to the specified destinations.[253] Reintegration custody may be secured by the use of electronic appliances for remote surveillance.[254,255] It is different from parole to the extent that in the case of the latter, the court waives the enforcement of a certain part of the penalty based on the behaviour of the convict during the enforcement of imprisonment, while during reintegration custody, the enforcement of penalty continues, but its form is more adapted to free life. The pen. judge shall be responsible for the ordering and termination of

[244] Section 43 (2) of the CC.
[245] Section 188 (1) of the Prison Act.
[246] In the regard, Sections 57-60 of the Prison Act equally apply *mutatis mutandis*, with respect to the special provisions on release on parole from life imprisonment.
[247] Section 57(8) of the Prison Act.
[248] Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[249] Section 69 (2) of the CC.
[250] Section 190 (1) of the Prison Act. Section 45 of the CC contains further rules on the termination of parole from life imprisonment (and, respectively, on the postponement of the earliest possible date of release on parole), but the regulation referred to is quite extensive and complex. In our view, its detailed description would go beyond the scope of this study.
[251] The most important rules on release on parole from life imprisonment are included in Sections 42-45 of the CC. Moreover, as it is apparent from the above, relevant rules are also provided by the Prison Act, out of which the most important ones have been presented or indicated in the corresponding footnotes. Commentary on Act C of 2012 on the Criminal Code, editor: Krisztina Karsai.
[252] Section 187/A (3) of the Prison Act.
[253] Section 187/A (4) of the Prison Act.
[254] Under point 6 of Section 3 of the Prison Act "electronic appliance for remote surveillance": technical device for tracking the movement of the convict or a person detained based on other grounds.
[255] Section 187/A (5) of the Prison Act.

reintegration custody, and for the procedures for the release on parole of convicts in reintegration custody.[256] Its duration shall be credited to the period of imprisonment.[257, 258]

Reintegration custody may be primarily applied to a person convicted for negligent commission of a criminal offence, if (s)he agrees to the restrictions of rights inherent in the custody. In case of persons convicted for intentional commission of a criminal offences, the Prison Act lays down further criteria on eligibility.[259] Its duration shall not be longer than one year, if the convict was sentenced to imprisonment due to committing a criminal offence negligently, while the reintegration custody of persons sentenced to imprisonment to be served for intentional commission of a criminal offence shall not be longer than ten months.[260]

The application of reintegration custody may be ordered by the pen. judge on the initiative of the penitentiary institution or on the request of the convict or his/her defence counsel, in the latter case, the penitentiary institution's evaluation and recommendation to support or to reject the request shall be obtained and taken into account.[261] For the due justification of the recommendation to support or to reject the request, the penitentiary institution shall request the penitentiary probation officer to draw up a risk and needs assessment whether it is possible to use electronic appliances for remote surveillance[262] in the apartment[263] indicated by the convict. Under the relevant provisions of the Prison Act, the placement of the convict in reintegration custody shall be excluded if the apartment in question is unsuitable to host electronic appliances for remote surveillance.[264] Unsuitability may equally refer to technical reasons, such as the lack of appropriate network coverage, or to more general obstacles to the use of the apartment, such as uncertainty of title to property.[265]

As already referred to above, reintegration custody for the convict – in addition to the partial re-establishment of personal liberty – is advantageous from the point of view that its duration shall be credited to the period of imprisonment, and the time spent in the penitentiary institution is reduced with that period. However, in exchange for the benefits so granted, the legislator sets out complex behavioural requirements with regard to the convict, such as

- conduct in line with the general expectations of society, i.e. the convict should abstain from committing any further criminal offence or petty offence;
- conduct in line with the rules of behaviour prescribed by the pen. judge ordering reintegration custody;
- observance of the rules of use of electronic appliances for remote surveillance;
- the convict should promote his/her own reintegration proactively;

[256] Section 61/A-61/D of the Prison Act.
[257] Section 187/A (6) of the Prison Act.
[258] Commentary to Act No. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Confinement for Petty Offences, editor: Zsuzsanna Juhász.
[259] Section 187/A (1) of the Prison Act. The grounds for exclusion of the applicability of reintegration custody, equally applicable to convicts of intentional and negligent criminal offences are included in Section 187/C of the Prison Act.
[260] Section 187/A (1a) of the Prison Act.
[261] Sections 61/A (1) and (2) of the Prison Act. Further rules on measures related to the ordering of reintegration custody are included in Sections 136/A-136/B of Decree 16/2014 (XII. 19.) IM on the detailed rules on the execution of imprisonment, detention, pre-trial detention, and detention as a substitute for monetary fines.
[262] Under Section 4 of Decree 10/2015. (III. 30.) BM on the detailed rules of the installation and operation of systems ensuring the functioning of electronic appliances for remote surveillance, the use of electronic appliances for remote surveillance, and the related responsibilities of the prison service and the police authority, for the use of electronic appliances for remote surveillance it shall be required that the real estate designated for the enforcement of the reintegration custody is equipped with electric network, continuous power supply, network coverage and signal strength necessary for the communication of data with electronic appliances for remote surveillance.
[263] Under Section 187/B (4) of the Prison Act, if the apartment to be designated for the enforcement of reintegration custody is not owned or leased exclusively by the convict, a preliminary written statement of reception permitting the presence of the convict by the owner or lessee shall be required.
[264] Point e) of Section 187/C (1) of the Prison Act.
[265] Commentary to Act No. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Confinement for Petty Offences, editor: Zsuzsanna Juhász.

- observance of the general rules of reintegration custody.

The penitentiary probation officer having jurisdiction based on the location of the designated real estate shall supervise the fulfilment of all those requirements.[266] The Prison Act describes cases of termination of the previously authorised reintegration custody. These include mostly grounds imputable to the convict such as when a new imprisonment to be served by the convict is imposed, or if the convict violates the rules of behaviour or the rules of use of electronic appliances for remote surveillance which (s)he undertook, or if (s)he damages or renders the electronic appliances for remote surveillance unusable. Nevertheless, the Act provides also on cases not imputable to the convict, such as when the real estate becomes unsuitable for the purposes of enforcing reintegration custody and the convict cannot register any other apartment, which may be designated as the location of reintegration custody.[267] Termination shall be decided upon immediately by the pen. judge competent who ordered the reintegration custody on the initiative of the penitentiary institution[268] with respect to the fact that, as a consequence, the convict must serve the remaining term of imprisonment in the penitentiary institution.[269]

### 2.6.3. Penitentiary probation officers' responsibilities during early release

The penitentiary probation officer shall monitor the enforcement of release on parole and reintegration custody. While under penitentiary probation supervision the supervised person is obliged to

- abide by the rules of behaviour prescribed by the decision of the court;
- to follow the penitentiary probation officer's orders relating to the observance and monitoring of the rules of behaviour,
- to provide the requested information to him/her;
- and to present himself/herself at the probation officer at regular intervals.[270]

At the same time, during the enforcement of probation supervision, the supervised person may ask for assistance or advice (for example, the observance of the rules of behaviour that shall be supervised by the probation officer or the penitentiary probation officer).[271] If the supervised person violates the rules of behaviour while on parole, the penitentiary probation officer shall draw up a proposal and send it to the prosecution service.[272] If, due to the violation of the rules of behaviour, parole may be subject to termination, or the enforcement of imprisonment may be ordered, these shall be initiated by the prosecution service before the pen. judge.[273]

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[266] Section 187/D of the Prison Act.

[267] The exhaustive list of the cases of termination of reintegration custody are included in Section 187/E (1) of the Prison Act.

[268] Section 61/C (1) of the Prison Act.

[269] Commentary to Act No. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Confinement for Petty Offences, editor: Zsuzsanna Juhász. The basic rules on reintegration custody are included in Sections 187/A – 187/E of the Prison Act; the special rules of the procedure by the penitentiary judge concerning the ordering and termination of reintegration custody, and the release on parole of convicts in reintegration custody are included in Sections 61/A – 61/D of the Prison Act; and further relevant rules are set out in Sections 136/A – 136/F of Decree 16/2014 (XII. 19.) IM on the detailed rules on the execution of imprisonment, detention, pre-trial detention, and detention as a substitute for monetary fines. Furthermore, Sections 115-116 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases provide on further rules concerning the ordering, modification and termination of reintegration custody. In addition, further relevant rules are set out in Sections 4-5 of Decree 10/2015. (III. 30.) BM on the detailed rules of the installation and operation of systems ensuring the functioning of electronic appliances for remote surveillance, the use of electronic appliances for remote surveillance, and the related responsibilities of the prison service and the police authority.

[270] Section 313 (1) of the Prison Act.

[271] Section 313 (4) of the Prison Act.

[272] Section 314 (1) of the Prison Act.

[273] Section 314 (3) of the Prison Act.

## 2.7. Alternative sanctions from the perspective of vulnerable groups and minorities

We would like to point out the following in relation to the use of alternative sanctions regarding social groups that are vulnerable and – compared to mainstream society – form a minority based on certain characteristics (e.g. belonging to a certain minority, health condition, disability, financial situation, non-Hungarian citizenship, belonging to the LGBTQI community).

In the system of sanctions under Hungarian criminal law, there are no alternative sanctions available specifically designed for groups with one of the above properties. As well as special provisions are missing that would regulate the use of alternative sanctions taking into account the needs or characteristics of such groups, allow the imposition of a more lenient punishment, or, if appropriate, allow for an earlier release from the imprisonment imposed with special regard to their characteristics.

While Hungarian law of criminal procedure takes vulnerability into account in certain cases (e.g. by introducing the concept of persons with special needs),[274] it is irrelevant from the point of view of sentencing under the relevant legal framework. In that regard, however, it is important to recall that Opinion 56/2007. BK referred to earlier mentions certain characteristics which may be regarded as vulnerabilities among the personal sentencing factors that may be mitigating circumstances, such as old age, the low level of literacy or the lack of education of the perpetrator, the limited nature of his/her mental competency, illness, an important level of disability, or financial difficulties of the perpetrator not imputable to him/her. The CC acknowledges “cases deserving special consideration”, in which case the imposition of the given sentence may be dispensed with. Moreover, it seems appropriate to recall the provision already mentioned briefly according to which if imprisonment for a period not exceeding five years is imposed, the court, in cases deserving special consideration, may order that the convict may be released on parole after serving half of his/her sentence. When assessing whether the case deserves special consideration, the court examines, among other things, the very same factors revealed in the course of the criminal proceedings and listed in Opinion 56/2007. BK, such as the health deterioration of the defendant, his/her age or other personal circumstances, which may be considered. These may serve as grounds for granting that option when sentencing or, if appropriate, to dispense with the imposition of penalty.

