

RELEASE FROM PRISON

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1. Introduction

It is well known, that in Hungary the prison population is high by European standards. In 2013 there were 18,042 people in prison custody (the possible: 12,584 people). The majority of these prisoners are serving determinate sentences, but a growing number face indeterminate (life) sentences.¹ This figure shows the overcrowding in Hungarian prison.

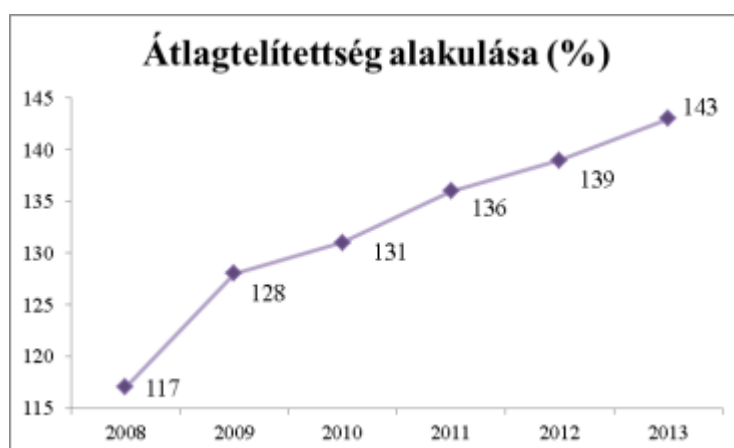


Figure 1

The overcrowding in prison in Hungary from 2008–2013

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

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

- a) segregation from the society
- b) detention and supervision
- c) movement within the parameters of the prison,
- d) regime of life,

¹ <http://www.bvop.hu/?mid=77&cikkid=2168>

- e) amount of money allotted for personal needs,
- f) rewards and disciplinary sanctions
- g) participation in prisoner organisations are different.

A new act was enacted in 2013 in Hungary, which came into force on 1 January 2015. This is the Act CCXL of 2013 for the execution of punishments and measures. This act takes focus on the reintegration, rehabilitation.

2. The system of early release in Hungary

Some data about Hungary:

Population: 9,839,000

Number of inmates: 18,244

Official capacity: 12,604

Inmates Imprisonment rate: 184 inmates/100,000 citizens

Female inmates: 1,227 inmates

Juveniles: 468 inmates

Overcrowding: 143%

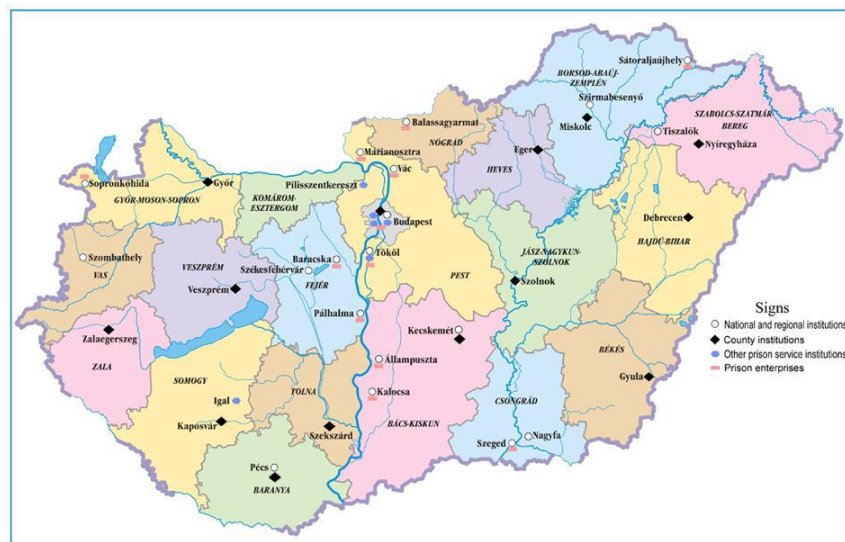


Figure 2
National and regional institutions, country institutions²

The imprisonment may be life imprisonment or imprisonment lasting for a definite period of time. The shortest and the longest duration of a sentence for a specific term of imprisonment shall be three months and twenty years, respectively, or twenty-five years in respect of cumulative or consolidated sentences and for crimes committed in affiliation with organised crime.

² <http://www.bvop.hu/?mid=4&lang=hu>

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

The court may rule in the judgement sentencing life imprisonment that the convict might not be released from the penal institution even after serving certain part of his time.

