

CRIMINAL LAW IN HUNGARY

SECOND EDITION

KRISZTINA KARSAI
ZSOLT SZOMORA



Wolters Kluwer

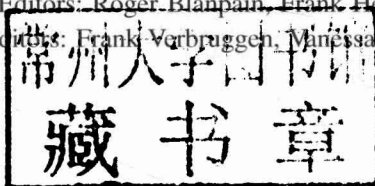
Criminal Law in Hungary

Second Edition

**Krisztina Karsai
Zsolt Szomora**

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Criminal Law.

General Editors: Roger Blanpain, Frank Hendrickx
Volume Editors: Frank Verbruggen, Manessa Franssen



Wolters Kluwer

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wklawbusiness.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-6642-5

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Table of Contents

The Authors	3
List of Abbreviations	15
General Introduction	17
§1. THE GENERAL BACKGROUND OF THE COUNTRY	17
I. Geography and Climate	17
II. Population	18
III. Economy	18
IV. Political System and Administrative Structure	19
V. The Judicial System	19
§2. CRIMINAL LAW, CRIMINAL JUSTICE AND CRIMINAL SCIENCE	20
I. Definitions of Criminal Law	20
A. Criminal Law	20
B. Substantive Criminal Law	20
C. Criminal Procedure	20
D. Enforcement of Criminal Sanctions	21
E. Criminal Offences	21
II. Characteristics of Criminal Law	22
III. Overview of the Criminal Justice System	23
A. The Police	23
B. The Prosecution Service	24
C. Investigating Judges and Investigating Jurisdictions	26
D. Trial Jurisdictions	26
E. Prison System and After-Care	27
F. The Bar	29
G. Statistical Overview	30
IV. Trends within Criminal Justice	32
§3. THE HISTORICAL BACKGROUND	37
I. The Period of Customary Law	37
II. The Csemegi-Code	37
III. Codifications after World War II	38
IV. The Criminal Code of 1978	39

Table of Contents

V. The Criminal Code of 2012	40
VI. The Codification of Criminal Procedural Law	40
§4. SOURCES OF CRIMINAL LAW	41
I. International Sources	41
A. National Sources	42
1. Fundamental Law	42
2. Statutory Legislation	43
3. Statutory Delegated Legislation	44
4. Court Decisions	44
§5. CLASSIFICATIONS AND TECHNIQUE OF CRIMINAL LAW	45
Part I. Substantive Criminal Law	47
Chapter 1. General Principles	47
§1. THE PRINCIPLE OF LEGALITY	47
I. Limitation on Penalization	47
II. Legality and Interpretation	49
§2. THE PRINCIPLE OF THE INDIVIDUAL GUILTY MIND	50
§3. THE PRINCIPLE OF PROPORTIONALITY	51
Chapter 2. Scope of Application of Criminal Statutes	53
§1. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO TIME	53
I. Prohibition of Retroactive Criminal Law	53
II. Retroactivity of the Milder Statute	53
III. The Extent of the Prohibition against Retroactive Criminal Law	54
§2. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO SPACE	54
I. The Territorial Principle	54
II. Extraterritorial Criminal Jurisdiction	55
A. Principles	55
B. Cases	55
C. Localization	56
D. The Effect of Foreign Adjudication and Execution	56
§3. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO PERSONS	57
I. Immunities Based on National Public Law	57
II. Immunities Based on International Public Law	58