Although the present research focuses on adult defendants, in the context of vulnerable groups it seems appropriate to discuss briefly the most important elements of sentencing and alternative sanctions concerning juveniles.[275] There is a clear division between juvenile and young adult perpetrators, which is marked by date of birth. However, those two groups have essentially the same characteristics, and adult perpetrators having reached the age of 18 years can also be classified as vulnerable perpetrators. Under the relevant legal provisions, the general rules of the CC shall apply to young adults who have already reached the age of 18 years. Judges do take into account young adulthood and their personal circumstances concerning the use of alternative penalties in practice. For understanding the situation of young adult perpetrators, the knowledge of the regulations on juveniles is an important point of reference. Under the CC,[276] the primary objective of a penalty imposed on or a measure applied to a juvenile shall be to assist the juvenile concerned to develop in the desirable direction and become a useful member of society; for this reason, the education and protection of the juvenile concerned shall be taken into account when deciding on the measure or penalty.

To juveniles, measures shall be applied primarily. Those who have not attained the age of fourteen years when committing the criminal offence shall only be subject to measures. A penalty shall be imposed on a juvenile if the court is of the view that the application of a measure would not achieve its objective. A juvenile shall only be subject to a custodial measure or custodial penalty if the objective of the measure or penalty cannot be achieved by other means. Special education in a reformatory is a

[274] Sections 96 of the CCP.
[275] Under Section 105 (1) of the CC those who have attained the age of twelve years but have not attained the age of eighteen years when committing the criminal offence shall qualify as juveniles.
[276] Section 106 of the CC.

measure applied specially to juveniles.[277] Imprisonment, confinement or community service shall not be imposed concurrently with special education in a reformatory.[278]

The maximum lengths of imprisonment or confinement imposed on a juvenile are different from those imposed on adults, and the rules on the exclusion of release on parole and on the security levels of penal institutions for the enforcement of sentences of imprisonment are also different from the general rules of the CC.[279] Community service as penalty may only be imposed on a juvenile and a juvenile may only be subject to the measure of reparation work if (s)he has attained the age of sixteen years when the respective decision is passed.[280] Fine may only be imposed on a juvenile if he has his own earnings, income, or adequate assets.[281] A juvenile may be released on probation in relation to any criminal offence. The probationary period shall not be shorter than one year or longer than two years.[282]

The application of probation supervision as a type of measure to juvenile perpetrators shall be mandatory during the period of parole, conditional sentence with probation supervision, probationary period of a sentence of suspended imprisonment, temporary release from a reformatory, and conditional suspension by a prosecutor.[283]

The case with community service seems to be that it shall not be linked with probation supervision as additional measure in case of adult perpetrators either (see Section 69 of the CC). Therefore, simply the general provisions of the Prison Act [Section 280(2)] apply to juveniles too, according to which the probation service shall ensure the enforcement of community service.

# 3. The use of non-custodial sanctions in practice

## 3.1. Research methods

### 3.1.1. Analysis of public data and interviews

In addition to the review and analysis of the relevant Hungarian law we have submitted Freedom of Information (FOI) requests for public data related to the legal institutions examined to the Ministry of Justice (hereinafter: MoJ) and the central administrative organ of the judiciary, the National Office for the Judiciary (hereinafter: NOJ) to get information about the relevant jurisprudence. The MoJ partially fulfilled our request, while the NOJ refused completely to provide any data.[284] Thus, in the hope of receiving regional data, we requested data from nine out of the twenty tribunals, proceeding as courts of second instance, and, for cases of major gravity, as courts of first instance.

[277] Section 108 (1) of the CC.

[278] The detailed rules on special education in a reformatory are included in Sections 120-122 of the CC. The rules on temporary release from special education in a reformatory– similar to release on parole – are included in Section 122.

[279] Sections 109-111 of the CC.

[280] Section 112 of the CC; Section 117 of the CC.

[281] Section 113 (1) of the CC. If a fine imposed on a juvenile is not collectible, it shall be converted to community service (if the juvenile has attained the age of sixteen years) or to confinement. In that context, it is important to note that in case the juvenile has not attained the age of sixteen years of age, the principle of gradual punishment is not observed. Uncollectible fine shall not be converted to community service, only to confinement.

[282] Section 116 (1) of the CC.

[283] Section 119 (1) of the CC.

[284] Governing forces exploit their constitutional majority since 2010 in a way that they exercise powerful control over or terminate legal institutions which are to guarantee the checks-and-balances system in a democratic society under the rule of law. Systemic problems related to that tendency, which have intensified in recent years, also endanger the independence of the Hungarian justice system. European Union and Council of Europe institutions have criticism in that regard on several occasions. The excessive power of the President of the National Office for the Judiciary is apparent from the rejection of our research requests concerning the work of courts and the regular refusals to supply data with regard to our requests for data of public interest. That situation is aggravated by the state of danger caused by the coronavirus pandemic that gave authorisation for the institutional system of the judiciary to become more closed and less transparent.

Until the conclusion of the research, we received data from four tribunals. As part of the statistical analysis, we processed official statistical data from 2013 until 2019 on convicts of criminal proceedings concluded with final and binding effect.[285] We examined data present in decisions with final and binding effect, which describe tendencies in sentencing and in the use of alternative sanctions, and data related to the socio-demographic characteristics of convicts.

In addition to statistical data analysis, we carried out semi-structured interviews with the criminal justice stakeholders (attorneys, probation officers, correctional probation officers, judges), including former detainees.

| **Number of interviewees per stakeholder groups** | |
|---|---|
| attorneys | 6 |
| probation officer | 3 |
| judge | 2 |
| correctional probation officer | 1 |
| persons concerned – former detainees | 3 |
| other expert | 1 |
| **Total** | **15** |

The information has been supplemented by an anonymous questionnaire sent to attorneys registered at the Hungarian Bar Association and judges, within the framework of which seven attorneys responded to our questions. Thanks to probation officers and defence counsels, the data collection has a wide regional coverage.

## 3.2. The use of non-custodial sanctions in practice

We examined publicly available statistical data present in decisions with final and binding effect, which describe tendencies in sentencing and in the use of alternative sanctions, and data related to the socio-demographic characteristics of defendants.

**The number of criminal proceedings concluded with final and binding effect per year**

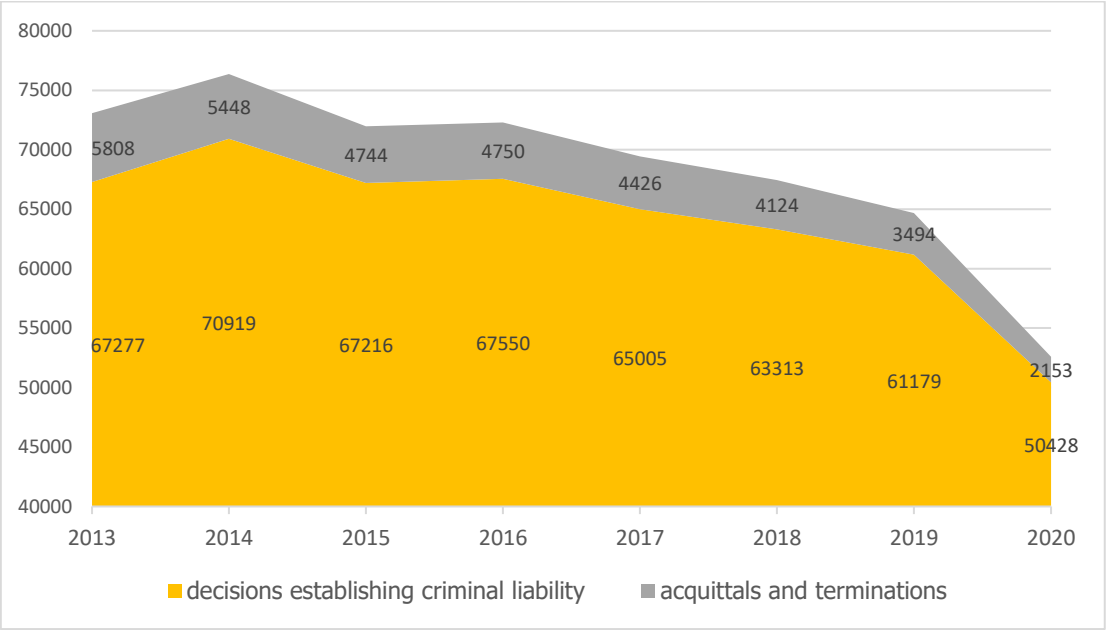
| | |
|---|---|
| 2013 | 73 085 |
| 2014 | 76 367 |
| 2015 | 71 960 |
| 2016 | 72 300 |
| 2017 | 69 431 |
| 2018 | 64 437 |
| 2019 | 64 680 |
| 2020 | 52 581 |

As it is apparent from the table, there is a clear decreasing tendency in the number of criminal proceedings concluded with final and binding effect since 2016, just like there is a continuous decrease in the number of registered criminal offences since 2013 until the present day. However, last year affected by the COVID-19 pandemic, shows a decrease, which is much more significant than in previous years: having compared these data to other segments of the research, we are of the view that that significant decrease is at least partially due to the coronavirus pandemic. The number of decisions

[285] The National Office for the Judiciary (NOJ) publishes its specialized statistical data entitled "Statistical data on accused persons of criminal proceedings concluded with final and binding effect" recorded within the framework of the National Program for the Collection of Statistical Data on its website annually. Available at: https://birosag.hu/jogerosen-befejezett-buntetoeljarasok-vadlottainak-statisztikai-adatai/revizio-utan. Since data from 2020 were published at the end of our statistical analysis, that year could not be included in the analysis.

establishing criminal liability also decreased just like the number of concluded cases, but their proportion grew in relation to the joint category of acquittals/termination of proceedings.

**Number of decisions establishing criminal liability, acquittals and terminations**




By looking at the proportion of alternative sanctions in relation to all imposed penalties, court statistics reveal the tendency that the proportion of alternative sanctions has grown slowly, but clearly within all decisions establishing criminal liability, the proportion of suspended imprisonment has decreased and the proportion of imprisonment has stagnated.

**Imposing sanctions within all decisions establishing criminal liability**

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total of the seven years examined |
|---|---|---|---|---|---|---|---|---|
| **penalties other than imprisonment** | 40906 | 44781 | 42846 | 44534 | 42353 | 41993 | 41175 | 298588 |
| | 62% | 64% | 65% | 67% | 67% | 68% | 69% | 66% |
| **suspended imprisonment** | 16425 | 16057 | 14523 | 13578 | 13405 | 12366 | 11621 | 97975 |
| | 25% | 23% | 22% | 21% | 21% | 20% | 19% | 22% |
| **imprisonment to serve** | 8371 | 8632 | 8437 | 7910 | 7658 | 7343 | 7027 | 55378 |
| | 13% | 12% | 13% | 12% | 12% | 12% | 12% | 12% |
| **TOTAL** | **65702** | **69470** | **65806** | **66022** | **63416** | **61702** | **59823** | **451941** |

In case of criminal offences punishable by not more than three years of imprisonment – which are the most relevant from the perspective of alternative sanctions –, we can similarly see a slow increase with regard to alternative sanctions within all imposed penalties. While non-custodial penalties accounted for 77% of all decisions establishing criminal liability in 2016, their proportion was 80% in 2019. A decrease can be perceived in the proportion of suspended imprisonment between the years examined, and a stagnation in case of imprisonment to serve, in favour of other types of penalty.