In that case life imprisonment literally lasts for the lifetime of the convict, and thereby becomes the most severe sanctions of Hungarian criminal applicable law.

3. Life imprisonment

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

If the possibility of release on conditional release will not be excluded by the judge,³ then in case of offence that can be prosecuted without a time limit, the minimum period (before granting parole) must be ordered by the judge as being at least 25 years, maximum 40 years.

4. Imprisonment lasting for a definite period of time

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

Early release in Hungary is based on discretionary decisions and it is always conditioned. The basic provision governing the early release of prisoners is Article 38 (1) of the Penal Code.⁴ According to this provision, prisoners can be conditionally released from determinate prison sentences after they have served two-thirds of their sentence. Since the amendments of 1998 a minimum period of three months must be served by the prisoner before being released conditionally.

The conditional release aims to ensure the opportunity of an effective re-socialization for the well-behaving prisoners. In this case, the aim of the penalty can be achieved without serving the complete term of imprisonment. The decision about the release of a certain prison inmate on parole belongs under the competence of the penal executive judge. There are objective criterion and subjective criterion on parole.

³ NAGY, Anita: *Penal Judge*. Miskolci Doctorate Studies. Bóbor, 2015/2, 57–79.

⁴ Penal Code: The Act C of 2012.

- a) The main objective criteria for release on parole is that a certain proportion of the sentence must have already been served. Definitely the two-thirds of their sentence. According to Article 38 (3), when the court imposes a term of imprisonment of no longer than five years, the court may – in circumstances deserving special consideration – grant conditional release after half of the sentence has been served. This option is not available in the case of multiple recidivists.
- b) The subjective criteria is a particularly good prognosis for the future. The deciding judge must be convinced that there is no danger that the offender will relapse into further crime. The penal judge primarily may take into account the opinion of the penal institution concerning the prospects of the future. The judge shall examine the statement of the convict and other objective circumstances, such as the family circumstances of the convict, the opportunities of his employment, sources of his living. The penal institution supports it, if the prisoner has a lot of rewards. The rewards in prison can be: praise, permission of extra opportunity to receive extra parcel, permission of extra opportunity to meet visitors, extension of the amount of money allotted for personal needs, article reward, money reward, delating the record of executed disciplinary sanctions, short term absence of leave, authorised absence.

The competent authority for conditional release is always a penal judge (Special chamber of the County Court). The penal judge acts as a single judge. The penal judge conducts the hearing of the offenders, in case of presenting evidence he holds trial where the prosecutor and the defender are permitted to be present. The penal judge conducts the hearing and holds the trial within the parameters of the penal institution. The decision, reached by the penal judge is appealable. If the penal judge has not released the prisoner on parole, he may review the chance of the release of the prisoner later.

The penal judge terminates the procedure if the motion has been withdrawn by the prosecution on the grounds of justifiable reason.

Appeals against the decision of the penal judge are decided by an appeal panel of the county court. The procedural costs are covered by the State.

In the following table data are focusing on the conditional release from 2010–2013:

Table 1
Conditional release in Hungary.
The first line shows the total number,
the second line the conditional released prisoners

2010	7,533	6,079
2011	7,598	6,037
2012	7,334	5,900
2013	7,427	5,945

5. Probationary Supervision

The system of early release can include supervision by the probation services according to Article 69 of the Penal Code. The court shall place the convicted person under the supervision and guidance of a probation officer.

Probationary Supervision is a measure of educational function and a measure of an accessory character. This preventive measure cannot be applied independently, only in addition to imprisonment (penalty) and other measures.

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

1. for the postponement of accusation
2. for the duration of conditional release
3. for the duration of probation
4. for community labour
5. for suspended imprisonment

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

There are some examples for behavioural rules: the perpetrator is not allowed to contact concrete persons, she/he keeps away from the victim, carries on with studies or registers for job search. Article 71 (1) of Penal Code contains a long list of examples for behavioural rules. The main types of behavioural rules are the following.

1. The offender may be ordered to discontinue a form of conduct or activities related to the crime (such as visiting clubs or similar venues) or an obligation similar to a restraining order may be imposed on the offender (typically for offenders of domestic violence).
2. The offenders may be ordered to participate in treatment, trainings or counselling related to character or behavioural problems, addictions etc., for instance they may be required to undergo medical treatment, or to attend aggression management training, social skills improvement training, labour market training and job counselling.
3. Obligations to makeup for missing education; for instance the juvenile offenders can especially be ordered to continue or complete their studies or to attend learning assistance programmes.
4. Behaviour rules related to restitution; if such rules are prescribed, the offender may be required to pay compensation or provide symbolic reparation for the damage caused by the crime.

