

Act V of 1961
On the Criminal Code of the People's Republic of Hungary
(excerpt)
GENERAL PART
FUNCTION OF THE CRIMINAL LAW

Section 1 The task of this act is to protect the state, social and economic order of the Hungarian People's Republic, the persons and rights of citizens, to educate to observe the rules of socialist social coexistence and to instil civic discipline. To this end, it shall determine which acts being harmful to society are criminal offences and the punishments to be imposed on the perpetrators of such acts.

[keywords: protection of state, protection of social and economical order, rights of citizens]

THE CRIMINAL OFFENCE

Section 2 par. 1 A criminal offence is an act harmful to society for which the law prescribes a penalty, and that is committed intentionally or – if negligence also carries a punishment – with negligence

Par. 2 An act harmful to society is any act or passive negligence that violates or endangers the state, social or economic order of the People's Republic of Hungary, the persons or rights of its citizens.

[keywords: criminal offence, act harmful to society]

CHAPTER I
SCOPE OF CRIMINAL LAW

Temporal scope of this Act

Section 3 par. 1 The criminal offence shall be adjudicated in under the law in effect at the time it was committed.

Par. 2 Where an act is no longer treated as a criminal offense, or if it draws a more lenient penalty under the new criminal law in effect at the time when it is adjudicated, this new law shall apply. Otherwise, the new law shall not have retrospective effect.

[keywords: rectoactivity of law]

Personal and territorial scope of this Act

Section 4 par. 1 Hungarian law applies to a criminal offence committed in the People's Republic of Hungary, and when a Hungarian citizen commits an act abroad that is a criminal offence under Hungarian law.

Par. 2 A crime committed outside the borders of the People's Republic of Hungary on a Hungarian warship, a Hungarian military aircraft or a Hungarian merchant ship on the high seas, or on board a Hungarian civil aircraft in transit, is also considered a crime committed within the country.

[keywords: applicable law]

Section 5 Hungarian law shall also apply to a criminal offence committed abroad by a foreign national if the act is

- a) is a criminal offence under Hungarian law and is punishable under the law of the place where it is committed, or
- b) a criminal offence as defined in Chapters IX and X and Title II of Chapter XIII of this Act, whether or not punishable under the law of the place where it is committed provided in both cases that the chief prosecutor orders the prosecution

[keywords: applicable law]

Section 6 Whether the criminal offence was committed in the People's Republic of Hungary or abroad, any sentence or preliminary detention served based on a final judgment of a foreign court must be included in the sentence imposed by a Hungarian court for the same criminal offence.

[keywords: judgement of a foreign court]

Section 7 The criminal responsibility of persons enjoying diplomatic or other personal immunity is governed by the international treaty (convention) or, failing that, by international practice. In the matter of international practice, the statement of the Minister of Justice shall be taken as a basis.

[keywords: immunity]

Extradition and asylum

Section 8 par. 1 Citizens of the People's Republic of Hungary may not be extradited to another state, unless an international treaty (convention) provides otherwise.

Par. 2 Extradition of a foreign national is possible on the basis of an international treaty

(convention) or, in the absence of such a treaty, in the case of reciprocity. Reciprocity is governed by a declaration of the Minister of Justice.

Par. 3 Extradition shall not be granted in the case of a reciprocity if the act for which extradition is requested is not a criminal offence under either Hungarian law or the law of the requesting state.

Par. 4 The request for extradition shall be denied in case of a person who is being persecuted for his or her democratic behaviour or for his or her activities in the cause of the liberation of peoples.

[keywords: extradition]

CHAPTER II CRIMINAL RESPONSIBILITY

Title I The attempt and the preparation

Section 9 Any person who carries out an act with intent to commit a premeditated crime, without finishing it, shall be punishable for attempt.

[keywords: attempt]

Section 10 par. 1 The sentence applicable to a completed criminal act shall also apply to attempt.

Par. 2 The penalty may be mitigated without limitation or dismissed altogether if the attempt has been carried out on an unsuitable subject, with an unsuitable instrument or by way of unsuitable means.

Par. 3 Any person: who voluntarily withdraws from the completion of the criminal act, or who attempts to prevent the crime on his or her own volition, shall not be prosecuted for attempt. If the attempt in itself constitutes another crime, the perpetrator shall be liable for prosecution for that crime.

[keywords: attempt, penalty]

Section 11 par. 1 If it is expressly prescribed by an act, any person who provides the means necessary for committing a criminal offense or facilitating that, acquires the necessary tools and who invites, volunteers or undertakes to commit a crime, or agrees to commit a crime in league with others shall be punishable for preparation.

Par. 2 A person is not punishable for a preparation,

a) who voluntarily withdraws from the commencement of the criminal act,

b) who withdraws his or her invitation, offer, undertaking with a view to avoiding the perpetration, or attempts to pursue other contributors to withdraw from the criminal activity, provided that the commencement of the perpetration of the criminal offense does not take place for any reason, or

c) who reports to the authority the preparation.

Par. 3 If in the case provided for in Subsection (2) the preparation in itself constitutes another crime, the perpetrator shall be liable for prosecution for that crime.

[keywords: preparation, aid]

Title 2

Perpetrators of a criminal offence

Section 12 In the scope of this Act, perpetrators are the principal and the coactor (parties), the abettor and the aider (accomplices).

[keywords: perpetration]

Section 13 par. 1 Principal is a person who actually commits a criminal act.

Par. 2 Coactor is a person who knowingly participates in a criminal act jointly with others, in full knowledge of each other's activities.

[keywords: principal, coactor]

Section 14 par. 1 Abettor is a person who intentionally persuades another person to commit a crime.

Par. 2 Accomplice is a person who knowingly helps another person to commit a crime.

Par. 3 The penalties applicable to parties to a crime shall also apply to accomplices.

