

# Mentally abnormal and drug-addicted offenders in the criminal procedure in Hungary

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MENTALLY ABNORMAL AND DRUG-ADDICTED  
OFFENDERS IN THE CRIMINAL PROCEDURE IN HUNGARY

Katalin Gönczöl

A. MENTALLY ABNORMAL OFFENDERS

I. Criminal Responsibility

The basic condition of criminal responsibility is the accountability of the person. It includes the ability of realization (or recognition) of facts as well as the ability to develop a will corresponding to the realization (recognition) and to demonstrate this will. Thus a person can only be regarded as accountable if he possesses the ability of realization (recognition) if he is capable of developing a will in himself and of acting accordingly. A person who is not possessing the accountability cannot be the subject of penal law and as such cannot be punished. Here is what Act IV of 1978, the Criminal Code of the Hungarian People's Republic (CC for short) says about this point:

"CC Article 24. (1) Whoever commits the act in a state of mental deficiency, particularly in insanity, mental debility, intellectual decline, schizophrenia or personalistic troubles, that render him unable to realize the consequences of the act or to proceed in accordance with such realization, cannot be punished."

The Criminal Code uses the term state of mental deficiency to denote cases in which the absence of the ability to be responsible must be examined. It lays special emphasis on insanity, mental debility, intellectual decline, schizophrenia and personalistic troubles. "Insanity can be defined as a sort of disease of a lasting nature in general which can bring about serious disorders in the functioning of the higher nervous system and which has an impact, among other things, on the way of thinking, domain of will and realm of emotions of the person suffering from this disease. Mental debility is not a disease but a reduced state of mental performance; it can be caused by damage to the brain at birth or in childhood. In more serious cases, a person suffering from mental debility is only capable of very restricted intellectual activity in every field of life; as a rule, his will power is weak and his intellectual and emotional standards are low. Intellectual decline (dementia) is, in most cases, a final and progressive type of decline. It can be traced back to different reasons and it is of varying extent effecting the existing intellectual performance; sometimes

it only involves certain areas of the intellectual functions. In general schizophrenia is a disease of a temporary nature; it can be caused, in addition to the troubles of the central nervous system, by the consumption of poisonous materials (such as alcohol and drugs) or it can also be the consequence of certain physiological processes. None of the variations of schizophrenia by itself can be factors influencing the degree of responsibility; however, they can have such an impact depending merely on the degree of gravity. From the point of view of criminal law one of the most characteristic forms of personalistic troubles is psychopathy. This is no disease as it is but it denotes a personality whose attitude can become insufficient from the aspect of social expectations to be met. However, it can be of such a degree that it may well be considered a disease and be of the same nature as insanity in which case responsibility should be excluded"<sup>1</sup>.

In addition to what is listed above other defective states of mental functioning can also bring about a state in which responsibility must be excluded as is referred to by the respective Article of the Criminal Code.

In case the mental state did not exclude accountability of the person at the moment the criminal act was committed for all but only limited this ability, there is a subject of the criminal act, there is responsibility to be borne by the perpetrator for the act under the criminal law and therefore, he is punishable. The following relevant provision is contained by the Criminal Code:

"CC Article 24. (2) The punishment may be mitigated without restriction, where the mental deficiency has limited the perpetrator in realizing the consequences of his act or to proceed in accordance with such realization."

The term "mitigation without restriction" means that the lowest measure of any sort of punishment may be imposed (see CC Article 87 (4)). However, this provision of the Code contains only the possibility of unrestricted mitigation, thus in principle it is possible that the criminal court applies the strictest possible punishment provided by the law against a person whose accountability is limited; it may also occur that in consideration of all the circumstances associated with the case the punishment is mitigated.

## II. Examination of Mental Deficiency by Experts

Because of its physiological and psychological character mental deficiency makes medical examination by a specialist necessary. As stated by the law it is obligatory to ask for the services of a medical expert in case the object of the question to be decided is mental deficiency. In fact, according to the Hungarian law two experts must be invited to carry out the examination of mentally deficient offender in order to promote unbiased and reliable sentencing<sup>2</sup>.

In case one examination is far from being sufficient for stating mental deficiency, the legal authority competent in the case can rule that the person's mental condition must be observed (the competent legal authority is the prosecutor before sub-

mitting the indictment and the court during the actual proceedings). Observation can take one month, but the period can be extended by another month by the competent authority following opinion given to this effect by the mental hospital<sup>3</sup>. If on the basis of the observation of the condition of the person's mental condition or following the results of the examination and in consideration of the other but relevant data of the legal procedure it is highly probable that the person's forced medical treatment must be ordered, provisional forced medical treatment can be applied during the procedure for which a specific health institution (asylum) must be designated<sup>4</sup>.