Chapter 3. General Principles of Criminal Liability	59
§1. INTRODUCTION: THE BASIC ELEMENTS OF CRIMINAL OFFENCES	59
§2. THE MATERIAL OR PHYSICAL ELEMENT (<i>ACTUS REUS</i>)	60
I. Description	60
II. Exclusion of the Physical Element	62
III. Acts, Omission, Causation	62
A. Offences of Action	63
B. Offences of Omission	63
C. Causation Offences	64
IV. Classification of Offences from the Point of View of the Material Element	65
A. Momentary and Continuous Offences	65
B. Occasional or Habitual Offences	66
§3. THE MORAL OR MENTAL ELEMENT (<i>MENS REA</i>)	66
I. Subjective Guilt or Culpability	66
II. Intent	67
A. Degrees of Intent	68
1. General Intent	68
2. Special Intent	68
B. Types of Intent with Reference to Their Consequences	69
1. Direct Intent (<i>Dolus Directus</i>)	70
2. Indirect or Eventual Intent (<i>Dolus Eventualis</i>)	70
III. Negligence	70
A. Definition	70
B. The Evaluation of Negligence	71
C. Types of Negligence	71
IV. The Required Form of Guilt	72
Chapter 4. Justification, Excuse and Other Grounds for Impunity	74
§1. GENERAL PRINCIPLES	74
§2. GROUNDS OF JUSTIFICATION	75
I. Public Duty or Orders of the Authorities	75
II. Justifiable Defence	76
A. Defining the Problem	76
B. Preventive Justifiable Defence under Hungarian Law	76
C. Justifiable Defence and Its Conditions	76
1. Conditions Relating to the Attack	77
2. Conditions Relating to the Defence	78
D. Putative Justifiable Defence	79
III. Legitimate Resistance against Unlawful Acts of Civil Servants	79

Table of Contents

IV. Necessity	79
A. Necessity as Justification	79
B. Conditions	80
C. Putative Necessity	81
V. Consent of the Victim	81
§3. GROUNDS OF EXCUSE	82
I. Introduction	82
II. Minority	83
III. Insanity	85
A. Insanity at the Moment of the Act or Omission	85
B. Insanity at the Moment of the Trial	85
IV. Intoxication	86
V. Force Majeure and Coercion	86
VI. Ignorance or Mistake	87
A. Ignorance or Mistake of Law	87
B. Ignorance or Mistake of Fact	87
C. Special Cases	88
§4. OTHER GROUNDS OF IMPUNITY	88
I. Report of Some Criminal Offences to the Public Authority	90
II. Submission to the Public Authorities	91
III. Family Relationship	91
Chapter 5. Inchoate Offences, Parties to Criminal Offences	92
§1. CRIMINAL PREPARATION AND ATTEMPT	92
I. Describing the Problem	92
II. Hungarian Attempt and Preparation Statutes; Conditions of Preparation	92
III. Conditions of Attempt	94
A. Intent to Commit a Criminal Offence	94
B. Commencement of Perpetration	94
C. Incompletion of the Offence	95
IV. Attempting the Impossible (Unsuitable Attempt)	96
V. The Punishment for Attempt	96
§2. PARTIES TO CRIMINAL OFFENCES	97
I. General Remarks	97
II. Hungarian Law on Parties to Criminal Offences	97
III. The Requirement of a Perpetrator's Offence	98
A. The Perpetrator's Offence as a Basic Condition	98
B. The Perpetrator's Offence as a Relevant Factor in Measuring Punishment	99
IV. Forms of Participation Provided for by Law	100
A. Perpetrators	100
1. Direct Perpetrators	100