[keywords: abettor]

Section 15 In the case of several perpetrators, the circumstance under which one of them is not punishable or is subject to a lighter penalty does not affect the others, and the circumstance under which one of them is subject to a more severe penalty only affects the other perpetrator if he or she knew of it at the time of the criminal offence.

[keywords: several perpetrations]

Title III

Intent and negligence

Section 16 A criminal offense is committed with intent if the person conceives a plan to achieve a certain result, or acquiesces to the consequences of his or her conduct.

[keywords: intent]

Section 17 Negligence means when a criminal offense is committed where the perpetrator is able to anticipate the possible consequences of his or her conduct, but carelessly relies on their non-occurrence, or fails to foresee such possible consequences through conduct characterized by carelessness and neglectfulness.

[keywords: negligence]

Section 18 The more severe consequences attached to the result as a qualifying circumstance of the crime may be applied if the perpetrator is charged with intent or negligence in respect of the result.

[keywords: qualifying circumstances of a crime]

Title IV

Obstacles of criminal responsibility

Exemption from criminal responsibility

Section 19 The act is exempted from criminalisation in case of:

- a) being below the age of criminal responsibility,
- b) insanity, feeble-mindedness and mental retardation,
- c) coercion and threat,
- d) mistake,
- e) justifiable defence,
- f) means of last resort,
- g) lack of private motion,
- h) other reason specified in an act.

[keywords: exemption from criminal responsibility]

Childhood

Section 20 Persons under the age of fourteen years at the time the criminal offense was committed shall be exempt from criminal responsibility.

[keywords: age of criminal responsibility]

Insanity, feeble-mindedness and mental retardation

Section 21 par. 1 A person who has committed the act in a state of insanity, feeble-mindedness or mental retardation which renders him or her incapable of recognising the consequences of his or her act dangerous to society or of acting in accordance with such recognition shall be exempt from criminal responsibility.

Par. 2 If the perpetrator's insanity, feeble-mindedness or mental retardation merely limited his or her ability to recognise the socially dangerous consequences of the act or to act in accordance with that recognition, his or her sentence may be reduced without limit.

[keywords: state of insanity, mental retardation]

Criminal responsibility for criminal offences committed under influence by alcohol or narcotic drugs

Section 22 The provisions of Section 21 shall not apply to persons who engage in criminal activity under self-inflicted influence by alcohol or narcotic drugs.

[keywords: activity under self-inflicted influence by alcohol or narcotic drugs]

Coercion and threat

Section 23 par. 1 Any person who has committed a criminal act under undue influence by coercion or threat, depriving him or her of the capacity to act according to his or her own free will shall not be prosecuted.

Par. 2 The penalty may be reduced without limitation if the coercion or threat deprives the perpetrator of the capacity to act according to his or her own free will.

[keywords: coercion, threat]

Mistake

Section 24 par. 1 The perpetrator cannot be charged with a fact of which he or she was unaware at the time of the offence (mistake).

Par. 2 Any person who commits an act on the mistaken assumption that it is not harmful to society and who has reasonable grounds for this presumption shall not be prosecuted.

Par. 3 A mistaken assumption shall not exclude punishability if it is caused by negligence, and if the act is punishable under this Act if resulting from negligence.

[keywords: mistake]

Justifiable defence

Section 25 par. 1 A person who commits the act in justifiable defence shall be exempt from criminal responsibility.

Par. 2 Justifiable defence means any action that is necessary to prevent an unlawful attack against a person's property, or against the person or property of others, against the public interest, or an unlawful attack posing a direct threat in respect thereof.

Par. 3 Any person who exceeds the reasonable force of self-defence due to shock or justifiable aggravation shall not be prosecuted. If, on the other hand, the shock or the justifiable aggravation merely limited the perpetrator's ability to recognise the extent of the defence required, the punishment may be mitigated without limit.

[keywords: justifiable defence]

Means of last resort

Section 26 par. 1 A person who commits the act in means of last resort shall be exempt from criminal responsibility.

Par. 2 Means of last resort means when a person engages in conduct to save his or her own person or property or the person or property of others from an imminent danger that cannot otherwise be prevented or acts so in the defence of the public interest shall not be prosecuted, provided that the harm caused by the act does not exceed the peril with which he or she was threatened.

Par. 3 The concept of means of last resort shall not apply to any person whose professional duty includes exposure to danger.

[keywords: means of last resort]

Lack of private motion

Section 27 In specific cases defined in this Act the perpetrator of a criminal offence is

punishable only based on a private motion.

[keywords: private motion to persecute a crime]

Section 28 par. 1 A private prosecution may also be lodged by the victim, the victim's legal representative, if the victim has limited capacity to act, or by the victim's legal representative exclusively if the victim is incapacitated.

Par. 2 If the criminal offence was committed by the victim's legal representative this right stated in par. 1 is substituted for that of the guardianship authority.

Par. 3 If the victim entitled to a private application has died before the expiry of the time limit for filing a private motion without having filed a private motion, any of his or her relatives is entitled to file a private motion during the time still available.

[keywords: private prosecution]

Section 29 par. 1 A private motion must be lodged within thirty days of the day on which the person entitled to a private motion becomes aware of the identity of the perpetrator of the criminal offence.

Par. 2 In the case of mutual slight bodily harm, defamation or libel, the other party is entitled to file a private motion for the criminal offence committed against one of the parties until the start of the closed session before the first instance judgment, even if the time limit for filing a private prosecution has expired, provided that the statute of limitations has not yet expired.

Par. 3 A private motion may not be withdrawn.

Par. 4 A private motion against any perpetrator is valid against all perpetrators.

[keywords: private motion]

Reasons ceasing the criminal responsibility

Section 30 Criminal responsibility shall cease:

- a) upon the death of the perpetrator,
- b) by statutory limitation,
- c) by clemency,
- d) by other reasons specified in acts.