**Imposing sanctions for criminal offences punishable by not more than three years of imprisonment in decisions establishing criminal liability**

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total of the seven years examined |
|---|---|---|---|---|---|---|---|---|
| **penalties other than imprisonment** | 40906 | 44781 | 42846 | 44534 | 42353 | 41993 | 41175 | 298588 |
| | 73% | 74% | 75% | 77% | 77% | 79% | 80% | 76% |
| **suspended imprisonment** | 10260 | 10668 | 9219 | 8556 | 8345 | 7372 | 6824 | 61244 |
| | 18% | 18% | 16% | 15% | 15% | 14% | 13% | 16% |
| **imprisonment to serve** | 4680 | 5045 | 4896 | 4385 | 4137 | 3903 | 3621 | 30667 |
| | 8% | 8% | 9% | 8% | 8% | 7% | 7% | 8% |
| **TOTAL** | **55846** | **60494** | **56961** | **57475** | **54835** | **53268** | **51620** | **390499** |

### 3.2.1. The use of suspended imprisonment

According to the experience of defence counsels, the use of suspended imprisonment is typical in the case of first-time offenders, and within the penalty range of imprisonment for one to five years. In this group of cases, it is typical that already the motions of the prosecution request suspended imprisonment. For criminal offences punishable within the penalty range of imprisonment for two to eight years, the prosecution typically submits a motion for imprisonment, and that is when the motion of the defence gains more importance. For criminal offences punishable within the penalty range of imprisonment for five to ten years, motions of the defence for alternative penalties are deemed unnecessary, as there is no realistic prospect for suspended sentence. According to the experience of the interviewed defence counsels, – although there is no uniform jurisprudence – courts grant approximately fifty percent of their motions for suspended imprisonment.

Both the prosecution and the court take due account of the principle of gradual approach. In the opinion of most of the interviewed defence counsels, suspended imprisonment can be more effective on the long-term than imprisonment to serve, because, in case of criminal offences of lesser gravity, the time served in prison and the harms of prison can cause greater damage than the preventive power it has with respect to the perpetrator. In case of criminal offences of lesser gravity, suspended imprisonment is considered more efficient from the point of view of the objective of punishment. According to the experience of defence counsels, the personal circumstances of the perpetrator (his/her financial situation, family status) are most relevant when the court imposes suspended imprisonment instead of imprisonment to serve. In addition, the relationship of the perpetrator to the criminal offence is also relevant. If the perpetrator confesses to the commission of the criminal offence and demonstrates repentance, or perhaps has taken steps to mitigate the harm caused by the committed act that carries a very significant weight in the court's assessment.

In the view of certain defence counsels, the scope of application of suspended imprisonment could be broadened, while differentiation and the review of the duration of the suspended imprisonment after a given period should also be considered.

### 3.2.2. The use of alternative penalties

Comparing with the slightly decreasing and then stagnating use of imprisonment, we have examined the prevalence of its alternative penalties, and of secondary penalties and measures applied independently in decisions establishing criminal liability concluded with final and binding effect. It can be observed that the total number of imposed sanctions has not decreased at the pace of the total number of criminal cases concluded with final and binding effect, which may suggest the possible conclusion that courts tend to impose several sanctions side by side more frequently. However, the CC which entered into force in July 2013 might have an impact on the slight decrease in the number of

sanctions. Judgements imposed under the new CC may have an impact on sentence statistics mostly from 2015.

**Number of imposed sanctions within all decisions establishing criminal liability**

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total of the seven years examined |
|---|---|---|---|---|---|---|---|---|
| imprisonment to serve | 8371 | 8632 | 8437 | 7910 | 7658 | 7343 | 7027 | **55378** |
| suspended imprisonment | 16425 | 16057 | 14523 | 13578 | 13405 | 12366 | 11621 | **97975** |
| confinement | 42 | 447 | 983 | 1382 | 1833 | 2044 | 2075 | **8806** |
| community service | 12700 | 12629 | 11138 | 10739 | 9886 | 9038 | 8627 | **74757** |
| fine | 15665 | 19664 | 20075 | 21529 | 22790 | 24328 | 24696 | **148747** |
| disqualification from a profession | 144 | 221 | 336 | 364 | 433 | 508 | 566 | **2572** |
| disqualification from driving a vehicle | 6744 | 11278 | 12093 | 13995 | 15000 | 15638 | 15150 | **89898** |
| ban on entering certain areas | 4 | 39 | 23 | 41 | 34 | 24 | 27 | **192** |
| ban on visiting sports events | 1 | 17 | 26 | 37 | 15 | 18 | 20 | **134** |
| expulsion | 324 | 503 | 1160 | 2566 | 456 | 434 | 441 | **5884** |
| independently applied ancillary measure | 13922 | 13471 | 11701 | 10847 | 10020 | 8984 | 8287 | **77232** |
| **TOTAL** | **74342** | **82958** | **80495** | **82988** | **81530** | **80725** | **78537** | **561575** |

**The ratio of imposed sanctions within all decisions establishing criminal liability (%)**

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total of the seven years examined |
|---|---|---|---|---|---|---|---|---|
| imprisonment to serve | 11% | 10% | 10% | 10% | 9% | 9% | 9% | **10%** |
| suspended imprisonment | 22% | 19% | 18% | 16% | 16% | 15% | 15% | **17%** |
| confinement | 0% | 1% | 1% | 2% | 2% | 3% | 3% | **2%** |
| community service | 17% | 15% | 14% | 13% | 12% | 11% | 11% | **13%** |
| fine | 21% | 24% | 25% | 26% | 28% | 30% | 31% | **26%** |
| disqualification from a profession | 0% | 0% | 0% | 0% | 1% | 1% | 1% | **0%** |
| disqualification from driving a vehicle | 9% | 14% | 15% | 17% | 18% | 19% | 19% | **16%** |
| ban on entering certain areas | 0% | 0% | 0% | 0% | 0% | 0% | 0% | **0%** |
| ban on visiting sports events | 0% | 0% | 0% | 0% | 0% | 0% | 0% | **0%** |
| expulsion | 0% | 1% | 1% | 3% | 1% | 1% | 1% | **1%** |
| independently applied ancillary measure | 19% | 16% | 15% | 13% | 12% | 11% | 11% | **14%** |
| **TOTAL** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** |

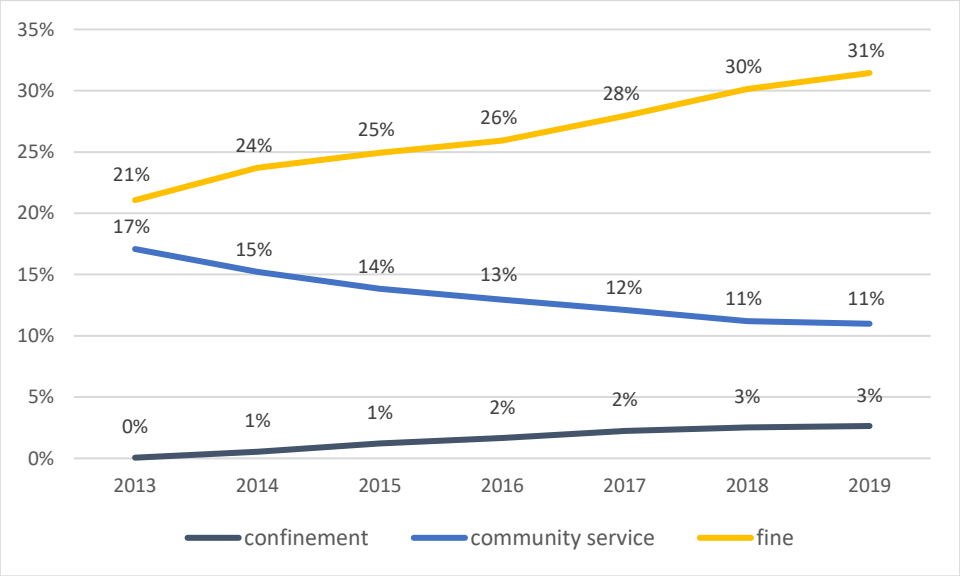
Among all decisions establishing criminal liability the most frequently imposed penalties, apart from imprisonment, are fine (2019: 31%), disqualification from driving a vehicle (2019: 19%), community service (2019: 11%), and ancillary penalties and measures applied independently (2019: 11%). The frequency of imposing disqualification from driving a vehicle shows a clear increase between 2013 (9%) and 2019 (19%), just like fine. The ratio of imposing community service and secondary penalties and measures applied independently in relation to the total of sanctions, however, has clearly decreased.

Compared to other types of sanctions, the numbers of disqualifications from a profession, bans on entering certain areas, and bans on visiting sports events are insignificant. Expulsions are not common either: there are elevated figures in 2015 and 2016, which probably reflect the impact of the migrant crisis. It is worth mentioning that the frequency of imposing the sanction of confinement, introduced by the CC, and which can also be considered uncommon in overall terms, has shown continuous increase: it was imposed only 42 times in 2013, but already on 2075 occasions in 2019.

In terms of multiplicity, the most significant types of penalty are, apart from imprisonment, fine (2019: 31%), disqualification from driving a vehicle (2019: 19%), community service (2019: 11%), and ancillary penalties and measures applied independently (2019: 11%). The frequency of imposing disqualification from driving a vehicle showed a clear increase between 2013 (9%) and 2019 (19%), just like fine. The ratio of community service and secondary penalties and measures applied independently in relation to the total of sanctions, however, clearly decreased.

It is apparent that the ratio of fine and confinement is in growth, but that of community service is significantly decreasing in the examined period, as illustrated in the table below.

**The frequency of imposing fine, community service, and confinement within all decisions establishing criminal liability with final and binding effect**




A slow but clear change in sentencing practice in favour of non-custodial sanctions is also detectable based on the experience of interviewed judges. In their view, the range of alternative penalties is too narrow, just like the penalty range and the range of criminal offences where those can be used. They highlight the lack of uniform jurisprudence and significant differences between individual courts in sentencing concerning criminal offences of the same gravity. Due to the margin of subjective appreciation of judges, their individual attitudes, that cover a very wide spectrum, play a key role. In the opinion of one of the judges, certain judges do not consider the long-term effects or the objectives of punishment. In the judge's view, although that has changed a lot, it is still not uncommon among judges to have an approach to deliver as strict sentences as possible, as the primary objective is the timely conclusion of the criminal proceedings and that the judgement become final and binding. It is a

priority therefore to deliver a judgement that is equally acceptable for the accused and the defence, and for the prosecution:

> *"There is sort of a balancing activity. One must deliver a judgement that is both acceptable for the accused and which is admissible for the prosecution. In such circumstances, the personal situation of the perpetrator is of secondary importance. The judge has no capacity for individual assessment, nor for the customisation of judgments. One rarely finds judges who really wish to know who the person who committed the crime is, and under what circumstances." (judge 1)*

Defence counsels also confirm the view that judicial sentencing is dependent upon the motions of prosecutors: the prosecution is even less open for alternative penalties than the court. It happens very rarely and only in the case of "petty" offences that the prosecution applies for an alternative penalty (e.g. "*if some-one stole a bicycle once at the age of 19").* The prosecution typically files an appeal against judicial judgements imposing alternative sanctions independently. According to the interviewed defence counsels and two judges, it is unlikely that a judge would use a sanction against which the prosecution will surely file an appeal. Therefore, cases are rarely concluded with a final and binding decision at first instance if the judge imposes alternative sanctions in the judgement.