The purpose of the expert's report is to offer information to the criminal authorities and the court which are not trained in medicine about the deficiencies identified in the case of the person subjected to examination, to describe the behavioural consequences of the deficiency on the basis of practical medical experiences and finally to explain the relations between the offender's individual manifestations during the disease<sup>5</sup>. However, the hands of the court are not bound by the report supplied by the expert; if it has reservations in consideration of other evidences the court has the right to rule that the examination be supervised. The authority to take the final position on special problems is the Judicial Committee of the Scientific Council for Health.

### III. Ruling and Cancelling Forced Medical Treatment

In the event of mental deficiency no punishment can be applied. In serious cases, however, measures designed to cure mentally deficient people must be taken in order to protect society. According to the Hungarian Criminal Code those having committed most serious crimes while suffering from mental deficiency must be submitted to forced medical treatment.

"CC Article 74. (1) A person who commits a criminal offence against the person, by violence or in a way arousing public danger, and cannot be punished for his act because of mental deficiency, there being a risk of his committing another similar act, provided a punishment heavier than deprivation of liberty for one year should otherwise be applied, shall be submitted to forced medical treatment.

(2) Forced medical treatment takes place in an asylum designated for such purpose.

(3) Forced medical treatment is cancelled where its necessity has ceased."

The law makes it obligatory to adopt forced medical treatment only in the case of people having committed the most serious crimes such as manslaughter, causing physical injury, rape, robbery and causing public danger.

It is also specified by the law that forced medical treatment should only be applied in case there is a risk of the person committing another similar act. A conclusion to this effect can be drawn from all the circumstances related to the case and from the medical specialist's opinion.

The conditions were formulated in such a way that the application of forced medical treatment is excluded in the case of minor criminal offences. As

revealed by the relevant provision it can only be applied in case a punishment heavier than deprivation of liberty for one year should otherwise be applied. (This must be examined on the basis of the objective characteristics of the act.)

Article 33 of Health Act No. 2 of 1972 of the Hungarian People's Republic contains provisions for forced medical treatment or care to be given to insane people. Therefore, provided the conditions specified by the Criminal Code for adopting forced medical treatment are absent but the offender must be subjected to medical treatment or care because of his mentally deficient state the court must supply information to this effect to the competent health authorities. The objective of this step is to make the health authorities acquainted with the necessity of subjecting the offender to a cure. In such cases the cure can take the form of treatment given to outpatients or it can also be given within the premises of a hospital functioning outside the frame of the national organization of the execution of punishment.

The Criminal Code specifies those to be subjected to forced medical treatment so that this measure should only be applied in the case of persons who must be treated in a closed institution (asylum) in the interest of protecting society. It is called the Institution of Judicial Observation and Mental Care.

According to para (3) of Article 74 of the Criminal Code forced medical treatment should be cancelled where its necessity has ceased. If justified by the improved condition of the patient the head doctor of the institution designated for the treatment must immediately submit a proposal for the cancellation of forced medical treatment<sup>6</sup>. Decision on the supervision of forced medical treatment is taken by the court in trial. Before, the end of one year of forced medical treatment the necessity of continued treatment must be examined by the court ex officio. If it rules that the treatment should be effected each year<sup>7</sup>. Supervision of forced medical treatment can be requested by the prosecutor, husband/wife of the person subjected to it, or by the defense counsel in addition to the court and the head doctor of the institution in which treatment is effected. The court can rule that supervision of forced medical treatment is not necessary if a supervision has already been performed within the preceding six months<sup>8</sup>.

Finally, let us review the frequency of the occurrence of mentally deficient offenders and the ratio of the application of forced medical treatment. As revealed by the data contained by Table 1 criminal proceedings had to be cancelled on the basis of Article 24 para (1) of the Criminal Code (because of the mentally deficient state of the offender) in the case of one hundred persons on the average per annum. This accounts for some 0.2 to 0.3 per cent of the offenders every year. One third or half of the offenders who could not be punished because of their being mental deficient were subjected to forced medical treatment specified in Article 74 para (1) of the Criminal Code.