[keywords: cessation of criminal responsibility]

Statute of limitation of criminal responsibility

Section 31 The criminal responsibility shall be ceased by the statute of limitations after:

- a) twenty years for a criminal offence for which the law allows the death penalty,

- b) for an offence punishable by imprisonment, the maximum period of imprisonment, but not less than three years,
- c) three years in case of other criminal offences.

[keywords: statute of limitations]

Section 32 The limitation period begins:

- a) in the case of a completed offence, on the day on which the perpetrator's activity relating to the facts of the offence ended, but if the result was not achieved at the same time but later, on the day on which the result occurred;
- b) in the case of an attempt or preparation, the date on which the perpetrator carried out the last act of commission or preparation of the offence;
- c) in the case of an offence committed solely by failing to fulfil an obligation, the last day on which the perpetrator could have fulfilled the obligation without the consequence provided for by the criminal law.

[keywords: statute of limitations]

Section 33 par. 1 The limitation period is interrupted by the action of the prosecuting authority against the perpetrator for the criminal offence. From the date of interruption, the limitation period starts to run again.

Par. 2 The period during which the criminal proceedings against the perpetrator are suspended for a preliminary ruling does not count towards the limitation period.

[keywords: interruption of statute of limitations]

CHAPTER III

PENALTIES AND MEASURES

Title I

Penalties

The aim of the penalty

Section 34 The purpose of the penalty is to apply the legal consequence for the criminal offence to protect society, to correct the perpetrator and to deter members of society from committing criminal offences.

[keywords: purpose of the penalty]

Means of penalty

Section 35 par. 1 The principal penalties are as follows:

1. death penalty,
2. imprisonment,
3. corrective-educational work,
4. fine.

Par. 2 The ancillary penalties are as follows:

1. deprivation of civil rights,
2. prohibition to exercise professional activity,
3. prohibition from residing in a particular area,
4. expulsion,
5. forfeiture of property,
6. fine.

[keywords: penalty, death penalty, imprisonment, fine]

Section 36 par. 1 The death penalty may be imposed only on a person who is at least twenty years old at the time of the criminal offence.

Par. 2 In addition to the death penalty, only forfeiture of property may be used as an ancillary penalty.

Par. 3 In the case of a death penalty, all the legal consequences which the law attaches to deprivation of civil rights (Section 48) are triggered when the sentence becomes final.

Par. 4 The death penalty can be commuted from a pardon to imprisonment for up to twenty years. In this case, the court shall decide subsequently on the imposition of ancillary penalties, except for the forfeiture of property.

[keywords: death penaty]

Imprisonment

Section 37 Imprisonment shall be for a fixed term; the shortest term shall be thirty days; the longest term shall be fifteen years, or twenty years in the case of a cumulative sentence or a merger of sentences.

[keywords: imprisonment]

Section 38 par. 1 The imprisonment shall be served in prison or in a law enforcement workplace.

Par. 2 A person sentenced to imprisonment is obliged to carry out the work assigned to him or

her and is remunerated for this.

Par. 3 Prison rules are stricter than those in the law enforcement workplace.

Par. 4 The methods and procedures for the enforcement of imprisonment are laid down in the rules on the enforcement of sentences.

[keywords: imprisonment, law enforcement workplace]

Section 39 par. 1 A person sentenced to imprisonment may be released on parole if he or she has served at least two-thirds of his or her sentence and there are grounds for believing that the purpose of the sentence can be achieved without further imprisonment.

Par. 2 A person convicted of an intentional criminal offence may be released on parole after serving three-quarters of the sentence if he or she has previously been sentenced to imprisonment for an intentional criminal offence and ten years have not elapsed between the serving of the sentence or the expiry of the sentence and the commission of the new criminal offence.

Par. 3 The following may not be released on parole:

- a) who has not yet served at least three months of his or her sentence;
- b) who was expelled;
- c) who has been sentenced to imprisonment twice before the commission of the intentional criminal offence and who has not served his or her last sentence or had his or her sentence terminated within ten years, and who, by the nature of the criminal offence or his or her way of life, is in flagrant breach of the rules of social coexistence.

[keywords: release on parole]

Section 40 par. 1 The duration of parole shall be the same as the remaining part of the term of imprisonment

Par. 2 During the period of parole, the prisoner shall comply with the rules of conduct.

Par. 3 If the convicted person breaks the rules of conduct or is sentenced to corrective labour or a fine for an offence committed during the period of parole, the court may terminate it.

Par. 4 If the convicted person is sentenced to imprisonment for a criminal offence committed during the period of parole, the court shall terminate it.

Par. 5 In the case of termination of parole, the time spent on it does not count towards the imprisonment.

[keywords: release on parole, rules of conduct]

Section 41 The rights of the convicted person, which are covered by the deprivation of civil rights, are suspended during the period of imprisonment.

[keywords: rights of the convicted person]

Corrective-educational work

Section 42 par. 1 A person sentenced to corrective-educational work shall perform work of the nature specified by the court, and his or her personal freedom may not otherwise be restricted.

Par. 2 A deduction of between five and twenty percent of the convicted person's wages is to be made for the benefit of the State, as ordered by the court. The convicted person shall also be entitled to all the rights granted to an employed worker which are not incompatible with the purpose of the sentence.

[keywords: corrective-educational work]

Section 43 par. 1 The shortest period of corrective-educational work is three months, the longest is one year and six months, and two years in the case of cumulative sentence and merger of sentences.

Par. 2 Where the Special Part of this Act does not specify the maximum duration of the corrective-educational labour, it may last up to one year and six months.

Par. 3 Time during which the prisoner does not carry out the work shall not be counted towards the duration of the corrective- educational work.