Although in the opinion of judges the principle of gradual application is applied when sentencing, it is the joint opinion of defence counsels and judges that judges apply alternative penalties in a much narrower scope than it would be possible under the relevant legal provisions, and they do not make use of the full range of alternative penalties. In the view of the judges, those are applied mostly in case of petty offences. The introduction of the provision on the median value in the act (see Chapter 2.1.) also narrows down the margin of manoeuvre of judges with regard to the use of alternative penalties.

Experience of defence counsels and of judges alike coincide with the above statistical data: fine is the most often used alternative penalty. Negligent traffic-related criminal offences are the type of criminal offences where fine is imposed most often. Fine, however, is regularly criticized by courts because the amount of penalty can be paid by practically anyone, so in many cases it does not actually strike the perpetrator, but his/her family.[286]

Other alternative penalties – although defence counsels regularly request their use from the court in their motions – are rarely imposed in the experience of judges and defence counsels alike. In the view of defence counsels, judicial practice is too much focused on imprisonment and is getting more and more rigorous.

The experience of defence counsels supports the tendency revealed by the above statistics that the combined imposition of penalties is more and more frequent with respect to the very limited scope of criminal offences where alternative penalties are imposed: confinement, community service and fine are imposed concurrently, and fine is often imposed in addition to imprisonment. It is possible that the significant proportion of the imposition of fine is also due to the fact that certain types of criminal offences shall be mandatorily punishable by fine either independently or concurrently with another penalty.

With respect to specific criteria relevant for the imposition of alternative penalties, defence counsels are of the view that the type of the criminal offence is the most significant: alternative sanctions are used in the case of criminal offences of very minor material gravity and social consequences, mostly petty offences (insult, public deed forgery of minor gravity, criminal offences against property committed for an insignificant value, bodily harm of minor gravity, criminal offences against public order or public safety of minor gravity, traffic-related criminal offences of minor gravity).

[286] Further rules on fine and the most important rules on its enforcement are included in Sections 50-51 of the CC, Sections 50–56 and 126-127 of Decree 9/2018. (VI. 11.) IM on the responsibilities of courts and other bodies in case of detained persons with respect to the conducting of the criminal procedure and the enforcement of decisions in criminal cases, and Sections 292-293/A of the Prison Act.

The personal circumstances – including vulnerability – were mentioned by defence counsels at second place among specific criteria relevant for sentencing. In the experience of judges and defence counsels alike, alternative sanctions are more likely to be imposed in case of first-time, juvenile or young adult perpetrators.

> *"They often expect the defence to give for reasons in their argumentation to allow the imposition of an equitable sentence. Health condition is also taken into account. Alternative sanctions are imposed with a greater chance in case of juvenile, young adult and very old defendants, or defendants with health problems." (defence counsel 2)*

In the opinion of certain defence counsels, unless it is obvious to expect the perpetrator to pay the fine with regard to his/her financial situation, it will not be imposed. In the opinion of others, personal circumstances have no relevance at all when imposing fine, and they experience an intensifying negative tendency in judicial practice in that regard.

Also, the defence rather requests suspended imprisonment which is more severe within the range of penalties than fine in the case of a defendant who has a very difficult financial situation and for whom chances are low to be able to pay any amount of fine. However, that raises the problem that the range of alternative penalties is not broad enough and its use is socially discriminative.

A case was mentioned when a juvenile committed smaller shopliftings. Although the motion of the defence proposed the imposition of community work carried out at a location linked to the scene of the crime, and which could have been socially beneficial and could have raised awareness, the judge sentenced the juvenile to suspended imprisonment.
As reported by judges, under the current regulation, if the accused acknowledges his/her culpability, it shall not be necessary to provide reasoning with regard to the establishment of criminal liability, only concerning the sentence[287], which results in a significant decrease of the workload of judges. In principle, that could give an opportunity to spend more time with assessing personal circumstances in the course of the proceedings. However, according to the experience of one of the interviewed judges, that is rarely the case in practice.

According to the experience of certain probation officers, with regard to the proportion of sanctions, there are very few requests from judges for the drawing up of probation officers' opinions or needs and risk assessments supporting the assessment of personal circumstances. That also confirms the impression that judges have a limited capacity for individualisation and to take personal circumstances into account when sentencing, even if they impose alternative sanctions. According to probation officers, many "mistakes" and obstacles slowing down the procedure could be avoided with the help of probation officers' opinions. For example, one of the judges delivered a judgment imposing a sentence of community service and it turned out only later at the job suitability assessment that the convict cannot be employed.

> *"Unfortunately, personal circumstances are not considered when sentencing; there are, for example, notorious community service convicts, who never in their lives served the penalty, but always served the sentence in prison. As if the court had no other means than imposing community service. For the homeless in winter time it even comes in handy to be able to have roof above their heads." (probation officer 2)*

> *"The court does not use probation officer's opinions as tools to assess the health condition, social or family background of the convict. I don't understand why they do not make use of it, sentencing would be more customised – and the difficulties caused by the lack of it are passed on to probation officers. It is us who need to struggle, for instance, that the convict works off the penalty." (probation officer 2)*

[287] That information is supported by the Kúria: "The principles and practice of drafting first instance conclusive decisions in criminal cases" Annex 6, p. 38.

It is apparent from publicly available data of the NOJ[288], that in a large number of community service and fine cases – relatively stagnating since 2017 – procedures were initiated to convert these to imprisonment (if the convict fails to pay the fine, or does not perform the imposed community service, the respective penalty shall be converted to imprisonment. See 2.5.1 for details.). If we compare the number of cases initiated to convert these sanctions to imprisonment with the number of sentences imposing community service and fine between 2017 and 2019, we see that a relatively high number of such cases are brought back to court due to non-compliance. This does not, of course, imply that all cases that are initiated will result in a conversion of the sanction, but it does indicate that in a relatively high proportion of the cases, the minimum criteria to comply with these sanctions are not being met. That confirms the impression of defence counsels and probation officers, according to which community service and financial penalties imposed are often not adapted to the personal circumstances and situation of the offenders, but are "routinely" imposed sanctions. One of the probation officers reported that in his/her county, eventually one third of all community service sentences are converted to confinement.

**Number of community service sentences imposed and the number of procedures initiated for the conversion of community service sentences to imprisonment in a given year**

| Year | Number of community service sentences imposed | Number of initiated procedures for converting community service to imprisonment |
|---|---|---|
| 2017 | 9 886 | 5 327 |
| 2018 | 9 038 | 5 053 |
| 2019 | 8 627 | 5 151 |

**Number of fine sentences imposed and the number of procedures initiated for the conversion of community service sentences to imprisonment in a given year**

| Year | Number of fine sentences imposed | Number of initiated procedures for converting fine sentences to imprisonment |
|---|---|---|
| 2017 | 22 790 | 8 057 |
| 2018 | 24 328 | 8 658 |
| 2019 | 24 696 | 6 652 |

According to the experience of defence counsels, disqualification from driving a vehicle is the most frequently applied alternative penalty after fine among alternative sanctions, especially in case of traffic-related criminal offences of minor gravity. The application of community service is insignificant. However, in their opinion, the penalty of community service is the most appropriate sanction with respect to the objective of alternative penalties as also declared in the Act as the prevention of re-offending and the promotion of social inclusion. In the view of defence counsels, the penalty of community service is dissuasive. In many cases, they see that perpetrators perceive community service as a penalty that is more severe than even a short-term confinement, suspended imprisonment or fine. A reason for that may be that community service has negative connotations in the public perception. Community service is visible and cannot be “hidden” from the local community. The transparency of the sanction and the stigmatization by public opinion may also contribute to the principles of general prevention, especially in small settlements.

[288] The National Office for the Judiciary (NOJ) publishes its Statistical yearbook on its website annually. Inter alia it provides statistical data on the workload with reference to cases referred to the competence of penitentiary judges. Available at: Statisztikai évkönyvek | Magyarország Bíróságai (birosag.hu)

Community service in public perception is associated with labour service, or communal work that have a demeaning social image. [289] That intensifies its dissuasiveness. In addition, the primary target group of community service consists of indigent convicts in a disadvantaged situation. At the same time, the fact that local municipalities employ communal workers and have the necessary countrywide infrastructure, and organisational and administrative capacities, can contribute to the efficient implementation of community service. In connection with the serving of community service, probation officers mention another problem. It happened in a case that a local municipality did not employ the convict voluntarily only for the duration of the imposed community service, but in an abusive manner:

> *"We had a case once when the local municipality had the convict perform extra work. It did not make the convict work 250 hours, but 300 hours. The probation officer, who has 200 ongoing cases, cannot see that every day, cannot be there every day next to everybody. At local municipalities, however, there is a work supervisor who gives instructions for work and leaves and when the work is over, collects the rakes or shovels, but is not present with them all the time. They enter some random numbers in the records, so that kind of, so-called check, cannot always be realised. (…) we are not fully in control of the situation, and we are entirely dependent on the local employees of the local municipality there" (probation officer 3)*

Both defence counsels and judges report that the current system offers scarce opportunities for the customisation of community service; the list of employers who may be designated for the serving of community service is limited. There are no places of work for convicts which would be related to the criminal offence committed by them or that would suit their qualifications, and thereby, would have a more significant awareness raising impact. That is especially the case in small settlements where the only communal employer, typically, is the local municipality and the type of work, which may be performed is unskilled work. Although since 1 January 2021 the law provides that the competent local municipality shall be obliged to employ those who are to serve the penalty of community service (see 2.5.1.), according to probation officers, that is not always realised:

> *"from 1 January 2021, it is obligatory for local municipalities to receive [convicts], but we continue to ask for the consent of the given local municipality, because there are local municipalities of small settlements where convicts cannot be received. Enforcement lacks backing from the state. It depends on the good intentions of the mayor, whether (s)he is willing to do it or not. (…) The Act on local municipalities does not provide on this obligation, they are only aware of this [obligation] from us, they just hum and haw. There will be shortly an information session for notaries in the whole county on the enforcement of this." (probation officer 2)*

Defence counsels highlight with regard to the penalty of disqualification from a profession that judges are dissuaded from using it as a sanction, because its enforcement is difficult to check. There isn't any centrally maintained register in which it could be checked whether the convict really does not work in the profession subject to the penalty (for example, defence counsels mention the case of a teacher who was sentenced for committing sexual abuse against a minor but still works with children).