Table 1: Occurrence of Mentally Abnormal Offenders since the Introduction of the New Criminal Code

| Mentally abnormal Offenders   | 2nd half of 1979 |       | 1980   |       | 1st half of 1981 |       |
|---|------------------|-------|--------|-------|------------------|-------|
|   | number           | %     | number | %     | number           | %     |
| Could not be punished because of mental deficiency as stated by Article 24, para (1) of the Criminal Code | 79               | 100,0 | 116    | 100,0 | 57               | 100,0 |
| Subjected to forced medical treatment on the basis of Article 74, para (1) of the Criminal Code           | 30               | 37,9  | 63     | 54,3  | 23               | 40,3  |

#### IV. Development of Mental Deficiency during Imprisonment

It may occur that an offender was healthy when he committed the criminal act and mental deficiency which renders the implementation of punishment impossible according to regulations develops later, for example, in the course of imprisonment. For this case provisions are contained by decree No.8/1979 (VI.30.) issued by the Ministry of Justice.

"Article 110. (1) The convict in whose case the physician of the institution detects symptoms in the course of imprisonment, which are indicative of mental deficiency must be sent to the Institute of Judicial Observation and Mental Care for treatment.

(2) The mental condition of the convict denoted by para (1) shall be examined by the Institute of Judicial Observation and Mental Care.

(3) The person is detained in the Institute for examination for one month. This period can be extended by the head doctor of the Institute by another month.

(4) In case it can be established on the basis of the opinion of two mental disease specialists that deprivation of liberty cannot be executed because of the person's abnormal state of mind he shall be transferred to the mental ward of the institute of Judicial Observation and Mental Care by the head doctor of the Institute.

(5) The condition of the convict transferred to the mental ward must be supervised according to necessity, but at least twice a year by two specialists and the head doctor of the Institute must decide on whether treatment should be continued or the measures contained by para (6) are necessary, to be applied.

(6) In case the convict

- a. has been cured, he must be taken to the institution corresponding to the degree of the implementation of his punishment;
- b. has revealed signs of improvement of a degree not hampering the implementation of imprisonment, he must be transferred to the curing and educational group.

(7) In case it has been found to have made no improvement on the day of his release he must be taken to a hospital functioning within the National Health Service."

#### V. Execution of Forced Medical Treatment, Care and Treatment Given to a Convict of Limited Accountability

The modern legal foundations for the implementation of forced medical treatment are contained by law-decree No.11/1979 which includes the implementation of punishments and taking measures following the introduction of the new Criminal Code. This set of provisions specifies the requirements to be satisfied by the cure as follows:

"Article 84. (1) In the course of forced medical treatment the patient must be given the most suitable treatment according to the prevailing standards of medicine so that any deterioration in his condition shall be prevented and his health be restored as soon as possible to the highest possible degree."

To achieve the above objectives it was necessary to update the asylum functioning within the frame of the implementation of punishment. Since 1961, continuous improvement has been made and the process has been accelerated since the introduction of the new Criminal Code with the gradual creation of conditions for performing differentiated, individualized and complex treatment necessary for effective diagnostics, psycho and socio-therapy, rehabilitation and therapeutic milieu. Additional conditions have also been created in terms of personnel and establishments to promote the modern approach. The overriding objective of the staff of the Institute of Judicial Observation and Mental Care is to establish a sort of therapeutic community.

There are only health personnel and no prison warders in the Institute. Working teams have been set up with a view to the division of labour corresponding to specific lines and tasks. Their members include a physician, a psychologist, a social worker and the nursing staff. They have been functioning for about a year during which patients' communities have been established along with voluntary groups. According to the possibilities a system of creative activities has been introduced which is supplement along twenty different lines by reasonable activities tailored to the individual needs and life-like labour therapy sessions. The incentives designed to promote participation in the sessions include

release, release to promote re-adjustment and occasional financial bonuses. There is a library for the patients and there is also a well-equipped studio which they operate on their own. The patients listen to the radio or watch television regularly and a film is also screened once a week.

To foster relations between the patients and the outside world is one of the principal tasks of the Institute. There are no restrictions whatsoever on correspondence. There are visiting hours for relatives three times a week as in an ordinary hospital. Family therapeutic activities are also under way in which the relatives are included with regard to their actual readiness and not in respect of whether they are close or distant relatives.

There are no conditions created for heterosexual relations within the premises of the Institute, but in the course of cultural events and programmes the male and female patients can spend the time together and play the role of man or woman, respectively.

An opportunity is provided by the leadership of the Institute for the patients to have a say in the daily time-table, in the composition of the people in one ward and in giving out bonuses. They can also decorate the wards collectively. The products of creativity sessions are displayed at shows.

In the daytime the patients can move about freely within the building and in the three yards around it. For patients fit for doing sports regular sport facilities are available. All the efforts are designed to serve the objective of resocialization and prevent a lasting incorporation of the hospital situation in the personality.

In order to prepare release relations have been established with social and health institutions operating in the world at large with the objective of after-care. It is a desire to establish objective conditions for adjustment to the society on collective basis. At the same time arrangements are made that the labour rights, rights of inheritance of the patients, their family rights are observed and problems arising in the various fields of life are solved<sup>9</sup>.