[keywords: period of corrective-educational work]

Section 44 par. 1 If the convicted person fails to fulfil his or her work obligations without good cause or commits a serious breach of work discipline, the court shall convert the remaining part of the corrective-educational work into imprisonment.

Par. 2 In the case of the conversion of corrective-education work into an imprisonment, two days of corrective-educational work is equivalent to one day of imprisonment. In such cases, the period of imprisonment may be less than thirty days.

[keywords: conversion of corrective-educational work to imprisonment]

Fine

Section 45 The minimum sum of the fine is 100 forints, the maximum is 50.000 forints.

[keywords: fine, amount]

Section 46 par. 1 Against someone who has been sentenced to imprisonment and has sufficient earnings, income or assets,

a) a fine as an ancillary penalty shall be imposed if the criminal offence was committed for financial gain;

b) a fine may be imposed as an ancillary penalty for any criminal offence if it is likely to deter

the perpetrator more effectively from committing a further criminal offence.

Par. 2 If the court imposes the forfeiture of property, a fine shall not take place.

[keywords: fine as ancillary penalty]

Section 47 par. 1 The fine shall be converted into imprisonment in the event of non-payment.

Par. 2 When converting a fine into imprisonment, a daily imprisonment shall be counted instead of an amount of twenty-five forints to two hundred forints. The term of imprisonment substituted for a fine shall not be less than one day nor more than one year.

[keywords: conversion of fine to imprisonment]

Deprivation of civil rights

Section 48 par. 1 The person deprived of civil rights until the expiry of the prescribed period

a) may not be public official;

b) may not take part in the election of members of the organs of state power, may not sit on committees of organs of state power or on any other body set up by them;

c) may not hold office in a social organisation, movement, cooperative or interest representation body, and may not generally perform public functions;

d) may not practise as a lawyer;

e) may not attain military rank

f) shall not receive a national decoration or be given permission to receive a foreign decoration.

Par. 2 From the date of the judgment becoming final, a person deprived of civil rights shall forfeit any existing membership, position, office or trust which the disqualification precludes him or her from obtaining.

Par. 3 Once the sentence becomes final, the person deprived of civil rights shall lose his or her military rank, as well as his or her national decorations and the right to wear his or her foreign decorations.

[keywords: deprivation of civil rights]

Section 49 Deprivation of civil rights shall be imposed on a person sentenced to imprisonment if, having regard to all the circumstances of the case, he or she is unfit to take part in public affairs.

[keywords: deprivation of civil rights]

Section 50 par. 1 The shortest period of deprivation of civil rights is one year, the longest ten years.

Par. 2 The period of deprivation of civil rights begins when the judgment becomes final. The

period shall not include the period during which the rights covered by the deprivation of civil rights are suspended pursuant to Section 41, nor the period during which the convicted person is exempted from the enforcement of the imprisonment. If the parole has not been terminated, its period shall be included in the period of deprivation of civil rights.

[keywords: period of deprivation of civil rights]

Prohibition to exercise professional activity

Section 51 Prohibition to exercise professional activity may be imposed upon a person:

- a) commits a criminal offence by breaking the rules of his or her occupation requiring qualifications or by failing to comply with them,
- b) commits an intentional offence by using his or her profession.

[keywords: prohibition to exercise professional activity]

Section 52 par. 1 The shortest period of prohibition is one year and the longest is ten years.

Par. 2 The provision on the calculation of the duration of a deprivation of civil rights shall apply mutatis mutandis in the case of a prohibition to exercise professional activity.

Par. 3 The court may make the exercise of an activity requiring a qualification conditional upon the person concerned proving, in a specified manner, that he or she has the necessary skills for the occupation after the expiry of the period of prohibition.

[keywords: period of prohibition to exercise professional activity]

Prohibition from residing in a particular area

Section 53 par. 1 In the cases specified by law, a person sentenced to imprisonment may be prohibited from residing in one or more municipalities (towns) or from a part of the country if his or her presence in these places is dangerous to the public interest.

Par. 2 The shortest duration of the prohibition is six months and the longest is five years. The provision on the calculation of the period of deprivation of civil rights (Section 50 par. 2) shall apply mutatis mutandis in the case of the prohibition.

[keywords: prohibition from residing in a particular area]

Expulsion

Section 54 A perpetrator who is a foreign citizen shall be expelled from the territory of the People's Republic of Hungary if, considering all the circumstances of the case, his or her removal from the country is desirable.

[keywords: expulsion]

Forfeiture of property

Section 55 In cases specified by acts

- a) forfeiture of property shall be imposed in addition to the death penalty or imprisonment for more than five years
- b) forfeiture of property may also be imposed in addition to an imprisonment of more than three years if the protection of society so requires.

[keywords: forfeiture of property]

Section 56 par. 1 Forfeiture of property may be imposed either on all the perpetrator's property or on a specified part or fraction of his or her property, or on individually specified items of property.

Par. 2 Forfeiture of property may also be extended to property which the perpetrator has transferred to another person in order to evade the authority, provided that the acquirer must have known of the purpose of the transfer, and to property which the perpetrator has transferred to another person free of charge after the criminal offence has been committed.

Par. 3 Once the judgment imposing forfeiture becomes final, the property of the confiscated object is transferred to the state.

[keywords: forfeiture of property]

Obstacles of the execution of penalties

Section 57 The enforceability of the sentence is excluded upon

- a) the death of the sentenced person,
- b) the statute of limitations,
- c) pardon,
- d) other grounds provided for by acts.

[keywords: obstacles of the execution]

Limitation period for the penalty

Section 58 par. 1 The limitation period of the principal penalty is

- a) twenty years for death penalty or, in case of imprisonment of at least fifteen years,
- b) fifteen years for imprisonment for a term of ten years or more but less than fifteen years,
- c) ten years for imprisonment of five years or more but less than ten years,
- d) five years for imprisonment of less than five years,

e) three years in the case of corrective-educational work or a fine.