We also examined to what extent the condemned person's track record influenced the imposition of alternative penalties. Based on all the final and binding decisions establishing criminal liability in the seven examined years, we concluded that the accused person's track record clearly has an important role regarding sentencing. Imprisonment was imposed in the smallest proportion in the case of accused against whom no previous penalties had been imposed by a final and binding decision of the court (23%). This proportion shows a linearly increasing tendency as the criminal record of convicts was more serious; imprisonment was imposed for 43% of reoffenders; 58% of recidivists, 79% of special and multiple recidivists, and 94% of violent multiple recidivists.

[289] Communal work is the low-prestige work carried out by recipients of social care, typically for the local municipality or another communal employer. In 2020, public labour service provided work for 92,000 persons in average.

**Recidivism and prison sentence in case of the accused of cases concluded with final and binding decisions establishing criminal liability (2013-2019)**

| | not recidivist | reoffender not considered as recidivist | recidivist | special recidivist | multiple recidivist | violent multiple recidivist | All accused |
|---|---|---|---|---|---|---|---|
| no imprisonment imposed | 216524 | 83357 | 3105 | 2359 | 3522 | 50 | 308917 |
| | 77% | 57% | 42% | 21% | 21% | 6% | 67% |
| imprisonment imposed* | 63293 | 63303 | 4350 | 8778 | 13078 | 740 | 153542 |
| | 23% | 43% | 58% | 79% | 79% | 94% | 33% |
| Total | 279817 | 146660 | 7455 | 11137 | 16600 | 790 | 462459 |
| | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

* Independent from the suspension of imprisonment.

### 3.2.3. The application of measures

We also analysed national data related to the application of measures. Conditional sentence with probation supervision is clearly the measure that is most frequently applied independently in comparison to other measures, but that proportion is somewhat decreasing. While in 2013 and 2014 it accounted for 91% of all secondary penalties and measures, its proportion decreased to 85% in 2017, and regained two percentage points in 2019. In comparison, the proportion of reprimand remained to be insignificant, but constantly in growth until 2018: it accounted for 8% in 2013, 11% in 2018, and finally only 9% in 2019. The proportion of reparation work within all imposed sanctions is even lower but is clearly in growth: while in 2013 it was not measurable in percentage, it accounted for 2% of all independently applicable secondary penalties and measures in 2019.

**The frequency of the imposition of independently applicable secondary penalties and measures within all decisions establishing criminal liability**

| | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** | **Total of the seven years examined** |
|---|---|---|---|---|---|---|---|---|
| disqualification from a profession | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 2 |
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| disqualification from driving a vehicle | 15 | 3 | 0 | 0 | 0 | 0 | 0 | 18 |
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| expulsion | 15 | 2 | 1 | 0 | 1 | 0 | 0 | 19 |
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| reprimand | 1105 | 1162 | 1001 | 1025 | 1273 | 975 | 752 | 7293 |
| | 8% | 9% | 9% | 9% | 13% | 11% | 9% | 9% |
| conditional sentence with probation supervision | 12734 | 12205 | 10520 | 9609 | 8556 | 7838 | 7372 | 68834 |
| | 91% | 91% | 90% | 89% | 85% | 87% | 89% | 89% |
| compulsory psychiatric treatment | 2 | 1 | 1 | 3 | 1 | 1 | 3 | 12 |
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| confiscation | 21 | 12 | 24 | 39 | 13 | 7 | 1 | 117 |
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| forfeiture of assets | 8 | 3 | 4 | 5 | 7 | 11 | 6 | 44 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| reparation work | 20 | 83 | 149 | 166 | 168 | 152 | 153 | 891 |
| | 0% | 1% | 1% | 2% | 2% | 2% | 2% | 1% |
| rendering electronic data permanently inaccessible | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| **TOTAL** | 13922 | 13471 | 11701 | 10847 | 10020 | 8984 | 8287 | 77232 |
| | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

It is the experience of defence counsels and probation officers concerning measures that those are applied almost only in the case of juvenile perpetrators, first-time offenders, and negligent commission of criminal offences. In the general opinion of defence counsels and probation officers, measures are rarely applied for adult perpetrators because the criminal offences of such minor gravity, in the case of which the objective of punishment could be appropriately achieved by applying a measure, do not make it to the trial stage at all. In the case of those, typically other legal institutions are applied for the purposes of accelerating the procedure, such as the suspension of prosecution or plea agreement. In case of reprimand, cases are usually concluded in the prosecution stage.

The experience of defence counsels and judges alike confirm the statistics according to which the most frequently applied measure is conditional sentence with probation supervision, followed by reprimand. Motions by the defence are usually submitted for those purposes. Measures are only requested by the defence, if the motion of the prosecution also includes a request for the imposition of some alternative penalty – otherwise it is unlikely that the judge would apply a measure. Therefore, in such cases, motions for that purpose are typically not submitted by the defence either. As mentioned before, even alternative penalties are rarely put forward in motions by the prosecution, but motions for measures are nearly never submitted by the prosecution. In the experience of defence counsels, judgements imposing measures are highly dependent on the attitude of the judge, nation-wide differences are even greater than in the case of alternative penalties. Conditional sentence with probation supervision is imposed most often also because it involves stakes and has dissuasive power with regard to the perpetrator: if (s)he commits a criminal offence again while released on probation, it entails a more severe sanction, while in case of reprimand and reparation work no such dissuasive effect is incorporated in the legislation. Reparation work is the measure least applied. According to the judge's view, reparation work could be a much more widely applied measure also because, as opposed to community service, it is not the responsibility of the probation officer to designate the place of work for the perpetrator, but (s)he can choose where (s)he wishes to serve his/her sentence. Accordingly, a real reparation toward the community could be effectively realised within the framework of an individually customised type of work suiting the perpetrator.

In order to illustrate the low volumes of reparation work, the interviewed probation officers report that in one of the counties in Central Hungary and one in Southern-Hungary they had one to three cases of reparation work imposed among their clients in the last two years. As for the third county in Central-Hungary with a more elevated caseload, there were altogether eight ongoing reparation work cases during the time of the interviews. One of the probation officers reported that since the CC entered into force, there had been altogether 35 reparation work penalties imposed in the whole county.

Probation officers experienced that courts are likely to apply probation supervision as a measure in cases where there is a chance that it may have a function to dissuade and educate. Among adult perpetrators, that is mostly true for young adults and first-time offenders.

In the view of the judges, probation officers are overloaded, and such caseloads do not allow them to fulfil the purpose of probation supervision aiming at the prevention of risks involved in reoffending, the correction of criminal behaviour, and the promotion of reintegration to society, beyond exercising only formal control. Probation supervision under the current circumstances – in the view of the

interviewed judges – cannot fulfil its functions. That may also be the reason why probation supervision is only very rarely applied as a measure in discretionary cases.

It is perceived that it would make more sense to impose individualized, special rules of behaviour which are suited to the personal circumstances of the perpetrator and the nature of the criminal offence (e.g. participation at aggression management training, participation at programs with a restorative approach) but in the opinion of the judge interviewed that opportunity is not use by judges. Usually only general rules of behaviour are ordered (e.g., the obligation to maintain contacts with the probation officer; see 2.5.2.).

As reported by probation officers, even if no special rule of behaviour is ordered by the judge for participating in a program for the correction of behaviour or raising awareness, it happens that supervised persons are nevertheless involved such programs. However, convicts are much more reluctant to participate if that is not imposed by the judgement as an obligation.

## 3.3. The use of legal institutions related to early release

### 3.3.1. Experience concerning the use of release on parole

There are no available comprehensive countrywide statistical data on jurisprudence from previous years concerning release on parole and reintegration custody. An empirical research from 2016[290] examined jurisprudence concerning release on parole, and the main findings of that research which are relevant for the present study are briefly summarized in the following. Although the legislative framework applicable to the legal institution of release on parole has become significantly stricter since 2016 (see 2.3.1.3.) the findings of that previous research nevertheless provide important information on tendencies in jurisprudence and judicial attitudes related to release on parole. In-depth interviews were conducted with 31 pen. judges within the framework of the research. The research showed that the number of ongoing release on parole cases was below ten in average in the case of one third of the interviewed judges, between ten and thirty in case of one-third of them, and more than thirty in another one third of them. From the different figures on the number of cases, it is apparent that the workload of pen. judges in relation to release on parole differs greatly from county to county. The caseload related to release on parole is significant in counties where county-level penitentiary institutions are located. Those institutions are used primarily for prison sentences to be enforced in a low- or medium-security penal institution, thus requests for release on parole are more frequent than in counties with national penitentiary institutions in which convicts subject to imprisonment to be served in a high-security penal institution are represented in a greater proportion.

Concerning the granting of release on parole, the research did not find that a uniform national jurisprudence existed in that regard. Pen. judges typically consider the information on which their decision on release on parole is based as sufficient. 70% of the initiatives of penitentiary institutions were approved of by judges. There were significant differences as to the depth and level of expertise of those initiatives. Differences were great between counties as to the extent of information on which decisions were based and to the weight courts gave to certain factors. The interviewed judges considered primarily the behaviour of the convict in prison when deciding of release on parole, which was followed in the assessment by considering the criminal offence itself, while family circumstances and the outside, recipient community were considered less relevant, and the personal traits of the convict were considered least relevant by the judges. More than half of the judges considered the committed criminal offence as an important aspect in the assessment, one-third of them did not consider the committed criminal offence at all. Moreover, an important problem raised by the research is that pen. judges decide on release on parole without the thorough knowledge of the background where the convict lives, and against which his/her behaviour is examined and assessed.

[290] Ágnes Solt: *A Feltételes szabadságra bocsátás intézményének magyarországi gyakorlata.* [The Hungarian practice of release on parole.] OKRI, 2016. Available: http://www.okri.hu/images/stories/KT/KT_54_2017/kt54_honlap.pdf

It is a dominant opinion among the interviewed judges that the tightening of rules on release on parole are unjustified and excessive, and do not necessarily serve the intended long-term reintegration purposes neither from the point of view of the convict nor of society.

They generally agree with the regulation according to which the convict may be released on parole after serving two-thirds of the prison sentence. They have the impression that judges – even before the introduction of legislative restrictions – had started to apply stricter rules themselves based on their own assessment, and to grant release on parole less often than before. Legislative changes were adopted to reflect that judicial practice. The actual experience of defence counsels and of the correctional probation officer confirm the findings of the 2016 research according to which there is a lack of uniform jurisprudence and differences between counties are significant. Decisions on refusal often lack a well-founded reasoning.

Similar to the finding of the 2016 research, defence counsels and judges equally mention in their opinions that there is still a predominant practice of pen. judges to take the nature and gravity of the criminal offence as a determining factor into account when deciding on release on parole. That is received with unequivocal criticism, some consider it as a misinterpretation of the relevant legislative environment, others as a practice clearly in breach of the law.