Convicts of limited accountability on whom imprisonment is inflicted begin to serve their sentence in the Institute of Judicial Observation and Mental Care<sup>10</sup>. The objective of this measure is specified by the respective provisions as follows:

"Article 109. (2) The convict must be subjected to examination in the Institute of Judicial Observation and Mental Care and by taking into account the opinion of medical experts submitted in the course of the criminal procedure a complex therapeutic programme corresponding to the person's mental condition must be drawn up within a month. In exceptional cases this period can be extended by another month by the head doctor of the Institute. After that the convict must be transferred to a curing and educational group."<sup>11</sup>

The institution termed curing and educational group was introduced by Law-Decree No. 11/1979 on the implementation of punishments and measures. These groups operate in certain institutions of the implementation of punishments. The Institute of Judicial Observation and Mental Care elaborates not only the thera-



peutic programme of the individual convicts but is also supervises the therapeutic work of the institutions specified for the implementation of punishment and provides for the preparation of the personnel on an adequate level and their in-service training.

There is an educational officer in charge of the curing and educational group and the people participating in its activities include a physician, psychologist or some other specialists if necessary<sup>12</sup>.

The members of the curing and educational group have a daily schedule as distinct from what is applied in the institution in which the punishment is implemented. There are minimum 30 and maximum 80 people in one group. The way they conduct their life is defined by a programme drawn up every month. It includes therapeutic sessions, learning, cultural programmes and regular work.

According experiences gained over the past year the overwhelming majority of people subjected to cure and education can be employed 8 hours a day. If necessary, the working hours can be reduced to 6 hours per day. Those who are unsuitable for regular employment in the institution in which the punishment is implemented can have sessions at which they can do useful work.

Learning is based on the simple method of acquiring rules. For convicts capable of learning, the form the acquisition of fundamental knowledge takes is special educational sessions. A considerable proportion of convicts subjected to curing and education can participate in organized primary education run within prison premises.

Community therapy is the fundamental part of curing and education. Its objective is defined as follows by Miklós Magyar in a methodological guidebook written on the subject: "In the curing and educational group the community therapies adopted reduce the harmful psychological impacts to which, under prison conditions, the convicts are exposed and are different from the objective of the execution of punishment. They increase the individual's readiness to adjust and adapt himself, to establish social relations and his determination to face his own fate and possibilities; they educate and make people accustomed to bearing responsibility."<sup>13</sup> The recommended therapies are of the creative, hobby and artistic type.

The essence of therapeutic sessions is formulated by Miklós Magyar as follows: "While work and, for that matter, labour therapy causes the patient to face social demands (that is, he is socialized by them), creative, hobby and artistic therapy makes it possible to develop the remaining functions of the personality. In addition to providing an opportunity for self-expression it is also a significant factor that the activities are carried on by the individual in a community." In addition, the different forms of psychotherapy methods are also adopted. The simplest variations of this method are the individual, small and large group psycho-therapy. The Methodological Guide suggests that the application of individual therapy can be introduced with the use of covering and disclosing types of methods. Improvement of a person's knowledge of himself is specified as the objective of small-group therapy. Large group therapy is designed to es-

establish the mechanism of the self-regulation of the group<sup>15</sup>. Adopting family therapeutical methods is extremely important for keeping the relations of the convicts alive with the outside world, but it is also essential for preparing release and promoting recovery as well<sup>16</sup>.

What is listed above contains the general methods and principles to be followed in the course of curing and education. The elaboration of the actual and complex programme that varies from person to person is the task of the Institute of Judicial Observation and Mental Cure within the observation and examination period lasting for one or perhaps two months as specified by the relevant provision.

There is very little that can be said as yet about the practical experiences of curing and education since the scheme was launched just over a year ago. And the first months were obviously characterized by attempts to seek the right path. A foundation of principle had to be laid down with the creation of the necessary conditions in terms of facilities, organization and personnel. All that we can say now is that the initial results are promising and are indicative of careful preparations.

Including a person in the curing and educational group cannot be regarded as a final measure for the duration of imprisonment. In case the condition of the convict is found to have changed favourably in the group, the remaining period of his prison term must be spent in on ordinary prison specified by the sentence<sup>17</sup>.