2. Joint Perpetrators	101
3. Indirect Perpetrators	101
B. Accessories	102
1. Instigators	102
2. Abettors	103
V. The Required Intent	104
A. General Rules	104
B. Incidental Departure from the Intended Unlawful Enterprise	105
VI. Special Cases	105
A. Abandonment of Participation	105
B. Entrapment	106
 Chapter 6. Classification and Survey of Criminal Offences	 107
§1. GENERAL CLASSIFICATION OF CRIMINAL OFFENCES	107
I. Statutory Classification of Criminal Offences	107
II. Ordinary and Political Offences	107
III. Ordinary and Printing-Press Offences	107
§2. SURVEY OF CRIMINAL OFFENCES	108
I. Criminal Offences of the Penal Code	108
A. Offences against the Person, Personal Freedom and Personal Dignity (Chapters XV, XVIII, XXI)	108
B. Offences against Public Health (Chapter XVII)	108
C. Offences against Sexual Morality and Sexual Freedom (Chapter XIX)	109
D. Offences against the Traffic (Chapter XXII)	109
E. Offences against Natural Habitats and Fauna and Flora and Nature (Chapter XXII)	109
F. Offences against Justice (Chapter XXVI), Corruption Offences (Chapter XXVII), Offences of Public Officials (Chapter XXVIII) and Offences against Public Officials (Chapter XXIX)	109
G. Offences against the Public Security (Chapter XXX)	110
H. Offences against the Public Peace (Chapter XXXII)	110
I. Offences against the Public Trust (Chapter XXXIII)	110
J. Offences against the Property (Chapters XXXV, XXXVI, XXXVII)	110
K. Offences against the Economy (Chapters XXXVIII-XLII)	111
II. Criminal Offences in the Specific Criminal Legislation	111
 Chapter 7. The Sanctioning System	 112
§1. THE GENERAL SANCTIONING SYSTEM	112
§2. PENALTIES	114

Table of Contents

I. The Penalties	114
A. The Death Penalty	114
B. Custodial Penalties	115
C. Confinement as a Penalty	117
D. Community Service	118
E. Fine	118
F. Disqualification from a Profession	118
G. Disqualification from Driving a Motor Vehicle	119
H. A Ban on Entering Certain Areas	119
I. A Ban on Visiting Sport Events	120
J. Expulsion	120
II. Secondary Penalty: Exclusion from Participation in Public Affairs	120
§3. PREVENTIVE MEASURES	121
I. Preventive Measures Applicable Both to Adults and Juveniles	121
A. Admonition	121
B. Probation and Compensational Service	122
C. Probationary Supervision	122
D. Forfeiture	123
E. Confiscation	123
F. Rendering Electronic Data Irreversibly Inaccessible	124
G. Compulsory Psychiatric Treatment	125
II. Preventive Measure Applicable Only to Juveniles: Special Education in a Reformatory Institution	125
III. Measures Applicable to Legal Persons	126
§4. MODES OF PUNISHMENT: CONDITIONAL SENTENCE	126
I. Introduction	126
II. Probation	127
III. The Suspended Penalty	128
§5. PRINCIPLES AND RULES CONCERNING SENTENCING	128
I. The General Principles	128
II. Grounds for Increasing the Penalty	132
A. Aggravating Circumstances	132
B. Recidivism	132
C. Increasing Penalty in Case of Criminal Organization	134
III. Grounds for Mitigating the Penalty	134
A. Mitigating Circumstances	134
B. Mitigating the Penalty under Article 82 Btk	134
IV. Concurrence of Offences	135
A. Concurrence by One Act	135
B. Concurrence by More Acts	135
C. Continued Offences	137
D. Subsequently Aggregated Penalty	137
V. Combination of Sentencing Rules	137

Part II. Criminal Procedure	139
Chapter 1. Principles, Institutions, Stages	139
§1. THE JUDICIAL ORGANIZATION	142
I. Trial Jurisdictions	142
II. The Functions of the Investigating Judge	145
§2. THE STAGES OF THE PENAL PROCESS	147
I. Basic Distinctions	147
II. The Investigation in the Pre-trial Stage	148
A. The Police and the Prosecution Service	148
B. The Beginning of the Investigation	149
1. The Basis of the Investigation	149
2. Instituting the Investigation; Deadlines of the Investigation	151
3. Supplementing the Complaint	152
4. Rejection of the Complaint	152
C. Decisions Made during the Investigation	154
1. The Suspension of the Investigation	154
2. The Termination of the Investigation	155
D. The Closing of the Investigation	156
III. The Exclusive Powers of the Public Prosecutor during and after the Investigation	156
A. The Exclusive Powers of the Public Prosecutor during the Investigation: The Decisions on Settling the Case Out of the Court	156
1. Partial Termination of the Investigation	157
2. The Termination of the Investigation by the Application of Admonition	157
3. Mediation Procedure	158
B. The Powers of the Public Prosecutor after the Investigation	159
1. The Partial Desisting from the Indictment	159
2. The Postponement of the Indictment	159
3. The Indictment	161
IV. The Inquiry in Court	162
§3. THE LEGAL POSITION OF THE ACCUSED AND THE CIVIL PARTY	162
I. The Legal Position of the Accused	162
A. Introductory Remarks	162
B. The Provisions in the Code of Criminal Procedure	163
1. The Knowledge of the Suspicion and the Charge	163
2. The Right of Presence at the Procedural Events and Actions	163
3. The Right to 'Read' the Documents of the Case Affecting Him/Her	163