Several defence counsels remark that in the counties they know somewhat better, judicial decisions on release on parole consider personal circumstances in a way that release on parole is less likely to be granted to convicts of a less favourable social standing– in their opinion, discriminative judicial assessments based on social standing are not rare. Although a sound family and financial situation may be interrelated with social standing, they do not think that it would be either straightforward or justified that poor convicts living among precarious financial conditions should be deprived of the opportunity to be released on parole.

In the experience of defence counsels in most of the cases pen. judges rely on the opinion of penitentiary institutions. They do not question the initiatives of pen. institutions. Under the current regulations if the duration of release on parole amounts to or exceeds a period of two years, a probation officer's opinion shall be mandatorily sought. In the experience of defence counsels, probation officer's opinions supporting decisions on release on parole are thorough and objective.

As reported by the correctional probation officer, the pen. judge does not always request probation officer's opinions even in cases when that is mandatorily prescribed by law. As for discretionary cases, opinions are very rarely sought. The probation officer, in his/her opinion, often challenges the opinion of the pen. institution. In the officer's view, the opinion of the pen. institution is often one-sided, and it is strongly determined by the personal sympathy of the reintegration guard and their relationship with the convict. In the officer's opinion, a correctional probation officer can draw a more balanced picture of the detainee's behaviour and the situation in the penitentiary than the opinion of the pen. institution. The practice of pen. judges is divergent as to which opinion they accept as well-founded in such cases. There are some who consider the opinion of the pen. institution, and others who consider the opinion of the correctional probation officer as more relevant.

A further aspect of the present study, which is given more weight than in the 2016 research, is that an important weight is given to disciplinary penalties imposed in the pen. institution when assessing behaviour. If a disciplinary penalty has been imposed on a person, (s)he shall not be eligible for release on parole. Although in principle it is possible to abolish disciplinary penalties by obtaining distinctions, that is very rarely authorised by pen. institutions – they manage punishments and rewards in an "arbitrary" and abusive manner. It is very easy to get a disciplinary penalty, but very difficult to replace it with a reward in the opinion of both defence counsels and convicts.

### 3.3.2. Experience related to the use of reintegration custody

The interviewed defence counsels, convicts and one professional involved in the research of penitentiary matters commented in relation to reintegration custody that there is a lack of uniform

application of the law by pen. judges. There are counties where "all requests are refused irrespective of the fact that conditions are fulfilled." (expert 1) Certain pen. judges, however, release persons who are recidivists. In their opinion, it is a basic problem that there are no legal remedies available with regard to those decisions. Thus, the reasoning of the decisions adopted by pen. judges carries no weight and cannot be reviewed.

A typical experience concerning reintegration custody is that – just like in case of release on parole, – the committed criminal offence is given great weight in the overall assessment. Legal practitioners consider that as an "abnormal, unprofessional practice". Namely, the convict is punished twice in that way.

Furthermore, it appears that much emphasis has been given to the record of disciplinary penalties in recent years. Those on whom a disciplinary penalty was imposed, lose the opportunity for reintegration custody. In many cases pen. judges do not even investigate reasons why that penalty was imposed. At certain courts, the mere absence of imposed disciplinary measures is not enough to demonstrate excellent conduct, as convicts must also have to demonstrate rewards in order to benefit from reintegration custody. In the meantime – as the 2016 research mentioned it in connection with release on parole – pen. judges are not aware of the realities of penitentiary institutions, the environment in which disciplinary penalties are applied to the convict.

> *"… prison practice has changed so that if you put a wet towel at the wrong place on the bed, you are subject to disciplinary penalty. In addition, institutions country-wide have been instructed not to reward detainees more often than every three months. Pen. judges are not aware of those changes. They don't know that this is a different kind of prison [system]. These unfortunate people don't get rewarded any more for performing their work well. Or, for example, they came up with the idea that nobody should be allowed to work in the same job for more than one year. Due to that, the poor detainees cannot make any progress, they must re-establish their situation each year. The prison administration fully exploits its rights, by locking up completely, and working in practice without any control, because nobody cares about the whole story." (expert 2)*

In the opinion of certain defence counsels, the possibilities are unreasonably narrow as reintegration custody may be granted in case of criminal offences punishable by not more than five years of imprisonment, and they would enhance its use. One of the reasons for that is, in their view, that for certain types of criminal offences the penalty range is unjustifiably severe and the penalties imposed are disproportionately harsh. The judgment is disproportionate to the level of danger imposed to society by those acts and the objective of the convict's reintegration is not pursued if (s)he is not released. In their case the objective of punishment has already been attained by spending a few years in prison. They also mention the practice of court judges in sentencing that consists of deliberately imposing a penalty that "slips out" out of the five years. It is not uncommon that only one or two months more is imposed. That judicial practice is typical especially in case of economic criminal offences committed to the detriment of the state (e.g. budget fraud). As if the intention of certain court judges was that, the convict loses the opportunity for release on parole and reintegration custody.

In the view of certain defence counsels, correctional probation officer's opinions to support reintegration custody are rarely individualized and rather resembles a "check list". It is formalized and does not take actual personal circumstances into account. If everything is fulfilled from the check list, then the correctional probation officer supports the granting of release. In the decisions of pen. judges, the financial situation of the perpetrator is given much weight, which is disproportionate and results in a discriminative judicial practice.

> *"If someone is poor, the technical conditions cannot be guaranteed for the operation of the electronic appliance for remote surveillance needed for the enforcement of reintegration*

*custody, and then there is no chance. So the legal provisions themselves already limit to a great extent, who can benefit from it."*

In the view of the persons concerned, there are important technical obstacles related to reintegration custody, the trackers on ankle-cuffs often don't work , which means a continuous "hassle" for them: when the penitentiary did not get a signal from the device due to a technical obstacle, or indicated wrongly a change of position, then the penitentiary called them even in the middle of the night and they had to demonstrate that they did not actually leave the real estate used for the purposes of reintegration custody.

*"Often, there is no signal, or there is a false alarm. In such a case the pen. institution calls me even in the middle of the night, and I must go to the street immediately to have signal again so they can make sure that I am indeed at home." (convict 1)*

## 3.4. Monitoring the enforcement of alternative measures, and institutions of early release

### 3.4.1. The organisational structure of probation service and correctional probation service

Probation Service was established by the government in 2003 by its Decision 1183/2002. (X. 31.) Korm.[291] Probation services – with the exception of the tasks of probation officers related to the enforcement of prison sentence – are currently provided by the metropolitan and county government offices, and the justice minister shall be responsible for the professional management thereof. [292] The tasks of probation officers related to the enforcement of prison sentence[293] were transferred from the municipal and county government offices to the prison service following the organisational changes in 2014. [294]

The opinion of probation officers and correctional probation officers about the structural changes of the organisation is diverse. Primarily they highlight its disadvantages. In their opinion the government office cannot exercise appropriately its powers of supervision of legality with regard to the probation service. It is difficult for probation officers to fit in the logic of an administrative organisation, with their own professional background and mentality. The professional and methodological support and monitoring of the probation service is still provided by the Ministry of Justice (MoJ). The professional support provided by the MoJ is deemed important unequivocally and is much appreciated. However, they note that due to this "double structure" professional and methodological support has become more difficult, its means and channels have been diminished. Trainings and professional consultations between regional organisations in charge of probation supervision are less frequent. At the same time, they remark that the integration of matters related to probation supervision to government offices has advantages, too. Namely, it facilitates the enforcement of certain sanctions (e.g. community service). The government office as an official body can support cooperation with local municipalities.

Data from the MoJ on the work of the probation service reveal that probation officers handle a workload of approximately 100 thousand ongoing cases per year nationwide. In the year 2020 affected by the COVID-19 pandemic, probation officers had a somewhat reduced workload of ongoing cases per year than in the preceding two years, practically with the same number of staff.

| Year | Ongoing cases | Number of probation officers |
|---|---|---|
| 2018 | 93565 | 350-400 |
| 2019 | 86962 | 350-400 |
| 2020 | 75252 | 348 (on 31/12/2020) |

[291] Decision 1183/2002. (X. 31.) Korm. on the establishment of the Probation Service and the regulatory principles of its operation

[292] Section 1 of Decree 8/2013. (VI. 29.) KIM on the Activities of the Probation Service,https://igazsagugyiinformaciok.kormany.hu/partfogo-felugyeloi-szolgalat

[293] Point 3 of Section 3 of the Prison Act.

[294] https://bv.gov.hu/hu/a-buntetes-vegrehajtasi-partfogo-felugyelet

| Gender composition of probation officers on 31/12/2020 | |
|---|---|
| male | 133 |
| female | 215 |

The workload of probation officers varies from county to county. Beyond the differences in the population of counties, that is also related to the number and gravity of criminal cases initiated in the counties, and judicial practice that varies throughout the country. Not only caseload, but also the types and distribution of certain probation officer's tasks are very different in the counties differing in size and economic situation. A probation officer working in the region of Central Hungary states in that regard:

> *"In this county, enforcement is completely different than (…) ,say, in the neighboring region with farmsteads. So if a probation officer has to travel to many different locations and designate work at several different places, the situation is different that for some-one who checks 20 sites and has many little villages to look after. (…) So differences are huge. Not only regards caseload but in the regions up north, in the area above the Danube bend, it's a pleasure to work as probation officer, and one can work well in Veszprém county and the Balaton Uplands. So if we take a look at figures of crimes committed even here or elsewhere, then we will find that crime statistics are completely different in the Cegléd region or near Budapest than in a poorer area, like the Danube bend or the villages near Nógrád." (probation officer 1)*

We received the information concerning data on the caseload in two counties in Central Hungary and one county in Southern-Hungary that in these counties a probation officer has 100-150 supervised persons at the same time. It was reported that there are counties where a probation officer works with only 50 supervised persons in average. That also depends on whether the probation officer specializes for certain types of tasks or not. Certain tasks require more capacities, other less. Most of the cases are related to the enforcement of community service in the counties interviewed. In counties with high workloads, they are in charge of only one specific area (community service, probation supervision, probation officer's opinions, preventive supervision, mediation procedures, etc.) As reported by the interviewed probation officers, however, the typical situation in most counties is that probation officers carry out tasks of all kinds. It is only mediation procedure that is overseen by specially trained probation officers in all the counties, that task accounting for most of their job-related activities.

### 3.4.2. Probation officers' responsibilities during alternative measures' imposition and enforcement

Probation officers are responsible for several tasks related to the imposition and enforcement of alternative penalties and measures, which are summed up in 2.5.2. Responsibilities of correctional probation officers related to release on parole and reintegration custody are summed up in 2.5.3. In general, it can be stated that their activities aim at the mitigation of risks involved with reoffending, the enforcement of community penalties, the monitoring of the perpetrator within the community, the reinforcement of the protection of the community, and the social reintegration of the perpetrator.