I wish to mention that not only convicts of limited accountability are included in the curing and educational group but also a person who has been ordered to be subjected to forced medical treatment although his ability to bear responsibility has not been affected by his deficient mental state, but from the aspect of preventing recidivism it is desirable to subject him to curing and education throughout his prison term. In addition, convicts who have been treated in the Institute of Judicial Observation and Mental Care because of their deficient state of mind in the course of imprisonment but their mental state has improved to such a degree that there is no further obstacle left for continued deprivation of liberty are also transferred to the curing and educational group along with certain alcoholic convicts who, in some cases, have been subjected to forced medical treatment; it is also this of group which offers cure and treatment to drug-addicts suffering from personalistic troubles. As we shall see later there are few people of this kind in the Hungarian system of the execution of punishment.

## B. OFFENDERS OF THE DRUG-ADDICT CATEGORY

### I. Criminal Responsibility

There is no mass consumption of drugs in Hungary and, for that matter, drug-addiction is not a problem of social dimensions. Customs that sprang up in association with drugs do not look back on any tradition and they are, therefore, so infrequent that it would be quite a problem to describe them statistically. The proportion of crimes committed under the influence of drug or in relation to them is even smaller. In spite of the favourable picture we take advantage of every social, cultural and legal means at our disposal to prevent this worldwide phenomenon from spreading in Hungary. That was the objective that guided the people elaborating the Criminal Code when, in the course of formulating the general and special provisions of criminal law, the dangers of committing crime in connection with drugs and relevant sanctions were taken into consideration.

According to the present standards of medicine a state of schizophrenia is brought about by drugs. The degree of schizophrenia is dependent on the quality and quantity of narcotic drugs consumed and on the individual tolerance of the person. In contrast to other reasons of schizophrenia the state brought about by narcotic drugs or alcohol is generally induced by the offender himself. He has much to do with reaching a stage that excludes or limits the accountability. In consideration of this point the present Criminal Code does not apply the dispositions of Article 24 (1).

"Article 25. The dispositions of Section 24 do not apply to a person who commits the act in a drunken or drugged state due to his own fault."

If the argument is reversed, it means that a person in a drunken or drugged state due to his own fault is responsible for his act in the same manner as if he had not committed the act in such a state. It follows that in such a case the criminal act does not have a subject possessing accountability but maintains that it is the responsibility of the person not to reach such a state in which he can lose control of his own actions; however, in case he reaches such a situation due to his own fault, he must be responsible for his own actions in the same way as if he had been in possession of accountability. Responsibility is established on the basis of the characteristics of the object side of the criminal act. Considering the external manifestations of a criminal act it can be regarded as a premeditated act or one committed out of carelessness. All that has to be examined on the subjective side is whether or not the perpetrator has become drunken or reached a drugged state due to his own fault. The depth and intensity of either of the states, that is to say, the extent to which the person's accountability are justified to be established by an expert<sup>18</sup>.

Since the introduction of the new Criminal Code this provision has hardly been applied to persons in a drugged state arising from the consumption of narcotic drugs. The picture is much the same if we examine the period since 1961 since the provision in question was formulated in the same manner in the previous Criminal Code. However, the provision has a much greater importance in respect of alcoholics since between 1970 and 1979 alcohol consumption rose in

Hungary parallel with the rise in living standards. During the ten year period under review wine consumption rose by 11.1 per cent, beer consumption by 14.9 per cent and the consumption of spirits by 33.3 per cent<sup>19</sup>. In 1980, every fifth crime was committed under the influence of alcohol or in connection with a way of life influenced by drunkenness<sup>20</sup>.

## II. Crime Committed in Association with Narcotic Drugs. Abuse with Drugs

"CC Article 282. (1) Whoever, by violation of official regulations, prepares, acquires, keeps or puts on market narcotic drugs fit for taking morbid delight, introduces such materials into Hungary, or takes them out of the country, or carries them through Hungarian territory, commits a crime and is punishable with deprivation of liberty from one year to five years.

(2) Under the dispositions of para (1) is punishable, whoever to a person who has not completed his eighteen years of age, gives narcotic drugs fit for taking morbid delight.

(3) The punishment is deprivation of liberty from two years to eight years, where the offence is committed

(a) by a professional offender,

(b) in a criminal alliance,

(c) implying narcotic drugs of considerable quantity or value.

(4) Any person who makes preparations for an offence with narcotic drugs as defined in para (1), is punishable for misdemeanour, with deprivation of liberty up to two years.

(5) Any person who prepares, acquires or keeps a small quantity of narcotic drugs for purposes other than putting on market, commits a misdemeanour and is punishable with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine."

As I stated earlier there are no traditions in Hungary of either narcotic drug consumption or the illegal preparation of narcotic drugs. Considering the fact that in the other countries of the world both the preparation and consumption of narcotic drugs are increasing at a rapid pace along with related crime it became necessary to adopt criminal sanctions or envisage their application for purposes of prevention. There were some years in which Budapest was one of the transit centres of international narcotic drug smuggling. However, as a result of successful detection, the application of heavy punishment or the threat of inflicting such punishment this phenomenon has been reduced to practically the minimum.