Par. 2 The fine, if it is an ancillary penalty, expires after three years.

[keywords: limitation period of the principal penalty]

Section 59 par. 1 The limitation period for the principal penalty begins on the day on which the decision imposing the penalty becomes final. If the imprisonment has already been served and the convicted person escapes during the enforcement of the sentence, the limitation period begins again from the date of the escape.

Par. 2 The limitation period for a fine as an ancillary penalty shall begin on the day on which the execution of the imprisonment is completed or the date on which the sentence ceases to be enforceable.

Par. 3 The limitation period shall be interrupted by an action of the competent authority against the convicted person for the purpose of enforcement of the sentence.

Par. 4 If a fine has been imposed in addition to the imprisonment, an action for the enforcement of either the principal penalty or the ancillary penalty shall interrupt the limitation period for both penalties.

Par. 5 On the date of the interruption, the limitation period shall begin again.

[keywords: limitation period of the principal penalty]

Title II

Measures

Warning

Section 60 Without imposing a penalty, a warning shall be given to a person whose act and person, either at the time of commission or at the time of adjudication, due to a change of circumstances, is of such minor danger to society that the least severe penalty applicable under this Act is unnecessary.

[keywords: warning]

Involuntary treatment in a mental institution

Section 61 par. 1 The court shall order the involuntary treatment of a person who is not criminally responsible for a criminal offence committed in a state of insanity, feeble-mindedness or disturbed consciousness (Section 21 par. 1), if there is reason to fear that he or she will commit an act which would otherwise constitute a criminal offence.

Par. 2 Involuntary medical treatment shall be carried out in a designated medical institution

or in home care with medical treatment.

Par. 3 The court shall terminate the involuntary medical treatment when it is no longer necessary.

[keywords: involuntary treatment in a mental institution]

Involuntary rehabilitation.

Section 62 par. 1 If the criminal offence is linked to excessive alcohol consumption, the court may order the perpetrator to undergo involuntary rehabilitation.

Par. 2 If the perpetrator has been sentenced to a non-custodial sentence, the involuntary treatment shall be carried out in an institution or a closed medical facility.

Par. 3 If the perpetrator has been sentenced to imprisonment, the involuntary treatment shall be carried out during the execution of the sentence.

[keywords: involuntary rehabilitation]

Confiscation

Section 63 par. 1 An object shall be confiscated,

a) which is used or intended to be used as an instrument for the commission of a criminal offence, if it is the perpetrator's property, or otherwise, if it endangers public safety or public order;

b) which is created by way of a criminal act;

c) which the perpetrator of the criminal offence has received from the owner or with the owner's consent from another person for committing the criminal offence.

Par. 2 Media products, in which a criminal act is realized, shall also be confiscated.

Par. 3 If confiscation cannot be ordered or effected, the perpetrator may be ordered to pay the value of the property in the case of paragraph 1 points b) and c).

Par. 4 Ownership of the confiscated property is transferred to the state when the judgment imposing confiscation becomes final.

Par. 5 If the preconditions for confiscation are fulfilled, it shall be ordered even if the perpetrator is exempted from criminal responsibility.

[keywords: confiscation]

CHAPTER IV SENTENCING

Principles of sentencing

Section 64 par. 1 The penalty shall be imposed within the limits specified by acts, bearing in mind its purpose (Section 34), in a manner commensurate with the criminal offence and the perpetrator's danger to society, the degree of culpability, and other aggravating and mitigating circumstances.

Par. 2 The death penalty shall be imposed, considering the principles set out in par. 1, when the purpose of the punishment cannot be achieved by any other penalties.

[keywords: purposes of penalty, death penalty]

Multiple counts of offences and cumulative sentence

Section 65 If the court finds the perpetrator guilty of more than one criminal offence in the same conviction (multiple counts of offences), one sentence (cumulative sentence) shall be imposed for all the offences.

[keywords: cumulative sentence]

Section 66 par. 1 The penalty shall be imposed based on the types of punishment and according to the most severe one prescribed for the gravest of the multiple offences to which it pertains.

Par. 2 If, in respect of a multiple count of charges, at least two is punishable by imprisonment, the upper limit of the applicable punishment shall be increased by one-half of the maximum penalty prescribed, however, it may not reach the total duration of the maximum sentences established for such criminal acts and shall not exceed twenty years.

Par. 3 Where two or more offences for which the law imposes a more severe penalty of corrective-educational work are committed together, the provision of paragraph 2 shall apply mutatis mutandis, provided that the term of the corrective-educational work imposed as a cumulative penalty shall not exceed two years.

Par. 4 A fine imposed as a cumulative sentence may not exceed the maximum amount of the fine specified in Section 45.

[keywords: cumulative sentence]

Section 67 par. 1 The imposition of an ancillary sentence in the case of multiple counts of offences is appropriate if the law provides for the application of an ancillary penalty to any of the offences in the multiple counts of offences.

Par. 2 In the case of a cumulative sentence, the ancillary penalty may not exceed the maximum rate or the maximum duration laid down by acts.

[keywords: cumulative sentence, ancillary sentence]

Commutation of sentences

Section 68 par. 1 The principal penalty laid down in the Special Part of the Act may, within the limits of par. 2, be reduced if its minimum level is too severe, considering the purpose of the penalty and the circumstances governing its imposition (Section 64).

Par. 2 Within the meaning of par. 1, if the minimum sentence to be imposed for a criminal act is:

- a) imprisonment of ten years, instead of it at least five years,
- b) imprisonment of five years, instead of it at least two years,
- c) imprisonment of two years, instead of it at least six months,
- d) six months of imprisonment, instead of it a shorter term of imprisonment or corrective-educational work,
- e) imprisonment of less than six months, which may be replaced by a maximum of one year's corrective-educational work or fine.