Table 2
Cases of ordering probation supervising from release

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

6. The after-care of the released prisoners⁵

The role of the probation officer is significant not only in the implementation of alternative sanctions, but also the task of after-care.⁶ The aim of after-care is to provide the released prisoners or offenders released from prison or reformatory with the help for the social re-integration and for the creation of the necessary social conditions in order to protect the public and to prevent crime repetition.

Since 2003, after-care begins with six months before the expected time of release. The assistance may continue after release if the ex-convict requires it subsequent to the release.

The probation officer – among others – helps insolving housing problems, job search, obtaining documents and arranging other official matters.

The probation officer may direct the person under after-care to religious, charity or other organizations co-operating with the Probation Service, and in reasonable cases may provide the client with a small amount of cash subsidy.⁷

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

The after-care tasks in the reformatory and penal institutions are carried out by the competent probation officer according to the headquarters of the institutions, while the after-care following release and the preparation of the family are implemented by the probation officer of the competent county office. The number of persons under after-care all over the country is approxamately 2,200 annully.⁸

⁵ http://kih.gov.hu/information-in-english1/-/asset_publisher/4frusdbuyVxX/content/information-in-english-probation-service

⁶ Issue of Central Office of Justice: Hungarian Office of Justice Probation Service, 2.

⁷ Issue of Central Office of Justice: Hungarian Office of Justice Probation Service, 4.

⁸ http://kih.gov.hu/information-in-english1/-/asset_publisher/4frusdbuyVxX/content/information-in-english-probation-service

http://kih.gov.hu/information-in-english1/-/asset_publisher/4frusdbuyVxX/content/information-in-english-probation-service

7. Recalling conditionally released prisoners in Hungary

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

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

7.1. So a reason for a recall a new offence.

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

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

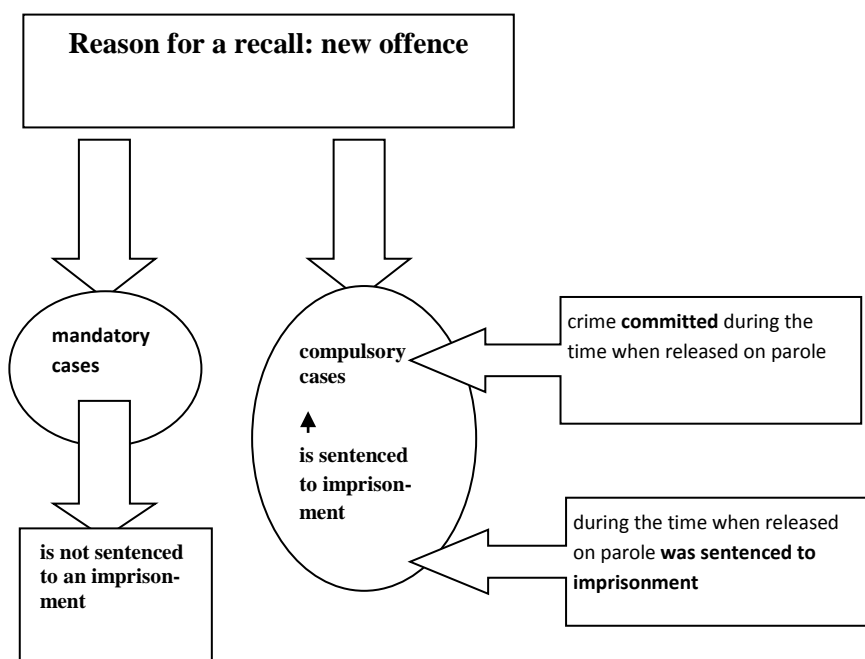


Figure 3
Reason for a recall: new offence

7.2. Serious Violation of direction

It also possible according to Code Execution of Punishments and measures (Act CCXL of 2013) Article 61 (1) the serious violation of direction. The suspension of

the remainder of the sentence can furthermore be revoked if the released prisoner deliberately or persistently violatest the Court's instructions.

In this case the prosecutor files a motion of parole revocation to penal judge.

The penal judge has the right to decide if the behavioural rules serious or not.

7.3. *Escape*

According to Code Execution of Punishments and measures Act 2013 CCXL Article 61 (2) if the prisoner on parole has tried to escape from the authorities before his arrest, or attempt of escape can reasonably be suspected, the prosecutor, or after the filling of the motion, the penal judge may order the temporary execution of imprisonment.