The legislators considered the fact that the range of drugs suitable for taking morbid delight has been changing from year to year in the function of the changes in customs and the development of technology. That is why there is a separate provision contained by the new Criminal Code for the definition of substances regarded as narcotic drugs.

The behaviour contained by para (2) deserves special attention. International experiences supply ample evidence to the effect that the consumption of narcotic drugs can become a harmful passion in an early age; that is why young people under eighteen years of age must be specially protected by the criminal law.

Para (3) of Article 282 contains very heavy punishment to be inflicted on those involved in international drug smuggling.

Para (5) draws a line of distinction between the victims and beneficiaries of narcotic drugs. It is quite obvious that the full force of the law is applied to the latter category. In the case of the victims it is not permitted to discard the threat of punishment in order to prevent people from committing the act, but obviously the punishment envisaged must be milder than that inflicted on the beneficiaries.

Following the introduction of the new Criminal Code, that is from July 1st, 1979 to December 31st, 1980 Article 282 of the Code was applied in 13 cases altogether. One person was made responsible for having committed the most serious act contained by para (3). Another person was made responsible for having committed the crime described in para (5) which is the lightest of all. During the one and a half year period under review forced medical treatment was adopted in connection with narcotic drugs in the system of the execution of punishment and during imprisonment only in three cases.

#### A rousing Morbid Passions

"CC Article 283. Whoever gives help to a person who has not completed his eighteenth year yet, to obtain morbid enjoyment of a narcotic drug or preparation, or attempts to persuade him to do so, commits a misdemeanour and is punishable with deprivation of liberty up to one year, or with reformatory and educativ labour, or with a fine."

"This Section has a supplementary role to play in the struggle by criminal law against narcotic drugs. It has been stated that interest taken by adolescents in drugs often begins with the use of materials that do not figure on the list of narcotic drugs; however, because of their narcotic effect they are suitable for morbid enjoyment. They include a number of pharmaceuticals and also some other substances like glues. The extent to which they are detrimental to health is, as a rule, below that of narcotic drugs. The fact that their use of this kind was qualified as criminal act indicates the recognition of the danger of arousing a morbid bent or passion. It is the duty of the medical experts to decide whether or not a substance possesses the effect figuring in the bearing of the case."<sup>21</sup>

The sanctions defined by the law for arousing morbid passion was applied in 8 cases (4 adults and 4 juveniles) between July 1st, 1979 and December 31st, 1980.

We must be fully aware of the fact that no provisions of criminal law, even if they have been formulated with maximum foresight, care and consideration can prevent the spread of drug-taking on a mass scale. The application of the sanctions of criminal law is regarded as means to be used in the final resort, that is, they are taken advantage of only in case other institutional forms are of no avail. All the available forms of social policy must be mobilized for purposes of prevention. Excessive consumption of alcohol as well as the taking of narcotic drugs for morbid delight are but second best actions on the part of people revealing the absence of the ability to conduct their life in a cultured manner or the bankruptcy of attempts designed to promote this ability. All the members of the society must be taught to be able to take advantages of the possibilities offered by the social conditions and to find expression for the values hidden in the personality in a most useful manner.

#### Notes :

- 1) Interpretation of the Hungarian Criminal Code. Közgazdasági és Jogi Könyvkiadó (Publishing House of Economics and Law), Budapest, 1979 pp. 61-62.
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- 3) Article 74. para (1) of Law of Criminal Procedure.
- 4) Article 98 paras (1) and (2) of Law of Criminal Procedure.
- 5) Békés, Imre, Földvári, József, Tokaji, Géza: Hungarian Criminal Law, General Part, BM Könyvkiadó (Publishing House of the Ministry of the Interior), Budapest, 1980. p.158.
- 6) Article 83 para (3) of the implementation of punishments and measures of law-decree. No.11 of 1979.
- 7) Article 73 para (1) and (2) of Law of Criminal Procedure.
- 8) Article 73 para (3) of Law of Criminal Procedure.
- 9) Magyar, Miklós, A terápiásmilieu megteremtésének lehetőségei forenzikus-psichiátriai intézetben (Possibilities of Therapeutic Milieu in a Forensic Psychiatric Institute). Manuscript, 1980. pp.1-2
- 10) Decree No. 8/1979. (VI.30.) issued by the Ministry of Justice on the Rules Governing the Execution of Punishment, Article 109 para (1).
- 11) Decree No. 8/1979. (VI.30.) issued by the Ministry of Justice on the Rules Governing the Execution of Punishment, Article 109 para (2).