Table of Contents

4. The Right to Act in the Criminal Procedure	164
5. The Right of Legal Remedy	164
6. The Right to Be Informed	164
7. The Right to Legal Assistance and to Private Communication with Relatives	164
8. The Defendant's Obligations	164
C. The Rights of the Defence	164
II. The Legal Position of the Victim and the Civil Party	166
A. Introductory Remarks	166
B. The Civil Party	167
C. Private Prosecuting Party and the Substitute Public Prosecuting Party	168
§4. THE RULES OF EVIDENCE	169
I. The Principles of Evidentiary Law	170
II. The Means of Proof	172
A. Statement of the Witness	172
B. The Protection of the Witness	174
C. Expert Opinion	175
D. The Statement of the Defendant	177
E. Other Means of Evidence and the Evidentiary Actions	178
III. The Exclusion of Evidence	178
Chapter 2. Powers, Rights and Duties in the Pre-trial Proceedings	181
§1. THE COERCIVE MEASURES OF THE CRIMINAL PROCEDURE	181
I. Introductory Remarks	181
II. The Most Important Covert Methods of Investigation	181
III. The Powers to Deprive Personal Freedom	182
A. The Powers of Arrest, House Arrest and Home Curfew	183
B. The Restraining Order and the Temporary Psychiatric Treatment	183
IV. The Powers of Search and Seizure	184
A. The Powers of Search and Body Search	184
B. The Powers of Seizure and Freezing of Property	185
V. Bail and the Order to Preserve Computer Data	186
VI. Miscellaneous	187
A. The Powers at the Scene of the Offence	187
B. Ensuring the Order of the Proceedings	187
§2. POWERS, RIGHTS AND DUTIES WITHIN THE FRAMEWORK OF THE PRE-TRIAL DETENTION	188
I. Introductory Remarks	188
II. The Conditions of the Pre-trial Detention	188

III. The Continuation of the Pre-trial Detention	189
IV. The Review of the Pre-trial Detention	190
V. The Termination of the Pre-trial Detention	190
VI. The Execution of the Pre-trial Detention	191
VII. An Alternative to the Pre-trial Detention: Freedom and Release under Conditions	192
§3. THE POWERS AND DUTIES OF THE INVESTIGATING JUDGE	192
I. Responsibilities of the Investigating Judge	192
II. The Procedure of the Investigating Judge	192
III. The Appeal against the Decisions of the Investigating Judge	193
IV. The Powers to Interview the Accused and Witnesses	193
Chapter 3. The Trial	194
§1. THE PREPARATORY STAGE OF THE TRIAL	194
§2. THE TRIAL IN THE COURTS OF FIRST INSTANCE	197
I. The Attendance of the Parties	198
II. The Course of the Trial	199
III. The Judgment of the Case	203
§3. SOME SPECIAL PROCEDURES OF THE COURT	204
I. Expedited Hearing	205
II. Fast Track Court Procedure	205
III. Waiver of Trial	206
IV. Procedure in Absentia	207
§4. THE LEGAL REMEDIES	208
I. Introductory Remarks	208
II. The Ordinary Legal Remedies	209
A. Appeal against the Decision of the Court of First Instance	209
B. Appeal against the Decision of the Court of Second Instance	212
C. The Repeated Procedure of the Courts of First and Second Instance	213
III. The Extraordinary Legal Remedies	213
A. Re-opening of the Case	213
B. Curia Review	215
Part III. Execution and Extinction of Sanctions	217
Chapter 1. Sources of Penitentiary Law and Nature of Regulations	217