Under the relevant legislation, probation officers can contribute to individualized sentencing that considers personal circumstances to a greater extent by means of drawing-up probation officer's opinions and needs and risk assessments in support of alternative penalties and measures. As mentioned earlier, in their experience, however, they are very rarely requested by courts to do so. That situation is illustrated by the fact that altogether 27 requests for a probation officer's opinion have been received in one of the counties since 1 January 2021. Only one of those was received from a court and was related to the monitoring of the enforcement of an alternative penalty. All other requests were received from the prosecution and related to juvenile perpetrators.

In relation to all needs and risk assessments, the number of requests related to adult perpetrators is insignificant. Requests received from courts, include in general requests concerning needs and risk

assessments related to cost exemption and criminal legal aid, and some related to requests for pardon in support of release from punishment (e.g. not to serve unperformed community service in the form of confinement). Additionally, needs and risk assessments in support of obtaining a clear judicial record are also requested.

## 3.5. The characteristics of defendants within final and binding decisions

### 3.5.1. Sociodemographic characteristics of defendants receiving a final judgement

Statistical data published by the NOJ contains limited information on the sociodemographic characteristics of defendants that have received their final judgement. The NOJ's yearly datasets include the sex, nationality, level of education and marital status of defendants that have received a final judgement in the year in question. In our statistical analysis, we do not use the marital status as the focus of our research is on characteristics that may represent vulnerabilities of defendants and thus may be the basis of authorities' discriminatory practices.

**Nationality of the defendant**

One of our research questions is whether there was a difference in the rate of criminal liability established within final and binding decisions between Hungarian and foreign nationals during the period under study. Over the seven years studied between 2013 and 2019, only 4% of all defendants were foreign nationals. The data show that in this period, 96% of criminal cases involving a foreign national defendant were concluded with establishing criminal liability, while in the case of Hungarian nationals this rate is lower, 93%. It therefore appears that once accused in front of a criminal court, foreign nationals were even more likely to be found guilty than Hungarian nationals.

**Sex of the defendant**

Another research question is whether there was a difference between men and women in the overall rate of criminal convictions. For both sexes, we see the same trend as discussed in chapter 3.2. of this study: between 2013 and 2019, there was a clear decrease in the proportion of acquittals and terminations within all final and binding decisions. At the same time between 2013 and 2019, while within 91% of final and binding decisions found female defendants guilty, the rate for male defendants was higher, 94%. We also looked at whether there was any difference between female and male defendants within final and binding decisions establishing criminal liability in the frequency of imposing confinement and the most common alternative sanctions (community service, fines, driving disqualifications). Overall, the frequency of imposing confinement (short-term detention up to 90 days) has grown between 2013 and 2019 (see chapter 3.2.2), it was imposed on average of 2% in case of male defendants and 1% in case of female defendants. Over the same period, community work was used less frequently overall, on average in the case of 16% male defendants and 14% of female defendants. Overall, fine was imposed more frequently between 2013 and 2019, averaging in 33% of male defendants' cases and 24% for female defendants' cases. The rate of disqualification from driving also increased overall over the seven years examined, with an average of 21% of male defendants' cases and 9% of female defendants' cases. Our analysis of the NOJ database shows that on average, confinement and the most commonly used non-custodial sanctions are imposed in a higher proportion of decisions establishing criminal liability in the case of male defendants than for female defendants.

**The defendant's level of education**

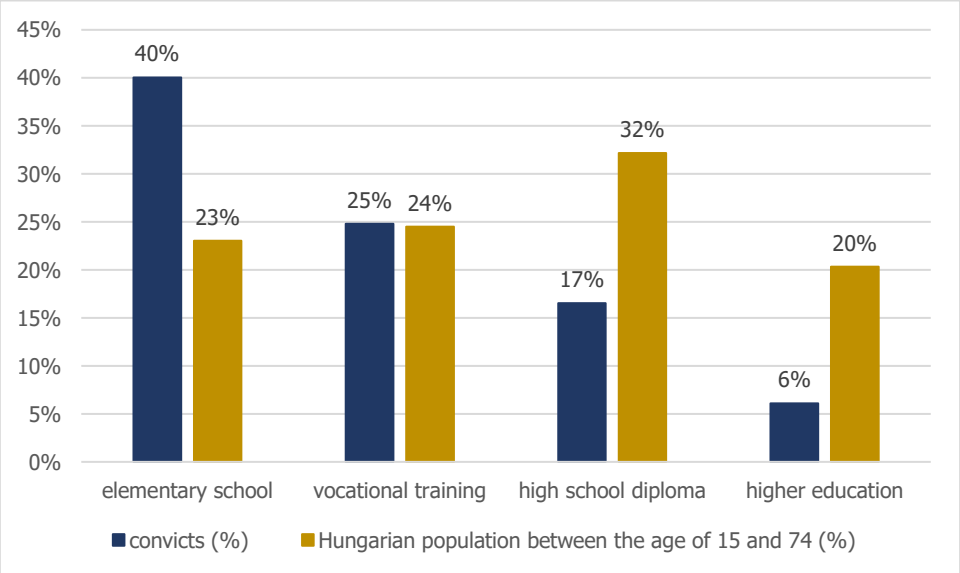
On average, the education level of defendants in final criminal convictions is lower than that of the population aged 15 to 74 years recorded by the Hungarian Statistical Office (HCSO). Comparisons are somewhat complicated by the fact that the NOJ data collection uses slightly different educational attainment categories from the HCSO. The lowest level of educational attainment in the NOJ data is represented by the category "illiterate", while in the HCSO database it is represented by education below eight years ("less than elementary school"). While there may be some overlap, the latter

category certainly includes a larger group than the former; clearly not everyone with less than eight years of education is illiterate. It is also important to note that the data gaps in the NOJ data in this respect are increasing every year examined: while in 2013, information on the educational attainment of seven per cent of the convicted defendants was not available in the publicly available database, in 2019 it was almost 20%. The average distributions of educational attainment for the seven years between 2013 and 2019 are compared below in a separate graph, aggregated by educational attainment category.

**Age 15–74 population by highest level of education (thousand people; %)[295]**

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Average distribution of educational attainment 2013-2019 |
|---|---|---|---|---|---|---|---|---|
| **lower than elementary school** | 134 | 125 | 127 | 116 | 112 | 108 | 103 | 118 |
| | 2% | 2% | 2% | 2% | 2% | 1% | 1% | 2% |
| **elementary school** | 1809 | 1720 | 1665 | 1623 | 1540 | 1469 | 1443 | 1610 |
| | 24% | 23% | 22% | 22% | 21% | 20% | 19% | 21% |
| **vocational training** | 1858 | 1836 | 1807 | 1822 | 1862 | 1864 | 1819 | 1838 |
| | 24% | 24% | 24% | 24% | 25% | 25% | 25% | 24% |
| **high school diploma** | 2366 | 2396 | 2414 | 2448 | 2432 | 2418 | 2429 | 2415 |
| | 31% | 32% | 32% | 33% | 33% | 33% | 33% | 32% |
| **higher education** | 1442 | 1496 | 1525 | 1499 | 1514 | 1573 | 1624 | 1525 |
| | 19% | 20% | 20% | 20% | 20% | 21% | 22% | 20% |
| **Total** | 7610 | 7573 | 7538 | 7508 | 7460 | 7432 | 7419 | 7506 |
| | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

**Average distribution of educational attainment among defendants with final and binding criminal convictions vs. the population aged 15-74 (2013-2019)[296]**




It can be clearly seen that within convicts (40%), almost twice the proportion of people had the lowest education, at most an elementary school degree in comparison to the 15-74 age group in the population (23%). Those with a vocational qualification were represented in almost the same proportion in both groups; while the proportion of those with a high school diploma in the population was almost double that of those with a final conviction. The largest difference is in the proportion of

[295] Source: Population labour force survey, Hungarian Central Statistical Office (HCSO/KSH).
[296] Forrás: OBH, KSH.

people with tertiary education: while the average proportion of people aged 15-74 in the population over the seven years studied was 20%, the proportion of people with a higher education was only 6%.

### 3.5.2. The use of alternative sanctions in case of vulnerable convicts and minorities

As reported by probation officers, a significant number of adult supervised persons belong already to some disadvantaged, vulnerable social group: deprived people, Roma, or homeless people. The supervised persons in the highest status and in employment are typically those who belong to the social group of poorly educated, unskilled workers. For them, community service and fine are equally very burdensome, they can hardly afford being absent from their casual work guaranteeing their living for even one week, and they do not have financial reserves either.

It is important to mention that custodial measures are more burdensome for vulnerable convicts and their families, with special regard to poor, illiterate detainees with health problems. For the relatives of poor convicts, the physical distance between the penitentiary institution and their place of residence which often amounts to several hundreds of kilometres renders it impossible to maintain personal contacts. Due to the elevated call charges (almost four times higher as civil rates), telephone calls, too, are only available in a very limited form for poor detainees, or not available at all. In case of these groups, therefore, the enhanced use of alternative sanctions would be especially important.

## 4. The impact of the COVID-19 pandemic on the use of non-custodial measures[297]

In general, the legislative changes adopted as a response to the epidemiological situation did not transform the system of penalties and measures, did not introduce more lenient, non-custodial sanctions nor any other rules aiming at the early release of detainees or applying more lenient penalties to them for the protection of detainees or the prison staff. None of the rules introduced as a reaction to the pandemic responded especially to the needs of vulnerable groups (such as children, the elderly, or persons in a disfavoured socio-economic situation). That general conclusion was supported by relevant statistical data: the number of detainees present in penitentiary institutions even increased to some extent during the pandemic. At the end of the period of the first state of danger – i.e. on 17 June 2020 – there were more detainees than on the last day of 2019, so the situation in Hungary is significantly different as in most European countries. In addition, the number of persons released on parole and those placed in reintegration custody significantly decreased in 2020.

Legislative changes introduced with respect to the epidemic situation concerning alternative sanctions and legal institutions used for the mitigation of custodial penalties, that is, related to early release, were detectable only in the modification of certain non-essential rules with respect to the application and enforcement of some of those legal institutions. Those included rules on the interruption of community service and reparation work and facilitations as to the deadline for the certification of performance, and

changes concerning the activities of probation officers and correctional probation officers, such as the means of contact with the persons concerned, or the methods of preparing needs and risk assessments and probation officer's opinions.

Based on the performed data analysis, questionnaires and interviews, it appears that immediately after that the so-called first state of danger was declared following the outbreak of the pandemic in Hungary "criminal justice practically came to a halt"; judges attempted to conclude cases of minor material gravity by a penalty order, and many court hearings had to be postponed. In parallel, the importance,

[297] Read our full research report on the impact of the COVID-19 pandemic on the use and enforcement of non-custodial sanctions here: https://helsinki.hu/wp-content/uploads/2022/01/FINAL-IPPF-report-Hungary-Final-HUN.pdf

function and frequency of remote hearings increased significantly. At the same time, the pandemic did not affect

the imposition of alternative penalties or measures in a substantial manner, only influenced their enforcement. In that regard, probation officers, for example, reported difficulties in connection with the interruption and continuation of community service, but at the same time, however, the designation of new workplaces with which they had not had contacts before was mentioned by them as a major benefit.