- 12) Decree No.8/1979. (VI.30) issued by Ministry of Justice on the Rules Governing the Execution of Punishment, Article 59 para (1).
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- 14) Magyar, Miklós: op.cit., p.32.
- 15) Magyar, Miklós: op.cit., p.34.
- 16) Magyar, Miklós: op.cit., p.38
- 17) Decree No.8/1979. (VI.30) issued by the Ministry of Justice on the Rules Governing the Execution of Punishment, Article 59 para (3).
- 18) Decision of Principle No.3 taken by the Supreme Court in 1980 on responsibility for criminal acts committed in a state of drunkenness or drugged state.
- 19) Hungarian Statistical Pocketbook 1980. Statisztikai Kiadó Vállalat (Statistical Publishing House). Budapest, 1980. p.139.
- 20) Facts and Figures on Crime 1980. Published jointly by the Data Processing Department of the Ministry of the Interior and the Secretariat of the Chief Prosecutor's Office. Budapest, 1980. p.53.
- 21) Interpretation of the Hungarian Criminal Code. op.cit., p.349.

## ZUSAMMENFASSUNG

Die Grundbedingung strafrechtlicher Verantwortlichkeit ist die Zurechnungsfähigkeit der Person. Sie schließt die Fähigkeit ein, Tatsachen zu erkennen, ebenso die Fähigkeit, in Einklang mit dem Erkennen einen Willen zu entwickeln und diesen Willen zu bekunden. So kann eine Person nur dann als zurechnungsfähig betrachtet werden, wenn sie fähig ist, einen eigenen Willen zu entwickeln und dementsprechend zu handeln. Nach dem ungarischen Strafgesetzbuch kann eine Person, die nicht zurechnungsfähig ist, nicht dem Strafrecht unterworfen werden und kann so auch nicht bestraft werden.

Für den Fall, daß der Geisteszustand die Zurechnungsfähigkeit der Person zur Tatzeit nicht völlig ausschloß, sondern nur beeinträchtigte, existiert ein Urheber der Straftat, gibt es eine Verantwortlichkeit des Straftäters gegenüber dem Strafgesetzbuch von Ungarn, und demzufolge kann er bestraft werden. In diesen Fällen kann die Strafe ohne Einschränkung gemildert werden.

Bei Geistesschwäche kann keine Strafe verhängt werden. In ernstesten Fällen jedoch müssen zum Schutz der Gesellschaft Maßnahmen getroffen werden, die bestimmt sind, geistesschwache Menschen zu heilen. Nach dem ungarischen Strafgesetzbuch müssen solche, die schwerste Straftaten begangen haben, während sie an Geistesschwäche litten, zwangsläufig medizinischer Behandlung unterzogen werden. Diese Schwerverbrechen sind folgende: Totschlag, vorsätzliche Körperverletzung, Vergewaltigung, Raub und Gefährdung der Öffentlichkeit. Es wird vom Gesetz auch spezifiziert, daß medizinische Zwangsbehandlung nur in Fällen angewendet werden könne, wenn die Gefahr besteht, daß die Person weitere ähnliche Taten begehen könnte.

In Ungarn gibt es keinen massenhaften Drogenkonsum und deshalb ist Drogenabhängigkeit kein Problem von sozialer Dimension. Bräuche, die im Zusammenhang mit Drogen auftauchen, schauen nicht auf irgendeine Tradition zurück und sind deshalb so selten, daß es problematisch wäre, sie statistisch beschreiben zu wollen. Der Anteil von Straftaten unter Drogeneinfluß oder in Beziehung zu diesen ist noch kleiner. Trotz des günstigen Bildes unternehmen wir alles, was uns in sozialer, kultureller und gesetzlicher Hinsicht zur Verfügung steht, um dieses weltweite Phänomen an seiner Ausbreitung in Ungarn zu hindern. Dies war das Ziel der Leute, die das Strafgesetzbuch erarbeiteten, als sie während der Formulierung des allgemeinen und speziellen Teiles des Strafgesetzes die Gefahren und die einschlägigen Rechtsmittel in Betracht zogen, die mit Straftaten im Zusammenhang mit Drogen verknüpft sind.