Par. 3 In respect of attempt or aiding and abetting, if the sentence to be imposed under par. 2 points a)-d) remains excessive, the next sentencing category of par. 2 shall be applied.

[keywords: commutation of sentences]

Section 69 If an act allows unlimited mitigation, the minimum sentence for any type of punishment may be imposed.

[keywords: commutation of sentences, mitigation]

Suspension of the execution of the penalty

Section 70 par. 1 The court may suspend the execution of a sentence of imprisonment of less than one year or a fine (as a capital penalty) if, considering the personal circumstances of the perpetrator, in particular his or her criminal record, and the offence committed, the purpose of the sentence can be achieved without execution.

Par. 2 In exceptional circumstances, the court may exceptionally suspend the execution of a sentence of imprisonment exceeding one year but not exceeding two years.

Par. 3 The execution of a fine as a capital penalty may be suspended for one year from the date on which the judgment becomes final, the execution of the imprisonment of less than one year for three years, and the execution of imprisonment of more than one year for five years.

Par. 4 Unless otherwise ordered by the court, the suspension does not apply to the fine imposed as an ancillary penalty.

Par. 5 The execution of the sentence may not be suspended if

- a) deprivation of civil rights, prohibition from residing in a particular area or expulsion is applied;

- b) the perpetrator committed the criminal offence before the completion of imprisonment or during probation;
- c) the perpetrator has been sentenced to imprisonment for an intentional crime within five years prior to the commission of the offence, unless the execution of that sentence has been suspended.

[keywords: suspension of the execution of a sentence]

Section 71 The suspended penalty shall be executed if

- a) it is established during the probation that the execution of the sentence has been suspended despite the grounds for disqualification provided for in Section 70 par. 5 points b) or c);
- b) the perpetrator is sentenced to imprisonment for a criminal offence committed during the probation, or the sentence of corrective-educational work for such an offence is commuted to imprisonment.

[keywords: suspension of the execution of a sentence]

Merger of sentences

Section 72 par. 1 If the perpetrator has been sentenced to more than one term of imprisonment or to more than one corrective-educational work, or to imprisonment and corrective-educational work, the sentences shall be included in a single sentence.

Par. 2 Merger may include sentences for executable terms of imprisonment, that were still pending at the time when ordering the merger of sentences, or which are being served consecutively. However, if the perpetrator is serving consecutive sentences of imprisonment, a merger of sentences may be imposed even if one of the sentences has not yet been fully served.

[keywords: merger of sentences]

Section 73 par. 1 Penalties of the same type should be included in a merger of sentences of the same type.

Par. 2 The merger of sentences shall be determined on the basis of the penalties imposed in each sentence; the total penalty shall exceed the most severe penalty imposed in each conviction but shall not exceed the combined total of the penalties previously imposed and the maximum penalty for the relevant category of penalty laid down in the General Part of the Act.

Par. 3 However, if all the criminal offences were committed before the earliest judgment became final, the merger of sentences shall be determined as if all the offences had been tried in one proceeding and sentenced cumulatively (Section 66). In this case, the total penalty shall not exceed the total duration of the sentences imposed in each judgment.

[keywords: merger of sentences]

Section 74 par. 1 In the case of concurrence of several imprisonment sentences, the court may suspend the enforcement of the imprisonment sentence imposed as a total sentence in the case of Section 73 par. 3 and only if the conditions for suspension are met and the execution of all previously imposed imprisonment sentences has already been suspended by the court. In such a case, the longest of the several probations laid down in each judgment shall prevail, starting on the date on which the most recent judgment became final.

Par. 2 The imprisonment which replaces a fine (as a principal penalty) because of a transformation cannot be included in the merger of sentences.

[keywords: merger of sentences, imprisonment, fine]

Section 75 par. 1 In the case of a merger of sentences of imprisonment and corrective-educational work, the sentences shall be merged into an imprisonment.

Par. 2 Imprisonment may be merged with corrective-educational work if the imprisonment is to be executed. The corrective-educational work, or the part thereof not yet executed, shall be considered in the merger of sentences to the extent laid down in Section 44 par. 2.

Par. 3 A sentence of imprisonment which, because of a transformation, replaces corrective-educational work shall be regarded for the purposes of the merger of sentences as if it had originally been imposed.

Par. 4 When several corrective-educational works are included in the merger of sentences, if the rate of deduction from the wages in each sentence is different, it shall be determined in such a way that it is not less than the minimum rate specified in each sentence, and not more than the maximum rate specified therein.

[keywords: merger of sentences, imprisonment, corrective-educational work]

Section 76 par. 1 Ancillary penalties imposed by separate sentences may not be included in the merger of sentences. A fine may not be included in the merger of sentences even if it has been transformed to imprisonment.

Par. 2 Of the concurrent penalties of the same type imposed by each sentence, only the penalty which is the most severe for the perpetrator shall be executed, except for forfeiture of property and the fine.

[keywords: merger of sentences, ancillary penalties]

Inclusion of pre-trial detention

Section 77 par. 1 The period of pre-trial detention shall be included in full in the sentence of

imprisonment or corrective-educational work imposed. For the purpose of the inclusion, one day of pre-trial detention shall be equivalent to two days of corrective-educational work.

Par. 2 By remand of pre-trial detention, the court shall also declare the fine to have been forfeited up to the amount corresponding to the amount of the conversion provided for in Section 47 par. 2.

[keywords: period of pre-trial detention]

CHAPTER V

EXONERATION FROM THE DETRIMENTAL CONSEQUENCES ATTACHED TO PRIOR CONVICTIONS

Scope of Exoneration

Section 78 par. 1 The scope of the exoneration is that the convicted person is exempted from the adverse consequences, other than civil law consequences, which are attached to the conviction by law.