Table of Contents

Chapter 2. General Principles Concerning the Execution of Penalties and Preventive Measures	219
Chapter 3. The Prison System	221
§1. ORGANIZATIONAL STRUCTURE	221
I. Prison Administration and Classification of Penitentiaries	221
II. Classification of Prisoners	221
§2. THE PENITENTIARY REGIME	221
I. Introduction	221
II. Aspects of Living Conditions	222
A. Visits, Correspondence and Telephone	222
B. Information and Media	222
C. Prison Labour	222
D. Disciplinary Measures	223
E. Leave from Prison	223
III. Forms of Alternative Execution of the Prison Sentence	224
§3. PRISONERS' RIGHTS, COMPLAINTS PROCEDURE AND JUDICIAL CONTROL	225
§4. EARLY (CONDITIONAL) RELEASE	226
Chapter 4. Extinction of Sanctions or Sentences	228
§1. PARDON	228
§2. THE LIMITATION PERIOD FOR THE ENFORCEMENT OF PENALTIES	229
§3. REHABILITATION AND COMPENSATION OF OFFENDERS	230
I. The Exemption	230
II. Compensation for Unlawful Detention of Offenders	231
§4. REVISION OF SENTENCES	232
General Conclusion	233
Selected Bibliography	235
Index	237

Criminal Law in Hungary

Second Edition

**Krisztina Karsai
Zsolt Szomora**

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Criminal Law.

General Editors: Roger Blanpain, Frank Hendrickx
Volume Editors: Frank Verbruggen, Vanessa Franssen



Wolters Kluwer

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wklawbusiness.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-6642-5

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Authors



Professor Dr Krisztina Karsai (born 6 June 1972) studied Law and State Sciences at the University of Szeged (former Attila József University) (1991–1996), where she also received the PhD degree in 2004 for her thesis on European criminal law. She has been working at the Faculty of Law of the University of Szeged since 1997, where she was appointed Associate Professor in 2005 and where she teaches substantive and procedural criminal law, European criminal law, consumer (criminal) law and legal rhetoric. Since 2000, she has been a member of the expert group of the Ministry of Justice for combating drug problems and, since 2005, for crime prevention. Since 2013, she has

chaired the Department of Criminal Law and Criminal Procedure at the University of Szeged; in 2014 she was appointed to full professor. Prof. Karsai is the author of many books and articles on Hungarian and European criminal law and is Humboldtian and the winner of the Cesare Beccaria Awards for Young Researchers (2007). Dr Karsai also published books on consumer protection by criminal law, on traffic offences, on police law and on European criminal law. Since 2012, she has been an independent expert of the European Commission in the field of criminal justice. She is editor and co-author of the new Commentary on the new Hungarian Criminal Code of 2012.



Associate Professor Dr Zsolt Szomora (born 26 January 1980) studied Law and State Sciences at the University of Szeged, where he graduated in 2003. He received the PhD degree in 2008 for his thesis on analysing of sexual crimes in a comparative aspect. He has been working at the Faculty of Law of the University of Szeged since 2003, where he was appointed Associate Professor in 2011. Dr Szomora teaches substantive and procedural criminal law, the law of sexual crimes and the constitutional aspects of criminal law. He has published a monograph on sexual crimes and many articles on doctrinal questions of criminal law, and is co-author of textbooks for law students. Furthermore, he

contributed to the codification works on the new Hungarian approach to sexual crimes. In 2010, he worked as Humboldtian research fellow at the University of

The Author

Osnabrück (Germany). In 2011, he was awarded the Junior Prima Prize by the Hungarian Academy of Sciences. He is also a co-author of the new Commentary on the new Hungarian Criminal Code of 2012.