Nach dem ungarischen Strafgesetzbuch ist eine Person, die selbstverschuldet unter Alkohol- oder Drogeneinfluß steht, genauso verantwortlich für ihre Tat, als wenn sie die Tat nicht in diesem Zustand begangen hätte. Daraus folgt, daß in einem solchen Fall die Person keine Zurechnungsfähigkeit besitzt, aber das Gesetz hält fest, daß es in der Verantwortung der Person liegt, sich nicht in einen solchen Zustand zu versetzen, in dem sie die Kontrolle über die eigenen Handlungen verlieren könnte; jedoch, wird ein solcher Zustand selbstverschuldet erreicht, muß sich die Person für ihre Tat genauso verantworten, als wenn sie im Besitz der vollen Zurechnungsfähigkeit gewesen wäre. Die



Verantwortlichkeit ist auf der Grundlage der Eigenheiten der Objektseite der Straftat erstellt. Wenn man den äußeren Ablauf einer Straftat in Betracht zieht, kann diese als vorsätzlich oder als aus Nachlässigkeit begangen erkannt werden. Alles, was auf der Täterseite untersucht werden muß, ist, ob der Täter aus eigenem Verschulden betrunken war oder unter Drogeneinfluß stand oder nicht. Das Ausmaß und die Schwere dieser beiden Zustände, das heißt, das Ausmaß, bis zu welchem die Zurechnungsfähigkeit der Person vertretbar ist, muß von einem Experten bestimmt werden.

## RESUME

La condition de base de la responsabilité criminelle est l'imputabilité de la personne. Ceci inclut la faculté de la réalisation des faits et aussi la faculté de développer un vouloir correspondant à la réalisation et de manifester ce vouloir. Ainsi une personne ne peut être regardée imputable que quand elle possède la faculté de réalisation, quand elle est capable de développer un vouloir en elle-même et d'agir selon celui. Selon le code pénal hongrois une personne qui ne possède pas son imputabilité, ne peut pas être sujet à la loi pénale, et par conséquent elle ne peut pas être punie.

Au cas où l'état mental n'excluait pas complètement, mais limitait seulement, l'imputabilité de la personne au moment du crime, il y a un sujet de l'acte criminel, il y a une responsabilité pour cet acte, qui doit être acceptée par le délinquant d'après le code pénal hongrois, et par conséquent il peut être puni. Dans ces cas la peine peut être commuée sans restriction.

Dans le cas d'une aliénation mentale une peine ne peut pas être infligée. Dans les cas graves cependant, on doit prendre des mesures désignées à guérir les aliénés pour la protection de la société. Selon le code pénal hongrois, ceux qui ont commis des crimes graves pendant qu'ils ont souffert d'aliénation mentale, doivent être soumis à un traitement médical coercitif. Les crimes les plus graves sont les suivants: homicide, lésion corporelle, viol, rapine et la mise en danger du public. En plus il est précisé par la loi qu'un traitement médical coercitif ne s'applique que quand il y a le risque que la personne pourrait commettre un autre crime similaire.

En Hongrie il n'y a pas d'usage étendu des stupéfiants et pour cette raison la toxicomanie n'est pas un problème de dimension sociale. Des coutumes qui ont surgi en rapport avec des stupéfiants n'ont pas de tradition quelconque et sont, par suite, tellement rares qu'il serait un problème considérable de les chiffrer dans des statistiques. La proportion des crimes commis sous l'influence des stupéfiants ou en relation avec eux est encore plus petite. En dépit de l'image favorable nous prenons toutes les mesures sociales, culturelles et légales qui sont à notre disposition, pour empêcher que ce phénomène universel se répande en Hongrie. Ceci était le but guidant les gens qui ont élaboré le code pénal quand, pendant la formulation de la partie générale et spéciale de la loi pénale, ils ont considéré les dangers des crimes en rapport avec des stupéfiants et des sanctions respectives.

Selon le code pénal hongrois une personne ivre ou intoxiquée par sa propre faute est responsable pour son acte dans la même mesure que si elle n'avait pas commis l'acte dans cet état. Il en suit que dans un tel cas l'acte criminel n'a pas de sujet possédant l'imputabilité, mais la loi maintient que c'est dans la responsabilité de la personne de ne pas se mettre dans un tel état où elle peut perdre le contrôle de sa propre action; mais au cas où elle se trouve dans une telle situation par sa propre faute, elle doit prendre la responsabilité pour sa propre action dans la même manière que si elle avait possédé toute son imputabilité. La responsabilité est établie sur la base des caractéristiques du côté objectif de l'acte criminel. Considérant la manifestation extérieure d'un acte criminel, il peut être regardé comme ou prémédité ou commis par imprudence. Tout ce qui doit être examiné du côté subjectif est la question si le délinquant est devenu ivre ou intoxiqué par sa propre faute ou non. La profondeur et l'intensité de chacune des deux états, c'est -à-dire l'étendue jusqu'à laquelle l'imputabilité de la personne est justifiable, doit être évaluée par un expert.

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