Par. 2 The person cleared by exoneration shall be deemed to have a clean criminal record, and - unless otherwise provided for by law – he or she cannot be required to give account of any conviction from which he or she has been exonerated.

Par. 3 Where a new criminal offence is committed, the exoneration shall not extend to those detrimental consequences which are attached by this Act to a previous conviction.

[keywords: scope of the exoneration]

Mode of exoneration

Section 79 The convicted person may be exonerated:

- a) on the strength of an act;
- b) on the basis of a court ruling; or
- c) by an act of clemency.

[keywords: exoneration, act of clemency]

Statutory exoneration

Section 80 par. 1 Exoneration shall take effect by virtue of an act:

- a) in the case of a fine as a principal penalty, if its execution has been suspended, on the date on which the judgment becomes final;
- b) in the case of a fine as a principal penalty, if its execution has not been suspended, on the

date of its payment or of the completion of the execution of the alternative sanction or of the date of the expiry of its enforceability;

c) in the case of corrective-educational work, on the day on which it or the alternative imprisonment ends or ceases to be enforceable;

d) in the case of an imprisonment, if the execution of the sentence has been suspended and the probation has ended without the sentence having been carried out, on the day on which the probation expires;

e) in the case of an imprisonment of less than one year, if its execution has not been suspended, five years after the sentence was served or after its enforceability ceased, provided that the sentenced person has not committed any further offence during that period. In the case of a new offence, the provisions of Section 83 shall apply to the exoneration.

Par. 2 In the case of par. 1 point e), if the sentence has been imposed for an offence under Chapter IX or Chapter X, the statutory exoneration shall take effect ten years after the sentence has been served or has ceased to be enforceable.

Par. 3 A exoneration under par. 1 point d) shall cease to have effect if the sentence the enforcement of which has been suspended is subsequently to be carried out.

[keywords: statutory exoneration]

Judicial exoneration

Section 81 par. 1 The court shall, upon request, grant the sentenced person exoneration if it is justified and from the day on which the sentence of imprisonment was served or from the day on which the sentence ceased to be enforceable

a) five years for imprisonment of more than one year but not more than five years,

b) ten years for imprisonment of more than five years but not more than fifteen years,

c) in the case of imprisonment exceeding fifteen years, fifteen years have already elapsed.

Par. 2 The waiting period shall be ten years in the case of par. 1 point a) and fifteen years in the case of par. 1 point b) if the sentence was imposed for a criminal offence in Chapter IX or X.

Par. 3 In assessing the justification, the convicted person's lifestyle since serving the main sentence and whether he or she has made reparation for the harm caused by his or her actions shall be considered, if he or she has been able to do so.

[keywords: judicial exoneration]

Uniform exoneration

Section 82 If an ancillary penalty is imposed, the convicted perpetrator shall not be exonerated from the detrimental consequences attached to prior convictions, and he or she may not be

exonerated, insofar as the ancillary penalty is carried out or it did not cease to be enforceable.

[keywords: uniform exoneration]

Joint exoneration

Section 83 par. 1 In the case of multiple convictions, the exoneration may only apply to all the sentences together if its conditions are fulfilled for each of them.

Par. 2 If the convicted person is sentenced before the statutory exoneration takes effect to a penalty which is not covered by a statutory exoneration, the joint exoneration may be granted only by the court.

Par. 3 The waiting period is ten years where imprisonments which have not been suspended concur, and fifteen years where one of the sentences exceeds fifteen years.

[keywords: joint exoneration]

Exonerated by act of clemency

Section 84 The Presidential Council of the People's Republic may grant exonerated to a convicted person even if the preceding provisions do not provide for it.

[keywords: exonerated by act of clemency]

CHAPTER VI SPECIAL PROVISIONS REGARDING JUVENILES

The juvenile

Section 85 par. 1 'Juvenile offender' shall mean any person between the age of fourteen and eighteen years at the time of committing a criminal offence.

Par. 2 The provisions of Chapters I to V shall apply to a juvenile with the derogations provided for in this Chapter.

[keywords: juvenile offender]

Purpose and conditions for the use of educational measures and penalties

Section 86 The main purpose of the educational measure of penalty imposed on a juvenile is to promote his or her development in the right direction and to make him or her a useful member of society.

[keywords: educational measure of penalty]

Section 87 par. 1 As a main rule, educational measures shall be applied in case of a juvenile.

Par. 2 A sentence shall be imposed on a juvenile if the use of an educational measure is not appropriate or if the juvenile is over the age of eighteen at the time of the offence.

Par. 3 Neither educational measure or penalty may be imposed if a curative measure (Section 101) is ordered.

[keywords: educational measure of penalty, juvenile offender]

Educational measures

Section 88 The educational measures are:

- a) judicial reprimand,
- b) conditional sentence,
- c) placement in a reformatory institution.

[keywords: educational measures]

Judicial reprimand

Section 89 A judicial reprimand consists of the court explaining to the juvenile the danger to society of his or her actions, expressing disapproval of the offence and warning him or her to refrain from committing dangerous acts in the future.

[keywords: judicial reprimand]

Conditional sentence

Section 90 par. 1 In the case of a conditional sentence, the court will postpone the final decision for one year, and will lay down rules of conduct for that period.

Par. 2 If the juvenile has behaved satisfactorily within the time limit, the court finds that the juvenile has fulfilled the condition and terminates the proceedings without taking any measures or imposing any penalty.

Par. 3 If the juvenile commits an offence or commits a serious breach of the rules of conduct prescribed for him or her within the time limit, the court may order placement in a reformatory institute or impose a sentence, even before the time limit has expired.

Par. 4 If the juvenile commits a lesser offence of misconduct during the time limit, the court may extend the time limit once for a maximum of one year, provided that the probationer has not yet reached the age of eighteen. The extension shall be counted from the expiry of the first-time limit for probation.