In the work of probation officers and correctional probation officers, dilemmas related to contacts either by personal or electronic means were often raised in an intensified manner, just like difficulties involved with the drawing-up of needs and risk assessments or probation officer's opinions from a distance, by means of telecommunications device. In the overall, it was confirmed to probation officers during the period of the pandemic that personal contacts and monitoring are essential in their work with supervised persons and contacting them only by electronic means poses a number of problems. At the same time, the possibility of electronic contact facilitated organisational and administrative procedures with the participation of organisations and institutions involved in probation and opened ways toward new partners too (for example, to schools in case of juveniles under supervision). Those new or closer partnerships may be a positive impact of the pandemic.

A significant number of supervised persons already belong to some disadvantaged, vulnerable group: persons living in extreme poverty, Roma, or homeless people. The supervised persons who work and belong to the group with the highest status typically belong to the section of society with a low level of education and working as semiskilled workers. As a general remark, it can be noted, moreover, that the epidemological situation which – in the absence of new alternative sanctions, or their wider application, and in the absence of early release – placed a significant burden on law-enforcement, most probably intensified the already existing, systemic problems and put convicts who were already vulnerable and had less negotiating power to an even more difficult situation. Proceeding with the cases in penitentiary institutions concerning the change of prison grade, release on parole or to reintegration custody became much more difficult, especially when convicts were hospitalized or were subject to quarantine measures, thus the duration of their detention could have been prolonged even by months. A general problem related to the epidemiological situation, as pointed out by convicts, was that they did not receive ample information from the penitentiary institution about changes concerning the different procedures. They could not really follow the quick-changing legislation, so they often did not know what their rights and their obligations were.

Finally, the study is concluded by recommendations based on the findings of the research. In that regard, inter alia, it draws the attention to the importance of systemic collection of data on the judicial practice of sentencing in relation to alternative penalties or measures, and release on parole, the practical questions of ordering reintegration custody and the tendencies in enforcement. It advocates the increase of the number of probation officers and correctional probation officers and encourages penitentiary judges for an enhanced use of release on parole and reintegration custody.

# 5. Conclusions

Our research shows that despite a decreasing trend in recent years both in the number of criminal proceedings concluded with final and binding effect and in the use of imprisonment as a sanction in proportion to all imposed penalties, a wider range of alternative sanctions available under the CC were only partially used in a growing proportion, with regard to certain sanctions. That is confirmed by the experience of defence counsels and of judges, according to which alternative penalties are applied in a much narrower scope than it would be possible under the relevant legal provisions.

In case of criminal offences punishable by not more than three years of imprisonment – which are the most relevant from the perspective of alternative sanctions –, we can similarly see a slow increase with regard to alternative sanctions within all imposed penalties. That is confirmed by the experience of judges and defence counsels alike, who also perceive a slow but clear change in sentencing practice in favour of non-custodial sanctions.

Based on the experience of defence counsels, a motion for suspended imprisonment is typically submitted by the prosecution and used in the case of first-time offenders, within the penalty range of imprisonment for one to five years. The motion of the defence for alternative penalties gains importance primarily within the penalty range of imprisonment for two to eight years, while within the penalty range of imprisonment for five to ten years, motions of the defence are considered already pointless, as courts typically do not impose suspended imprisonment in such cases.

Defence counsels and judges alike point out the significant differences in sentencing practices between courts, and that judge's individual attitude and personal appreciation play an important role. The principle of gradual application is typically duly applied by courts when sentencing and the personal circumstances of the perpetrator are taken into consideration. However, defence counsels see significant individual differences in that regard, too.

The most frequently imposed alternative penalties are fine (2019: 31%), disqualification from driving a vehicle (2019: 19%), and community service (2019: 11%). That latter figure also applies when it comes to the proportion of secondary penalties and measures applied independently in the last reference year (2019: 11%). In comparison, the numbers of disqualifications from a profession, bans on entering certain areas, and bans on visiting sports events are insignificant.

With respect to specific criteria relevant for sentencing, the type of the criminal offence is the most significant: alternative sanctions are mostly used in the case of petty offences (insult, public deed forgery of minor gravity, criminal offences against property committed for an insignificant value, bodily harm of minor gravity, criminal offences against public order or public safety of minor gravity, traffic-related criminal offences of minor gravity). Moreover, the personal circumstances and record are relevant for courts when sentencing. Alternative sanctions are more likely to be imposed in case of first-time offenders, juvenile or young adult perpetrators. The selection of a given type of alternative penalty is influenced by personal circumstances, however, there is no clear tendency in that regard; certain defence counsels find it problematic that courts impose alternative sanctions irrespective of the personal circumstances of perpetrators and the penalties imposed are unrealistic. For example, an amount of fine that the perpetrator will not pay. According to the experience of probation officers, with regard to the proportion of sanctions, there are very few requests from judges for the drawing-up of probation officer's opinions or needs and risk assessments. That is also reflected by relevant NOJ data concerning imposed community service and fine sanctions converted to imprisonment: between 2017 and 2019, the number of conversions to imprisonment in relation to the total of sentences was rather significant. That means that community service and fine often remain unperformed. In 2019, in relation to all community service sentences imposed that year, almost two-thirds of community service sentences were converted to imprisonment. In case of fine sentences, it was one-third of all the fine sentences imposed in 2019 that were converted to confinement.

In relation to measures, national data reveal that conditional sentence with probation supervision is clearly the measure that is most frequently applied independently in comparison to other measures, but that proportion is somewhat decreasing. In comparison, the proportion of use of reprimand is insignificant. The proportion of reparation work within all imposed sanctions is even lower but is shows a slow growth. The proportion of the imposition of other, independently applicable secondary penalties (disqualification from a profession, disqualification from driving a vehicle, expulsion, demotion, compulsory psychiatric treatment, confiscation, forfeiture of assets, rendering electronic data permanently inaccessible) remained insignificant and unquantifiable in the years of the reference period between 2013 and 2019. Based on the experience of defence counsels and probation officers, measures are applied almost only in the case of juvenile perpetrators, first-time offenders, and negligent commission of criminal offences. Probation officers experienced that courts apply probation supervision as a measure among adult perpetrators almost only in case of young adults and first-time offenders.

There were no comprehensive countrywide statistical data available to us on jurisprudence from previous years concerning release on parole and reintegration custody. The 2016 research[298] carried out to examine jurisprudence concerning release on parole revealed that the workload of pen. judges in relation to release on parole differs greatly from county to county; the caseload is bigger in counties where county-level penitentiary institutions are located, which are used primarily for prison sentences to be enforced in a low- or medium-security penal institution. Concerning the granting of release on parole, the research did not find that a uniform national jurisprudence existed in that regard. Pen. judges approved of 70% of the initiatives of penitentiary institutions for release on parole, and the experience of defence counsels interviewed in the present research also confirmed that pen. judges rely on the opinion of pen. institutions, and do not question them.

Needs and risk assessments or probation officer's opinions do not play a decisive role with regard to their decision. Furthermore, the 2016 research identified significant differences as to the extent of information on which pen. judges based their decision on release on parole. The interviewed judges considered primarily the behaviour of the convict in prison when deciding of release on parole, which was followed in the assessment by considering the criminal offence itself, while family circumstances and the outside, recipient community were considered less relevant, and the personal traits of the convict were considered least relevant by the judges. More than half of the judges considered the committed criminal offence as an important aspect in the assessment. That practice was identified and criticised also by the defence counsels interviewed in the present research. In their view, the convict has already been punished and the sentence has already been served with regard to the committed criminal offence, so it is inappropriate, and, in the view of some, it even amounts to a practice in breach of the law to give great weight to the criminal offence in the overall assessment of release on parole.

It is the general experience of the interviewed legal practitioners (defence counsels and probation officers) and the convicts concerned that there is a lack of uniform application of the law by pen. judges with regard to decisions on reintegration custody. In their opinion, it is a basic problem that there are no legal remedies available with regard to those decisions. Correctional probation officer's opinions to support reintegration custody are rarely individualized and merely formal. In the decisions of pen. judges, the financial situation of the perpetrator is given much weight, which is disproportionate and results in a discriminative judicial practice.

The persons concerned reported important technical obstacles related to reintegration custody. The trackers on ankle-cuffs often do not work, which renders the execution and monitoring of reintegration custody difficult.

[298] Ágnes Solt: *A Feltételes szabadságra bocsátás intézményének magyarországi gyakorlata*. [The Hungarian practice of release on parole.] OKRI, 2016. Available: http://www.okri.hu/images/stories/KT/KT_54_2017/kt54_honlap.pdf

# 6. Recommendations

***To courts***

1. Promote the uniform application of law by means of relevant guidelines and internal regulations to judges.
2. Collect more detailed statistics on jurisprudence that reveal eventual differences.
3. Provide trainings for judges with special focus on the assessment of individual circumstances, the aspects of vulnerability, and the long-term effects and objectives of punishment.
4. Enhance use of probation supervision as measure in cases where a margin of appreciation is available, also in case of adult perpetrators.
5. Enhance the assessment of individual circumstances by judges, and for that purpose, an increased involvement of probation officers, requests for probation officers' opinions, and needs and risk assessments.
6. Enhance the application of prescribing special, individual rules of behaviour in case of juvenile and young adult perpetrators, which is adapted to the personal circumstances of the perpetrator and the nature of the crime, as such rules, are, in the view of probation officers, more efficient than the general rules of behaviour laid down by law.
7. Adopt guidelines and internal regulations with a view to the promotion of a uniform application of law by pen. judges in relation to judicial decisions on reintegration custody.

***To prosecution services***

1. Provide trainings for prosecutors with special focus on the assessment of individual circumstances, the aspects of vulnerability, and the effects and objectives of alternative sanctions.

***To the legislator***

1. Ensure the participation of Hungary in the annual survey of the Council of Europe for monitoring the use of alternative sanctions (SPACE II.).
2. Broaden the range of available alternative sanctions and the extension of the scope of the penalty range and the types of criminal offences in case of which alternatives penalties may be applied.
3. Broaden the scope of applicability of suspended imprisonment, differentiation, and the mandatory review of the duration of the suspended imprisonment after a given period.
4. Reduce the requirements of release on parole and broadening the scope of persons who may be eligible to be released on parole with a view to meeting the intended long-term reintegration objectives.
5. Provide a legal framework for legal remedies with regard to decisions by pen. judges on reintegration custody.
6. Widen the penalty range in the case of which reintegration custody may be applied (currently, reintegration custody is only available in relation to sentences of not more than five years of imprisonment), allowing for a wider margin of appreciation of personal circumstances in decisions by pen. judges.
7. Enhance the mandatory use of probation officer's opinions and needs and risk assessments with a view to decisions on release on parole and reintegration custody.