Exceed himself from conditional release

There are two kind of exceed from conditional release:

1. if one does not appear for the starting of imprisonment
2. if one does not appear because of its own fault.

Life imprisonment violates the European Convention on Human Rights. Lifelong imprisonment without the opportunity of parole (actual life sentence) was introduced into Hungarian criminal law in 1998. At present, Hungary is the only EU Member State whose legal system makes it possible to impose a so-called “actual life sentence” on perpetrators of serious crimes.

In *Case of László Magyar v. Hungary*⁹ (Application no. 73593/10), the applicant complained that his whole life sentence was incompatible with Article 3 of the Convention, which reads as the follows: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

As the third party – The Hungarian Helsinki Committee¹⁰ expressed the opinion that the possibility of a presidential pardon did not mean that an actual life sentence in Hungary might be characterised as reducible in terms of the case-law of the Convention.

In the judgement *the European Court of Human Rights* did not say that Hungarian convict Mr László Magyar, who was sentenced to life-long imprisonment without the possibility of a parole (i.e. actual life-long imprisonment), shall be released. In fact, it did not even say that Mr Magyar shall be definitely released in the future.

The merit of the decision is that Article 3 of the Convention “must be interpreted as requiring reducibility of the sentence, in the sense of a review” which allows the domestic authorities to consider in case of all convicts whether further detention is justified, and all detainees are entitled to know “what they must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought.”

As the result of this decision in Hungary in 18 November 2014 modified the new Code of Execution of Punishments and measures (Act 2013 CCXL).

According to this modification the procedure of Presidential Pardon have to consider *ex officio* and the condition of the procedure: the convict must be completed 40 years from his life long imprisonment.

Recalling conditionally released prisoners in Germany

Early release in Germany is based on discretionary decisions and is always conditional.¹¹ The law provides several possibilities for an early release from prison or preventive detention. Which law has to be applied depend on different criteria, such as the age of the offender, the length of the prison sentence, the type of offender.

⁹ Case of László Magyar v. Hungary Application no. 73593/10
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i/03.02.2015>

¹⁰ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144109#{‘itemid’:\[‘001-144109’\]’}’}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144109#{‘itemid’:[‘001-144109’]’}’})

¹¹ PRUINE, Ineke: Recalling conditionally released prisoners in Germany. *European Journal of Probation*, 2012/4, 63.

The basic provision governing the early release of prisoners is in 57 (1) of the Penal Code. According to this provision, prisoners can be conditionally released from determinate prison sentences after they have served two-thirds of their sentence. In exceptional cases (first time offenders; particularly good prognosis) they can be released after they have served half of their sentence [57 (2) of the Penal Code].

Life prisoners can be released after having served at least 15 years 57 a of the Penal Code). Conditional early release is granted to prisoners with good prognoses, but the exclusion of all risk is not required – a “justifiable” degree of risk is accepted. There are more detailed regulations for young inmates of youth prisons (aged 14–24).

The competent authority for conditional release is always a judge (special chamber of the District Courts). Statistical data about conditional release are not very accurate but, in practice, such release seems to have become less frequent over the last 10–15 years. The system of early release can include supervision by the probation service as in Hungary.

According to 56d of the Penal Code the court shall place the convicted person under the supervision and guidance of a probation officer for all or part of the probationary period, if this appears necessary to prevent him from committing offences.

Case loads are very high, with each probation officer being allocated about 70 clients on average at any one time. According to 57 (3) of the Penal Code [read together with s. 56a (1)], the probation term is at least two years and no longer than five years. It shall be not less than the remainder of the sentence.

Conditional release may be combined with so-called directives („Weisungen“) or obligations („Auflagen“). Directives are imposed in order to influence the behaviour of the offender and the living routines of him/her (see 56 c of the Penal Code) and, in this way to prevent reoffending.

They can consist of an instruction to avoid contacts with persons who might negatively influence the released offender or to avoid certain places, to try to find work or – with the consent of the offender – to undergo alcohol or other treatment.¹²

Obligations are meant to fulfill the victim’s or society’s desire for satisfaction.

In the majority of all cases the recall is caused by a new offence. This means that the ratio of those whose suspension of the sentence is revoked for violations of directives or obligations is comparably small.¹³

¹² For details see 56c (2), (3) of The Penal Code.

¹³ PRUINEE, Ineke: Recalling conditionally released prisoners in Germany. *European Journal of Probation*, 2012/4, 72.