[keywords: conditional sentence]

Placement in a reformatory institution

Section 91 par. 1 The court shall order the juvenile to be placed in a reformatory institution if the juvenile's effective education can only be ensured by institutionalisation.

Par. 2 The length of the placement in a reformatory institution is not fixed by the court; the shortest is one year.

Par. 3 A person who has already spent at least one year in a reformatory institution and has shown signs of improvement during that time may be released from the institution for one year by the board of the institution. If the juvenile has shown good behaviour during the one-year period, the discharge shall become final at the end of that period, failing which the court shall order the juvenile to continue his or her education in the reformatory institution.

Par. 4 A juvenile who has reached the age of eighteen in a reformatory institution shall be released therefrom. The court may also order that such a person may continue his or her education in the institution until the end of the school year in which he or she reached the age of eighteen.

[keywords: reformatory institution]

Penalties applicable to juveniles

Section 92 The principal penalties that may be imposed on juveniles are imprisonment, corrective-educational work or a fine, and the ancillary penalties are deprivation of civil rights, prohibition to exercise professional activity, prohibition from residing in a particular area and expulsion.

[keywords: penalties, juvenile offender]

Section 93 par. 1 The minimum term of imprisonment for a juvenile for any offence is thirty days.

Par. 2 The maximum term of imprisonment that may be imposed on a juvenile is ten years if the penalty laid down in the Special Part of the Act is more than ten years and the juvenile was over the age of sixteen when the offence was committed. In other cases, the maximum term of imprisonment shall be the same as that laid down in the Special Part of the Act but shall not exceed five years.

Par. 3 For the purpose of calculating the limitation period, the period specified in par. 2 shall apply.

[keywords: juvenile offender, imprisonment]

Section 94 Corrective-educational work can only be applied to a juvenile who has reached the age of sixteen at the time of the adjudication of the criminal offence.

[keywords: juvenile offender, corrective-educational work]

Section 95 par. 1 A fine may be imposed on a juvenile if he or she has independent earnings, income or sufficient assets.

Par. 2 The irrecoverable fine cannot be converted or replaced by a measure.

[keywords: juvenile offender, fine]

Section 96 Deprivation of civil rights may be imposed on a juvenile only in the case of an imprisonment of more than one year.

[keywords: juvenile offender, deprivation of civil rights]

Execution of imprisonment

Section 97 par. 1 Special care shall be taken to ensure the moral upbringing and education of the juvenile during the execution of the imprisonment.

Par. 2 The juvenile's imprisonment shall be served in a separate penitentiary. However, if the convicted person has reached the age of twenty when the sentence is served, the sentence shall be served in accordance with the general rules.

Par. 3 If the convicted person has reached the age of twenty while serving the sentence, the general rules apply to the further serving of the sentence, provided that the remainder of the sentence is longer than one year.

[keywords: juvenile offender, execution of imprisonment, moral upbringing]

Uniform measure and cumulative sentence

Section 98 par. 1 In the case of multiple offences committed by a juvenile, a single educational measure or a cumulative sentence should be imposed for all offences.

Par. 2 The cumulative sentence may not exceed fifteen years or seven years and six months imprisonment, as the case may be, in accordance with the distinction provided for in Section 93 par. 2.

Par. 3 If a person is charged with an adult offence in addition to an offence committed as a juvenile, no educational measures can be taken against him or her. In such a case, a cumulative sentence should be imposed.

[keywords: juvenile offender, cumulative sentence]

Merger of sentences

Section 99 par. 1 The merger of sentences for a juvenile, depending on whether the juvenile has reached the age of sixteen or not, may not exceed fifteen years or seven years and six months imprisonment respectively.

Par. 2 In the case of a concurrence of a placement in a reformatory institution and imprisonment, the imprisonment shall be executed. In such cases, the court may extend the period of imprisonment for a maximum of one year, considering all the circumstances of the case, in particular the juvenile's personality and personal circumstances.

Par. 3 In the case of a concurrence of a placement in a reformatory institution and corrective-educational work, the court determines whether the placement in a reformatory institution or corrective-educational work should be carried out. In such cases, the duration of the corrective-educational work may be extended.

[keywords: juvenile offender, merger of sentences]

Probation with supervision

Section 100 par. 1 A juvenile who has been placed on probation, sentenced to corrective-educational work or had the execution of an imprisonment suspended by a court is under probation with supervision.

Par. 2 A juvenile who has been released on parole or temporarily discharged from a reformatory institution is also under supervision.

Par. 3 During the period of probation with supervision, the juvenile is under the supervision of a designated probation officer and is obliged to comply with the rules of conduct prescribed for him or her.

[keywords: juvenile offender, placement on probation]

Curative measures

Section 101 par. 1 The juvenile may be ordered to undergo involuntary treatment in a medical institution or therapeutic placement as a curative measure.

Par. 2 The court will order remedial education if the juvenile is mentally defective or mentally incompetent.

Remedial education ends as soon as it is no longer necessary or when the juvenile has reached the age of eighteen.

[keywords: curative measure]

Exoneration from the detrimental consequences attached to prior convictions of the juvenile

Section 102 par. 1 If the sentence is not more severe than one year of imprisonment and its execution has not been suspended, the juvenile is exonerated from the detrimental consequences attached to prior convictions on the day on which the execution of the sentence is completed or its enforceability ceases.

Par. 2 If the execution of the custodial sentence imposed on a juvenile has been suspended for a probationary period, the convicted person is discharged is exonerated from the detrimental consequences attached to prior convictions on the day the judgment becomes final. The exoneration shall expire when the sentence is carried out.

Par. 3 If the juvenile has served more than one year of imprisonment, the court shall grant him or her an exoneration on request, if he or she is merited.

[keywords: exoneration of a juvenile offender]